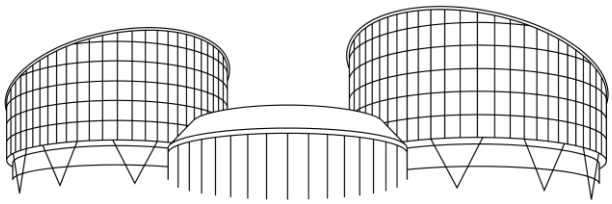

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MALKHASYAN v. ARMENIA

(Application no. 6729/07)

JUDGMENT

STRASBOURG

26 June 2012

FINAL

26/09/2012

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

In the case of Malkhasyan v. Armenia**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 6729/07) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Vardan Malkhasyan ("the applicant"), on 8 February 2007.

2. The applicant was represented by Mr A. Shushanyan and Mr M. Shushanyan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that his detention between 10 and 22 June 2007 had been unlawful and that the courts had failed to provide reasons for his continued detention.

4. On 21 January 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Yerevan.

A. The criminal proceedings against the applicant, and his arrest and detention

6. On 2 December 2006 the applicant gave a speech at an assembly organised by an NGO, the Unity of Armenian Volunteers. The assembly took place in the hall of the Yerevan State Choreography College and about 150 people attended. In his speech, the applicant called the authorities "bandits and internal enemies of the people who had to be got rid of by any means, including arms, armed struggle and rebellion". He called for blood and fire to be thrown on the enemy and stated that there was no more need for analysing, debating, making comments or listening to experts – "the country had to be liberated from the internal enemy".

7. On 8 December 2006 the Investigative Department of the National Security Service (NSS) decided to institute criminal proceedings under Article 301 of the Criminal Code (CC) on the ground that public calls for a violent overthrow of the government had been made during the speeches given at the above assembly.

8. On 9 December 2006 from 9.35 p.m. to 11.55 p.m. the applicant's flat was searched in his presence. The applicant alleges that immediately after the search he was taken to the NSS.

9. On 10 December 2006 from 10.05 a.m. to 1.15 p.m. the applicant was questioned as a suspect in office no. 487 of the NSS. It appears that the applicant admitted making the above statements at the assembly.

10. On the same date at 2.30 p.m. an arrest record was drawn up, which stated that the applicant was arrested at that hour by the investigator in office no. 487 of the NSS on suspicion of being involved in the above offence. It appears that his passport was seized.

11. On 12 December 2006 the applicant was formally charged under Article 301 of the CC with making public calls for a violent overthrow of the government. Another person, Z.S., who had also given a speech at the above assembly, was accused together with the applicant under Article 301 of the CC and also under Article 235 § 1 of the CC with illegal possession of firearms and ammunition. Their speeches had been recorded.

12. On the same date the applicant was questioned as an accused. The applicant submitted that he had made the statements in question in a state of intoxication and confusion. They were made on the spur of the moment and he had not intended to incite anyone to a rebellion or a violent overthrow of the government.

13. On the same date the investigator filed a motion with the Kentron and Nork-Marash District Court of Yerevan, arguing that the applicant, if at large, could abscond and exert unlawful pressure on persons involved in the proceedings and seeking to have the applicant detained for a period of two months. The applicant alleges that the investigator submitted to the court

only a transcript of his speech but not its audio recording, even if such a recording was at the investigator's disposal.

14. On the same date the District Court examined the investigator's motion. The applicant, who was present at this hearing, objected to the motion, claiming that he had not been fully aware of the meaning of his words because of being intoxicated and irritated as a result of a family argument earlier on that day. The District Court, having examined the circumstances underlying the charge against the applicant, decided to grant the investigator's motion on the ground that the applicant, if at large, could obstruct the investigation by exerting unlawful influence on persons involved in the proceedings.

15. On 19 December 2006 the applicant lodged an appeal against this decision, claiming that it was unfounded, unlawful and unreasoned.

16. On 26 December 2006 the applicant lodged a supplement to his appeal arguing, *inter alia*, that the investigator had failed to present any evidence to the court in support of his allegations that he would abscond or obstruct the investigation. The allegation that he would obstruct the investigation was rebutted by the fact that the investigating authority had at its disposal a recording of his speech. In such circumstances, it was impossible for him to obstruct the investigation in any manner. The court, however, had failed to consider this fact. The applicant further argued that the court decision should have been based on a reasonable suspicion of his having committed an offence.

17. On the same date the Criminal and Military Court of Appeal examined and dismissed the appeal. The Court of Appeal found that the investigator had submitted sufficient evidence, such as the records of the applicant's interviews of 10 and 12 December 2006, linking the applicant to the event in question and suggesting the existence of a reasonable suspicion. Furthermore, the District Court had lawfully found that there were sufficient grounds to believe that the applicant, if at large, would obstruct the investigation.

18. On 27 December 2006 the applicant filed a motion with the District Court seeking to be released on bail. He argued that he was known to the investigating authority, he had a permanent place of residence and he had never absconded from the investigation.

19. On 30 December 2006 another person, V.A., who was Z.S.'s friend, was also charged under Article 235 § 1 of the CC with illegal possession of firearms and ammunition in the context of the same criminal proceedings.

20. On 26 January 2007 the District Court dismissed the motion on the ground that the applicant, if at large, could abscond.

21. On the same date the applicant lodged an appeal against this decision, arguing that it was unfounded, unlawful and unreasoned.

22. On 15 February 2007 the Criminal and Military Court of Appeal dismissed the appeal, finding that there were not sufficient grounds to

release the applicant on bail in view of the fact that, in the context of the same criminal case, the applicant's co-accused, V.A., was suspected and then detained on the charge of illegal possession of large amounts of firearms and ammunition, and taking into account the nature and dangerous character of the act imputed to the applicant.

B. Extension of the applicant's detention

23. On 1 February 2007 the investigator filed a motion with the District Court seeking to have the applicant's detention period, which was to expire on 10 February 2007, extended by two months on the same grounds.

24. On 7 February 2007 the applicant filed objections against this motion. He argued that the investigator had not produced any evidence in support of his allegations that he would abscond or obstruct the investigation. However, the allegation that he would abscond was unjustified since he had a big family and property in Armenia, and his passport had been seized. Furthermore, that allegation had not been confirmed by the District Court's decision of 12 December 2006. As to the allegation that he would obstruct the investigation, that was rebutted by the fact that the investigating authority had at its disposal a recording of his speech. The applicant requested that he be released on bail.

25. On the same date the District Court examined the investigator's motion. The applicant's lawyer was present at this hearing and made submissions. He filed a motion with the court, claiming that the applicant's presence was necessary at the hearing and requesting that this presence be secured. The presiding judge asked the lawyer whether the applicant had expressed willingness to be present, to which the lawyer replied that he assumed that the applicant would wish to be present. The presiding judge then decided to refuse that motion on the ground that no such request had been made prior to the hearing and that the law did not require a detainee's presence at hearings where detention was being extended.

26. The District Court decided to grant the investigator's motion, taking into account that there was a need to carry out a number of investigative measures, such as the questioning of members of the Unity of Armenian Volunteers, completing a number of examinations and disclosing the origin of weapons and ammunition found in V.A.'s possession, and finding that the applicant, if at large, could abscond and obstruct the investigation by exerting unlawful influence on persons involved in the proceedings.

27. On 8 February 2007 the applicant lodged an appeal against this decision.

28. On 1 March 2007 the applicant lodged a supplement to his appeal arguing, *inter alia*, that the procedure for extension of detention, envisaged by Article 139 § 1 of the CCP, had not been respected by the investigator and the District Court, and that he had not been present at the hearing of

7 February 2007, in violation of the guarantees of Article 285 § 2 of the CCP. As regards specifically the time-limits prescribed by Article 139 § 1 of the CCP, the applicant argued that his detention period was to be calculated from 9 December 2007, since that was the date on which he had been actually deprived of his liberty, and not from the date on which the arrest record had been drawn up, namely 10 December 2007. The applicant further claimed that the District Court's decision was unreasoned and his continued detention unjustified, raising the same arguments as those presented in his objection of 7 February 2007.

29. On the same date the Court of Appeal decided to dismiss the appeal and to uphold the decision of the District Court, finding the applicant's arguments to be unfounded. As regards the time-limits prescribed by Article 139 § 1 of the CCP, the Court of Appeal admitted that they had not been observed by both the investigator and the District Court, however, this was not a procedural violation of such importance as to affect the proper outcome of the detention hearing. The applicant's lawyer was present at this hearing and made submissions.

30. On 30 March 2007 the investigator filed a motion with the District Court seeking to have the applicant's detention period, which was to expire on 10 April 2007, extended by two months on the same grounds.

31. On 3 April 2007 the relevant District Election Committee registered the applicant, upon his application, as a single constituency candidate for the parliamentary election to take place in Armenia on 12 May 2007.

32. On 5 April 2007 the District Court granted the investigator's motion of 30 March 2007 on the same grounds as before. The applicant's lawyer was present at this hearing and made submissions.

33. On 10 April 2007 the applicant lodged an appeal against this decision in which he argued, *inter alia*, that his detention period had been extended without the consent of the Central Election Committee, in violation of the guarantees of Article 111 § 6 of the Electoral Code. The applicant further argued that, by remaining in detention, he was deprived of the possibility to participate in the election campaign on equal conditions with other candidates. He also raised arguments similar to those raised in his objection of 7 February 2007 and supplement of 1 March 2007.

34. On 2 May 2007 the Court of Appeal decided to dismiss the appeal and to uphold the decision of the District Court. The Court of Appeal found, *inter alia*, that the requirements of Article 285 of the CCP and Article 111 § 6 of the Electoral Code had been respected, since imposition of detention and extension of a detention period were two distinct concepts. Detention had been imposed on the applicant prior to his registration as a parliamentary candidate. The Court of Appeal further found that the grounds for the applicant's continued detention as invoked by the investigator were valid. The applicant's lawyer was present at this hearing and made submissions.

35. On 5 June 2007 the prosecutor approved the bill of indictment and the case was transmitted to court for an examination on the merits.

36. On 7 June 2007 Judge M. of the Kentron and Nork-Marash District Court of Yerevan decided to take over the applicant's criminal case.

37. On 10 June 2007 the applicant's detention period, authorised by the decision of 5 April 2007, expired.

38. On 13 June 2007 the applicant applied to the chief of the detention facility where he was kept, claiming that his detention period, authorised by the District Court's decision of 5 April 2007, had expired on 10 June 2007 and requesting that he be released.

39. By a letter of 19 June 2007 the chief of the detention facility refused this request on the ground that the case had been transmitted to the District Court.

40. On 22 June 2007 Judge M. decided to put the applicant's criminal case down for trial. This decision stated that the preventive measure imposed on the applicant was to remain unchanged.

41. On 6 August 2007 the Kentron and Nork-Marash District Court of Yerevan found the applicant guilty as charged and sentenced him to two years' imprisonment.

42. On 7 August 2007 the applicant lodged his completed application form with the Court.

43. It appears that thereafter the applicant contested his conviction before the higher judicial instances.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code (in force from 1 August 2003)

44. The relevant provisions of the CC provide:

Article 301: Public calls aimed at violently changing the constitutional order of Armenia

> "Public calls aimed at violently seizing State power and violently changing the constitutional order of Armenia shall be punishable by a fine of between 300 and 500 times the minimum wage or by detention of between two and three months or by imprisonment for a period not exceeding three years."

B. The Code of Criminal Procedure (in force from 12 January 1999)

45. For a summary of the relevant provisions see the judgment in the case of *Poghosyan v. Armenia* (no. 44068/07, §§ 26-41, 20 December

2011). The provisions of the CCP which were not cited in that judgment read as follows.

46. According to Article 135, the court, the prosecutor, the investigator or the body of inquest can impose a preventive measure only when the materials obtained in the criminal case provide sufficient grounds to believe that the suspect or the accused may: (1) abscond from the authority dealing with the case; (2) hinder the examination of the case during the pre-trial or court proceedings by exerting unlawful influence on persons involved in the criminal proceedings, by concealing or falsifying materials significant for the case, by failing to appear upon the summons of the authority dealing with the case without valid reasons or by other means; (3) commit an act prohibited by criminal law; (4) avoid criminal liability and serving the imposed sentence; and (5) hinder the execution of the judgment. When deciding on the necessity of imposing a preventive measure or choosing the type of preventive measure to be imposed on the suspect or the accused, the following should be taken into account: (1) the nature and degree of danger of the imputed offence; (2) the personality of the suspect or the accused; (3) age and state of health; (4) sex; (5) occupation; (6) family status and dependants, if any; (7) property situation; (8) whether he has a permanent residence; and (9) other important circumstances.

47. According to Article 139 § 1, if it is necessary to extend the accused's detention period, the investigator or the prosecutor must submit a well-grounded motion to the court not later than ten days before the expiry of the detention period. The court, agreeing with the necessity of extending the detention period, shall adopt an appropriate decision not later than five days before the expiry of the detention period.

48. According to Article 285 § 1, the prosecutor or the investigator shall file a motion with a court seeking to have detention imposed as a preventive measure or the period of detention extended, if such a necessity arises. The motion must indicate the reasons and grounds necessitating the suspect's detention. Materials substantiating the motion shall be attached to it. According to Article 285 § 2, the motion seeking to have detention imposed as a preventive measure shall be subject to immediate examination at the court on the territory of which the pre-trial investigation is carried out, by a single judge and in the presence of the person who has filed the motion, the accused, his lawful representative and his defence counsel, if such is engaged in the case.

C. The Electoral Code (in force from 28 February 1999)

49. Article 111 § 6 of the Electoral Code provides that, during the election, detention or administrative or criminal liability may be imposed by a court on candidates nominated through proportional and single

constituency ballot only with the consent of the Central Election Committee.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

50. The applicant complained that the extension of his detention on 7 February 2007 was not carried out in compliance with the time-limits prescribed by law and that his detention between 10 and 22 June 2007 was not authorised by a court and was therefore unlawful. He invoked Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "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..."

A. Admissibility

1. Compliance with domestic time-limits when extending detention

(a) The parties' submissions

51. The Government submitted that the fact that the five-day time-limit prescribed by Article 139 § 1 of the CCP had not been observed by the District Court when deciding on 7 February 2007 to extend the applicant's detention did not have any adverse effect on the applicant's rights guaranteed by Article 5 § 1. The formal non-compliance with the time-limit in question due to some shortcomings in court administration did not render the applicant's detention arbitrary within the meaning of Article 5 § 1, since the applicant was already in detention and the District Court decided that it was to remain unchanged.

52. The applicant submitted that his detention was to end on 10 February 2007 and both the investigator and the District Court failed to comply with the time-limits prescribed by Article 139 § 1 of the CCP. These were grave violations of domestic law and a good reason to quash the decision of the District Court. Furthermore, since a breach of the domestic law entailed a violation of Article 5 § 1, the failure to comply with the time-limits in his case resulted in a breach of that provision.

(b) The Court's assessment

53. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III, and *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II). A period of detention is, in principle, "lawful" if it is based on a court order. Even flaws in the detention order do not necessarily render the underlying period of detention unlawful within the meaning of Article 5 § 1 (see *Benham*, cited above, §§ 42-47, and *Jėčius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX).

54. In the present case, the applicant's two-months detention period authorised by a court was to expire on 10 February 2007. Article 139 § 1 of the CCP required the investigator, if he deemed necessary to seek extension of detention, to submit a motion for extension not later than ten days and the court to adopt its decision not later than five days before the expiry of the detention period. The investigator in the applicant's case submitted a motion for extension on 1 February 2007, while the District Court adopted its decision granting that motion and extending the applicant's detention by two months on 7 February 2007.

55. The Court notes that at the time when the District Court decided on 7 February 2007 to extend the applicant's detention, his detention was still valid as authorised by the District Court's previous decision of 12 December 2006. Furthermore, the decision of 7 February 2007, while taken after a short delay, was nevertheless taken several days before the expiry of the authorised detention period. It was adopted by a competent court upon the investigator's motion as required by the domestic law. The Court considers that the procedural shortcoming in question, namely the short delays in the filing and examination of the investigator's motion, was of such a formal and minor nature that it did not in any way affect the lawfulness of the relevant detention period.

56. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Lawfulness of detention between 10 and 22 June 2007

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The Government submitted that the applicant's detention between 10 and 22 June 2007 was in compliance with the law, namely Article 138 § 3 of the CCP.

59. The applicant contested this submission, claiming that Article 138 § 3 of the CCP could not be considered as a lawful ground for his detention.

2. The Court's assessment

60. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12).

61. Where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports of Judgments and Decisions* 1998-VII).

62. The Court notes that it has already examined an identical complaint in another case against Armenia, in which it concluded that there had been a violation of Article 5 § 1 of the Convention in that the applicant's detention was not based on a court decision and was therefore unlawful within the meaning of that provision (see *Poghosyan v. Armenia*, no. 44068/07, §§ 56-64, 20 December 2011). It sees no reason to reach a different conclusion in the present case and concludes that the applicant's detention between 10 and 22 June 2007 was unlawful within the meaning of Article 5 § 1.

63. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

64. The applicant complained of the fact that the domestic courts had failed to provide reasons for his continued detention. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

1. The parties' submissions

66. The Government argued that the domestic authorities provided relevant and sufficient reasons for the applicant's continued detention, such as the danger of his absconding and exerting unlawful pressure on the persons involved in the proceedings.

67. The applicant submitted that the domestic courts failed to provide relevant and sufficient reasons for his continued detention and their reasoning failed to make any assessment of his particular circumstances and was unfounded.

2. The Court's assessment

(a) General principles

68. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 58, ECHR 2003-IX (extracts); *Becciev v. Moldova*, no. 9190/03, § 53, 4 October 2005; and *Khodorkovskiy v. Russia*, no. 5829/04, § 182, 31 May 2011).

69. The domestic courts must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from

the rule of respect for individual liberty and set them out in their decisions on the applications for release (see *Letellier v. France*, 26 June 1991, § 35, Series A no. 207). Arguments for and against release must not be general and abstract (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225).

70. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV)

71. The Convention case-law has developed four basic acceptable reasons for detaining a person before judgment when that person is suspected of having committed an offence: the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9); the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7) or commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A no. 10) or cause public disorder (see *Letellier*, cited above, § 51).

72. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Yağcı and Sargın v. Turkey*, 8 June 1995, § 52, Series A no. 319-A). The risk of absconding has to be assessed in the light of the factors relating to the person's character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is prosecuted. The expectation of heavy sentence and the weight of evidence may be relevant but is not as such decisive and the possibility of obtaining guarantees may have to be used to offset any risk (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8).

73. The danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence (see *Trzaska v. Poland*, no. 25792/94, § 65, 11 July 2000)

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

74. In the present case, the Court notes that the domestic courts, when ordering the applicant's detention and its extension, relied on the risk of his absconding and taking certain actions to prejudice the administration of justice such as exerting unlawful pressure on witnesses.

75. The Court observes that both the District Court and the Court of Appeal limited themselves to repeating these grounds in their decisions in an abstract and stereotyped way, without indicating any reasons as to why they considered to be well-founded the allegations that the applicant could abscond or exert unlawful pressure on witnesses. Nor have they attempted to refute the arguments made by the applicant. A general reference to the serious nature of the offence with which the applicant had been charged cannot be considered as a sufficient justification of the alleged risks. Nor is it clear how the fact that the applicant's co-accused had been detained, relied on by the Court of Appeal when refusing bail (see paragraph 22 above), was relevant to justify the risk of the applicant's absconding.

76. In the light of the above, the Court considers that the reasons relied on by the District Court and the Criminal and Military Court of Appeal in their decisions concerning the applicant's detention and its extension were not "relevant and sufficient".

77. Accordingly there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

78. The applicant complained that he was not present at any of the hearings at which the question of extension of his detention was decided. He invoked Article 5 § 1 of the Convention. The Court considers that this complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

1. The Government

79. The Government submitted that Article 285 § 2 of the CCP required a detainee's presence only at the first detention hearing and not those at which questions of extension of the detention were determined. The applicant's lawyer was present at all the hearings on extension of the detention and was able to present arguments, file motions and make written submissions. Therefore, the applicant's absence from the relevant court hearings did not in any way adversely affect his rights. Furthermore, the applicant had never personally or through a lawyer expressed the wish to participate in the hearings. At the hearing of 7 February 2007 the lawyer

simply assumed that the applicant would want to be present. In conclusion, there was no violation of Article 5 § 4.

2. The applicant

80. The applicant argued that Article 285 of the CCP was applicable also to proceedings concerning extension of his detention. This was clearly established by the judicial practice and also the fact that the District Court referred to that Article in its decisions. Thus, the domestic law required his presence and failing to secure his presence had deprived him of the possibility to present his position before the District Court. The proceedings were not adversarial and failed to ensure equality of arms in violation of Article 5 § 4.

B. The Court's assessment

81. The Court reiterates that, in certain circumstances, Article 5 § 4 may require a detainee's presence at an oral hearing (see *Singh v. the United Kingdom*, 21 February 1996, §§ 67-69, *Reports of Judgments and Decisions* 1996-I; *Graužinis v. Lithuania*, no. 37975/97, §§ 33-34, 10 October 2000; *Waite v. the United Kingdom*, no. 53236/99, § 59, 10 December 2002; *Lebedev v. Russia*, no. 4493/04, § 113, 25 October 2007; and *Khodorkovskiy v. Russia*, cited above, § 235).

82. In the present case, the applicant was not present at the hearings of 7 February and 5 April 2007 at which the District Court decided to extend his detention or the hearings of 1 March and 2 May 2007 at which the Court of Appeal examined the appeals against those decisions. The Court does not share the applicant's opinion that Article 285 of the CCP required his presence at those hearings. As it follows from the text of that Article, as well as its interpretation by the domestic courts, a detainee's presence is required only at the hearing at which detention is ordered and not the hearings at which detention is extended. The applicant's allegation that there was established judicial practice to that effect is not supported by any evidence. Furthermore, the fact that the District Court referred to Article 285 of the CCP in its decisions does not affect the situation. Indeed, this Article applies both to proceedings ordering and extending detention. However, the specific requirement contained in paragraph 2 of that Article applies only to the former. Thus, it cannot be said that the domestic law required a detainee to be present at hearings determining questions of extension of detention.

83. The Court notes that the applicant's lawyer was present at all the hearings in question. He was able to present the applicant's case and to argue in favour of his release. The Court further notes that the applicant failed to specify why his presence was indispensable at the hearings in question. In such circumstances, the Court does not have sufficient reasons

to conclude that the manner in which the relevant hearings were conducted violated the applicant's right to an oral hearing under Article 5 § 4.

84. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. Lastly, the applicant raised a number of other complaints under Article 5 § 1, 10 and 14 of the Convention and Article 3 of Protocol No. 1.

86. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed 108,000 euros (EUR) in respect of non-pecuniary damage.

89. The Government objected to this claim.

90. The Court considers that the applicant undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award him EUR 4,500 in respect of such damage.

B. Costs and expenses

91. The applicant also claimed 20,000 Armenian drams in respect of postal expenses.

92. The Government objected to this claim, arguing that there was no need for the applicant to use such an expensive postal service.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 43 for costs and expenses in the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the alleged unlawfulness of the applicant's detention between 10 and 22 June 2007 and the alleged lack of reasons for his continued detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in that the applicant's detention between 10 and 22 June 2007 lacked legal basis;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the failure to provide relevant and sufficient reasons for the applicant's continued detention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 43 (forty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President