



REPUBLIC OF ARMENIA

COURT OF CASSATION

DECISION

IN THE NAME OF THE REPUBLIC OF ARMENIA

To Decision of the Board of the Central Bank

Decision of the Criminal Court of Appeal

Presiding Judge: M. Arghamanyan

Judges: N. Hovakimyan

A. Azaryan

Criminal Chamber of the Court of Cassation of the Republic of Armenia (hereinafter referred to as the "Court of Cassation"),

With Presiding Judge: H. ASATRYAN

Participation of: Judges S. AVETISYAN,

L. TADEVOSYAN

D. KHACHATURYAN

A. POGHOSYAN

S. OHANYAN

Clerk: A. HOVHANNISYAN

M. PETROSYAN

N. TUMANYAN

Participation of: Prosecutor: A. SHAHBAZYAN

Victim: G. VIRABYAN

Representative of the victim: K. TONOYAN

Defence Council of accused-on-trial: H. MOVSISYAN,

A. ARSENYAN: H. SUKIASYAN

On 22 December 2023, in the city of Yerevan,

having examined, in an open court session, the cassation appeal brought by Deputy Prosecutor General of the Republic of Armenia H. Aslanyan against the Decision of the Criminal Court of Appeal of the Republic of Armenia of 4 July 2019 regarding accused-on-trial Hovhannes Movsisyan (father's name: Negus) and Armen Arsenyan (father's name: Razmik),

ESTABLISHED:

Procedural overview of the Case:

1. On 23 April 2004, Grisha Virabyan (father's name: Yasha) was apprehended to the Artashat Division of the Police on suspicion of keeping a weapon.

On the same day, Criminal Case No 27203404 was instituted at the Prosecutor's Office of Ararat marz under the elements of the crime provided for by part 1 of Article 316 of the Criminal Code of the Republic of Armenia (hereinafter referred to as "the Criminal Code of the Republic of Armenia") adopted on 18 April 2003, with regard to the incident of using violence by G. Virabyan against the representatives of the Police.

- 1.1. On 3 May 2004, Grisha Virabyan was involved as an accused and a charge was brought against him under part 3 of Article 316 of the Criminal Code of the Republic of Armenia.
- 1.2. On 11 August 2004, a decision was rendered in Criminal Case No 27203404 on dismissing the proceedings regarding the employees of Artashat Division of Police Department of Ararat Marz on the ground of the absence of corpus delicti and the act causing damage to be considered legal by the criminal law.
- 1.3. On 17 August 2004, the charge brought against G. Virabyan under part 3 of Article 316 of the Criminal Code of the Republic of Armenia was changed and supplemented, and a new charge was brought against him under part 3 of Article 316 of the Criminal Code of the Republic of Armenia.
- 1.4. On 30 August 2004, a decision was rendered by the Prosecutor of Erebuni and Nubarashen Administrative Districts of the city of Yerevan on terminating the criminal prosecution against G. Virabyan and on dismissing the proceedings of the criminal case on the ground that: "During the crime committed, medium gravity harm was caused to G. Virabyan's health: his testicle was damaged, operated on and removed, which is incurable, and in fact, by bearing hardships, he has atoned for his sin, and in such circumstances, it is not appropriate to conduct criminal prosecution against him".
- 1.5. On 12 November 2004, upon the decision of the Court of First Instance of Erebuni and Nubarashen Administrative Districts of the city of Yerevan, G. Virabyan's appeal against the decision on terminating the criminal prosecution and dismissing the proceedings of the criminal case was rejected with the reasoning of being

unsubstantiated.

- 1.6. G. Virabyan's appeal against the decision of the Court of First Instance of Erebuni and Nubarashen Administrative Districts of the city of Yerevan was rejected by the decision of the Criminal and Military Court of Appeal of the Republic of Armenia of 24 December 2004.
- 1.7. Based on G. Virabyan's cassation appeal, the Chamber for the Criminal and Military Cases of the Court of Cassation of the Republic of Armenia quashed, upon the Decision of 4 February 2005, the above-mentioned Decision of the Criminal and Military Court of Appeal of the Republic of Armenia and sent the materials to the same court for a new examination.
- 1.8. Based on the results of the new examination, the appeal brought by G. Virabyan against the Decision of the Court of First Instance of Erebuni and Nubarashen Administrative Districts of the city of Yerevan of 12 November 2004 was left without granting upon the Decision of the Criminal and Military Court of Appeal of the Republic of Armenia of 3 March 2005.
- 1.9. G. Virabyan's cassation appeal against the above-mentioned Decision of the Criminal and Military Court of Appeal of the Republic of Armenia was left without granting and the appealed judicial act was upheld upon the Decision of the Chamber for the Criminal and Military Cases of the Court of Cassation of the Republic of Armenia of 3 March 2005.
2. On 2 October 2012, based on G. Virabyan's application, the European Court of Human Rights (hereinafter referred to as "the European Court") made a Judgment in the case "*Virabyan v. Armenia*" (Application no. 40094/05), by which it recognized the fact of violation of G. Virabyan's rights provided for by Articles 3, 6 and 14 of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" (hereinafter also the European Convention).
3. Citing the Judgment of the European Court of 2 October 2012 in the case "*Virabyan*

v. Armenia” as a new circumstance, A. Sirunyan, the representative of G. Virabyan, lodged an appeal regarding the initiation of review proceedings for the Decision of the Chamber for the Criminal and Military Cases of the Court of Cassation of the Republic of Armenia of 13 May 2005, based on which, upon the Decision of the Court of Cassation of the Republic of Armenia of 24 October 2013, a review proceedings for the Decision of the Chamber for the Criminal and Military Cases of the Court of Cassation of the Republic of Armenia of 13 May 2005 was initiated. Upon the Decision of the Court of Cassation of the Republic of Armenia of 28 November 2013, the Decision of the Court of First Instance of Erebuni and Nubarashen Administrative Districts of the city of Yerevan of 12 November 2004 and the Decision of the Criminal and Military Court of Appeal of the Republic of Armenia of 3 March 2005 were quashed, and the case was sent to the Court of First Instance of General Jurisdiction of of Erebuni and Nubarashen Administrative Districts of the city of Yerevan for new examination.

4. Upon the Decision of the Court of First Instance of General Jurisdiction of Erebuni and Nubarashen Administrative Districts of the city of Yerevan of 22 May 2014, the Decision of the Prosecutor of Erebuni and Nubarashen Administrative Districts of the city of Yerevan of 30 August 2004 on dismissing the proceedings in the criminal case and not conducting criminal prosecution was eliminated, and an obligation was prescribed for the body conducting the proceedings to eliminate — under the conditions of reopening the criminal case proceedings — the violations of G. Virabyan’s rights and freedoms specified in the Judgment of the European Court of Human Rights of 10 October 2012.
- 4.1. The Prosecutor’s appeal against the above-mentioned decision was granted partially upon the Decision of the Criminal Court of Appeal of the Republic of Armenia of 21 July 2014, the Decision of the Court of First Instance of Erebuni and Nubarashen Administrative Districts of the city of Yerevan of 22 May 2014 was quashed and changed, the Prosecutor’s Office of the Republic of Armenia was obliged to eliminate the violation of G. Virabyan’s rights and freedoms allowed by the Decision

of the Prosecutor of Erebuni and Nubarashen Administrative Districts of the city of Yerevan of 30 August 2004 on dismissing the proceedings in the criminal case and not conducting criminal prosecution.

5. On 19 August 2014, Acting Prosecutor of Erebuni and Nubarashen Administrative Districts rendered a decision on eliminating the Decision of the Prosecutor of Erebuni and Nubarashen Administrative Districts of 30 August 2004 on dismissing the proceedings of the criminal case No 27203404 and on terminating the criminal prosecution.
 - 5.1. On 21 August 2014, the dismissed proceedings in the criminal case was reopened.
 - 5.2. On 1 September 2014, the Prosecutor rendered a decision also on eliminating the decision of 11 August 2004 on dismissing the proceedings in Criminal Case No 27203404 regarding the employees of Artashat Division of Police Department of Ararat Marz.
 - 5.3. On 10 May 2016, Criminal Case No 62212316 was instituted under the elements of part 2 of Article 309 of the Criminal Code of the Republic of Armenia for excess of official powers accompanied by the use of violence against G. Virabyan committed by the officers of the Police of the Republic of Armenia on 23 April 2004.
 - 5.4. Upon the decision of the preliminary investigation body of 13 May 2016, G. Virabyan was declared as victim.
 - 5.5. Upon the Decisions of the preliminary investigation body of 17 February and 20 February 2017, Hovhannes Movsisyan (father's name: Negus) and Armen Arsenyan (father's name: Razmik) were involved as accused and a charge was brought against them under part 2 of Article 309 of the Criminal Code of the Republic of Armenia.
 - 5.6. Upon the Decision of the preliminary investigation body of 10 March 2017, the criminal prosecution against accused H. Movsisyan and A. Arsenyan was terminated and the proceedings in the criminal case was dismissed on the grounds of expiration

of the statute of limitations for criminal liability.

- 5.7. Upon the decision of the Deputy Prosecutor General of the Republic of Armenia of 15 December 2017, the above-mentioned decision was eliminated.
6. On 20 February 2018, the Criminal Case on the charge against H. Movsisyan and A. Arsenyan was forwarded to the Court of First Instance of General Jurisdiction of Ararat and Vayots Dzor Marzes (hereinafter referred to also as “the Court of First Instance”) with the indictment. Upon the Criminal Judgment of the Court of First Instance of 22 February 2019, H. Movsisyan and A. Arsenyan were found guilty under part 2 of Article 309 of the Criminal Code of the Republic of Armenia and were released from criminal liability upon the grounds of expiration of the statute of limitations.
7. As a result of examination of the appeals lodged by the Prosecutor and the Defence Council, the Criminal Court of Appeal of the Republic of Armenia (hereinafter referred to also as “the Court of Appeal”) — upon the Decision of 4 July 2019 — left the Judgment of the Court of First Instance in legal force, rejecting the appeals.
8. Deputy Prosecutor General of the Republic of Armenia H. Aslanyan lodged a cassation appeal against the above-mentioned decision of the Court of Appeal, which was accepted for proceedings by the decision of the Court of Cassation of 25 November 2019¹.

Upon the decision of the Court of Cassation of 13 January 2021, written procedure for examination of the cassation appeal was established, which was changed to oral procedure upon the decision of 20 January 2021.

- 8.1. In the court session convened on 27 January 2021, the Court of Cassation, based on Protocol No. 16 to the European Convention, decided to apply to the European Court of Human Rights for an advisory opinion on the following issue: *“Would non-application of statutes of limitation for criminal responsibility for torture or any*

¹ Pursuant to part 8 of Article 483 of the Criminal Procedure Code of the Republic of Armenia regulating the transitional provisions, this appeal shall be examined under the procedure in force before 1 July 2022.

other crimes equated thereto by invoking the international law sources be compliant with Article 7 of the European Convention, if the domestic law provides for no requirement for non-application of statutes of limitation for criminal responsibility?”

9. Based on the application of the Court of Cassation, the Grand Chamber of the European Court of Human Rights (hereinafter referred to also as “the Grand Chamber”) submitted, on 26 April 2022, to the Court of Cassation the Advisory Opinion No P16-2021-001 “On the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture” (hereinafter referred to also as “the Advisory Opinion”), the Armenian translation whereof was received in the Court of Cassation on 28 July 2022.

Grounds, justifications and claim of the cassation appeal

10. The author of the cassation appeal noted that the lower courts, by acquitting releasing the accused-on-trial from criminal liability on the grounds of expiration of the statute of limitations, had violated the positions expressed by the European Court in a number of judgments, as well as the norms on inadmissibility of the application of statutes of limitations in the case of torture, stipulated by the international treaty ratified by the Republic of Armenia.
11. Having analysed the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, as well as the positions of the European Court, the person having brought the appeal argued that the interpretations given by the lower courts led to the violation of the international obligations assumed by the state, since the judgments of the European Court are an integral part of the European Convention and are subject to application in the Republic of Armenia as normative acts arising from the international treaty.

12. The person having brought the appeal have noted that the prohibition of torture is enshrined in a number of international treaties related to human rights and humanitarian law and is understood as a principle of general international law, a *jus cogens* norm, which means that it is binding for all states, even if these states have not ratified any specific treaty and that no other international or domestic rule can contradict the principle of *jus cogens*. The person having brought the appeal have argued that the absolute prohibition of torture and ill-treatment, *inter alia*, also implies the conduct of proper investigation of such cases by the state, and the application of adequate punishment to those who commit such acts, guaranteeing the inevitability thereof. According to the person having brought the appeal, releasing the officials having committed the above-mentioned acts from criminal liability or punishment, applying thereon amnesty, as well as other equivalent measures leading to impunity on the grounds of the expiration of the statute of limitations, directly leads to the violation of the international obligations assumed by the state.
13. The person having brought the appeal have stated that the case law of the European Court is an organic part of the European Convention, which clearly implies that a convention ban on applying statute of limitations for subjecting to criminal liability in cases regarding torture is established. Therefore, according to the person having brought the appeal, statutes of limitations should not be applied in those cases by virtue of part 6 of Article 75 of the Criminal Code of the Republic of Armenia, and it cannot lead to the violation of the rights and legal interests of the accused-on-trial, cannot cause legal uncertainty.
14. Based on the above-stated, the person having lodged the appeal asked to partially quash and change the Decision of the Court of Appeal of 4 July 2019 and impose punishment on the accused-on-trial proportionate to the acts committed thereby.

Factual and legal circumstances having essential significance for examination of the

cassation appeal

I. Judgment of the European Court in case of *Virabyan v. Armenia*

15. In the Judgment rendered in the case of *Virabyan v. Armenia*, reiterating the legal positions repeatedly expressed in its case law regarding Article 3 of the European Convention, the European Court noted: *"Article 3 [of the European Convention] enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV, and Chahal v. the United Kingdom, 15 November 1996, § 79, Reports 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see Selmouni v. France [GC], no. 25803/94, § 95, ECHR 1999-V, and Assenov and Others v. Bulgaria, 28 October 1998, § 93, Reports 1998-VIII)"*².

15.1. In the given case, the European Court found that: *"(...) [T]he explanation given for the applicant's injuries both by the Government and the domestic authorities is highly dubious and implausible. It notes, at the same time, that at all stages of the investigation the applicant presented a consistent and detailed description of who had ill-treated him and how. His allegations were compatible with the description of his injuries contained in various medical records (...).*

*The Court cannot, in view of the foregoing, consider the Government's explanation of the applicant's injuries to be satisfactory and convincing and consequently concludes that his injuries were attributable to a form of ill-treatment for which the authorities were responsible"*³.

² See, Judgment of the European Court of Human Rights of 2 October 2012 in the case "Virabyan v. Armenia", Application No 40094/05, § 148.

³ Ibid, paragraphs 154-155.

15.2. Based on the above-mentioned, the European Court concluded that: *"(...) [T]he applicant was subjected to a particularly cruel form of ill-treatment which must have caused him severe physical and mental pain and suffering. In particular, his testicles were repeatedly kicked and punched and hit with metal objects. These injuries had lasting consequences for his health, as his left testicle was so badly smashed that it had to be removed. He was further beaten up with his hands handcuffed behind his back and received blows to his chest and ribs. Strong inferences can be drawn from the circumstances of the case that the ill-treatment was inflicted on the applicant intentionally in order either to punish or to intimidate him or both. Having regard to the nature, degree and purpose of the ill-treatment, the Court finds that it may be characterised as acts of torture (see Selmouni, cited above, §§ 96-105, and Salman, cited above, § 115) ⁴.*

As a result, the European Court decided that there had been a substantial violation of Article 3 of the Convention.

15.3. Addressing the issue with respect to conducting effective investigation regarding the allegations of ill-treatment, the European Court noted: *"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, cited above, § 102, and Labita, cited above, § 131) ⁵.*

15.4. The European Court, while acknowledging that in the present case, criminal proceedings were instituted on the very day of the applicant's alleged ill-treatment and an investigation was launched, observed, however, that: *"(...) [T]he circumstances of the criminal case were based solely on the version of events*

⁴ Ibid, paragraph 157.

⁵ Ibid, paragraph 161.

*provided by the police officers, including the alleged perpetrators and their colleagues who were all in some way involved in the events of 23 April 2004, without even hearing the applicant or any other witnesses. Moreover, this version of events was considered an established fact from the very outset (see, for example, the investigator's decision ordering a forensic medical examination in paragraph 34 above) and the entire investigation was conducted on that premise. It is notable that the police version was so readily accepted by the investigator at a time when he did not yet even have at his disposal the forensic medical expert's conclusions as to the nature and possible causes of the applicant's injuries. As a result, the applicant was the only accused in those proceedings, while the police officers in question were never even regarded as possible suspects and, moreover, participated either as witnesses or, in the case of police officer H.M., a victim*⁶.

15.5. Expressing a doubt as to the sole purpose of the investigating authority was to prosecute the applicant and to collect evidence in support of that prosecution, the Court noted that: *At no point did the investigating authorities provide any explanation as to why they considered the testimonies of the police officers credible, and that of the applicant unreliable. The applicant's numerous requests that his allegations of ill-treatment be thoroughly investigated and the perpetrators be prosecuted and punished were either ignored or received a perfunctory response (see, for example, paragraph 54 above). It therefore appears that the investigating authorities, without any justification, gave preference to the evidence provided by the police officers and, in doing so, can be said to have lacked the requisite objectivity and independence*⁷.

15.6. Addressing the investigation of G. Virabyan's allegations of ill-treatment towards him, the European Court noted that there had been a number of significant omissions and inconsistencies during the investigation, which could jeopardize its

⁶ Ibid, paragraph 165.

⁷ Ibid, paragraph 167.

credibility and effectiveness⁸.

15.7. As a result, the Court concluded that *"(...) [T]he investigation into the applicant's allegations of ill-treatment undertaken by the authorities was ineffective, inadequate and fundamentally flawed. It was not capable of producing credible findings and leading to the establishment of the facts of the case. The authorities failed to act with due diligence and cannot be said to have been determined to identify and punish those responsible"*⁹.

Based on the above-stated, the European Court decided that there had been a procedural violation of Article 3 of the Convention.

15.8. Addressing the issue as to whether the ill-treatment towards G. Virabyan was manifested by political motives, the European Court stated that: *"(...) [T]here is no objective way to verify the applicant's allegations. It is true that the circumstances of the applicant's politically motivated arrest call for strong criticism and raise serious concerns. However, this in itself is not sufficient to conclude that the ill-treatment per se was similarly inflicted for political motives. Judging by the circumstances of the case, it cannot be ruled out that the applicant was subjected to ill-treatment as a revenge for the injury that he had inflicted on police officer H.M. Nor can it be ruled out that the violent behaviour of the police officers was triggered by the confrontation between them and the applicant or for reasons of police brutality which are beyond any explanation. While such actions must receive the utmost condemnation and may not be justified or condoned under any circumstances, the Court cannot conclude beyond reasonable doubt that the applicant's ill-treatment was motivated by his political opinion"*¹⁰.

As a result, the European Court concluded that there had been no violation of Article 14 of the European Convention taken in conjunction with Article 3 in its substantive limb.

15.9. Afterwards, addressing the procedural limb of Article 14 of the Convention, the

⁸ Ibid, paragraphs 171-177.

⁹ Ibid, paragraph 178.

¹⁰ Ibid, paragraph 214.

European Court recorded that: "(...) [W]hen investigating violent incidents State authorities have the additional duty to take all reasonable steps to unmask any political motive and to establish whether or not intolerance towards a dissenting political opinion may have played a role in the events. Failing to do so and treating politically induced violence and brutality on an equal footing with cases that have no political overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, § 158, 26 February 2004, and *Bekos and Koutropoulos*, cited above, § 69).

(...) [P]roving political motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible political overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of politically induced violence (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 159, and *Bekos and Koutropoulos*, cited above, § 69)¹¹.

15.10. Applying the above-stated provisions to the factual circumstances of this case, the European Court recorded: "(...) [T]he applicant alleged on numerous occasions before the investigating authorities that his ill-treatment had been linked to his participation in the opposition demonstrations and had been politically motivated, requesting that this circumstance be investigated and the perpetrators be punished (see paragraphs 36, 38, 45, 61 and 80 above). Two other witnesses had also made submissions which supported this allegation (see paragraph 59 and 60 above). The

¹¹ Ibid, paragraphs 218-219.

Court lastly observes that the lack of reasons for the applicant's arrest was noted by the Armenian Ombudsman (...).

In view of the foregoing, the Court considers that the investigating authorities had before them plausible information which was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible political motives for the applicant's ill-treatment.

However, the authorities did almost nothing to verify this information. Only two police officers, A.M. and R.S., were apparently asked if they were aware of the applicant's political affiliation, which can hardly be considered to be a real attempt to investigate such a serious allegation and appears to have been a mere formality (...). No further questions were asked, while the remaining police officers, including H.M. and A.K. whom the applicant directly implicated in making politically intolerant statements before and during his ill-treatment, were not even questioned regarding this allegation. No attempts were made to investigate the circumstances of the applicant's arrest, including the numerous inconsistencies and other elements pointing at the possible politically motivated nature of that measure, and no conclusions were drawn from the available materials. The Court therefore concludes that the authorities failed in their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to investigate whether or not discrimination may have played a role in the applicant's ill-treatment"¹².

Based on the above-stated, the European Court decided that there had been a violation of Article 14 of the Convention taken in conjunction with Article 3 in its procedural limb.

II. Charges brought against Hovhannes Movsisyan (father's name: Negus) and Armen Arsenyan (father's name: Razmik) in this Case

16. *According to the charge brought against H. Movsisyan under part 2 of Article 309 of the Criminal Code of the Republic of Armenia, "On 23 April 2004 at 17:40, Grisha*

¹² Ibid, paragraphs 222-224.

Virabyan (father's name: Yasha), resident of Shahumyan village of Ararat Marz was apprehended to the Artashat Division of the Police on suspicion of keeping a weapon. Within the framework of the materials being prepared regarding Grisha Virabyan's disobedience to the legal demands of the police officers during his apprehension, an argument began between Grisha Virabyan and Hovhannes Movsisyan, Head of the Criminal Prosecution Unit of the Artashat Division of the Police in the fifth office of the Criminal Prosecution Unit located on the second floor of the administrative building of the Division. During that time, Grisha Virabyan hit and injured Hovhannes Movsisyan's right eye with a mobile phone charging device placed on the office table.

With the purpose to punish Grisha Virabyan for the mentioned act, Hovhannes Movsisyan, Head of the Criminal Prosecution Unit of the Artashat Division of the Police, with Armen Arsenyan, an authorised operative of the Criminal Prosecution Unit of the same Division, *realising and complementing each other's actions, under the conditions of absence of grounds for using physical force provided for by Article 29 of the Law of the Republic of Armenia "On the Police", going obviously beyond the scope of powers thereof, and in the given case, without having an authority to use physical force, they used violence against Grisha Virabyan, and beat him in one of the offices of the Division, hitting him on his testicles and other parts of his body with hands and legs for multiple times, causing medium gravity bodily injury to his health, i.e. in the form of post-traumatic haematoma of scrotum, left-sided hematocele, left testicular laceration, right calf hemorrhage.*

As a result of the above-mentioned actions of Hovhannes Movsisyan, Grisha Virabyan suffered physical harm in the form of medium gravity bodily injury caused to his health; significant harm was caused to his rights and legal interests, that is, his right to the inadmissibility of torture and inhumane treatment guaranteed by the Constitution was violated; significant damage was caused also to the legal interests of the state, since the

Police of the Republic of Armenia was discredited ¹³.

16.1. A charge brought against A. Arsenyan under part 2 of Article 309 of the Criminal Code of the Republic of Armenia to the effect that he, “On 23 April 2004 at around 17:40, being in the administrative building of the Artashat Division of the Police, learnt that within the framework of the materials being prepared regarding disobedience by resident of Shahumyan village of Ararat Marz Grisha Virabyan — apprehended to the Artashat Division of the Police on suspicion of keeping a weapon — to the legal demands of the police officers, an argument took place between him and Hovhannes Movsisyan, Head of the Criminal Prosecution Unit of the Artashat Division of the Police in the fifth office of the Criminal Prosecution Unit located on the second floor of the administrative building of the Division. During that time, Grisha Virabyan hit and injured Hovhannes Movsisyan's right eye with a mobile phone charging device placed on the office table.

With the personal motive to take revenge for the mentioned action of Grisha Virabyan and with the intention to cause bodily injury, Armen Arsenyan, an authorised operative of the Criminal Prosecution Unit of the Artashat Division, being an employee of an inquest body in accordance with Articles 56 and 57 of the Criminal Procedure Code of the Republic of Armenia, with Hovhannes Movsisyan, Head of the Criminal Prosecution Unit of the same Division of the Police, realising and complementing each other's actions, under the conditions of absence of grounds for using physical force provided for by Article 29 of the Law of the Republic of Armenia “On the Police”, going obviously beyond the scope of powers thereof, and in the given case, without having an authority to use physical force, they used violence against Grisha Virabyan, and beat him in one of the offices of the Division, hitting him on his testicles and other parts of his body with hands and legs for multiple times, causing medium gravity bodily injury to his health, i.e. in the form of post-traumatic haematoma of scrotum, left-sided hematocele, left testicular laceration, right calf hemorrhage.

¹³ See Criminal Case, Volume 4, sheets 288-289.

As a result of the above-mentioned actions of Arsen Arsenyan, Grisha Virabyan suffered physical harm in the form of medium gravity bodily injury caused to his health; significant harm was caused to his rights and legal interests, that is, his right to the inadmissibility of torture and inhumane treatment guaranteed by the Constitution was violated; significant damage was caused also to the legal interests of the state, since the Police of the Republic of Armenia was discredited"¹⁴.

¹⁴ See Criminal Case, Volume 4, sheets 289-290.

III. Positions of the lower courts in this Case

17. With the Criminal Judgment of 22 February 2019, the Court of First Instance recorded that: *"(...) The Court considers as proven that as a result of the above-mentioned actions of Hovhannes Movsisyan and Armen Arsenyan, Grisha Virabyan suffered physical harm in the form of medium gravity bodily injury caused to his health; significant harm was caused to his rights and legal interests, that is, his right to the inadmissibility of torture and inhumane treatment guaranteed by the Constitution was violated; significant damage was caused also to the legal interests of the state, since the Police of the Republic of Armenia was discredited.*

Thus, the Court finds that the accused-on-trial Hovhannes Movsisyan (father's name: Negus), being an official, intentionally committed actions accompanied by violence, which were obviously beyond the scope of his powers and caused significant damage to the rights of the person and the legal interests of the state, and for such action he should be held liable under part 2 of Article 309 of the Criminal Code of the Republic of Armenia.

The accused-on-trial Armen Arsenyan (father's name: Razmik), being an official, intentionally committed actions accompanied by violence, which were obviously beyond the scope of his powers and caused significant damage to the rights of the person and the legal interests of the state, and for such action he should be held liable under part 2 of Article 309 of the Criminal Code of the Republic of Armenia.

(...)

Addressing the issue of subjecting Hovhannes Movsisyan and Armen Arsenyan to criminal liability for what they have committed, the Court records that, the Court considers it inadmissible that (...) [the] [reasoning] that the proceedings of the criminal case should be continued based on the position expressed by the Decision (...) in the ECtHR case ["Mocanu and Others v. Romania" (applications no. 10865/09, 45886/07 and 32431/08)], which has been carried out by the preliminary investigation body, and it has also served as a basis for the indictment, since neither the Prosecutor's decision, nor the

preliminary investigation body have given any reasons as to what extent and on what grounds the position expressed in the mentioned decision is applicable for conducting a preliminary investigation in the Republic of Armenia and why the domestic law of the Republic of Armenia, i.e point 6 of part 1 of Article 35 of the Criminal Procedure Code of the Republic of Armenia and Article 75 of the Criminal Code of the Republic of Armenia, should not be applied.

The Court finds that the preliminary investigation body has applied the mentioned ECtHR decision unreasonably, with the application whereof the following circumstances have been ignored:

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1994, which the Republic of Armenia also joined to, does not contain any provision that the application of statute of limitations is prohibited and only the Committee against Torture in its comments on the Convention, which, in fact, are of an advisory nature, particularly as a result of the monitoring and observations made for the Republic of Armenia in 2012 and 2017 (...) expresses regret that although it had recorded in the previous observations and recommendations (see, CAT/ C/ARM/CO/3, point 10), but the legislation in force still maintains the statute of limitations (...) in cases of torture, and persons convicted under these articles avail themselves of the application of amnesty. (...). Perhaps after the monitoring of 2012, for filling the legislative gap regarding torture and other cruel, inhuman or degrading treatment, a supplement was made to the Criminal Code of the Republic of Armenia and a separate Article 309.1 was established on torture, that is, highlighting the Committee's observations and recommendations, in addition to Article 309 of the Criminal Code of the Republic of Armenia, the legislative body of the Republic of Armenia made a supplement to the Criminal Code of the Republic of Armenia with Article 309.1 entitled "Torture", which in its disposition is significantly different from Article 309 of the Criminal Code of the Republic of Armenia, that is, a new crime was defined. Moreover, establishing the article on torture, the legislative body did not make any reference to Article 75 of the Criminal Code of the Republic of Armenia and point 6 of part 1 of Article 35 of the Criminal

Procedure Code of the Republic of Armenia, that is, it did not make any supplement thereto in the case that Article 75 of the Criminal Code of the Republic of Armenia exhaustively lists the types of crimes to which the statute of limitations is not applicable or is applicable with a limitation, which means that there is no legislative restriction on other crimes not listed in Article 75 of the Criminal Code of the Republic of Armenia, including for applying the statute of limitations to the persons having committed torture and terminating the criminal prosecution on the grounds thereof, for dismissing the proceedings of the criminal case or releasing them from criminal liability on the grounds of the expiration of the statute of limitations.

At the same time, it should be noted that the Republic of Armenia has signed the Convention on the Protection of Human Rights and Fundamental Freedoms, wherein there is no restriction on not applying statute of limitation, pardon or amnesty to persons having shown torture and other cruel, inhuman or degrading treatment in case of committing a crime thereby and only the fact that the ECtHR expressed a position on this issue in its decision for not terminating the criminal prosecution on the grounds of the expiration of the statute of limitations, not applying pardon or amnesty to a person, is not enough for the position expressed in that decision to be subject to mandatory implementation in the Republic of Armenia, since it is not incorporated into the legal system of the Republic of Armenia, and the decisions made by the European Court of Human Rights are not automatically incorporated into the legal system of the Republic of Armenia, and for applying this position, it is necessary either to make a legislative intervention, i.e. making an amendment in the domestic law — in the Criminal Code of the Republic of Armenia, or at least recognition — through making a precedent decision — of the binding code of conduct by the highest judicial body in the light of the precedent practice of the European Court of Human Rights. In this case, neither the first nor the second one is present, and the existence of the domestic legal norm, i.e. the mentioned articles of the Criminal Procedure Code of the Republic of Armenia and the Criminal Code of the Republic of Armenia, regarding releasing from criminal liability due to the expiration of the statute of limitations, is the only applicable rule of conduct known

to the legal system of the Republic of Armenia under the given conditions. It is true that the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 are binding for the Republic of Armenia by virtue of the fact of its ratification, but the decisions of the European Court of Human Rights cannot be equated — by any legal provision — with the articles enshrined in those international documents and their direct applicability cannot be recognised. The Court cannot be guided also by Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and give priority to the precedent, since the Republic of Armenia was not a party to the case “MOCANU AND OTHERS v. ROMANIA” (Applications nos. 10865/09, 45886/07 and 32431/08).

It should be noted that pursuant to part 3 of Article 5 of the Constitution of the Republic of Armenia, "In case of conflict between international treaties ratified by the Republic of Armenia and the norms of laws, the norms of international treaties shall apply". In this case, there is no direct contradiction between Article 75 of the Criminal Code of the Republic of Armenia and the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms.

The Court also states that by unconditionally applying the above-mentioned Decision of the European Court, both the provision prescribed by the Constitution of the Republic of Armenia on non-retroactivity of laws and legal acts deteriorating the condition of a person, and the requirements of part 2 of Article 13 of the Criminal Code of the Republic of Armenia, including the Convention requirements on the protection of human rights and fundamental freedoms defined under the Convention On the Protection of Human Rights and Fundamental Freedoms, had been overlooked.

(...)

In this case, even if we accept that the Decision of the European Court is applicable in the Republic of Armenia, the preliminary investigation body did not make a subject of investigation the fact whether the rights and fundamental freedoms and legal interests of accused-on-trial Hovhannes Movsisyan (father's name: Negus) and Armen Arsenyan

*(father's name: Razmik) are not violated in case the position expressed by that decision is applied, since the crime was committed thereby back in April 2004, and the decision of the ECtHR was made on 17 September 2014, and whether part 2 of Article 13 of the Criminal Code of the Republic of Armenia and the rights and fundamental freedoms of a person established by the Convention are not violated where the mentioned decision, which is a legal act deteriorating the condition of a person, is given retroactive effect. The Court finds that the rights and fundamental freedoms of accused-on-trial Hovhannes Movsisyan (father's name: Negusi) and Armen Arsenyan (father's name: Razmik) were also violated by applying the ECtHR decision by the preliminary investigative body on the above-mentioned grounds, that is, the position expressed by the ECtHR decision is not applicable to this Criminal Case"*¹⁵.

18. Upon the Decision of 4 July 2019, the Court of Appeal, leaving the criminal judgment of the Court of First Instance of 22 February 2019 in legal force, found that: "(...)/[T]he reasonings of the Court of General Jurisdiction of Ararat and Vayots Dzor Marzes regarding releasing accused-on-trial Hovhannes Movsisyan and Armen Arsenyan from criminal liability for the acts committed under part 2 of Article 309 of the Criminal Code of the Republic of Armenia on the grounds of expiration of the statute of limitations based on point 3 of part 1 of Article 75 of the Criminal Code of the Republic of Armenia, are lawful and substantiated, and the failure to apply the statute of limitations to the accused-on-trial by ignoring the above-mentioned requirements of the legislation of the Republic of Armenia will lead to a violation of their rights and legal interests and may cause legal uncertainty and be qualified as arbitrariness" ¹⁶.

IV. The positions expressed by the parties in the session of the Court of Cassation in this case:

¹⁵ See Criminal Case, Volume 5, sheets 236-257.

¹⁶ See Criminal Case, Volume 6, sheets 89-168.

19. Answering the questions of the Court during the court session of the Court of Cassation of 27 January 2021, A. Shahbazyan, Senior Prosecutor of the Department for Combating Crimes against Human of the Prosecutor General's Office of the Republic of Armenia, stated that at the time of committing the act, the *corpus delicti* of torture was not provided for by the Criminal Code of the Republic of Armenia, so a charge was brought against H. Movsisyan and A. Arsenyan under Article 309 of the Criminal Code of the Republic of Armenia, that is, excess of official powers, the features whereof are identified with torture. Answering the questions of the Court about whether the domestic legislation provides for a prohibition on applying the statute of limitations to a specific act, and whether the application of the statute of limitations will not lead to the violation of the rights of H. Movsisyan and A. Arsenyan, the Prosecutor has referred to the positions expressed by the European Court in cases “*Abdulsamet Yaman v. Turkey*” and “*Okkal v. Turkey*”, and has noted that there are norms of international law having established a prohibition on the application of the statute of limitations in a specific period.
- 19.1. Answering the questions of the Court, H. Sukiasyan, the Defence Counsel of the accused-on-trial, noted in the same session that the Prosecutor referred to international treaties, but the Republic of Armenia has not signed an international treaty, the provisions whereof apply instead of domestic legislation. The Defence Council added that there was a position of the European Court, which had an advisory nature. Referring to the principle of lawfulness, the Defence Council noted that as of 2004, torture was not a crime in the Republic of Armenia, and there was no prohibition on the application of the statute of limitations in cases of torture. The Defence Council noted that the effect of the Judgment of the European Court of 2014 should not be applied to a case that had happened 10 years before.
- 19.2. The accused-on-trial did not express position during the court session.
- 19.3. During the court session of the Court of Cassation of 22 December 2023, addressing the question of the Court regarding his position in relation to the request to quash

the appealed judicial acts and impose a punishment on the accused-on-trial, the victim G. Virabyan answered that he had forgiven the accused-on-trial, had no complaints and demands to them, and left it to the discretion of the Court.

V. The Advisory Opinion of the Grand Chamber of the European Court of Human Rights

20. Considering the benchmark significance of the Advisory Opinion of the Grand Chamber of the European Court of Human Rights received based on the application of the Court of Cassation, the Court of Cassation deems it necessary to refer to the conclusion presented in the Advisory Opinion and the arguments underlying it.

20.1. In its Advisory Opinion, the Grand Chamber relied on both the disclosure of the international legal content of the universal mandatory norm of the prohibition of torture and the relevant obligations of states, as well as the analysis of the requirement of predictability of the criminal law in the context of the principle "*no crime, no punishment without law*" (*nullum crimen, nulla poena sine lege*).

20.2. In particular, taking into account the fact that when formulating the application addressed to the European Court, the Court of Cassation relied on Article 3 of the European Convention, the European Court — before addressing the specific question given with a reference to Article 7 of the same Convention — considered it appropriate to reaffirm its case law under Article 3 regarding the statute of limitations, as far as it related to the Advisory Opinion, stating the following: "*The Court notes at the outset that it has accepted that the prohibition of torture has achieved the status of jus cogens or a peremptory norm in international law (see Al-Adsani v. the United Kingdom [GC], no. 35763/97, §§ 60-61, ECHR 2001-XI). Furthermore, it may be recalled that in the judgment in the leading case of Mocanu and Others [Mocanu and Others v. Romania] (...) [GC], no. 10865/09 and 2 more], (...) the Court held as follows:*

"(...) [I]n cases concerning torture or ill-treatment inflicted by State agents, criminal

proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated in such cases (see Abdülsamet Yaman v. Turkey, no. 32446/96, § 55, 2 November 2004; (...) Mocanu and Others v. Romania ([GC], no. 10865/09 and 2 more, § 70] and Association “21 December 1989” and Others, no. 33810/07 and 18817/08, § 144, 24 May 2011)). Furthermore, the manner in which the limitation period is applied must be compatible with the requirements of the Convention. It is therefore difficult to accept inflexible limitation periods admitting of no exceptions (see, mutatis mutandis, Röman v. Finland, no. 13072/05, § 50, 29 January 2013).

While finding on the facts that the relevant investigation had been terminated essentially on account of the statutory limitation of criminal liability, the Court held that the procedural obligations arising under (Article 2 and) 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 Mocanu and Others, cited above, § 346).

Thus, the Court has found a violation of the procedural guarantees of Article 3 in cases where the application of limitation periods was brought about by the failure of the authorities to act promptly and with due diligence (see, among other authorities, Batı and Others v. Turkey, nos. 33097/96 and 57834/00, §§ 97 and 145-47, ECHR 2004-IV (extracts); Abdülsamet Yaman, cited above, § 59; Yeşil and Sevim v. Turkey, no. 34738/04, §§ 38-42, 5 June 2007; Erdoğan Yılmaz and Others v. Turkey, no. 19374/03, § 57, 14 October 2008; Erdal Aslan v. Turkey, nos. 25060/02 and 1705/03, §§ 75-79, 2 December 2008; Pădureț v. Moldova, no. 33134/03, § 75, 5 January 2010; Karagöz and Others v. Turkey, nos. 14352/05 and 2 others, §§ 53-55, 13 July 2010; Savin v. Ukraine, no. 34725/08, §§ 70-71, 16 February 2012; Uğur v. Turkey, no. 37308/05, § 105, 13 January 2015; and Barovov v. Russia, no. 9183/09, § 42, 15 June 2021).

It should further be recalled that the Court has found violations of Article 3 where prosecutions became time-barred owing to the inadequate characterisation by the domestic authorities of acts of torture or other forms of ill-treatment as less serious

offences, leading to shorter limitation periods and allowing the perpetrator to escape criminal responsibility (see, among other authorities, *Pădureț*, cited above, § 75; *Velev v. Bulgaria*, no. 43531/08, § 61, 16 April 2013; and *O.R. and L.R. v. the Republic of Moldova*, no. 24129/11, §§ 73-74, 30 October 2018).

Moreover, on several occasions the Court has found a failure to comply with Article 3 guarantees chiefly on account of the absence of appropriate provisions in the national law capable of adequately punishing acts amounting to torture (see *Cestaro v. Italy*, no. 6884/11, § §§ 218-226, 7 April 2015; *Azzolina and Others v. Italy*, nos. 28923/09 and 67599/10, §§ 149-65, 26 October 2017; *Cirino and Renne v. Italy*, nos. 2539/13 and 4705/13, §§ 106-12, 26 October 2017; and *Blair and Others v. Italy*, nos. 1442/14 and 2 others, §§ 118-34, 26 October 2017). In that connection, the Court also noted that the offences in question had been subject to a statute of limitation, “a circumstance which in itself [sat] uneasily with its case-law concerning torture or other ill-treatment” (see *Abdülsamet Yaman*, cited above, § 55; *Cestaro*, cited above, § 208; *Cirino and Renne*, cited above § 110; and *Blair and Others*, cited above, § 118-34).

The Court is mindful of the difficulties that may be encountered in the process of execution of its judgments in cases concerning torture and other forms of ill-treatment because of the existence of statutes of limitation in the domestic systems of the member States. However, it notes that a number of member States have taken various measures in order to resolve this problem and thereby to prevent impunity for State officials who have committed such acts. Thus, several member States, including Turkey, the Republic of Moldova, Romania and now Armenia itself, have amended their legislation by abrogating the statutes of limitation for acts of torture. In others, like Italy, to ensure that criminal proceedings do not become timebarred, the law was amended in 2020 to the effect that the limitation period is suspended after the first-instance judgment for the remaining duration of the criminal proceedings.

The Court notes that in the case of *Virabyan* (cited above), it found a violation of Article 3 on the grounds that the applicant had been subjected to torture and that the authorities

had failed to carry out an effective investigation into his allegations of ill-treatment. However, in the Court's opinion, it would be unacceptable for national authorities to compensate for the failure to discharge their positive obligations under Article 3 of the Convention at the expense of the guarantees of Article 7 of the Convention, one of which is that the criminal law must not be construed extensively to an accused's detriment (see Myummyun v. Bulgaria, no. 67258/13, § 76, 3 November 2015, with regard to the latter requirement with references to Başkaya and Okçuoğlu v. Turkey [GC], nos. 23536/94 and 24408/94, § 36, ECHR 1999-IV; (...) Kononov v. Latvia [GC], no. 36376/04, ECHR 2010, § 185; and Del Río Prada v. Spain [GC], no. 42750/09, § 78, ECHR 2013).

In particular, and for the purposes of the present Advisory Opinion, it should be noted that it does not follow from the current state of the Court's case-law that a Contracting Party is required under the Convention not to apply an applicable limitation period and thereby effectively to revive an expired limitation period. The Court has recognised, in the context of the reopening of proceedings, that there may be situations where it is de jure or de facto impossible to reopen criminal investigations into the incidents giving rise to the applications being examined by the Court. Such situations may arise, for example, in cases in which the alleged perpetrators were acquitted and cannot be put on trial for the same offence, or in cases in which the criminal proceedings became time-barred on account of the statute of limitation set out in the national legislation. Indeed, the reopening of criminal proceedings that were terminated on account of the expiry of the statute of limitation may raise issues concerning legal certainty and may thus have a bearing on a defendant's rights under Article 7 of the Convention (see Taşdemir v. Turkey ((dec.), no. 52538/09, § 14, 12 March 2019)¹⁷.

20.3. Referring to Article 7 of the European Convention, the European Court reaffirmed the related general principles of its case law regarding the requirements of legal certainty and predictability within the framework of that article. In particular, the European Court emphasised that: "*(...) [T]he scope of the concept of foreseeability depends to a considerable degree on the content of the instrument in question, the*

¹⁷ See Advisory Opinion of the Grand Chamber of the European Court of Human Rights, §§ 59-66.

*field it is designed to cover and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying out a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such activity entails (see *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 157, ECHR 2015, and Advisory opinion P16-2019-001, § 61).*

(...)

*The Court further reiterates that, as it has held on several occasions, limitation may be defined as the statutory right of an offender not to be prosecuted or tried after the lapse of a certain period of time since the offence was committed. Limitation periods, which are a common feature of the domestic legal systems of the Contracting States, serve several purposes, which include ensuring legal certainty and finality and preventing infringements of the rights of defendants, which might be impaired if courts were required to decide on the basis of evidence which might have become incomplete because of the passage of time (see (...) *Coume and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, ECHR 2000-VII., § 146).*

*In the aforementioned case, the Court was called upon to determine whether legislative changes extending a limitation period, which had not yet expired, posed a problem under Article 7. The Court accepted that the extension of the limitation period had indeed prolonged the period of time during which prosecutions could be brought in respect of the offences concerned and therefore detrimentally affected the applicants' situation, in particular by frustrating their expectations. However, this did not entail an infringement of the rights guaranteed by Article 7, since that provision could not be interpreted as prohibiting an extension of limitation periods through the immediate application of a procedural law where the relevant offences had never become subject to limitation (*ibid.*,*

§ 149). In reaching that conclusion, the Court attached importance to the fact that the domestic court had followed the generally recognised principle that, save where expressly provided to the contrary, procedural rules apply immediately to proceedings that are under way (the *tempus regit actum* principle) (*ibid.*, § 148).

The Court later relied on these findings to conclude that rules on limitation periods did not define offences and the penalties for them and could be construed as laying down a simple precondition for the assessment of the case, declaring a complaint under Article 7 manifestly ill-founded (see *Previti v. Italy (dec.)*, no. 1845/08, § 80, 12 February 2013, in which the applicant complained that he had been unable to benefit from a more favourable limitation period introduced while his criminal case had been still pending before the supreme court). This finding was later confirmed in a number of similar cases, including *Biagioli v. San Marino ((dec.)*, no. 8162/13, § 90, 8 July 2014, where a law was introduced which, unlike at the time of the commission of the offence by the applicant, required the suspension of the prescribed limitation period in certain circumstances and which was applied in the applicant's case) and *Borcea v. Romania ((dec.)*, no. 55959/14, § 64, 22 September 2015, in which the applicant, an accused in criminal proceedings, was unable to benefit from legislative changes introducing a more favourable limitation period in respect of the offence imputed to him).

Thus, as can be seen from the rulings summarised above, legislative changes extending a limitation period which had not yet expired have not been found to constitute a failure to comply with Article 7 of the Convention.

However, in contrast to those cases, the Court found a violation of Article 7 in a recent case in which the applicants had been convicted of an offence which was time-barred (see *Antia and Khupenia v. Georgia*, no. 7523/10, §§ 38-43, 18 June 2020).

(...) [A]s can be deduced from the Court's findings above, where criminal responsibility has been revived after the expiry of a limitation period, it would be deemed incompatible with the overarching principles of legality (*nullum crimen, nulla poena sine lege*) and foreseeability enshrined in Article 7 (...). It follows that where a criminal offence under domestic law is subject to a statute of limitation, and becomes time-barred so as to exclude

criminal responsibility, Article 7 would preclude the revival of a prosecution in respect of such an offence on account of the absence of a valid legal basis. To hold otherwise would be tantamount to accepting “the retrospective application of the criminal law to an accused’s disadvantage” (emphasis added) (see Del Rio Prada v. Spain [GC], no. 42750/09, ECHR 2013, § 78)¹⁸.

20.4. Within the context of the above-stated, the European Court recorded that: “(...) *The Court is not presented with a legislative extension of a limitation period before its expiry in a case pending for adjudication, but with a situation where the requesting court is to determine whether to apply a ten-year limitation period, pursuant to Article 75 § 1(3) of the CC and Article 35 § 1(6) of the CCP, or an already existing provision in Article 75 § 6 of the CC specifying an exception whereby no limitation period is to apply in the circumstances described therein. Having regard to the general considerations outlined in paragraphs 70 and 71 above, it is first and foremost for the national court to determine, within the context of its domestic constitutional and criminal law rules, whether rules of international law having legal force in the national legal system, in the present instance pursuant to Article 5 § 3 of the Constitution (see paragraph 34 above), can provide for a sufficiently clear and foreseeable legal basis within the meaning of Article 7 of the Convention to conclude that the criminal offence in question is not subject to a statute of limitation*”¹⁹.

20.5. In a separate concurring opinion presented attached to the Advisory Opinion of the Grand Chamber, A. Harutyunyan, Judge of the Republic of Armenia in the European Court of Justice, based on the analysis of the prohibition of torture established by the international treaties of the Republic of Armenia, the decisions of the treaty bodies acting on the basis thereof, i.e. the Committee Against Torture and the European Court, on the prohibition of applying the statute of limitations on torture, Article 5 of the Constitution of the Republic of Armenia adopted on 5 July 1995 and Article 75 of the Criminal Code of the Republic of Armenia,

¹⁸ See Advisory Opinion of the Grand Chamber of the European Court of Human Rights, §§ 68 and 72-77.

¹⁹ Ibid, paragraph 78.

concluded that: *"(...) Article 4 of the UNCAT requires a State to ensure that all acts of torture are offences under its criminal law. Armenia ratified and acceded to the UNCAT in September 1993, yet the comments by the CAT highlight that it had failed to implement the obligation arising under Article 4 by 2004.*

Article 75 § 6 of the Criminal Code provides: "No limitation periods shall be applied with regard to persons who have committed criminal offences provided for in international treaties of the Republic of Armenia, where a prohibition on the application of a limitation period is laid down in those treaties".

*Article 4 of the UNCAT requires the criminalisation of torture as understood in Article 75 § 6 of the Criminal Code. Armenia's failure to implement this obligation cannot be the source of the non-application of Article 75 § 6. After all, Articles 26 and 27 of the Vienna Convention on the Law of Treaties provide that a treaty like the UNCAT must be implemented in good faith and that a State cannot "invoke the provisions of its internal law as justification for its failure to perform a treaty". This was also recognised by the Permanent Court of International Justice (PCIJ) in *Treatment of Polish Nationals*, in which it held that "a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force".*

Whereas in the present case a contrary domestic provision was not even in existence, such non-existence cannot be regarded as a justification for the State's failure to perform its duties either.

As concerns the second criterion under Article 75 § 6, namely that a limitation period should be laid down in the respective treaty, it is true that the UNCAT does not specifically address this matter. However, the CAT has reiterated that torture should not be time-barred, as highlighted in its 2012 Concluding Observations on Armenia.

(...)

The jus cogens prohibition of torture overrides national provisions on limitation. As a

consequence of the negative effect of the jus cogens nature of the prohibition, any law providing for a limitation period is therefore, ab initio, contrary to international norms and could never be legally applied.

There is thus no question of the applicability of Article 7 of the Convention as there was never a valid law that provided for limitation; the non-applicability of limitation periods was legal ab initio and foreseeable as having been part of national legislation pursuant to the jus cogens prohibition of torture and time-limits in relation thereto.

Even if the prosecution has already become time-barred under national law, this is irrelevant as such a law could never have legal effect²⁰.

Reasoning and findings of the Court of Cassation

21. The Court of Cassation finds that there is a concern regarding the uniform application of the law concerning the lawfulness of applying the statutes of limitations for subjecting the persons having committed torture or other acts equated thereto to criminal liability. Therefore, the Court of Cassation deems it necessary to express legal positions in this Case, which may serve as guidance for the proper establishment of judicial practice in such cases.
22. The first legal question posed before the Court of Cassation in this Case is whether the domestic regulations, in particular the provision envisaged by part 6 of Article 75 of the Criminal Code of the Republic of Armenia on non-application of statutes of limitations in cases prescribed by international treaties and against persons having committed the criminal offences provided for by those treaties, offer sufficient legal grounds within the meaning of Article 7 of the European Convention for refraining to apply the statutes of limitations for subjecting persons having committed torture

²⁰ See the Advisory Opinion of the Grand Chamber of the European Court of Human Rights, separate concurring opinion of Judge A. Harutyunyan, Section E.

or other acts equated thereto to criminal liability.

I. Domestic legislation of the Republic of Armenia

23. Pursuant to Article 6 of the Constitution of the Republic of Armenia adopted on 5 July 1995 "(...) Ratified international treaties are an integral part of the legal system of the Republic of Armenia. Where they define norms other than those provided for by laws, the norms of the treaties shall apply(...)".

Pursuant to Article 6 of the Constitution of the Republic of Armenia, as amended on 27 November 2005, "(...) *International treaties are an integral part of the legal system of the Republic of Armenia. Where the ratified international treaty defines norms other than those provided for by laws, those norms shall apply. International treaties contradicting the Constitution may not be ratified (...)*".

Pursuant to part 3 of Article 5 of the Constitution of the Republic of Armenia, as amended on 6 December 2015, "*In case of conflict between international treaties ratified by the Republic of Armenia and the norms of laws, the norms of international treaties shall apply*".

Pursuant to part 1 of Article 81 of the Constitution of the Republic of Armenia, "*The practice of bodies operating on the basis of international human rights treaties, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions on fundamental rights and freedoms enshrined in the Constitution*".

24. Pursuant to part 2 of Article 1 of the Criminal Code of the Republic of Armenia, "*The Criminal Code of the Republic of Armenia is based on the Constitution of the Republic of Armenia and on principles and norms of international law*".

Pursuant to part 6 of Article 75 of the Criminal Code of the Republic of Armenia, "*No statutes of limitations shall be applied to persons having committed offences against peace and safety of humanity as provided for in Articles 384, 386-391, 393-397 of this Code. No*

statutes of limitations shall also be applied to persons having committed criminal offences provided for by international treaties of the Republic of Armenia, where a prohibition on application of statutes of limitations is defined by those treaties".

Pursuant to part 9 of Article 83 of the Criminal Code of the Republic of Armenia adopted on 5 May 2021 and entered into force from 1 July 2022, " *No statutes of limitations shall be applied to persons having committed the criminal offence provided for by Articles 133-154, Article 308, point 1 of part 2 of Article 441 or Article 450 of this Code, irrespective of the time of commission of the criminal offence*".

Pursuant to Article 3 of the Law of the Republic of Armenia "On police" with the edition adopted on 16 April 2001, having entered into force from 10 June 2001 and being in force on April 2004, stipulating the principles of activity of the Police of the Republic of Armenia *The Police shall carry out its activities based on the principles of legality, respect for human rights and freedoms, honour and dignity, humanity and publicity(...)*".

Pursuant to Article 5 of the same Law *"(...) subjecting a human being to torture, cruel or degrading treatment, or use of violence against him or her by a police officer shall be prohibited and shall incur a liability in accordance with the law"*.

25. The analysis of the above-mentioned norms reveal that, first, the main law of the Republic of Armenia — the Constitution of the Republic of Armenia, along with certain nuances dependent on the wording of constitutional amendments, acknowledges the international treaties ratified by the Republic of Armenia as an integral part of the domestic legal framework. Furthermore, in case of contradiction between international treaties and norms of laws of the Republic of Armenia, the Constitution of the Republic of Armenia shall resolve the collision in favour of regulations of international treaties.

Article 1 of the Criminal Code of the Republic of Armenia adopted on 18 April 2003, in its turn, solely provided for a regulation to the effect that the Code is founded upon both the Constitution of the Republic of Armenia and the principles and norms of the international law.

25.1. As for the criminal and legal norm establishing a prohibition on application of statutes of limitations, the legislative body, acknowledging that international treaties of the Republic of Armenia are an integral part of the domestic legal framework, legitimately provided that in addition to several *corpus delicti* listed in the norm the statutes of limitations also shall not be applied to persons having committed the criminal offences provided for by international treaties, where a prohibition on application of statutes of limitations is defined by those treaties. No legislative amendment and supplement have been made to the above-mentioned norm of the Criminal Code of the Republic of Armenia since the adoption of the Code. In other words, the legislative body has from the onset, from the date of adoption of the Criminal Code on 18 April 2003, provided for an express legal ground for non-application of statutes of limitations against certain types of criminal offences in cases envisaged by international treaties ratified at that time or pending ratification in future. Thus, although the list of *corpus delicti* outlined in part 6 of Article 75 of the Criminal Code of the Republic of Armenia does not include torture or other acts equated thereto, the coverage of the norm is not limited to the mentioned *corpus delicti*, since it directly provides for a legislative opportunity of non-application of statutes of limitations in cases defined by international treaties and on persons having committed the criminal offences envisaged thereby. Moreover, it should be noted that "The special norm providing for criminal liability for torture under Article 309.1 of the Law of the Republic of Armenia "On making amendments and a supplement to the Criminal Code of the Republic of Armenia" adopted on 9 June 2015 is also not included in the list of *corpus delicti* specified in part 6 of Article 75 of the Criminal Code of the Republic of Armenia.

II. Prohibition against torture as a *jus cogens* norm in international treaties ratified by the Republic of Armenia

26. Pursuant to Article 53 of the Convention on the Law of Treaties adopted on 23 May 1969 and ratified on 17 May 2005, titled "Treaties contradicting the jus cogens norm of general international law", *"The treaty shall be null and void, where at the time of its conclusion it contradicts a jus cogens norm of the general international law. For the purposes of this Convention, a jus cogens norm of general international law is a norm that is fully recognised and acknowledged by the international community of states as a norm, from which no derogation is acceptable and which may only be amended by a subsequent norm of general international law."*

Pursuant to Article 64 titled "Emergence of a new jus cogens norm of general international law" of the same Convention, *"Where a new jus cogens norm of general international law emerges, any treaty contradicting that norm shall be deemed invalid and shall terminate"*.

- 26.1. It follows from the above-mentioned provisions of the Convention on the Law of Treaties that the peremptory or *jus cogens* norm of international law is a fundamental legal norm that permits no derogations. The *jus cogens* norm plays a similar role in the international legal framework as constitutional guarantees of rights do in the national legal framework.

27. The notion of protection of universal human values as a *jus cogens* commitment for the Republic of Armenia is also explicitly stipulated in the Preamble of the Constitution of the Republic of Armenia adopted on 5 July 1995, according to which Armenian people have adopted the Constitution of the Republic of Armenia, among other objectives and principles, *"to affirm their adherence to universal human values"*. As indicated by the Constitutional Court of the Republic of Armenia in its Decision No SDvO-1680 of 24 March 2023, incorporation of this affirmation — the constitutional term "universal human values"— in the Preamble of Constitution, as amended on 6 December 2015, is a primary benchmark used for targeted

interpretation of constitutional norms. The Constitutional Court of the Republic of Armenia stated by the same decision that the adherence of the Armenian people to universal human values set forth in the Preamble of the Constitution of the Republic of Armenia also requires the commitment of the Republic of Armenia to uphold and protect the universal human values, and that the criminal justice system of the Republic of Armenia established and safeguarded by the Constitution of the Republic of Armenia, is designed to ensure, among other values enshrined by the Constitution, the protection of "universal human values" in the sense of the Preamble of the Constitution, which not only stands as a paramount constitutional imperative, but also constitutes a jus cogens commitment for any state²¹.

28. Pursuant to Article 7 of the UN International Covenant on civil and political rights adopted on 16 December 1966 and ratified by the Republic of Armenia on 23 June 1993 "*No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment*".
29. Pursuant to part 1 of Article 2 of UN Convention on torture and other cruel, inhuman or degrading treatment and punishment signed on 10 December 1984 and ratified by the Republic of Armenia on 13 September 1993 "*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*".

Pursuant to Article 12 of the same Convention "*Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction*".

- 29.1. The Committee against Torture, responsible for monitoring the implementation of UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, in its Concluding Observations No CAT/C/CR/30/5

²¹ See Decision of the Constitutional Court of the Republic of Armenia No SDvO-1680 of 24 March 2023 in the Case "On determining the issue of compliance of liabilities stipulated in the Rome Statute of the International Criminal Court signed on 17 July 1998 with the Constitution".

and No CAT/C/CR/30/4 of 27 May 2003, with regard to submitted reports on actions taken to fulfil the liabilities taken by member states as prescribed by Article 19 of the Convention, has mandated member states **to exclude the application of the provision on statutes of limitations to torture crimes**²². The Committee against Torture has consistently developed its position also in its subsequent concluding observations with regard to reports submitted by member states²³.

30. On 13 September 1993 the Republic of Armenia also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment having entered into force on 1 February 1989, according to Article 1 of which *"European Committee (hereinafter referred to as "Committee") shall be established for the purpose of prevention of torture and inhuman or degrading treatment or punishment"(...)"*.
31. The International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as "Tribunal") has stated in its judgment of 10 December 1998 that the prohibition of torture has acquired a status of *jus cogens* norm, which is defined as a peremptory norm of international law that permits no derogation. In particular, pursuant to the above-mentioned judgment, the fact that torture is prohibited by peremptory norm of international law, has its influence at interstate and individual levels. According to the Tribunal, at the interstate level, this action serves to de-legitimise internationally any legislative, administrative or judicial acts. In accordance with the mentioned judgment, on the one hand, due to the *jus cogens* nature of prohibition of torture, treaties or customary rules concerning torture would be null and void and invalid *ab initio*, on the other hand, actions taken by a state aimed at permitting torture or granting pardons for it, or releasing alleged perpetrators by way of adopting laws on amnesty shall be unacceptable. In the same judgment the Tribunal

²² See Concluding Observations of the Committee against Torture for Turkey, point 7 of sup-point (c) of UN document No CAT/C/CR/30/5 of 27 May 2003, Concluding Observations for Slovenia, point 6 of UN document No CAT/C/CR/30/4 of 27 May 2003.

²³ See the Advisory Opinion of the Grand Chamber of the European Court of Human Rights, separate concurring opinion of Judge A. Harutyunyan, Section A, point 3.

asserted that even if such a situation arises, the national regulations, which will contravene the general principle and any other relevant contractual provision, will not receive international legal recognition. An important statement made in the above-mentioned judgment is that the alleged perpetrators of torture, who may benefit from those national regulations, however, remain accountable, as despite any violation of the principle of prohibiting torture by domestic legislative or judicial bodies, individuals remain responsible for observing that principle. The judgment also highlights that at the individual level of criminal liability, one consequence of the prohibition of torture attaining a *jus cogens* nature in the international community is that each state possesses the legal capacity to investigate cases of torture, prosecute and punish or extradite persons accused of committing tortures, who are in the territory falling under its jurisdiction²⁴.

32. Pursuant to Article 3 of the European Convention on Human Rights and Fundamental Freedoms adopted on 4 November 1950 and ratified by the Republic of Armenia on 26 April 2002 "*No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment*".
 - 32.1. The European Court has repeatedly emphasized the absolute nature of the prohibition of torture, inhuman or degrading treatment or punishment in its case law established with regard to Article 3 of the European Convention. In particular, The Court asserts in its judgment in the case *Zelilof v. Greece* that Article 3 upholds one of the most fundamental values of a democratic society. Even in such complicated situations, as the fight against terrorism and organised crime, the Convention unequivocally prohibits torture and inhuman or degrading treatment or punishment. Unlike many substantive provisions of the Convention and Protocols 1 and 4 thereto, Article 3 does not provide for any rule regarding exceptions, no derogation from it is permitted by part 2 of Article 15, even in the event of a state of

²⁴ See Judgment of the International Criminal Tribunal for the former Yugoslavia No JL/PIU/372-E of 10 December 1998 in the case *the Prosecutor v. Anto Furundzija*, §§ 155-157.

emergency threatening the nation's existence²⁵.

32.2. The absolute nature of the prohibition of torture implies that the State shall not only be liable to refrain from torture, inhuman or degrading treatment or punishment, but to undertake certain constructive actions. The European Court has established a stable case law stating that if a person alleges that he or she has been subjected to torture by a police officer or other official in violation of Article 3, it is implied that the provision, read in conjunction with the State's general obligation under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in the Convention", requires a liability of effective official investigation. Such an investigation should be able to identify and impose liability on those guilty. Otherwise, the general prohibition of torture, inhuman or degrading treatment or punishment, irrespective of its fundamental importance, will be ineffective in practice, and in some cases it will become possible for state authorities to violate the rights of persons under their supervision and actually remain unpunished²⁶.

32.3. Based on the study of case law, the Court of Cassation reiterates that the standards for effective investigation of cases concerning torture provided for by Article 3 of the European Convention are as follows:

- (a) the bodies conducting investigation should be independent and impartial²⁷;
- (b) the competent bodies should act with proper speed²⁸, the investigation should be swift and thorough; in other words, in order to disclose the case, the

²⁵ See the judgment of the European Court of Human Rights of 24 May 2004 in the case of *Zelilof v. Greece*, Application No 17060/03, §§ 42.

²⁶ See, inter alia, Judgment of the European Court of Human Rights of 28 October 1998 in the Case *Assenov and Others v. Bulgaria*, Application No 24760/94, §§ 102, Judgment of the Grand Chamber of 6 April 2000 in the Case *Labita v. Italy*, Application No 26772/95, § 131, Judgment of the Grand Chamber of 13 December 2005 in the Case *Bekos and Koutropoulos v. Greece*, Application No 15250/02, §§ 53, Judgment of 17 October 2006 in the Case *Okkali v. Turkey*, Application No 52067/99, §§ 65.

²⁷ See Judgment of the Grand Chamber of the European Court of Human Rights of 20 May 1999 in the case of *Ogur v. Turkey*, Application No 21594/93, §§ 91-92, Judgment of 20 July 2004 in the Case *Mehmet Emin Yuksel v. Turkey*, Application No 40154/98, § 37, Judgment of 28 July 1998 in the Case *Ergi v. Turkey*, §§ 83-84.

²⁸ See Judgment of the European Court of Human Rights of 26 January 2006 in the Case of *Mikheev v. Russia*, Application No 77617/01, §§ 109.

competent bodies must exert serious efforts and refrain from relying on hastily drawn or weakly reasoned conclusions when concluding the investigation or substantiating their decisions²⁹;

- (c) bodies conducting investigation should be vested with the full power to confirm the relevant facts, identify and hold liable those guilty³⁰, they must take all reasonable steps at their disposal to ensure collection of evidence pertinent to the case, including, inter alia, interrogation of witnesses and medical evidence³¹;
- (d) a thorough investigation should be conducted, which is required to ensure collection of evidence in the case³²;
- (e) public oversight of the investigation and effective involvement of the victim³³ in investigation must be ensured; any shortcomings of investigation that cast doubt on the ability to disclose the reasons of injuries or identify those accountable may compromise the fulfilment of this standard³⁴.

32.4. Thus, the European Court of Human Rights acknowledged in its case law that the prohibition of torture has received a *jus cogens* status or a status of a peremptory norm in international law. Moreover, in the context of constructive liability of the state to conduct an effective investigation in cases regarding tortures, the European

²⁹ See, Judgment of the European Court of Human Rights of 28 October 1998 in the Case *Assenov and Others v. Bulgaria*, Application No 24760/94, §§ 103, Judgment of 3 June 2004 in the Case *Bati and Others v. Turkey*, Applications Nos 33097/96 and 57834/00, §§ 136.

³⁰ See Judgment of the European Court of Human Rights of 4 May 2001 in the Case *Hugh Jordan v. the UK*, Application No 24746/94, §§ 125-130, Judgment of 3 June 2004 in the Case *Bati and Others v. Turkey*, Application Nos 33097/96 and 57834/00, §§136, Judgment of 17 September 2013 in the Case *Amine Guzel v. Turkey*, Application no. 41844/09, §§ 39.

³¹ See Judgment of the Grand Chamber of the European Court of Human Rights of 8 July 1999 in the Case of *Tanrkulu v. Turkey*, Application No 23763/94, Paragraph 104, Judgment of 14 December 2000 in the Case *Gul v. Turkey*, Application no. 22676/93, §§ 89.

³² See, Judgment of the European Court of Human Rights of 3 June 2004 in the Case *Bati and Others v. Turkey*, Applications Nos 33097/96 and 57834/00, §§134.

³³ See, Judgment of the European Court of Human Rights of 3 June 2004 in the Case *Bati and Others v. Turkey*, Applications Nos 33097/96 and 57834/00, §§ 137, mutatis mutandis, Judgment of the Grand Chamber of 20 May 1999 in the Case *Ogur v. Turkey*, Application No 21594/93, §§ 92, Judgment of 23 February 2006 in the Case *Ognyanova and Choban v. Bulgaria*, Application No 46317/99, Paragraph 107, Judgment of 6 November 2008 in the Case of *Khadzhialiyev and Others v. Russia*, Application No 3013/04, §§ 106.

³⁴ See Judgment of the European Court of Human Rights of 11 July 2006 in the Case *Boicenco v. Moldova*, Application No 41088/05, §§123.

Court has stated, in particular, that the criminal proceedings in cases concerning torture or ill-treatment committed by a state official must not be terminated on the ground of a statute of limitations, and also that in such cases amnesty and pardon should not be allowed to be applied³⁵. Thus, the European Court, referring to the Judgment of 2 September 1991 in the Case of *Lorence Duardi v. France* and Judgment of 2 November 2004 in the Case *Abdulsamet Yaman v. Turkey*, reasserted in its Judgment of 17 October 2006 in the Case *Okalin v. Turkey* that when a state representative is accused of having committed crimes that violate Article 3 of the European Convention, criminal proceedings and imposition of the punishment should not be restricted in terms of time³⁶.

III. The procedure and judicial practice aimed at aligning domestic legislation on prohibition of torture or other manifestations of ill-treatment to norms of international law

33. The judicial practice aimed at aligning domestic legislation on prohibition of torture or other manifestations of ill-treatment to norms of international law was launched by Decision of the Court of Cassation of the Republic of Armenia of 12 February 2010 in the Case of *Arayik Gzoyan*, wherein the Court of Cassation, citing the violation of the rights of A. Gzoyan guaranteed by Article 3 of the European Convention, in the light of the case law of the European Court, established the notion of the absolute prohibition of torture and the state's constructive liability to conduct an effective investigation into the alleged case of torture³⁷. By its Decision of 11 May 2011 in the Case of *Svetlana Grigoryan*, the Court of Cassation stipulated the obligation of competent bodies to conduct investigation in response to credible allegations of ill-treatment³⁸. In its subsequent judgments as well the Court of

³⁵ See Advisory Opinion of the Grand Chamber of the European Court of Human Rights, §§ 59.

³⁶ See Judgment of the European Court of Human Rights of 17 October 2006 in the case of *Okkali v. Turkey*, Application No 52067/99, §§ 76.

³⁷ See Decision of the Court of Cassation No YeAKD/0049/01/09 of 12 February 2010 on *Arayik Gzoyan*.

³⁸ See Decision of the Court of Cassation No YeAKD/0281/01/10 of 11 May 2011 on *Svetlana Grigoryan*.

Cassation has consistently applied the standards developed by the European Court³⁹.

34. In the considered field the necessity of legislative reforms is, inter alia, contingent upon the importance to ensure alignment between the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Convention for the Protection of Human rights and Fundamental Freedoms and legal regulations existing in the field of criminal liability for the torture provided for in the domestic legislation, as well as the requirement of execution of judgments of the European Court. Thus, in a number of judgments concerning Armenia (e.g. cases *Virabyan v Armenia*, *Nalbandyan v Armenia*, *Zalyan and others v. Armenia* and *Hovhannisyan v. Armenia*) the European Court recognised the violation of Article 3 of the Convention, thus committing Armenian authorities to take active steps to increase the effectiveness of fight against torture. Revision of judicial acts rendered by domestic judicial instances and reopening of cases⁴⁰ for the purpose of ensuring consistent execution of judgments of the European Court by the Court of Cassation of the Republic of Armenia has followed the rendering of mentioned judgments.
35. In its 2012 Report the Committee against Torture, first, *embraced* the ratification by the Republic of Armenia of essential international and regional documents prohibiting acts of torture and acts of discriminatory nature during 2006-2011, highlighted the issue of adopting relevant domestic legislation and aligning it with international standards, at the same time *it urged* for the criminalisation of the corpus delicti of torture, creation of legislative safeguards for protection of the minimum rights of arrested and detained persons, creation of a framework for establishing the institute of fair and proportional compensations for damage caused

³⁹ See Decisions of the Court of Cassation No EAQD/0190/11/16 of 30 August 2017 in the case of *Vardges Gaspari*, No SD2/0006/11/16 of 20 July 2018 in the case of *Arthur Hakobyan*, No EAQD/0172/11/17 of 18 September 2019 on the case of *Albert Hakobjanyan and Gagik Karapetyan*, No LD1/0030/11/16 of 3 September 2021 in the case of *Erik Eghinyan*, No YED/0558/01/18 of 15 October 2021 in the case of *Armen Hovhannisyan*.

⁴⁰ See Decisions No VB-04/15 of 24 June 2016 in the case of *Bagrat and Narine Nalbandyan's*, No VB-06/15 of 24 June 2016 in the case of *Bagrat and Arevik Nalbandyan's*, No VB-02/16 of 12 April 2017 in the case of *Arayik Zalyan*, No YEQD/0062/11/12 of 7 November 2019 in the case of *Aida Hovhannisyan*.

to victims of torture as a result of committed torture, including the rehabilitation institute, repeal of provisions regarding the application of the statute of limitations, pardon and amnesty prescribed by the Criminal Code for torture crime or acts equated thereto⁴¹.

36. The process of aligning the legislation with the principles of international law was actually launched by adoption on 9 June 2015 of Law No HO-69-N "On making amendments and a supplement to the Criminal Code of the Republic of Armenia" and Law No HO-70-N "On making an amendment to the Criminal Procedure Code of the Republic of Armenia", based on which the corpus delicti of torture and the regime of public accusation were respectively introduced for cases of torture.

37. Bringing the operating mechanism of providing legal assistance to arrested and detained persons into compliance with international standards can also be singled out from among the measures aimed at ensuring efficient examination of alleged cases of torture. Thus, on 21 December 2015 the Law No HO-191 "On making amendments and supplements to the Law of the Republic of Armenia "On custody of arrested and detained persons", according to which the arrested or detained person was given the opportunity to meet the defence council and the advocate — for the purpose of assuming his or her defence — also on working days or hours. Furthermore, as a result of amendments and supplements made, detained persons were provided with the opportunity, on the basis of their own motion, by the decision of the body conducting the proceedings, to independently request a meeting — in an unimpeded manner — with a different advocate not involved as a defence council in the ongoing criminal case to receive legal assistance in other legal fields.

38. Law HO-214-N "On making a supplement and an amendment in the Civil Code of

⁴¹ See Concluding Observations of the Committee against torture concerning Armenia, UN document No CAT/C/ARM/CO/3, 6 July 2012, §§ 10.

the Republic of Armenia" adopted on 16 December 2016 stipulated establishing of the institute of fair and proportionate compensation for damage caused to victims of torture, including the rehabilitation institute⁴².

39. Law HO-69-N "On making amendments and supplements to the Criminal Procedure Code of the Republic of Armenia" adopted on 16 January 2018 stipulates additional procedural safeguards for persons *de facto* deprived of liberty, such as inviting an advocate, undergoing medical examination at the request thereof. The above-mentioned regulations were also incorporated in the Criminal Procedure Code of the Republic of Armenia adopted on 30 June 2021.
40. On 7 March 2018, the Law of the Republic of Armenia "On pardon" was adopted, which established that no person convicted of torture shall be eligible for pardon.
41. The Criminal Code of the Republic of Armenia adopted on 5 May 2021 enshrined the prohibition on releasing persons having committed torture from criminal liability or punishment on the ground of expiry of the statute of limitations.
42. Taking into account the foregoing, the Court of Cassation states that:
 - the prohibition of torture is a *jus cogens* norm of international law, which is incorporated in international treaties ratified by the Republic of Armenia and forming the integral part of the legal system of the latter, including UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN International Covenant on Civil and Political Rights, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ratified by the Republic of Armenia as of 2002;
 - a requirement for prohibition of applying statute of limitations against the torture is stipulated in documents adopted by bodies acting on the basis of the above-mentioned conventions. Thus, "The Committee against Torture

⁴² See Article 1087.3 of the Civil Code of the Republic of Armenia.

responsible for monitoring the implementation of UN Convention against Torture and other Cruel or Degrading Treatment and Punishment stipulated in its 2002 Concluding Observations the prohibition for applying the provision on statutes of limitations to crimes related to torture. The European Court also asserted the unlawfulness of terminating criminal proceedings in cases concerning torture or ill-treatment committed by a state official on the ground of a statute of limitation in its Judgment rendered on 2 November 2004 in the case of *Abdulsamet Yaman v. Turkey* cited in the Advisory Opinion of Grand Chamber, where the Court referred to 2003 Concluding Observations of the Committee against Torture;

- the European Court specified with regard to position of the international contractual bodies being the integral part of those treaties that one of the most important peculiarities of the conventional system is that the European Convention not only requires from the state parties to observe the rights and responsibilities deriving therefrom, but also establishes a judicial body, which by virtue of Article 19 and part 1 of Article 46 of the European Convention shall be authorised to identify the violations of the European Convention in final judgments, which the states have undertaken to follow. Furthermore, it establishes a mechanism for supervising the execution of judgments under the auspices of the Committee of Ministers (paragraph 2 of Article 46 of the European Convention). According to the European Court, such an approach emphasizes the importance of effectively executing judgments⁴³. Moreover, pursuant to Article 32 of the European Convention, the jurisdiction of the European Court extends to all matters concerning the interpretation and implementation of the European Convention and provisions of Protocols attached thereto. In this regard it should be noted that the European Court itself has emphasized that its judgments, in fact, serve not only to resolve

⁴³ See Judgment of the European Court of Human Rights of 30 June 2009 in the Case *Verein Gegen Tierfabriken Schweiz (vgt) v. Switzerland (No. 2)*, Application No 32772/02, §§ 84.

disputes brought before the European Court, but also serve a broader purpose of "*clarifying, safeguarding and developing*" the rules defined by the European Convention, thereby contributing to fulfilment of the obligations assumed by states as contracting parties. The European Court has emphasized that while the primary goal of the conventional system is to provide individual assistance, its mission also involves shaping public policy derived from common interests, thereby elevating the general standards for protection of human rights and expanding the legal practice of human rights in the community of member states⁴⁴,

- With regard to the legal effect on member states of the positions taken by international contractual bodies, the Court of Cassation deems it appropriate to mention the Position of the International Court of Justice made with regard to Human Rights Committee to ensure the implementation of the UN International Covenant on Civil and Political Rights which suggests that when applying to Court it is crucial to assign importance and properly consider the interpretations put forward by independent bodies specifically established to monitor the reasonable application of an international treaty, if such bodies exist⁴⁵.

The European Commission for Democracy through Law (Venice Commission) expressed a similar legal position, observing that: "*(...) The legal norms with regard to which contractual bodies express their official positions constitute legally binding obligations for the State Parties, therefore, expressing official position by these contractual bodies is more than mere recommendations, which may be easily disregarded, as the State Party has not agreed to its application for interpretation or facts adopted by the Committee against Torture. Moreover, State Parties cannot directly disregard them, but should take them*

⁴⁴ See Judgment of the European Court of Human Rights of 24 July 2003 in the case of *Karner v. Austria*, Application No 40016/98, §§ 26.

⁴⁵ See the Advisory Opinion of the Grand Chamber of the European Court of Human Rights, separate concurring opinion of Judge A. Harutyunyan, Section A, §§ 1.

into account bona fide. On the other hand, they are not deprived of the right to reject them on the ground that no proper legal position was expressed on the relevant case after its detailed examination. However, no response to findings of the Human Rights Committee may have been considered a violation of liabilities undertaken by the International Covenant on Civil and Political Rights. The legal consequence is that State Parties undertake the liability of bona fide accounting of the final opinions of the Human Rights Committee" ⁴⁶;

- The Constitution of the Republic of Armenia adopted on 5 July 1995, as well as the Constitution as amended on 27 November 2005 directly recognised the international treaties ratified by the state as an integral part of domestic legal framework vested with priority;
- The Criminal Code of the Republic of Armenia adopted on 18 April 2003 shall by virtue of part 6 of Article 75 directly provide for a legal ground for non-application of statutes of limitations in cases specified by treaties ratified or to be ratified by the Republic of Armenia and to persons having committed the criminal offences envisaged thereby.

43. The examination of materials of this case show that:

- The incident of excess of official powers combined with violence against G. Virabyan incriminated to H. Movsisyan and A. Arsenyan has occurred on 23 April 2004⁴⁷;
- In relation to the above-mentioned case, the European Court recognised in the case of *Virabyan v. Armenia* of 2 October 2012 the fact of violation of substantive and procedural rights guaranteed by Article 3 of the European Convention⁴⁸;
- The first instance court has recognised H. Movsisyan and A. Arsenyan guilty of

⁴⁶ See the Advisory Opinion of the Grand Chamber of the European Court of Human Rights, separate concurring opinion of Judge A. Harutyunyan, *ibid*.

⁴⁷ See points 16-16.1 of this Decision.

⁴⁸ See points 15-15.10 of this Decision.

committal of the acts incriminated thereto. Subsequently, referring to the issue of submitting the latter to criminal liability it stated that the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment does not envisage a prohibition for application of the statute of limitations, and only the Committee against Torture expressed its regret in its conclusions, which, according to the court, are of advisory nature, that although in its previous observations and recommendations it envisaged the prohibition, but the legislation in force in any case still allows the statute of limitations in cases of torture. The First Instance Court also concluded that the European Convention also did not envisage the prohibition for applying the provision on statute of limitations against torture, and merely the fact that the European Court has expressed a position on non-termination of criminal prosecution on the ground of expiry of the statute of limitation and non-application to a person of pardon or amnesty by its Decision in the case of *Mocanu v. Romania*, is still insufficient for the position expressed by this decision to be binding in the Republic of Armenia, as the decisions rendered by the European Court are not automatically incorporated in the legal framework of the Republic of Armenia and in order to apply that position an amendment has to be made in the Criminal Code of the Republic of Armenia or it should at least be recognised as a peremptory rule of conduct with the adoption by the supreme judicial body of a precedential decision in the light of the precedential practice of the European Court of Human Rights. The first instance court has noted that while the provisions of the European Convention by virtue of the fact of its ratification are binding in the Republic of Armenia, the decisions of the European Court cannot be equated by any legal provision to the Articles specified in international documents and cannot be directly enforced. According to the assessment of the First Instance Court, by implementation of the above-mentioned decision the prohibition on retroactive force of laws and legal acts which worsened the human condition

was disregarded. Even if the decision of the European Court were applicable in the Republic of Armenia, the preliminary investigation body did not investigate whether, in the event of applying the position expressed in that decision, the rights and fundamental freedoms and lawful interests of H. Movsisyan and A. Arsenyan were not violated, as the act incriminated thereto was committed in April 2004, and the decision of the European Court was rendered on 17 September 2014⁴⁹;

- The Court of Cassation has upheld the decision of the First Instance Court by agreeing to the expressed position⁵⁰.

44. In the light of the facts of this case, the Court of Cassation, referring to the existence of a sufficient ground for non-application of statute of limitations on subjecting H. Movsisyan and A. Arsenyan to criminal liability for committal of the act incriminated thereto, stated that as of 23 April 2004, date of committal of the act incriminated to H. Movsisyan and A. Arsenyan, part 6 of Article 75 of the Criminal Code of the Republic of Armenia has directly envisaged a prohibition to apply statute of limitations in cases specified by international treaties and to persons having committed the criminal offences envisaged by international treaties. As to existence of such a prohibition in international treaties ratified by the Republic of Armenia as of that moment, it should be noted that back in 1993, before this case, the Republic of Armenia had already ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention which envisaged the prohibition for torture and which did not envisage statutes of limitations for incidents of torture. Back on 10 December 1998, the International Criminal tribunal for the former Yugoslavia, in its judgment in the case the Prosecutor *v. Anto Furundzija* stated that statutes of limitations cannot apply to torture incidents. And already in 2003, the requirement for the exclusion of the application of statutes of limitations to incidents of torture was explicitly specified in the documents of the Committee against Torture, and citing

⁴⁹ See point 17 of this Decision.

⁵⁰ See point 18 of this Decision.

this, the European Court formed a similar position as early as 2004. In other words, the Court of Cassation states that as of 23 April 2004, by virtue of Article 6 of the Constitution of the Republic of Armenia adopted on 5 July 1995, part 6 of Article 75 of the Criminal Code of the Republic of Armenia contained a legal prohibition provided for by International treaties of the Republic of Armenia for application of statutes of limitations to incidents of torture.

45. With regard to direct application of norms of international law, the Court of Cassation deems it appropriate to mention the legal position expressed by the European Court in the case *Kononov v. Latvia*, where the Grand Chamber of the European Court, revising the Decision of the European Court of 24 July 2008 on identifying the violation of Article 7 of the European Convention from the perspective of having sufficiently clear legal grounds for conviction, didn't find it incompatible with paragraph 1 of Article 7 of the European Convention the conviction of the applicant on 2000, criminalised by domestic legislation in 1993, for a war crime committed in 1944 on the basis of the norms of international law that established accountability for war crimes⁵¹. Referring to the issue of application of statutes of limitations, the European Court highlighted the importance of considering whether statutes of limitations were prescribed by international law for such acts at any point before conviction of the applicant. *As a result, taking into account the fact that no statute's of limitations were envisaged in international law either in 1944, o'r after hat, and that such statutes of limitations were not envisaged in domestic law as well, the European Court finds that the conviction of the applicant was not time-barred*⁵².

- 45.1. The Court of Cassation finds it necessary to mention that in the aforementioned case of *Kononov v. Latvia* , the European Court addressed the question of whether the applicant could have predicted that the acts in question were war crimes and whether the latter could be convicted for those crimes. With regard to this

⁵¹ See Judgment of the Grand Chamber of the European Court of Human Rights of 17 May 2010 in the case of *Kononov v. Latvia*, Application No 36376/04, §§ 196-199.

⁵² See *ibid*, paragraphs 232-233.

question, the European Court noted that the extent of predictability largely depends on the issue at hand, the domain to which it pertains, and the group and status of the individuals it affects. The European Court has emphasized that persons carrying out professional activities should demonstrate a higher degree of caution when pursuing their occupation, and particular diligence should be expected from them when assessing potential risks associated with their activities. As a result, the European Court concludes that in 1944, it could have been quite predictable for the applicant, a young serviceman placed in a combat scenario, that the relevant acts amounted to war crimes according to international law by virtue of the requirement to observe the fundamental international human rights, despite the absence of any reference to international law and rules of war in the Criminal Code of 1926, and the fact that such rules were not officially published in the USSR or Latvian Soviet Socialist Republic⁵³.

Taking into account the aforementioned, the Court of Cassation finds it necessary to mention that the accused-on-trial in this case were Police officers, and Article 5 of the Law of the Republic of Armenia "On Police" adopted on 16 April 2001 directly establishes that "subjecting a person to torture, cruel or degrading treatment or applying violence against him or her by the Police officer shall be prohibited and shall entail liability in accordance with the procedure established by law. Therefore, the prohibition of torture, cruel or degrading treatment was quite clear for the accused-on-trial police officers in this case, as it was explicitly provided for in the main regulatory legal act concerning their professional activities.

46. Summarising the foregoing, the Court of Cassation states that the Republic of Armenia, by designating under the Constitution of the Republic of Armenia adopted in 1995 the international treaties ratified by the Republic of Armenia as an integral part of the legal framework of the Republic of Armenia and by ratifying the main international documents of fight against torture, has undertaken a clear commitment to provide legally and in practice for effective mechanisms for criminalising torture

⁵³ See *ibid*, paragraphs 235-239.

and acts equated thereto, conduction of effective investigation in cases regarding thereto and subjecting the accused to criminal liability. Undertaking this commitment and its consistent implementation becomes evident from ratification of the main international conventions in the field of fight against torture, development of domestic legislation and the formation of relevant judicial practice.

To the extent that the Criminal Code of the Republic of Armenia adopted on 18 April 2003 directly stipulated a prohibition to apply statutes of limitations in cases prescribed by international treaties and to persons who have committed criminal offences provided for thereby, and the Republic of Armenia, by ratifying major international treaties on fight against torture, has committed to observe the requirements stipulated in documents adopted by the conventional bodies aimed at interpretation and implementation of provisions of those treaties, based on the norms of international law constituting an integral part of the legal system of the Republic of Armenia, it can be inferred that at least as of 1 August 2003, when the Criminal Code of the Republic of Armenia entered into force, there was a legislative prohibition for applying statutes of limitations in case of torture or treatment equated thereto, which could have been predictable for the accused-on-trial in this case by 23 April 2004, the date the act incriminated thereto was committed.

In the light of analysis regarding the significance of judgments of the European Court referred to in point 43 of this decision, the Court of Cassation expressed its disagreement with the position of the First Instance Court, which stated that the positions expressed by decisions of the European Court are not binding in the Republic of Armenia, as they are not automatically incorporated in the legal system of the Republic of Armenia. The Court of Cassation asserts that the obligation of the member states stipulated in Article 1 of the European Convention, requiring them to ensure the rights and freedoms prescribed by the European Convention for all persons under their jurisdiction, implies the responsibility of member states to uphold those rights and freedoms with the interpretations provided by the European Court, as a body vested with the competence to interpret the provisions of the

Convention. Moreover, it is deduced from the foregoing, that by virtue of Article 1 of the European Convention the judgment of the European Court shall be binding not only on the state, which is a respondent in a specific case, but any violation identified in each member state of the European Convention shall, in general, incur an *erga omnes* obligation to observe the common case law of the European Court. Therefore, this position of the First Instance Court contradicts the legal positions cited in point 43 of this decision expressed by the European Court regarding the role and significance of the system of convention and the decisions of the European Court within that framework.

47. Thus, the Court of Cassation states that the domestic regulations, in particular the provision provided for by part 6 of Article 75 of the Criminal Code of the Republic of Armenia regarding the non-application of a statutes of limitations in cases prescribed by international treaties and against persons having committed the criminal offences provided for by those treaties, offer sufficient legal grounds within the meaning of Article 7 of the European Convention for refraining to apply the statutes of limitations for subjecting persons having committed torture or other acts equated thereto to criminal liability.

Taking into account the foregoing, the Court of Cassation concludes that the accused-on-trial in this Case H. Movsisyan and A. Arsenyan are subject to criminal liability for the act incriminated thereto.

The appropriateness of imposing punishment on Hovhannes Negus Movsisyan and Armen Razmik Arsenyan

48. The second legal question posed before the Court of Cassation in this Case is whether or not the accused-on-trial Hovhannes Movsisyan and Armen Arsenyan should be subjected to punishment.

49. Pursuant to Article 48 of the Criminal Code of the Republic of Armenia,

- "1. *Punishment is a state coercive measure imposed upon the criminal judgement of the court on behalf of the State on a person found guilty of crime and is expressed by deprivation or restriction of that person's rights and freedoms as provided for by law.*
2. *The purpose of punishment is to restore social justice, correct the person subjected to punishment, as well as to prevent crimes*".
50. Reconfirming the importance of both the criminal responsibility for torture and the inevitability of punishment in the context of the constructive liability of the state to effectively investigate the instances of torture, the Court of Cassation, however, deems it necessary to refer to the specifics of this case.
- 50.1. Firstly, the Court of Cassation deems it necessary to specifically emphasize that for the first time in judicial practice within the scope of performing the function of ensuring the uniform application of the law, it expresses a benchmark position regarding non-application of statutes of limitations for subjecting the persons having committed torture and other acts equated thereto to criminal liability.
- 50.2. Secondly, it can be inferred from the examination of materials of this case that G. Virabyan applied to the European Court on 11 May 2005, about a year after the proceedings concerning the excess of official powers by the accused-on-trial combined with the exertion of force against G. Virabyan was dismissed, after having exhausted all domestic legal remedies. Judgment of the European Court stating the fact of violation of the rights of G. Virabyan guaranteed by Articles 3, 6 and 14 of the European Convention was rendered seven years later, on 2 October 2012. As a result of reopening the case on the ground of the above-mentioned judgment of the European Court as a new circumstance by applying the procedural processes, only two years later on 1 September 2014, a decision was rendered by the prosecutor to abolish the above-mentioned decision of 11 August 2004. And around two years later on 10 May 2016 a criminal case was initiated with regard to excess of official powers, accompanied by exerting force against G. Virabyan.

During the preliminary investigation H. Movsisyan and A. Arsenyan were involved as accused, and charges were brought against them, then a decision was made to terminate the criminal prosecution against them and dismissing the criminal proceedings on the ground of excess of statutes of limitations for subjecting to criminal liability, following which that decision was abolished by the Deputy Prosecutor General of the Republic of Armenia. Only two years later, on 20 February 2018, the criminal case on the charges against H. Movsisyan and A. Arsenyan was forwarded to the First Instance Court along with the indictment. The case has been investigated in the First Instance Court and Court of Appeal for around two years. The cassation appeal brought against the decision of the Court of Appeal was accepted by Decision of the Court of Cassation of 25 November 2019 for proceedings. In the court session convened on 27 January 2021 the Court of Cassation decided to seek an advisory opinion from the European Court regarding the case of the accused-on-trial H. Movsisyan and A. Arsenyan. On 26 April 2022 the Grand Chamber of the European Court provided the Court of Cassation with an advisory opinion, the Armenian translation whereof was received in the Court of Cassation on 28 July 2022.

It follows from the foregoing that almost 20 years have elapsed since the date a decision was rendered regarding the incident incriminated to H. Movsisyan and A. Arsenyan. In this regard, the Court of Cassation underscores that the prolonged duration of the criminal proceedings was not conditioned by the conduct of the accused-on-trial, but was due to specifics of investigation of this case, including the implementation of lengthy procedural processes required for reopening the case following the victim's application to the European Court and the receipt of the European Court's judgment, termination of the criminal prosecution for the second time after involving H. Movsisyan and A. Arsenyan as accused subsequent to the reopening of the case, and its subsequent resumption, duration of the cassation proceedings due to the importance and complexity of the legal issue at hand, which involved applying to European Court and subsequent legal process aimed at obtaining an advisory opinion. Examination of the materials of the case show that

throughout this entire period the accused-on-trial did not demonstrate a conduct that could have prolonged the case.

In this regard, it should be noted that the European Court considered the clear and measurable mitigation of the punishment by the state as a possible compensation for violation of the right of investigation of the case in the reasonable time period guaranteed by paragraph 1 of Article 6 of the European Convention⁵⁴.

51. Hence, taking into account along with the foregoing that H. Movsisyan and A. Arsenyan already don't work in the police system, as well as that victim G. Virabyan expressed a position at a public court session in the Court of Cassation stating that he had no claim against the accused-on-trial, in the context of the general principles of imposition of punishment the Court of Cassation finds that in this particular case the imposition of punishment cannot serve its purposes any more⁵⁵. In this regard, the Court of Cassation attaches importance to the circumstance that the charge brought against H. Movsisyan and A. Arsenyan was properly examined in lower courts, as a result of which the latter were recognised as accused in committal of the act incriminated thereto and judgment of conviction was delivered against them. Therefore, along with the compensation for non-pecuniary damage awarded by judgment of the European Court in the Case of Virabyan v. Armenia, the victim in the given case G. Virabyan was also granted, in accordance with the civil procedure of the Republic of Armenia the right to require compensation for the damage caused to him.

52. Based on the foregoing, the Court of Cassation finds that the accused-on-trial Hovhannes Movsisyan and Armen Arsenyan should not be convicted.

53. Summarising the above-mentioned, the Court of Cassation finds that the First Instance Court in this case by releasing upon Judgment of 22 February 2019

⁵⁴ See Judgment of the European Court of Human Rights of 26 June 2001 in the case of *Beck v. Norway*, Application No 26390/95, §§ 27, Judgment of 24 February 2005 in the Case *Ohlen v. Denmark*, Application No 63214/00, §§ 27.

⁵⁵ See *mutatis mutandis*, Decision of the Court of Cassation *No YeKD/0207/01/14* of 25 May 2020 on Arpine Maysuryan.

H. Movsisyan and A. Arsenyan from criminal liability on the ground of expiry of the statutes of limitations, and the Court of Appeal — by leaving the judgment of the First Instance Court unchanged, upon decision of 4 July 2019, have made a judicial mistake, an incorrect implementation of the international treaty provided for by Article 397 of the Criminal Procedure Code of the Republic of Armenia adopted on 1 July 1998 and the criminal law, which shall serve as a basis for reversing and amending on the basis of Article 419 of the same Code the judicial acts of lower courts regarding release of the accused-on-trial from criminal liability on the ground of expiry of the statute of limitations. At the same time, based on the analysis conducted in points 50-52 of this decision, the Court of Cassation finds that the judicial acts of the lower court should be left unchanged with regard to recognising H. Movsisyan and A. Arsenyan guilty without imposing a punishment on the latter.

53. Proceeding from the above-mentioned, and guided by Articles 5, 81, 162, 163, 171 of the Constitution of the Republic of Armenia, Article 11 of the Constitutional Law of the Republic of Armenia "Judicial Code of the Republic of Armenia" and Articles 39, 43, 361, 4066, 419 and 422-423 the Court of Cassation:

ESTABLISHED:

1. To partially uphold the cassation appeal. To partially dismiss and amend the judgment of the First Instance Courts of General Jurisdiction of Ararat and Vayots Dzor marzes of 22 February 2019 regarding Hovhannes Negus Movsisyan and Armen Razmik Arsenyan and the decision of the Criminal Court of Cassation of the Republic of Armenia of 4 July 2019 on leaving it unchanged, replace the words "and release him from criminal liability on the ground of the expiry of the statute of limitations by applying point 3 of part 1 of Article 75 of the *Criminal Code of the Republic of Armenia*" in paragraphs 1 and 3 of the concluding part of the Judgment of the First Instance Court of General Jurisdiction of 22 February 2019 with the words "*without imposing punishment*".
2. To leave the judicial acts of lower courts with respect to the remaining part unchanged.
3. This Decision shall enter into legal force from the moment of its promulgation, be final and not subject to appeal.

Presiding judge: H.ASATRYAN

Judges: S.AVETISYAN

L. TADEVOSYAN

D. KHACHATURYAN

A. POGOSYAN

S. OHANYAN