CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF GHARIBASHVILI v. GEORGIA

(Application no. 11830/03)

JUDGMENT

STRASBOURG

29 July 2008

FINAL

29/10/2008

This judgment may be subject to editorial revision.

In the case of Gharibashvili v. Georgia,

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

Françoise Tulkens, *President*,
Antonella Mularoni,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges*,
and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 20 February 2007, 6 May 2008 and 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 11830/03) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Robert Gharibashvili on 17 March 2003. In accordance with Rules 34 § 3 and 36 § 2 *in fine* of the Rules of Court, the applicant was granted leave to present his own case and to use the Georgian language in the written proceedings before the Court.

2. The Georgian Government ("the Government") were successively represented by their Agents, Ms I. Bartaia and Mr M. Kekenadze, of the Ministry of Justice.

3. On 5 December 2005 the Court decided to give notice to the Government of the applicant's complaints under Article 3 of the Convention. On the same date, the Court decided to apply Article 29 § 3 of the Convention and to examine the merits of the complaints at the same time as their admissibility.

4. The Government and the applicant each filed, on 28 April and 6 September 2006 respectively, observations on the admissibility and merits of the application (Rule 54A of the Rules of Court).

5. On 20 February 2007 the Court decided that further information as to the developments in the investigation of the applicant's complaint of ill-treatment was required. The Government and the applicant filed their replies on 23 March and 5 November 2007 respectively.

6. On 6 May 2008 the Court decided that further information concerning the possible involvement of the United Nations Human Rights Committee ("the UN Human Rights Committee") was required from the parties. The latter

were invited to submit that information by 18 June 2008 at the latest. Only the Government replied (see paragraphs 39-41 below).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1948 and is currently detained in Tbilisi no. 1 Prison.

1. Proceedings leading to the applicant's conviction

8. On 23 May 2001 the applicant was arrested on suspicion of having raped a fourteen year old girl.

9. According to the applicant, several police officers ill-treated him while he was in custody at a Rustavi police station on 23-25 May 2001, in order to obtain a confession. The police officers allegedly handcuffed him, put a gas mask on his face to make his cries inaudible, and severely battered him, breaking his jaw and the index finger of his left hand. The beatings were allegedly attended and encouraged by a senior officer of the Rustavi police station, Mr G., as well as by two investigators of the Rustavi district prosecutor's office ("the RDPO"), Mr. M. and Mr. A.

10. An expert opinion of 24 May 2001 and other pieces of evidence suggested that the applicant had had sexual intercourse with the victim. On 25 May 2001 he was charged with the rape of a minor ("the rape case").

11. As disclosed by the case file, on 26 May 2001 the applicant was assigned a lawyer, Mr S. On the same day, the Rustavi District Court remanded him in custody. Subsequently, he was transferred to the Tbilisi no. 5 Prison, where his state of health was examined by a physician. According to the applicant, that physician, whilst noting the signs of ill-treatment on his body, refused to record them in the medical log.

12. On 11 July 2001 the applicant complained that there were various procedural shortcomings in the investigation and requested that Mr M. be withdrawn from his case and another investigator assigned. He accused investigator Mr M. of a lack of impartiality, but did not raise any complaint of ill-treatment on the part of the latter or any other law-enforcement agents.

13. The fact that sexual intercourse had taken place between the applicant and the victim was later confirmed by another, comprehensive expert opinion, as well as by various material pieces of evidence and witness statements. The Tbilisi Regional Court convicted the applicant on 12 December 2001 of the offence with which he had been charged and

sentenced him to 13 years in prison. As disclosed by the case file, the applicant did not complain of alleged ill-treatment during the trial.

14. In a decision of 16 April 2002, the Supreme Court dismissed a cassation appeal by the applicant as unsubstantiated. The cassation hearing, which lasted several days, was attended by the applicant. No complaint of ill-treatment was raised before the cassation court either. Afterwards, the applicant was transferred to the Tbilisi no. 1 Prison to serve his sentence.

15. In support of his allegations of ill-treatment (see paragraph 9 above), the applicant submitted an excerpt from the medical log of the Tbilisi no. 1 Prison, dated 16 July 2003 ("the prison medical opinion of 16 July 2003"), which confirmed that the index fingers on both his hands were deformed due to fractures. The origin of those fractures could not however be identified. No traces of any old fracture of the applicant's jaw were reported.

2. Proceedings related to the applicant's complaints of ill-treatment and an abuse of power by the investigative authorities

(a) Prior to the communication of the application to the Government

16. On 23 May 2002 the applicant lodged with the General Prosecutor's Office ("the GPO") a complaint that various procedural violations had allegedly been committed in the course of the rape case, including the cassation proceedings before the Supreme Court on 16 April 2002. He requested a re-trial. He raised, *inter alia*, issues of the fabrication of expert reports and other pieces of evidence, an absence of proper legal assistance during the trial, and an inability to confront witnesses. No complaint of ill-treatment was made. As disclosed by the case file, the procedural complaint went unanswered.

17. In May 2004, the applicant again requested the GPO to reopen the rape case in view of newly discovered circumstances. He referred to the alleged ill-treatment at the Rustavi police station and the extortion of money allegedly committed by the RDPO investigator, Mr M. On 24 May 2004 the GPO dismissed this request as unsubstantiated. Following the applicant's appeal, the Mtatsminda-Krtsanisi District Court in Tbilisi upheld, on 28 July 2004, the GPO's decision of 24 May 2004.

18. On 5 November 2004 the Supreme Court of Georgia quashed the above-mentioned decisions of 24 May and 28 July 2004, reasoning that the refusal to reopen the rape case had not been preceded by a preliminary enquiry into the applicant's allegations. It ordered the prosecution to undertake a number of specific investigative measures, including the examination of the applicant and the witness on his behalf, Mr B., the latter being arguably able to confirm the allegation of ill-treatment.

19. As a follow-up to the Supreme Court's decision, the RDPO examined and dismissed, on 4 February 2005, the applicant's request for the

rape case to be reopened. However, on 4 April 2005 the Kvemo Kartli Regional Prosecutor's Office ("the KKRPO") quashed the decision of 4 February 2005, reasoning that the RDPO, contrary to the Supreme Court's instructions of 5 November 2004, had not interviewed the applicant. The KKRPO remitted the case to the RDPO for an additional enquiry.

20. On 27 April 2005 the RDPO approached the applicant for an examination. The latter however refused to cooperate because one of the alleged perpetrators of his ill-treatment, investigator M., was himself a member of the RDPO at that time. On the same day the prosecution authority decided to dismiss the applicant's reopening request as unsubstantiated.

21. As disclosed by the case file, the applicant lodged, on an unspecified date, an appeal against the RDPO decision of 27 April 2005 in court. On 19 December 2005 the Rustavi City Court dismissed his appeal as being introduced out of time.

22. According to the case file, on 28 December 2004 the applicant also requested the GPO to launch criminal proceedings in respect of ill-treatment, extortion and the falsification of expert opinions allegedly committed by investigator M. On 31 December 2004 the GPO rejected that request as unsubstantiated. The GPO conducted a verification and gave reasons with respect to the applicant's allegations of extortion and falsification of medical opinions. However, no enquiry was made and, consequently, no reply was given, with respect to the complaint of ill-treatment.

23. On 5 December 2005 the Tbilisi Regional Court dismissed, at first instance, an appeal by the applicant against the GPO decision of 31 December 2004 as unsubstantiated. The court reasoned that the GPO had made sufficient enquiries into all of the applicant's complaints before arriving at the decision not to initiate a criminal case. It also reproached the applicant for not having made a complaint about investigator M. before the termination of the rape case. Reiterating that the GPO decision of 31 December 2004 had reflected the results of a comprehensive enquiry into the circumstances surrounding the applicant's grievances, the Tbilisi Appeal Court dismissed on 21 February 2006, at final instance, the applicant's request for a criminal case to be opened against investigator M.

(b) After communication of the application to the Government on 5 December 2005

24. On 24 January 2006 the KKRPO opened a criminal case (no. 042068005) on the basis of the applicant's complaint of 28 December 2004 about abuses of power allegedly committed against him on 23-25 May 2001 (see paragraph 22 above).

25. On 27 January 2006 the GPO withdrew the above-mentioned criminal case from the KKRPO and assigned it to the Tbilisi City prosecutor's office ("the TCPO") for investigation.

26. In a letter of 20 August 2006, the applicant informed the Court that he had been interviewed in respect of that case.

27. In a decision of 15 March 2007, the TCPO decided to close the case due to the absence of objective evidence warranting the prosecution, despite the exhaustion of all possible investigative measures. As disclosed by this decision, on unspecified dates, the TCPO had separately interviewed the applicant, the impugned RDPO investigators, Mr M. and Mr A., the senior officer of the Rustavi police station, Mr G., and ten other police officers who were directly or indirectly implicated in the events which took place while the applicant was in custody at the Rustavi police station on 23-25 May 2001. Whilst the applicant reiterated his allegations of ill-treatment (see paragraph 9 above), the law-enforcement agents denied them.

28. The decision of 15 March 2007 further disclosed that the TCPO had ordered and the relevant expert agency examined, on 13 March 2007, the medical log of the Tbilisi no. 1 Prison containing information on the applicant's state of health. Thus, the expert report of 13 March 2007, by almost literally reiterating the text of the prison medical opinion of 16 July 2003 (see paragraph 15 above), confirmed the existence of fractures of the index fingers, as well as several other traumas to the applicant's body in general and to his left arm in particular. It was however impossible, according to that report, to identify the exact date or source of the finger fractures.

29. The investigation conducted by the TCPO also showed that the applicant had participated, in 1990-1994, in armed conflicts in two breakaway regions of Georgia. The applicant made clear to the TCPO that he had injured his left arm during that conflict.

30. The decision of 15 March 2007 concluded that the investigation had not disclosed any proof that the applicant had been ill-treated by the RDPO officers on 23-25 May 2001. It further reasoned that, since the applicant had first raised this issue only after his conviction of 12 December 2001 had become final, it could be assumed that his allegations were untrue and solely aimed at the reopening of the rape case.

31. The applicant appealed against the TCPO decision of 15 March 2007 in court, requesting its annulment and the continuation of the investigation. He expressly requested that his appeal be examined at an oral hearing so that he, as a victim, could plead the factual circumstances of the case in person. The appeal was dismissed as unsubstantiated by the Tbilisi City and Appeal Courts on 12 June and 6 September 2007 respectively, the latter decision being final. Both instances examined the case *in camera*, without

oral hearings. As disclosed by the court decision of 6 September 2007, there had not been an exchange of written submissions between the parties.

3. International Proceedings

32. According to the applicant, as well as lodging his application with the Court he sent a complaint to the UN Human Rights Committee. He did not specify the content of this complaint or the date it was lodged and/or received by the UN Human Rights Committee, nor any details of any subsequent proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that he had been ill-treated while he was in custody at the Rustavi police station on 23-25 May 2001 and that the competent authorities had not properly investigated the matter. In substance, he relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' initial arguments

34. In their observations on the admissibility and merits of the application, the Government submitted that, in so far as the applicant had apparently lodged a complaint with the UN Human Rights Committee, his application to the Court should be declared inadmissible under Article 35 § 2 (b) of the Convention. They submitted, in support, copies of numerous complaints lodged by the applicant with the Supreme Court of Georgia. In those complaints challenging the fairness of the domestic criminal proceedings, the applicant would always warn the Supreme Court that, as well as complaining to the Court, he had sent a complaint to the UN Human Rights Committee. He never specified the content or date of that complaint, except to state that it was aimed at "proving his innocence".

35. The Government further stated that the application to the Court was belated, as it had not been filed within six months after the Supreme Court delivered, on 16 April 2002, the final judgment in the rape case. Referring

to the fact that the applicant had never complained of ill-treatment before either the prosecution or the judicial authorities in the course of the rape case, the Government claimed that the complaint under Article 3 of the Convention should be rejected for non-exhaustion of domestic remedies.

36. Lastly, the Government claimed that, in view of the contrary findings of the investigation conducted at the domestic level, the applicant's allegations of ill-treatment were untrue and should therefore be rejected as manifestly ill-founded.

37. The applicant conceded, in his observations in reply, that he had sent a complaint to the UN Human Rights Committee. As disclosed further by his submissions, he has never received any reply to this complaint.

38. The applicant denounced the Government's assertion that he had not complained of ill-treatment in the course of the rape case. However, he did not specify as to when exactly, and before which of the domestic authorities, that issue had been raised.

2. Additional information submitted by the Government on the Court's request

39. Being unable to rule on the Government's objection of the involvement of the UN Human Rights Committee in the light of the parties' above-mentioned arguments, the Court decided, on 6 May 2008, that further information be solicited from them, under Rule 54 § 2 (a) of the Rules of Court, on that specific point (see paragraph 6 above).

40. The parties were thus invited to inform the Court whether the applicant's individual communication had ever been received and registered at the UN Human Rights Committee, whether any proceedings had been instituted on that basis and, if so, whether those proceedings concerned the same facts and complaints as those pending before the Court under Article 3 of the Convention (see *Folgero and Others v. Norway* (dec.), no. 15472/02, 14 February 2006).

41. In their reply of 18 June 2008, the Government informed the Court that the UN Human Rights Committee had not confirmed the submission of an individual communication by the applicant.

3. The Court's assessment

(a) The objection of involvement in another procedure of international investigation or settlement

42. The Court reiterates that Article 35 § 2 (b) of the Convention aims at avoiding the plurality of international procedures in the same case (see *Smirnova and Smirnova v. Russia* (dec.), nos. 46133/99 and 48183/99, 3 October 2002). In considering this issue, the Court has to verify whether applications to different institutions concern substantially the same person,

facts and complaints. Even the same facts can give rise to different complaints before the Court and another procedure of international settlement and thus can exclude the applicability of Article 35 § 2 (b) of the Convention (see *Pauger v. Austria*, no. 16717/90, Commission decision of 9 January 1995, (DR) 80 A, p. 24; *Evaldsson and Others v. Sweden* (dec.), no. 75252/01, 28 March 2006).

43. The Court would accept that the UN Human Rights Committee, set up under the International Covenant on Civil and Political Rights, is indeed a "procedure of international investigation" within the meaning of Article 35 § 2 (b) of the Convention (see *Hill v. Spain* (dec.), no. 61892/00, 4 December 2001). However, regard being had to the circumstances of the present case – in particular, the Government's reply of 18 June 2008 (see paragraph 41 above) – the Court finds it established that the UN Human Rights Committee has never received an individual communication from the applicant. Consequently, no proceedings before that institution could be said to have been pending involving the complaints raised before the Court.

44. The Government's plea of inadmissibility under Article 35 § 2 (b) of the Convention should therefore be dismissed.

(b) The objection on the grounds of non-exhaustion, and the belated and manifestly ill-founded nature of complaint

45. The Court first notes that it was a matter of disagreement between the parties whether or not the applicant had complained of ill-treatment in the course of the rape case. In the absence of any evidence supporting the applicant's version of events, the Court finds that this complaint was first made by the applicant only after the final Supreme Court decision of 16 April 2002.

46. However, the Court does not consider that the applicant was only able to challenge the alleged ill-treatment in the course of the criminal proceedings related to the rape case. It is the Court's well-established case-law that a separate complaint with the aim of holding State agents in charge of detained applicants criminally liable for alleged acts of ill-treatment is, in the normal course of events, an effective remedy (see, among many others, *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007; *Davtian v. Georgia* (dec.), no. 73241/01, 6 September 2005; *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Since the applicant did lodge such complaints with the competent domestic authorities, on the basis of which two different sets of proceedings were pending in 2004-2006 (see paragraphs 16-22 above), the Government's objections of non-exhaustion and belatedness should be dismissed.

47. As to the Government's argument that, in view of the findings of the domestic investigation, the applicant's complaint of ill-treatment is manifestly ill-founded, the Court considers that this issue requires an examination on the merits.

(c) Conclusion

48. In view of the above, the Court concludes that the applicant's complaints under Article 3 of the Convention cannot be rejected on the basis of the Government's objections. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

49. The Government denounced the applicant's allegation of ill-treatment as untrue, referring to the contrary findings of the TCPO in criminal case no. 042068005 (see paragraphs 24-30 above). They reiterated that the RDPO and Rustavi police officers had denied that the applicant had been subjected to any form of physical or psychological abuse while he was in custody at the Rustavi police station on 23-25 May 2001.

50. The Government further emphasised that the applicant's medical examination, conducted on the initiative of the TCPO, could not identify the exact source and date of the fractures of the applicant's index fingers. They also referred to the applicant's own recognition of the fact that he had been wounded in armed conflict (see paragraph 29 above), thus suggesting that these fractures could have occurred then.

51. According to the Government, despite the exhaustion of all possible investigative measures, the TCPO could not obtain any proof that the applicant had been ill-treated. That being so, as well as claiming that the prosecution authority had fully complied with its procedural obligations under Article 3 of the Convention, the Government submitted that the applicant's complaint was also ill-founded under the substantive limb of this provision.

52. The Government invited the Court to take into account that the applicant had never raised any similar complaint in the course of the rape case. Thus, for example, when complaining, on 11 July 2001, that procedural violations had been committed by investigator M., the applicant did not raise any issue of ill-treatment. Likewise, in his first complaint to the GPO after the final decision of 16 April 2002, no such complaint was made (see paragraphs 12 and 16 above). In the Government's view, these factors suggested insincerity on the part of the applicant. His allegations of

ill-treatment were therefore invented with the aim of reopening the rape case.

53. In reply, the applicant reiterated the circumstances of his alleged ill-treatment at the Rustavi police station on 23-25 May 2001, as a result of which his jaw, two teeth and three fingers had been broken. He claimed that the criminal investigation into those circumstances led by the TCPO had not been accurate or objective. The applicant asserted that he had never been interviewed during the course of that investigation, contrary to what had been stated in the decision of 15 March 2007 (see paragraph 27 above). In support of this assertion, he submitted a letter dated 31 October 2007 from the governor of Tbilisi no. 1 Prison, confirming that the prosecutor who had signed the decision had not entered the prison since January 2007. The applicant further stated that his state of health had never been examined in the course of the TCPO's investigation. He also claimed that one of the perpetrators, Mr G., said to have been interviewed in the course of the investigation (see paragraph 27 above), had in reality died well before criminal case no. 042068005 had opened.

54. The applicant further complained that the TCPO had not questioned his wife, neighbours or Mr S., the advocate who had assisted him in the course of the rape case. He claimed that those witnesses could have testified that he had been ill-treated while in police custody on 23-25 May 2001. The applicant also stated that the domestic courts had dispensed with oral hearings when examining his appeal against the TCPO's decision of 15 March 2007. He stated that, since he was a victim in those proceedings, his presence at oral hearings was essential.

55. Lastly, the applicant asserted that, as he did not have an advocate and had been denied visits in prison by his relatives for the past eleven months, he had been unable to obtain documents which could prove some of his above allegations.

2. The Court's assessment

(a) The allegation of ill-treatment

56. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of democratic societies, and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 62; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 81). The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention, and that in assessing evidence it has generally applied the standard of proof "beyond reasonable doubt" (see, among others, *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004). Such proof may follow from the coexistence of sufficiently strong, clear and

concordant inferences or of similar unrebutted presumptions of fact (see *Anguelova v. Bulgaria*, no. 38361/97, § 111, ECHR 2002-IV; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 338, ECHR 2005-III).

57. Turning to the circumstances of the present case, the Court first notes that the domestic proceedings did not identify any tangible proof that the applicant had been ill-treated at the Rustavi police station on 23-25 May 2001. Going beyond the domestic authorities' findings of fact and applying a particularly thorough scrutiny (see, among other authorities, *Talat Tepe v. Turkey*, no. 31247/96, § 49, 21 December 2004), the Court itself is unable, in view of the meagre medical material in its possession (see paragraphs 11, 15 and 28 above) and on the sole basis of the applicant's assertions, to consider the impugned ill-treatment in custody an established fact "beyond reasonable doubt" (see *Davtian v. Georgia*, no. 73241/01, § 38, 27 July 2006; *Danelia v. Georgia*, no. 68622/01, §§ 42 and 43, 17 October 2006). This lack of information is notably due to the shortcomings in the investigations conducted by the competent authorities (see paragraphs 71 and 73-76 below).

58. Consequently, the Court cannot establish a substantive violation of Article 3 of the Convention as to the applicant's ill-treatment in custody.

(b) The alleged inadequacy of the investigation

(i) General principles

59. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the police 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita*, cited above, § 131).

60. Even where the Court is unable to reach any conclusions as to whether there has been, in substance, treatment prohibited by Article 3 of the Convention, the procedural limb of Article 3 may still be invoked, deriving, at least in part, from the failure of the authorities to react effectively to such complaints at the relevant time (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005).

An obligation to investigate is not an obligation of result, but of means (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

61. For an investigation to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004). This means not only a lack of hierarchical or institutional connection but also practical independence (see, in particular, *Ergı v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84).

62. The investigation must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or otherwise base their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). 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.

63. Finally, the investigation must be expeditious. Under Article 3 of the Convention, the Court shall enquire whether the relevant domestic authorities reacted promptly to the complaints at the relevant time (see *Corsacov v. Moldova*, no. 18944/02, § 70, 4 April 2006).

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

64. The Court considers that the applicant's allegations made before the domestic authorities contained enough specific information – the date, place and nature of the ill-treatment, the identity of the alleged perpetrators, the causality between the alleged beatings and the asserted health problems, etc., to constitute an arguable claim in respect of which those authorities were under an obligation to conduct an effective investigation (see *Davtian*, judgement cited above, § 42; *Petropoulou-Tsakiris v. Greece*, no. 44803/04, § 47, 6 December 2007).

65. Another issue to be determined is the period during which the competent authorities were under the obligation to investigate the applicant's allegations. This period started in May 2004, when the applicant, according to the case file, first lodged the complaint of ill-treatment, and ended on 6 September 2007, when the domestic courts finally endorsed the termination of the investigation process (see paragraphs 17, 31 and 45 above).

66. The Court considers it appropriate to examine this period of approximately three years and four months, in the light of the investigative

measures undertaken by the domestic authorities prior to and after 24 January 2006 (see paragraph 24 above).

67. As to the period prior to 24 January 2006, the complaint of ill-treatment was made by the applicant in his application for the reopening of the rape case and in his separate request to hold investigator M. criminally liable (see paragraphs 17 and 22 above).

68. In so far as the reopening proceedings were concerned, the Court notes that the preliminary enquiry into the applicant's complaints of ill-treatment and other abuses of power allegedly committed by investigator M. was not independent. Notably, the enquiry was entrusted to the same division of the prosecution authority – the RDPO – of which the alleged perpetrator, Mr M., was a member, even though the applicant clearly objected to such an obvious conflict of interests (see *Toteva v. Bulgaria*, no. 42027/98, § 63, 19 May 2004; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III).

69. Furthermore, the prosecution authorities cannot be said to have conducted a thorough investigation, as the applicant himself was never interviewed during its progress (see *Petropoulou-Tsakiris*, cited above, §§ 50 and 53; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)). This shortcoming was also noted by the Supreme Court of Georgia, but was not remedied afterwards (see paragraphs 18-21 above).

70. As regards the applicant's separate request for Mr M.'s prosecution, the surrounding domestic proceedings disclose that his complaint of ill-treatment was left by the GPO without any consideration whatsoever. Whilst conducting a verification of the applicant's allegations about extortion and falsification of expert opinions, no similar enquiry was made, and consequently no reply was given, with respect to the allegation of physical abuse by this investigator. Nor did the Tbilisi Regional and Appeal Courts explain how this inexplicable oversight of part of the applicant's allegations could have constituted a "comprehensive" enquiry by the GPO (see paragraphs 22 and 23 above).

71. In the light of the above observations, the Court considers that the enquiries which had been relied on by the competent authorities to refuse to initiate criminal proceedings concerning the applicant's alleged ill-treatment in custody, manifestly lacked the required independence and thoroughness. This situation, which lasted between May 2004 and January 2006, suffices for the Court to find that the national authorities neglected their obligation to investigate effectively the applicant's claim of ill-treatment.

72. As to the subsequent period, the Court observes that it was only after the communication of the applicant's complaint to the respondent Government (see paragraph 3 above), that the GPO decided to open a criminal case, on 24 January 2006, that is almost two years after the applicant lodged a request to that end (see paragraph 22 above).

73. The Court first notes that the GPO withdrew the criminal case from the regional prosecution authorities, of which investigator M. was a member at that time, and assigned it to the TCPO (see paragraph 25 above), which agency was not responsible for the purported perpetrators (see, by contrast, paragraph 68 above). Secondly, the Court rejects the applicant's argument that he was not interviewed by the TCPO, because he explicitly acknowledged the opposite in his letter of 20 August 2006 (see paragraph 26 above). However, the Court finds it conflicting with the relevant principles of an effective investigation that the TCPO relied heavily on the information provided by the RDPO and Rustavi police officers directly or indirectly implicated in the impugned events, without seeking any information from the applicant's witnesses (see, for example, *Ergı*, cited above, §§ 83-84) or confronting the applicant himself with Mr M., Mr A. and Mr G., whom the former had directly incriminated (see *Davtian*, judgement cited above, § 46). The Court attaches further importance to the fact that the TCPO did not consider interviewing the Tbilisi no. 5 Prison doctor who had examined the applicant at the material time and allegedly refused to report the signs of ill-treatment on his body (see paragraph 11 above). Lastly, instead of ordering an independent and thorough medical examination of the applicant's state of health (ibid.), the TCPO limited the expert's enquiry to reading the prison medical log (see paragraph 28 above).

74. The Court further deplores that the termination of the above investigation was upheld by the domestic courts sitting *in camera*, without holding oral hearings. Nor could it be inferred from the case file that a transparent and adversarial procedure in writing took place instead (see paragraph 31 above). The Court observes in this connection that a public and adversarial judicial review, even if the court in question is not competent to pursue an independent investigation or make any findings of fact, has the benefit of providing a forum guaranteeing the due process of law in contentious proceedings involving an ill-treatment case, to which the applicant and the prosecution authority are both parties (see *Ramishvili and Kokhreidze*, decision, cited above; *Belevitskiy v. Russia*, no. 72967/01, § 61, 1 March 2007).

75. In the light of the above-mentioned shortcomings in the investigations conducted by the domestic authorities, the Court concludes that they were not effective.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

77. The applicant complained under Article 6 § 1 of the Convention that there had been procedural violations during the preliminary investigation and the trial in the rape case. He maintained his innocence, complaining that the domestic courts had assessed the circumstances of the case incorrectly.

78. This complaint was made in the application lodged with the Court on 17 March 2003. However, the final domestic decision in the criminal proceedings against the applicant, within the meaning of Article 35 § 1 of the Convention, was delivered by the Supreme Court on 16 April 2002. The applicant attended the cassation hearing. As further revealed by the contents of the case file, by the time of lodging, on 23 May 2002, his request for reopening with the GPO, the applicant already had knowledge of the cassation decision (see paragraph 16 above).

79. It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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."

81. The Court notes that at no stage of the proceedings did the applicant submit a claim for just satisfaction. Accordingly, the Court makes no award of this kind.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;

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

Done in English, and notified in writing on 29 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Deputy Registrar	Françoise Tulkens President