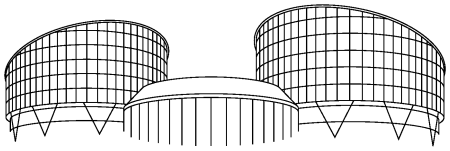

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GRIGORYAN AND SERGEYEVA v. UKRAINE

(Application no. 63409/11)

JUDGMENT

STRASBOURG

28 March 2017

FINAL

28/06/2017

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

In the case of Grigoryan and Sergeyeva v. Ukraine,

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

Vincent A. De Gaetano, *President,*
Ganna Yudkivska,
András Sajó,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 7 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 63409/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Roman Vitalyevich Grigoryan, an Azerbaijani national, and Ms Larisa Petrovna Sergeyeva, a Ukrainian national ("the applicants"), on 7 October 2011.

2. The applicants, who had been granted legal aid, were initially represented by Mr A. Koval, a lawyer with HIAS Kyiv/Right to Protection, a non-governmental organisation based in Kyiv, who lodged the application on behalf of both applicants. Following communication of the case, Ms K. Halenko, a lawyer with the same organisation, represented Mr Grigoryan alone. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna, of the Ministry of Justice.

3. The applicants alleged that they had been detained unlawfully and ill-treated whilst in detention for reasons arising out of ethnic prejudice and that there had been a failure to effectively investigate their allegations of ill-treatment.

4. On 17 September 2014 the application was communicated to the Government.

5. The Government of Azerbaijan, having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 §§ 1 and 4), did not indicate that they wished to exercise that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Grigoryan and Ms Sergeyeva were born in 1981 and 1975 respectively and live in Kyiv. The former is an ethnic Armenian, and at the time of the incident had had refugee status in Ukraine since 1997. It appears that at the relevant time they were unmarried life partners.

A. The applicants' arrest and alleged ill-treatment

7. At some time after 11 p.m. on 6 April 2010 the applicants and two of their acquaintances, Mr Y. K. and Ms Y. Yu., were travelling in a taxi driven by N. K. They were returning from a picnic in the course of which alcohol had been consumed. According to the taxi driver, the applicants' level of intoxication was "above average".

8. According to the applicants, the police stopped the car and asked the Mr Grigoryan to get out. According to their acquaintances and the taxi driver, a police car drew up beside the taxi at traffic lights in Kurbasa Street in Kyiv and Mr Grigoryan opened his passenger-side window, leaned out, waved his hands and either started singing or said something to the officers in the police patrol car. The acquaintances could not hear what he said because loud music was playing in the taxi. According to the police, Mr Grigoryan, while leaning out of the car window, made obscene gestures and swore at them. The police asked him to get out of the car and show his identification, which he eventually did. According to the taxi driver, Mr Grigoryan initially refused to get out of the car and the officers tried to extricate him by force, but in his submissions before the Court he did not allege that any excessive force had been used on this occasion. Indeed, in his submissions it is suggested that he was fully cooperative, got out of the car voluntarily and identified himself. Ms Sergeyeva also got out of the car and joined the discussion, after which the applicants, without putting up any resistance, got into the police car and were taken to a police station.

9. On arrival at the police station the patrol officers handed over the applicants to police Major A., the station's duty officer.

10. According to the Government, immediately upon the applicants' arrival at the police station, Major A. drew up arrest and administrative offence reports in respect of both applicants. The reports state that they were drawn up at 11.50 p.m. on 6 April 2010. According to the reports, the applicants were arrested for and accused of "petty hooliganism" ("*дрібне хуліганство*"), namely swearing in the street in an intoxicated state and refusing to desist despite the police officers' warnings, by which conduct public order had been disturbed. On the pre-printed part of the report forms, the grounds for arresting them are cited as the need to stop the commission

of the offence and to draw up a report (see relevant provisions of the Code of Administrative Offences in paragraph 34 (i) and (iii) below). According to the applicants, the reports were given to them to sign only the next morning immediately prior to their release.

11. It is evident from subsequent findings made by the authorities (see paragraph 32 below) that, while the administrative reports were being drawn up, Mr Grigoryan continued yelling, swearing and attempting to hit the officers. To stop this, his arms were twisted behind his back and he was bound. The police report on the "tying up" procedure states that he remained tied up for ten minutes, from 11.55 p.m. to 12.05 a.m. According to him, at around 12.30 a.m. on 7 April 2010 three officers entered his cell. They shouted insults referring to his Armenian ethnic origin ("*банобак*", "*черножопый*", "*чурка*"), threw him on the ground, and tied his hands and right leg together behind his back. They also kicked and throttled him. According to the applicant, he was left lying bound on the floor until about 4.30 a.m.

12. In the course of the subsequent investigation, Major A. explained that Mr Grigoryan was initially released after remaining bound for ten minutes but at around 1 a.m. he again started hitting the door of his cell with hands, feet and torso. The police then overcame his resistance and tied him up for another thirty minutes.

13. According to Ms Sergeyeva, she was able to hear Mr Grigoryan being beaten from her cell and this caused her distress. She pulled a glass lampshade from the ceiling, damaging the wiring, and threw it against the cell's barred door, shattering it. Several officers then entered the cell, bound her and left her tied up for half an hour, according to the official report on the "tying up" procedure. She alleged that while tying her up, the officers also hit her, spat on her, called her an "Armenian whore" and threatened to rape her.

14. Reports on the tying up of both applicants were drawn up by Major A. on pre-printed forms. The pre-printed forms state that the tying up procedure was used to stop unruly conduct ("*буйство*") and prevent self-harm by an intoxicated individual.

15. According to the taxi driver, he accompanied the applicants to the police station and waited for them until about 2 a.m. At some point, apparently waiting outside the building, he heard the applicants' voices inside, shouting and asking somebody not to hit them.

16. At 4.30 a.m. on 7 April 2010 the applicants were transferred to the central police station of the Svyatoshynskyy District (hereinafter "the district"), arriving there at 5.20 a.m. There, a senior district police official ruled on their case, imposing fines equivalent to about EUR 4.70 on each of them. The fines were paid the same day.

17. Between 10 a.m. and 11 a.m. the applicants signed the aforementioned administrative offence reports (see paragraph 10 above),

without adding any objections, and were released. The release record relating to Mr Grigoryan includes a handwritten note reading "I will not do this again" ("*больше не буду*"). According to the applicants, they signed without objection because the police threatened that if they did not cooperate, the fine would be replaced with fifteen days' administrative detention (see paragraph 33 below).

18. Later the same day forensic medical expert N. examined the applicants at their request and drew up a report noting that they had numerous bruises on their faces and bodies, which could have been inflicted on 7 April 2010. In particular Mr Grigoryan had haematomas in the following areas: forehead, left cheekbone, right shoulder, jaw, right side of the neck, clavicle, left hypochondrium, stomach, right elbow, right shoulder-blade area, popliteal spaces (back of the knees), and ankles. The expert also observed bloating and bluish colour on his right hand and two parallel left-to-right abrasions on his forehead and chin.

19. When questioned by the prosecutor's office in the course of the subsequent pre-investigation enquiries, the expert expressed the opinion that the above injuries suffered by Mr Grigoryan were the result of at least twenty impacts by blunt objects. The expert believed that they could not have been caused by falling over and that the injuries on Ms Sergeyeva's upper limbs could be explained through her having been tied up.

B. Investigation

1. Criminal pre-investigation enquiries

20. On 8 April 2010 Ms Sergeyeva complained to the prosecutor's office about what she described as unlawful arrest and beatings by the police. She presented an account of events essentially consistent with the applicants' account set out in paragraphs 7 to 17 above. However, it appears that she did not cite any indications of ethnic prejudice on the part of the police.

21. On 12 April 2010 Mr Grigoryan lodged a similar complaint. He stated in particular that on arrival at the police station he had immediately been put in a cell. Ms Sergeyeva had been shouting and demanding an explanation as to why they were being detained. He had started hitting the cell door, also wishing to receive an explanation. The police officers had entered, tied him up and continued hitting him for about thirty minutes while uttering insults referring to his ethnic origin (see paragraph 11 above).

22. From 13-15 April 2010 the district prosecutor interviewed the applicants, the arresting officers, Major A. and two other officers involved in the events at the police station.

23. On 16 April 2010 the district prosecutor decided not to institute criminal proceedings against Major A. and two other officers involved in the events at the police station in view of the lack of a *corpus delicti* in their

actions. The prosecutor's office relied essentially on the police officers' statements, according to which the applicants had been tied up in order to stop their disorderly behaviour at the police station and although the applicants had offered resistance, only the force necessary to control them and to bind them had been applied.

24. On 21 April 2010 the Kyiv prosecutor's office overruled the decision not to institute proceedings on the grounds that not all possible enquiries had been made. In particular, it pointed out that other arrestees who might have been at the police station at the time should have been interviewed and the applicants should have been asked whether they had signed the administrative offence reports and about any comments they might have made on them.

25. On 30 April 2010 the district prosecutor's office again refused to institute proceedings, adding that the applicants had been interviewed and had confirmed that they had drunk alcohol that night and had signed the administrative offence reports. There had been no other arrestees at the police station that night.

26. On 26 May 2010 the applicants complained to the Prosecutor General's Office that the investigation was not progressing. They alleged that they had been victims of crimes falling within the provisions of Articles 161 (discrimination), 365 (exceeding power or authority) and 371 (knowingly illegal arrest or detention) of the Criminal Code.

27. On 25 August 2010 the Kyiv prosecutor's office overruled the decision of 30 April 2010 on the grounds that the arresting officers had not been interviewed concerning the grounds for the arrest, the enquiry had not examined the allegation that ethnic prejudice had motivated the ill-treatment and, furthermore, no medical specialist had been interviewed to clarify the possible origins of the recorded injuries.

28. On 9 September 2010 the district prosecutor again refused to institute criminal proceedings. He found that the grounds for arrest had been that Mr Grigoryan had made obscene gestures towards police officers and that the second applicant had sworn at them. Referring to the results of additional interviews with the arresting officers, the prosecutor found that allegations of racial discrimination or insults were unfounded. The prosecutor's office also repeated the statements of the applicants' acquaintances who were in the taxi with them at the time of arrest and who made statements in the course of the internal police inquiry (see paragraphs 7 above and 32 below). The prosecutor added that, although he had managed to interview Mr Grigoryan, Ms Sergeyeva could not be interviewed because she was apparently suffering from an acute episode of her chronic schizophrenia. Finally, the prosecutor's office quoted the results of an interview with the medical expert regarding the origins of the applicants' injuries (see paragraph 19 above).

29. On 20 December 2010 the Kyiv prosecutor's office overruled the decision of 9 September 2010.

30. On 30 December 2010, 8 April and 30 September 2011 the district prosecutor's office again refused to institute criminal proceedings, giving essentially the same reasons. On 17 March, 18 August and 12 December 2011 respectively the Kyiv Svyatoshynsky District Court declared those decisions premature.

31. On 30 July 2012 the district prosecutor again refused to institute proceedings.

2. Internal police inquiry

32. On 23 April 2010 Ms Sergeyeva asked the chief of Kyiv police to investigate the legality of the police officers' actions. Her complaint contained no reference to alleged ethnic prejudice on the part of the police. On 25 May 2010 the personnel inspectorate of the city police department drew up a report on the internal inquiry – following which it was discontinued – concluding that there were contradictions between the applicants' and the officers' accounts. It forwarded the evidential material gathered in connection with the inquiry to the prosecutor's office to be taken into consideration in the context of the pre-investigation enquiries. It would appear that this report contains the only coherent official account of the events of the night of 6 to 7 April 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Offences of 1984, as worded at the material time

33. Article 173 of the Code defined "petty hooliganism" as "swearing in public, offensive behaviour or other similar actions which amount to a breach of the peace or disturb public order" and made it punishable by a fine ranging from three to seven times the non-taxable minimum income (at the time from approximately EUR 4.70 to EUR 11) or by retention of twenty per cent of earnings for one to two months. If in the circumstances of a particular case the above measures were deemed insufficient, taking into account the character of the perpetrator, administrative detention for up to fifteen days could be imposed.

34. Article 260 of the Code provided that persons could be arrested where necessary in order to: (i) stop the commission of an administrative offence if other preventive measures were ineffective; (ii) establish a person's identity; (iii) draw up an administrative offence report, unless this could be done on the spot; (iv) ensure timely and orderly examination of the case and execution of decisions in administrative offence cases.

35. Article 267 of the Code provided that arrest in connection with an administrative offence could be challenged by the arrestee before the superiors of the arresting official, a prosecutor or the courts.

36. Article 288 of the Code provided that an appeal could be lodged against a decision in an administrative offence case that had been issued by a police official, such appeal being brought before the administrative superior of the deciding official or a court.

B. Criminal Code of 2001

37. Article 161 § 2 of the Code provides for up to five years' imprisonment as punishment for "intentional acts aimed at inflaming ethnic, racial or religious hostility and hate, or attacking ethnic dignity or insulting citizens in connection with their religious beliefs, as well as the direct and indirect limitation of rights or the conferring of direct or indirect privileges on the basis of race, skin colour, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other characteristics", where such acts are combined with violence.

38. Article 371 § 1 of the Code makes the knowingly illegal arrest of a person punishable by a ban on occupying certain positions for up to five years or a restriction of liberty (namely detention in a semi-open penal institution) for up to three years.

C. Police Act of 1990

39. Section 13 of the Act provides, *inter alia*, that police officers are entitled to apply measures of physical coercion in order to stop the commission of offences and to overcome resistance to lawful police orders if such resistance is accompanied by force directed against police officers or other individuals, provided that other means have been tried but have failed to enable the police to fulfil their duties.

Section 14 of the Act provides, *inter alia*, that police officers are entitled to bind individuals' hands and feet in order to protect themselves and others from attacks and other actions endangering life or health, or in order to arrest offenders or in respect of persons in detention if those individuals resist police officers, or if there are reasons to believe that they may escape or cause damage to others or themselves, or in order to overcome resistance to police officers.

III. RELEVANT INTERNATIONAL MATERIAL

40. The relevant passages of the fourth report on Ukraine by the European Commission against Racism and Intolerance (ECRI), adopted on

9 December 2011 and concerning the fourth monitoring circle covering the period from January 2008 to June 2011, read:

"43. While incidents of desecration of cemeteries have continued to be reported in Ukraine, most racist incidents reported to the authorities or – more often – to civil society consist of physical attacks committed against foreign students, migrants, refugees, asylum seekers, Roma and other persons of non-Slavic appearance, including Africans, Central and South-East Asians and persons from the Middle East or the Caucasus. Such attacks clearly target people based on their appearance and most commonly occur in Kyiv and other major urban centres where there is a significant number of foreign students or migrants. Violent racist attacks are often committed by groups of skinhead youths, who are not necessarily members of structured right-wing organisations but may belong to a skinhead subculture. Such attacks are frequently severe, resulting in serious wounding by beating, knifing or shooting. Some observers also indicate that racist attacks tend to increase during electoral periods, when the political climate is less stable.

...

161. In its third report, ECRI urged the Ukrainian authorities to investigate any allegations of police misconduct and harassment towards persons coming within ECRI's mandate, in particular asylum seekers, refugees, foreign students and members of the Roma community, and to ensure that any law enforcement officials found guilty of such conduct were punished. ECRI further recommended that an independent body empowered to receive complaints against police officers be established and that they receive initial and on-going training on human rights in general and issues pertaining to refugees and asylum seekers as well as racism and racial discrimination in particular.

162. ECRI is deeply concerned by reports of frequent misconduct by police officers in their contacts with persons belonging to vulnerable groups. ECRI has received particularly serious allegations of abuses by police with respect to Roma...

...

164. ECRI urges the authorities to intensify their efforts to put a stop to racist or racially discriminatory misconduct by the police. It again urges them to investigate any allegations of misconduct by police and other law enforcement officials towards persons coming within ECRI's mandate – in particular members of the Roma community, asylum seekers, refugees and migrants – and to ensure that any law enforcement officials found guilty of such conduct are duly punished.

165. Racial profiling also occurs. Individuals are targeted for identity checks in public places such as markets and railway stations, notably on the basis of their skin colour or their "non-Slavic" appearance. While the authorities emphasise that such cases are rare, this is not the perception of persons belonging to the groups concerned, who report that they are regularly harassed by the police. Such practices shake the confidence of ethnic minorities and non-nationals in the police, who are perceived by these vulnerable groups as a threat rather than as the guarantors of their rights. As noted elsewhere in this report, this contributes to significant under-reporting of racist attacks against persons coming within ECRI's mandate, meaning that justice is not done in individual cases and creating a sense of impunity for the perpetrators. ECRI notes with interest that the authorities have been implementing joint activities with international partners since 2009 to review the relevant legal framework in place and provide training to law enforcement officers on combating racism and xenophobia; it stresses the importance of following up on these activities by enacting any legislative

changes identified as necessary. It also emphasises that more vigorous efforts are needed to combat racial profiling, first because it directly discriminates against the persons concerned and second because its consequence is to expose members of minority groups to a greater risk of racist attacks...”

41. The Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities published an opinion on 5 April 2013 regarding Ukraine’s compliance with that Convention. It concerned the third monitoring cycle and was based on the Ukrainian Government’s report submitted in May 2009 and the Committee’s visit to Ukraine in January 2012. The relevant parts of the opinion concerning the need to combat racism and discrimination read:

“16. Inter-ethnic hostilities and racially-motivated offences appear to be increasing at a time when the dissolution of the [State Committee for Nationalities and Religions] has left an institutional vacuum also as regards the fight against racism and discrimination in Ukraine. Western Ukraine and the Crimea appear to be particularly affected by an increase in inter-ethnic as well as inter-religious tension, which frequently appears to be fuelled by local media as well as some politicians. Allegations of police misconduct and harassment against some minority groups in particular continue to be frequently reported and there is a need for the Ministry of the Interior to expand further its training and awareness-raising activities conducted by its Human Rights Monitoring Department. An independent complaints mechanism should also be established to ensure that police misconduct is effectively investigated and followed-up.”

42. The United States State Department’s Report on the Human Rights Situation in Ukraine in 2010 contains the following relevant passages:

National/Racial/Ethnic Minorities

“The constitution and law prohibit discrimination based on race, skin color, and ethnic and social origin. Mistreatment of minority groups and harassment of foreigners of non-Slavic appearance remained a problem, although NGO monitors reported that hate crime incidents continued to decrease.

Incitement to ethnic or religious hatred is a criminal offense; however, human rights organizations stated the requirement to prove actual intent, including proof of premeditation and intent to incite hatred, made its legal application difficult. Police and prosecutors generally prosecuted racially motivated crimes under legal provisions dealing with hooliganism or related offenses. Article 161 of the criminal code criminalizes deliberate actions to incite hatred or discrimination based on nationality, race, or religion, including insulting the national honor or dignity of citizens in connection with their religious and political beliefs, race, or skin color.

The government acknowledged that racism and ethnically motivated attacks were a problem; however, some officials continued to minimize its seriousness, maintaining that xenophobia was not a problem and that violent attacks were isolated incidents.

No official statistics were available on the number of racially motivated attacks. However, the Diversity Initiative monitoring group, a coalition of international and local NGOs headed by the IOM mission in Kyiv, reported four attacks involving four victims during the first nine months of the year. This number compared with 26 attacks during 2009 and 63 in 2008. The attacks involved a Kuwaiti and three

African asylum seekers and foreign students. The attacks occurred in Kyiv, Simferopol, and Odesa; none was fatal.

According to the Diversity Initiative, police did not initiate criminal cases in any of the four attacks they documented during the year.

According to the PGO, during the year prosecutors forwarded to court two criminal cases based on Article 161. SBU investigators continued pretrial investigation in one case. During the first nine months of the year, two persons were found guilty of violating Article 161, compared with four in 2009 and three in 2008.

In December 2009 then president Yushchenko signed into law amendments to the criminal code that increased penalties for hate crimes. Accordingly, premeditated killing on grounds of racial, ethnic, or religious hatred carries a 10- to 15-year prison sentence. Parliament also established a fine from 3,400 to 8,500 hryvnias ($425 to $1,060) or up to five years in prison for hate crimes.

Advocacy groups asserted that police occasionally detained dark-skinned persons and subjected them to far more frequent and arbitrary document checks; at times victims of xenophobic attacks were prosecuted for acting in self-defense."

THE LAW

I. APPLICATION OF ARTICLE 37 OF THE CONVENTION AS TO MS SERGEYEVA

43. The application was initially submitted by Mr Koval on behalf of both applicants. However, following communication of the application, Mr Grigoryan − without dismissing Mr Koval − appointed a different lawyer working for the same organisation, namely Ms Halenko, to represent him (see paragraph 2 above). Ms Halenko made all the submissions and claimed just satisfaction solely on behalf of Mr Grigoryan, referring to him as "the applicant" in the singular and to Ms Sergeyeva as an "initial applicant". None of the applicants or their legal representatives has specifically informed the Court of the position concerning Ms Sergeyeva's complaints despite the fact that the Court, in its correspondence, consistently invited the representatives to make submissions on behalf of both applicants. After the initial application form was lodged, Ms Sergeyeva has never communicated with the Court or otherwise manifested her interest in the application either directly or through a representative.

44. In these circumstances, the Court concludes that the second applicant does not intend to pursue the application, within the meaning of Article 37 § 1 (a) of the Convention (see, *mutatis mutandis*, *Knez and Others v. Slovenia*, no. 48782/99, § 124, 21 February 2008, and *Sharifi and Others v. Italy and Greece*, no. 16643/09, §§ 127 and 134, 21 October 2014).

45. Given that the Court will continue to examine the Mr Grigoryan's complaints, which are based largely on the same facts, it considers that no particular circumstance relating to respect for the rights guaranteed by the Convention or its Protocols requires it to continue the examination of the application in respect of Ms Sergeyeva.

46. In view of the above, the Court finds it appropriate to strike the application in respect of Ms Sergeyeva out of its list.

47. Accordingly, the Mr Grigoryan will hereinafter be referred to as "the applicant".

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained that he had been ill-treated by police officers and that the domestic authorities had failed to investigate his allegations of ill-treatment effectively. He referred to Article 3 of the Convention, which reads:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) Effectiveness of the investigation

50. The applicant submitted that the authorities had never opened a full criminal investigation into the case, limiting themselves instead to the procedure of conducting "pre-investigation enquiries." He pointed out the limitations of the latter procedure. The ineffectiveness of the investigation had been recognised by the domestic courts, which had repeatedly overruled the decisions refusing the institution of criminal proceedings. No expert medical analysis had been ordered to clarify the possible origins of the applicant's injuries.

51. The Government maintained that the domestic investigation had satisfied the requirements of Article 3. The prosecutor's office had interviewed the applicant and Ms Sergeyeva immediately, and the police

had also conducted an internal inquiry. In the course of those investigations no confirmation of the applicant's allegations had been found.

(b) Alleged ill-treatment

52. The applicant submitted that the "physical and psychological force" used against him at the police station had been excessive, that his injuries could not be explained by the effects of binding alone, and that the Government had failed to provide a reasonable explanation for them. At the time when he was bound he was already at the police station under police control and was not committing any other administrative offence (this is evidenced by the fact that there was no record of any administrative offence committed by him inside the police station). Accordingly, none of the grounds for binding hands and feet provided for in the Police Act (see paragraph 39 above) had existed, and the action had therefore been unlawful. The statements made by the applicant's acquaintances and the taxi driver indicate that, although the applicant had been drinking before coming into contact with the police at the time of his arrest, he had not been aggressive and had been behaving normally. The method of binding used by the police usually involved tying hands and feet together behind the back in a so-called "hogtie". Such a form of binding could only explain injuries on the applicant's ankles and neck. Injuries on his face could be explained by the fact that he had been thrown face-down on the floor. However, the remainder of his recorded injuries could not be explained either by the binding or by the twisting of his arms. The location of his injuries, in particular on his head and abdomen, suggest that they had been inflicted by beating whilst he was bound – with those parts of his body exposed – and therefore unable to protect them. The combination of the beatings with immobilisation and ethnic insults caused the applicant substantial suffering and distress. The applicant argued, accordingly, that he had suffered inhuman and degrading treatment contrary to Article 3.

53. The Government submitted that the applicant and Ms Sergeyeva had behaved in an aggressive and disorderly fashion at the police station, using foul language and obscene gestures. Ms Sergeyeva had also destroyed a glass lampshade and damaged the wiring. This had made it necessary to tie up both the applicant and Ms Sergeyeva. This had been done and they had remained bound for ten to fifteen minutes. Some force, in particular "hand-to-hand fighting and hand twisting", had been used to control the applicant. This was permitted by the Police Act. The applicants' allegations of ill-treatment had been disproven by the domestic investigation, in particular the statements of their two acquaintances and of the medical expert (see paragraph 19 above). Accordingly, the Government submitted that the applicants had failed to prove "beyond reasonable doubt" that they had been ill-treated.

2. The Court's assessment

(a) General principles

54. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Kudła v. Poland* [GC], no. 30210/96, § 90, ECHR 2000-XI, and *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015).

55. When the police or other agents of the State, in confronting someone, have recourse to physical force which has not been made strictly necessary by the person's own conduct, it diminishes human dignity and is an infringement of the right set forth in Article 3 of the Convention (see *Kapustyak v. Ukraine*, no. 26230/11, § 59, 3 March 2016).

56. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Furthermore, it is observed that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. Where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 151 and 152, ECHR 2012, with further case-law references).

57. As to the procedural aspect of Article 3, the Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

58. Any investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis for their decisions. They must take all reasonable steps available to

them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, for example, *El-Masri*, cited above, § 183). The Court has, moreover, underscored the importance that the investigation of an attack with racial or ethnic overtones should to be pursued with vigour and impartiality, having regard to the need constantly to reassert society's condemnation of racism in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (see, among others, *Koky and Others v. Slovakia*, no. 13624/03, § 239, 12 June 2012).

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

(i) Effectiveness of the investigation

59. The applicant's complaint of ill-treatment was raised shortly after his release. Medical evidence showed that he had fairly extensive injuries and it is undisputed that those injuries were sustained in custody. The Court considers that in such circumstances the domestic authorities were under an obligation to carry out an effective investigation of the facts alleged by the applicant.

60. The authorities initially took some steps to investigate the complaint and gather evidence, in particular by interviewing all the key participants in the events.

61. However, the prosecutor's office examined the applicant's complaint by means of repeated rounds of pre-investigation enquiries, with no full-scale criminal investigation ever being initiated. The Court has previously held that in many situations this procedure imposes unacceptable limitations on the investigation, in particular because the authorities can take only a limited number of procedural steps within it (see, for example, *Savitskyy v. Ukraine*, no. 38773/05, § 105, 26 July 2012; *Yevgeniy Petrenko v. Ukraine*, no. 55749/08, § 67, 29 January 2015; and *Serikov v. Ukraine*, no. 42164/09, § 82, 23 July 2015).

62. For instance, the authorities could not order a full-scale expert assessment to remedy the lack of clarity in the medical documentation (see *Yevgeniy Petrenko*, cited above, § 67-68), nor could they conduct a face-to-face confrontation between witnesses whose evidence was contradictory, nor stage a reconstruction of events (see *Serikov*, cited above, § 83).

63. These procedural shortcomings manifested themselves in the instant case. There was no medical document or expert opinion which would address in any detail the possible origin of the applicant's injuries or the exact mechanism of their infliction. It is self-evident that some of the

injuries could be explained by the action of binding or other types of force which the police admitted using (especially arm twisting). However, others cannot be so explained.

64. Moreover, the authorities failed to establish in any detail: (i) the exact sequence of events at the police station, (ii) in what specifically the applicant's supposedly aggressive and disorderly behaviour consisted, (iii) how, specifically, the police officers acted in order to subdue the applicant, and (iv) whether all of his injuries could be explained by those actions.

65. Possible ways of resolving these issues should have included the conduct of specific questioning of the officers, a reconstruction of events, a face-to-face confrontation between the officers, the applicant and Ms Sergeyeva, and obtaining the opinion of a medical expert based on the exact account of events (compare *B.S. v. Spain*, no. 47159/08, § 45, 24 July 2012).

66. None of these options was pursued and, indeed, most of the above investigative actions could not have been undertaken without instituting criminal proceedings.

67. The Court considers that these elements are sufficient for it to conclude that the authorities have not done all that could have been reasonably expected of them to investigate the incident. In reaching this conclusion, and independently of its findings under Article 14 below, the Court has taken into account that it is particularly important for an investigation into violent incidents allegedly motivated by ethnic prejudice to be pursued with vigour, having regard to the need to reassert society's condemnation of such violence (see *Koky*, cited above, § 239; *Amadayev v. Russia*, no. 18114/06, § 81, 3 July 2014; and *Antayev and Others v. Russia*, no. 37966/07, § 110, 3 July 2014).

68. There has accordingly been a violation of Article 3 of the Convention in its procedural aspect.

(ii) Alleged ill-treatment

69. The Court notes the Government's submission that the tying up of the applicant was necessitated by his disorderly and aggressive conduct at the police station.

70. However, the Court observes that the official report on the tying up procedure, together with the results of the domestic investigation and the police officers' statements made in the course of that investigation, do not provide sufficient detail as to why the nature of the applicant's conduct necessitated binding him or dictated the method used and the duration of such binding.

71. Moreover, the formal report documented only one instance of binding, even though Major A. admitted in the course of the investigation that the applicant had been bound twice (see paragraph 12 above). As a

result, no formal reason for the second instance of binding was formulated at any point and there is no record of its duration. The Government themselves in their observations do not refer to that instance of binding, alleging that the applicant was only bound once for ten to fifteen minutes (see paragraph 53 above).

72. In view of this lack of information and the apparent contradictions, the Court is not convinced that the binding and the use of force to effect it were rendered strictly necessary by the applicant's conduct.

73. Moreover, due to the shortcomings of the domestic investigation, it is not self-evident that all of the applicant's fairly extensive injuries can be explained by the binding and the use of force needed to effect it.

74. It is well established in the Court's case-law that where the events at issue lie, in large part, within the exclusive knowledge of the authorities, and there is evidence of injuries occurring during detention, the burden of proof is on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Bouyid*, cited above, § 83).

75. The Court considers that in the present case the Government have not discharged this burden of proof and, accordingly, deems it sufficiently established that force not rendered strictly necessary by the applicant's own conduct was used against him. Any such use of force constitutes an infringement of the right set forth in Article 3 of the Convention.

76. Accordingly, the Court finds that the applicant was subjected to ill-treatment which must be classified as inhuman and degrading.

77. There has therefore been a violation of Article 3 in its substantive aspect.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

78. The applicant complained that his arrest and detention had been unlawful and he had not been informed promptly of the reasons for it. He relied on Article 5 §§ 1 and 2 of the Convention, which reads, in so far as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

Admissibility

1. The parties' submissions

79. The Government insisted that there were lawful grounds for the applicant's detention since he had committed the acts of petty hooliganism described in the arrest report. The police officers had explained to the applicants the reasons for the arrest, as evidenced by the arrest report and the administrative offence report, both of which the applicant had signed without objection. The applicant did not appeal against the decision imposing the fine on him. Accordingly, the Government maintained that there had been no violation of Article 5 §§ 1 and 2 of the Convention.

80. In his observations the applicant stated that "as is apparent from the materials and documents of the case, the applicant committed an administrative offence in K. Street". However, he still submitted that his arrest had been (i) groundless, (ii) undocumented and (iii) not in compliance with procedure prescribed by law. In any event, his arrest would still have been unlawful because in the circumstances none of the grounds for arrest provided in the Code of Administrative Offences (see paragraph 34 above) had existed. Specifically, he had not resisted the officers, he had provided his identification, and the administrative offence report could have been drawn up in the police car. He further complained that he had been detained by the police at 11 p.m. on 6 April 2010 but that his detention had remained undocumented until he had been delivered to the police station at 11.50 p.m. Contrary to the Government's submissions, the applicant had not been informed about the reasons for his arrest until the following morning, 7 April 2010, when he signed the offence report prior to his release. The applicant maintained, accordingly, that there had been a violation of Article 5 §§ 1 and 2.

2. The Court's assessment

81. The Court observes that the Government did not raise the issue of compliance with the six-month rule, even though the applicant was released on 7 April 2010 yet only lodged his complaint on 7 October 2011. The Court has previously held that the six-month rule is one of public policy and that, consequently, it has jurisdiction to apply it of its own motion (see *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II).

82. The Court observes that the applicant could have challenged his arrest before a domestic court under Article 267 of the Code of Administrative Offences (see paragraph 35 above) but never did so. Even

assuming, to his benefit, that the aforementioned remedy would be practically ineffective in the circumstances of his particular case, the Court notes that the applicant failed, in that event, to comply with the six-month time-limit under Article 35 § 1 of the Convention (see *Nikolay Kucherenko v. Ukraine*, no. 16447/04, § 27, 19 February 2009, and *Omelchuk v. Ukraine* (dec.), no. 42195/04, 15 March 2011).

83. This conclusion is not affected by the fact that, after his release and before lodging the application with the Court, the applicant attempted to initiate criminal proceedings against the police. In this respect the Court observes that the applicant never challenged the domestic decision finding him guilty of an administrative offence and that he appears to have conceded even before the Court that he did commit the offence in question (see paragraph 80 above). There is no arguable complaint of any particular gross illegality on the part of the police, such as for instance a prolonged unrecorded detention (contrast *Grinenko v. Ukraine*, no. 33627/06, §§ 9, 16 and 69, 15 November 2012). The Court is not convinced that in such circumstances the applicant had a reasonable prospect of obtaining a finding that the police, in arresting him, had committed the criminal offence of "knowingly" illegal arrest. Moreover, given that the applicant did not allege any ill-treatment by the arresting officers, there was no inextricably close connection between the applicant's Article 3 and Article 5 complaints (contrast ibid., § 69).

84. The Court concludes, therefore, that the applicant's complaints under Article 5 §§ 1 and 2 must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for being lodged outside the six-month time-limit.

IV. ALLEGED VIOLATIONS OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLES 3 AND 5 OF THE CONVENTION

85. The applicant further complained that he had been discriminated against in the enjoyment of his rights under Articles 3 and 5 of the Convention on account of his Armenian origin. Article 14 of the Convention reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

86. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, as it has effect solely in relation to the enjoyment of

the rights and freedoms safeguarded by those provisions (see, for example, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 71, Series A no. 94). In the light of the above conclusions concerning the admissibility of the applicant's complaint under Article 3, the Court considers that his complaint under Article 14 taken in conjunction with Article 3 likewise raises serious issues of fact and law, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established. It must, therefore, be declared admissible.

87. By contrast, the Court refers to its findings concerning the applicant's Article 5 complaint and considers that his complaint under Article 14 taken in conjunction with Article 5 is likewise out of time. It must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. The parties' submissions

88. The Government maintained that the applicant's arrest had been prompted solely by his disorderly behaviour in the street and that the use of restraint at the police station had likewise been motivated by the need to stop his "brutish" behaviour and to prevent self-harm. His allegation that the motive behind the treatment he suffered had been ethnic prejudice had been examined in the course of the domestic investigation and found to be baseless.

89. The applicant submitted that whilst he was being bound and beaten at the police station, the police officers had repeatedly uttered insults aimed at people from the countries of the South Caucasus. He had made and reiterated this allegation in his complaints and statements to the authorities, insisting that this specific aspect of the events be investigated. However, the police officers accused by him had not been questioned on this matter and no conclusion had been reached. The fact that no criminal proceedings had been instituted under Article 161 of the Criminal Code was a reason to believe that the investigation had been ineffective. In the applicant's view, the authorities had effectively ignored his complaints about ethnic prejudice as a potential motive for his alleged ill-treatment. Referring to the Court's case-law in this field, particularly *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, ECHR 2005-VII) and *Antayev and Others v. Russia* (no. 37966/07, 3 July 2014), the applicant maintained that there had been a violation of Article 14 taken in conjunction with Article 3.

2. The Court's assessment

(a) General principles

90. The Court observes that its case-law establishes that discrimination means treating differently, without any objective or reasonable justification, persons in relevantly similar situations (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012).

91. When investigating violent incidents such as acts of ill-treatment, State authorities have a duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events at hand. Proving racial motivation will admittedly often be difficult in practice. The respondent State's obligation to investigate possible racist 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 racially motivated violence (see, *mutatis mutandis*, *Nachova*, cited above, §160).

92. Lastly, the Court considers that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 3 of the Convention, but it may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure the fundamental values enshrined in Article 3 without discrimination. Owing to the interplay of the two provisions, issues such as those in the present case may fall to be examined under one of the two provisions only – with no separate issue arising under the other – or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (see *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 70, ECHR 2005-XIII (extracts)).

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

93. The Court has already established above that the applicant was ill-treated and that there was no effective investigation into his complaint in this respect, contrary to Article 3 of the Convention (see paragraphs 68 and 77 above). The Court considers that it must now separately examine the applicant's complaint that ethnic prejudice was a motive for the ill-treatment he suffered and that the authorities failed to investigate whether that motive had in fact played a role in the events.

94. The Court observes that shortly after the incident the applicant complained to the authorities that, while ill-treating him, the police officers had proffered insults related to his ethnic origin. Throughout the domestic investigation he consistently maintained this allegation.

95. However, the authorities took no serious steps to investigate his allegations in this respect. In particular, they neglected to question the officers accused by the applicant on this precise point and to establish whether they had been involved in similar incidents in the past (compare *Nachova*, cited above, § 167). It would appear that, in dismissing the applicant's allegations, the authorities relied solely on the statements of the arresting officers, who denied that their actions had been motivated by ethnic prejudice. However, the applicant apparently did not accuse those officers of any prejudice and his complaint in this respect referred only to the officers who had allegedly ill-treated him at the police station. Moreover, there was no suggestion that the arresting officers even witnessed any of the events at the police station or otherwise had any knowledge of them. By contrast, the officers who had actually been involved in the events were apparently never questioned on this specific point.

96. The Court concludes, therefore, that the authorities failed to take any reasonable steps to reveal possible racial or ethnic motives behind the treatment the applicant suffered at the police station.

97. The Court finds that such a clear failing is all the more regrettable in view of the concern about instances of racial profiling and harassment by police directed against individuals of foreign origin and non-Slavic appearance which has been expressed in a number of international reports, not least by the bodies within the Council of Europe which call for greater vigilance in this respect (see paragraphs 40-42 above).

98. Even though in the present case the Court does not have at its disposal sufficient evidence to establish that the ill-treatment inflicted on the applicant was actually motivated by ethnic prejudice, its above findings concerning the authorities' failure to take reasonable steps to uncover such potential motives are sufficient for the Court to find that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

100. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government considered that claim unsubstantiated and excessive.

102. The Court, ruling on an equitable basis, awards the applicant the claimed amount, EUR 10,000, in respect of non-pecuniary damage.

B. Costs and expenses

103. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application in respect of Ms Sergeyeva out of its list;

2. *Declares* the complaints under Article 3 and under Article 14 taken in conjunction with Article 3 of the Convention admissible and the remainder of the application inadmissible;

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

4. *Holds* that there has been a violation of Article 3 of the Convention in its substantive aspect;

5. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3;

6. *Holds*

   (a) that the respondent State is to pay the applicant, Mr Grigoryan, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 28 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Vincent A. De Gaetano
Deputy Registrar	President