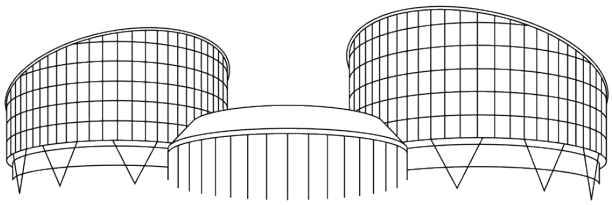

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PIRUZYAN v. ARMENIA

(Application no. 33376/07)

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 Piruzyan 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. 33376/07) 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 Kamo Piruzyan ("the applicant"), on 25 July 2007.

2. The applicant was represented before the Court by Ms L. Sahakyan and Mr Y. Varosyan, lawyers practising in Yerevan, and Mr A. Ghazaryan, a non-practising lawyer. 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 placement in a metal cage during the court proceedings amounted to degrading treatment; his detention between 19 February and 12 March 2007 had been unlawful; the courts had failed to provide reasons for his continued detention; he had had no possibility of being released on bail owing to the gravity of the alleged offence; the detention hearing of 12 December 2006 had not been adversarial and had failed to ensure equality of arms; his arguments concerning the lack of a reasonable suspicion had not been adequately addressed; and the Court of Appeal had refused to examine his appeal of 27 January 2007.

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 1978 and lives in Yerevan.

6. The applicant alleged that at 9.20 a.m. on 18 October 2006 he had been taken to the local police station in the town of Alaverdi in connection with an armed assault that had taken place earlier that day. He further alleged that his arrest had not been recorded and that he had been released several hours later.

7. On 19 October 2006 criminal proceedings were instituted against the applicant under Article 175 § 2 (2) and (4) of the Criminal Code (CC). The proceedings were instituted upon the complaint of the victim, G.H., who lived in the same building as the applicant. According to G.H., at 8.45 p.m. on 18 October 2006 the applicant, who had been wearing a mask, had attacked him on the ground floor of their building, hit him on the head with a metal rod and grabbed his briefcase, which had been full of expensive jewellery.

8. At 8 p.m. on the same day the applicant was formally arrested on suspicion of having committed the above-mentioned offence. The arrest report was signed by the applicant.

9. On 22 October 2006 the applicant was formally charged with robbery under the above-mentioned Article. The charge sheet specified that following the incident the victim had pursued the applicant, who had been forced to drop the briefcase and flee. It was signed by the applicant.

10. On the same date the investigator applied to the Lori Regional Court to have the applicant detained for a period of two months on the grounds that he had previous convictions, the offence belonged to the category of serious crimes and that, if at large, he would abscond.

11. On the same date the Regional Court examined and granted the investigator's application, finding that the case materials provided sufficient grounds for believing that the applicant might abscond and obstruct the investigation, having regard to the nature and degree of dangerousness of the offence in question.

12. On 8 December 2006 the investigator sought to have the applicant's detention extended by a further two months. The application stated that a number of examinations had been carried out during the investigation, including chemical and biological examinations and an examination of the traces left by the crime. However, an additional biological examination had to be carried out and the charge amended. The investigator argued that the applicant, if released, would abscond since he had committed a serious crime and might commit further offences as he had previous convictions. He had not admitted his guilt and would therefore obstruct the investigation.

The investigator submitted, in support of his application, a number of case materials, such as the decision to institute criminal proceedings, the arrest report and the decision to bring charges.

13. On 12 December 2006 the Regional Court examined the investigator's application. The applicant was present at that hearing and was seated next to his lawyer.

14. The applicant objected to the investigator's application and asked the court to release him on bail. He submitted at the outset that there was no reasonable suspicion that he had committed an offence. The fact that he had committed offences in the past did not justify detaining him in this particular case. The Regional Court stated in that regard that it was not examining the case on the merits, including the question of the applicant's guilt, but was examining the validity of the application for an extension of the applicant's detention. There was a difference between the issue of guilt and that of the existence of a reasonable suspicion.

15. The applicant further submitted that there was no concrete evidence justifying his detention. In response to a request by the applicant to produce evidence, the investigator admitted that no such evidence was available. He submitted that a number of examinations had been ordered and that it was necessary to take a blood sample in order to determine whether the applicant's blood group corresponded to the traces of blood found on the victim's shoes. The presiding judge then asked the investigator to present all the materials of the case. Shortly afterwards, the judge withdrew to the deliberation room.

16. The Regional Court, having examined the investigator's application and the materials confirming that it was well-founded, decided to grant the application in part and to extend the applicant's detention by one month – until 19 January 2007 – on the ground that on 8 December 2006 the investigator had ordered a biological examination which had not yet been completed. Referring to Article 143 § 1 of the Code of Criminal Procedure (CCP), the court further decided to refuse the applicant's request for bail, on the ground that he was accused of a serious crime.

17. On 27 December 2006 the applicant lodged an appeal. He submitted, *inter alia*, that there was no reasonable suspicion of his having committed an offence. The documents submitted by the investigator in support of his application, such as the decision to institute criminal proceedings, the arrest report and the decision to bring charges, were not sufficient to found a reasonable suspicion. Moreover, the Regional Court had refused, in general terms, to address the issue of the existence of a reasonable suspicion. The applicant further contested the allegation that he might commit further offences, which was based solely on the fact that he had previous convictions. Furthermore, there was no concrete evidence suggesting that he would abscond, and the need to carry out an additional biological examination could not serve as a ground for his continued detention. Lastly,

the applicant argued that the proceedings in the Regional Court had not been adversarial and had violated the principle of equality of arms since the presiding judge, having failed at the hearing to examine any evidence on which to found a reasonable suspicion, had received the entire case file from the investigator before withdrawing to the deliberation room. The applicant had neither had access to any of those materials nor the possibility to comment on them.

18. On 25 January 2007 the Criminal and Military Court of Appeal upheld the decision of the Regional Court. It stated that the investigating authority had submitted certain evidence substantiating the applicant's guilt which confirmed his involvement in the event. Thus, there was a reasonable suspicion that the applicant had committed an offence. The Court of Appeal found that there was a need to extend the applicant's detention, having regard to the dangerousness and nature of the alleged offence and the fact that he might abscond and obstruct the investigation. It dismissed his application for bail on the same grounds. It considered that the decision of the Regional Court to extend detention and refuse bail was well-founded and reasoned and that there were no grounds to amend that decision.

19. On 9 January 2007 the investigator lodged an application seeking to have the applicant's detention extended by one month on the same grounds as before.

20. On 12 January 2007 the Regional Court examined the investigator's application. The applicant was present at that hearing and was seated next to his lawyer. He objected to the investigator's application and asked the court to release him on bail. The Regional Court decided to grant the application and to extend the applicant's detention by one month – until 19 February 2007 – on the ground that the investigator had ordered a number of examinations which had not yet been completed. The court further decided to refuse the applicant's request for bail on the same ground as before.

21. On 27 January 2007 the applicant lodged an appeal.

22. On 8 February 2007 the charges against the applicant were amended. In addition to the original charge the applicant was also accused of recidivism and attempted murder.

23. On 16 February 2007 the investigation was completed and the applicant was granted access to the materials in the case.

24. On 19 February 2007 the applicant's detention period, authorised by the decision of 12 January 2007, expired.

25. On the same date the prosecutor approved the indictment and the case was sent to the Lori Regional Court for examination on the merits.

26. On the same date the Court of Appeal decided to leave the applicant's appeal of 27 January 2007 unexamined on the ground that the investigation had been completed and the case transmitted to the Regional Court.

27. On 5 March 2007 the applicant lodged an application with the Regional Court claiming that his detention had been unlawful since 19 February 2007 and requesting his release. A similar application was made to the chief of the detention facility where the applicant was held.

28. By a letter of 6 March 2007 the chief of the detention facility refused the request, referring to Article 138 of the CCP, on the ground that the case had been transmitted to the Regional Court.

29. On 12 March 2007 the Regional Court dismissed the application of 5 March 2007 on the same grounds.

30. On the same date the Regional Court decided to set the applicant's criminal case down for trial. The decision stated that the applicant's detention was to remain unchanged.

31. In the courtroom, during the proceedings before the Regional Court, the applicant was placed in a metal cage measuring about 4.5 sq. m. He was represented by a lawyer.

32. At the hearing of 21 March 2007 the applicant requested to be released from the cage. The Regional Court decided to adjourn the examination of that question.

33. At the hearing of 30 March 2007 the applicant challenged the presiding judge. He submitted, *inter alia*, that his placement in the metal cage had amounted to inhuman and degrading treatment and also violated the principle of equality of arms and the presumption of innocence, despite which the presiding judge had failed to take any measures to eliminate those encroachments on his rights. It appears that this challenge was dismissed as unfounded.

34. The applicant alleged that following the dismissal of that challenge he had again requested to be released from the cage, but the court had refused his request on the ground that it had no other means of ensuring security in the courtroom. The Government alleged that no further steps had been taken by the applicant in that connection following the dismissal of the challenge.

35. During the entire proceedings before the Regional Court the applicant was kept in the metal cage. The proceedings lasted almost nine months and included twenty-one public hearings at which the applicant was present. The hearings lasted between twenty-five minutes and seven hours. It appears that the case attracted public attention in the town of Alaverdi and that the hearings were attended by the applicant's family and friends and numerous other members of the public, including other inhabitants of the town and many students.

36. On 24 July and 18 August 2007 the applicant lodged appeals on points of law against the decisions of 25 January and 19 February 2007.

37. At the hearing on 8 August 2007 the applicant asked the Regional Court to revoke his detention order or otherwise release him on bail. He submitted that he had been in detention for almost ten months. There were

no grounds justifying his continued detention since all the witnesses had already been examined and he could not obstruct the proceedings. The prosecutor objected to the request, stating that the applicant could not be released on bail because he was accused of a serious crime. The Regional Court decided to dismiss the applicant's request on the ground that the examination of the case was not yet over and there were insufficient grounds to revoke his detention or release him on bail.

38. On 6 September 2007 the Court of Cassation decided to return the applicant's appeals of 24 July and 18 August 2007 for lack of merit.

39. On an unspecified date the prosecutor decided to drop the charges and sought an order from the Regional Court terminating the criminal proceedings against the applicant on the ground that the evidence obtained was not sufficient to support the charges against him.

40. On 5 December 2007 the Lori Regional Court decided to grant that application and to terminate the criminal proceedings against the applicant under Article 35 § 4 of the CCP.

41. On the same date the applicant was released from detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

42. Under Article 19, offences, according to their nature and the degree of danger posed to society, are divided into offences of minor seriousness, medium seriousness, serious offences and particularly serious offences. Premeditated acts punishable by a maximum of five years' imprisonment fall into the category of offences of medium seriousness, while those punishable by a maximum of ten years' imprisonment are considered serious offences.

43. Under Article 175 § 2 (2) and (4), robbery, that is, assault for the purpose of stealing another's property accompanied with violence or the threat of violence endangering life or health, if committed for the purpose of stealing a large amount of property and with the use of a weapon or other articles used as a weapon, is punishable by imprisonment of between six and ten years.

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

1. Right of appeal

44. Under Article 6 § 10, a final decision is any decision taken by the authority dealing with the case which precludes the institution or continuation of proceedings or resolves a case on the merits.

45. Under Article 65 § 2 (20), the accused is entitled to lodge appeals against the actions and decisions of the inquiry officer, the investigator, the prosecutor and the court, including the verdict and any other final judicial decision.

46. Under Article 384, as in force at the material time, appeals could be lodged only against final decisions of the first-instance court.

2. Detention

47. Under Article 134, preventive measures are measures of compulsion imposed on an arrestee or the accused in order to prevent their inappropriate behaviour in the course of the criminal proceedings and to ensure the enforcement of the judgment. Preventive measures include, *inter alia*, detention and bail.

48. Article 135 provides that the court 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, concealing or falsifying materials significant for the case, failing to appear following a summons by the authority dealing with the case without valid reason, or by other means; (3) commit an act prohibited by criminal law; (4) avoid criminal liability and serving the imposed sentence; or (5) hinder the execution of the judgment. Detention and bail can be imposed on the accused only if the severest punishment prescribed for the alleged crime is imprisonment for a term exceeding one year or if there are sufficient grounds to believe that the suspect or the accused might commit any of the actions referred to above. 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 must be taken into account: (1) the nature and degree of danger of the alleged offence; (2) the personality of the suspect or the accused; (3) his or her age and state of health; (4) his or her sex; (5) his or her occupation; (6) his or her family status and dependants, if any; (7) his or her property situation; (8) whether the suspect has a permanent residence; and (9) other important circumstances.

49. Article 136 § 2 provides that detention and bail can be imposed only by a court decision on an application by the investigator or the prosecutor or

of the court's own motion during its examination of the criminal case. The court can replace detention with bail, also on an application by the defence.

50. Under Article 138 § 3, during the pre-trial proceedings of a criminal case the detention period may not exceed two months, except for cases prescribed by the Code. During the pre-trial proceedings of the criminal case the detention period is suspended on the date when the prosecutor transmits the criminal case to the court or when detention is revoked as a preventive measure.

51. Article 143 § 1 provides that "bail" is the money, shares or other property deposited with the court by one or more persons in order to secure the release of a person accused of a crime of minor or medium seriousness.

52. Pursuant to Article 285 § 1, an application by the prosecutor or the investigator to have detention imposed or extended must indicate the reasons and grounds necessitating the suspect's detention. Materials substantiating the application must be attached to it.

3. Access to case file

53. Under Article 65 § 2(16), the accused has the right to familiarise him or herself with all the materials of the case upon the completion of the investigation.

54. Under Article 73 § 1(12), defence counsel is entitled to familiarise him or herself with all the materials of the case, to make copies of and take notes on any information contained in the case and in any volume, after the completion of the investigation.

55. Pursuant to Article 201, materials of the investigation can be made public only with the permission of the authority dealing with the case.

56. Pursuant to Article 265, the investigator, on determining that the materials gathered are sufficient to draw up the bill of indictment, informs the accused accordingly and decides where and when he or she can familiarise him or herself with the materials of the case.

4. Termination of criminal proceedings

57. Pursuant to Article 35 § 4, where the prosecutor discovers, in court, circumstances that rule out a criminal prosecution, he or she must declare that the criminal prosecution against the accused is to be dropped. Such a declaration serves as a ground for the court to terminate the proceedings and stop the criminal prosecution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicant complained that his placement in a metal cage during court proceedings was in violation of 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. Exhaustion of domestic remedies

59. The Government claimed that the applicant had failed to exhaust the domestic remedies. Following the rejection of his challenge on 30 March 2007, the applicant had never raised the issue again, despite the fact that over twenty hearings had been held before the Lori Regional Court. Furthermore, he had failed to raise it in his appeals to a higher court, even though he had been entitled to do so under Article 65 of the CCP.

60. The applicant submitted that the decisions taken on 21 and 30 March 2007 had been interim decisions that were not subject to appeal.

61. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Assenov and Others v. Bulgaria* no. 24760/94, § 85, ECHR 1999-VIII).

62. The only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that special circumstances existed which absolved him or her from this requirement (see

Kalashnikov v. Russia (dec.), no. 47095/99, 18 September 2001, and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006).

63. In the present case, the applicant was placed in a metal cage during the proceedings before the Lori Regional Court. It appears that there was no specific procedure to follow for a defendant who wished to be released from the metal cage. This in itself raises doubts as to whether there were any effective remedies for the applicant to exhaust. In any event, the case materials indicate that the applicant addressed the Regional Court at least twice requesting, *inter alia*, that he be released from the cage and alleging that his placement there amounted to inhuman and degrading treatment. No response was made to the applicant's request on the first occasion, when it was decided to adjourn the question, and the Regional Court did not address it on the second occasion either (see paragraphs 32 and 33 above). Thus, even assuming that the procedure followed by the applicant was a proper avenue of exhaustion for this type of complaint, it proved to be ineffective in his particular case.

64. Lastly, the Court observes that indeed the domestic law did not envisage a possibility of appeal against the decisions in question. It notes that Article 65 of the CCP, referred to by the Government, prescribes a general right of the accused to lodge appeals. However, more specific provisions of the CCP, namely, Article 384, precluded such decisions from being contested before the Court of Appeal.

65. In conclusion, even assuming that there were effective remedies to exhaust, the applicant can be considered to have done everything which could be reasonably expected of him in the particular circumstances. The Government's objection as to non-exhaustion must therefore be dismissed.

2. Conclusion

66. 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

67. The Government submitted that the authorities had had no intention of subjecting the applicant to treatment incompatible with Article 3. His placement in a metal cage had been an appropriate safety measure in view of the fact that he had previous convictions (in 1997, 2001 and 2002) and of the particular circumstances of the case and the applicant's personality.

68. The applicant submitted that his previous convictions, which had been for non-violent offences, namely, theft, had been insufficient to justify placing him in a metal cage. The judge, in refusing his request to be released from the cage, had made only a general reference to security considerations. He had been exposed to the public during almost nine months of court hearings, which had humiliated him in his own eyes and those of his family, friends and the wider public of Alaverdi which was a small town with a small community of inhabitants. Nothing in his behaviour had justified such a measure.

2. The Court's assessment

69. The Court observes at the outset that Article 3 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 victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV)

70. The Court notes that it has previously found a violation of Article 3 in a case in which the applicant was placed in a metal cage during court hearings (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 126-29, 15 June 2010). The circumstances of the present case are similar. In particular, contrary to the Government's assertions, no specific reasons were given by the Lori Regional Court for placing and keeping the applicant in the metal cage, such as his previous convictions or his personality. Moreover, it appears that the Regional Court failed to take any decision regarding the applicant's request to be released from the cage.

71. In any event, the Court notes that nothing in the applicant's behaviour could have justified such a security measure. During the court hearings concerning his detention, where no security measures were applied to him, the applicant behaved in an orderly manner and no incidents were recorded (see paragraphs 13 and 20 above). It is true that the applicant had previous convictions and was accused of a violent crime. However, nothing in the materials suggests that his previous convictions concerned violent crimes. As regards the accusations against him, the Court considers that this factor alone was not sufficient to justify the imposition of such a stringent security measure.

72. Thus, the lack of any justification by the Lori Regional Court and of any specific reasons for placing and keeping the applicant in the metal cage prompt the Court to believe that, as in the case of *Ashot Harutyunyan*, these acts were not necessitated by any real risk of his absconding or resorting to violence but by the simple fact that it was the seat where he, as a defendant in a criminal case, was meant to be seated (ibid., § 127).

73. The Court observes that the proceedings before the Lori Regional Court lasted from March to December 2007 and at least twenty-one public hearings were held. The hearings lasted between twenty-five minutes and

seven hours. During that entire period the applicant was observed by the public, including his family and friends, in a metal cage. The Court considers that such a harsh image of judicial proceedings could lead an average observer to believe that an extremely dangerous criminal was on trial. Furthermore, it agrees with the applicant that such a form of public exposure humiliated him in his own eyes, if not in those of the public, and aroused in him feelings of inferiority. Moreover, such humiliating treatment could easily have had an impact on the applicant's powers of concentration and mental alertness during proceedings bearing on such an important issue as his criminal liability (ibid., § 128).

74. In the light of the foregoing considerations, the Court concludes that the imposition of such a stringent and humiliating measure on the applicant during the proceedings before the Lori Regional Court, which was not justified by any real security risk, amounted to degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

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

75. The applicant complained that his detention between 19 February and 12 March 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

76. 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

77. The Government submitted that the applicant's detention between 19 February and 12 March 2007 was in compliance with the law, namely, Article 138 § 3 of the CCP.

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

2. The Court's assessment

79. 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).

80. 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 laws 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).

81. 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 19 February and 12 March 2007 was unlawful within the meaning of Article 5 § 1.

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

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

83. The applicant further complained that the domestic courts had failed to provide reasons for his lengthy detention and that his release on bail had been precluded by law on account of the seriousness of the offence. 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

1. Compatibility ratione personae

(a) The parties' submissions

84. The Government argued, as regards the alleged impossibility of the applicant's release on bail, that the applicant could not claim to be a victim of a violation of Article 5 § 3. It is true that the Lori Regional Court, in its decision of 12 December 2006, had based its refusal to release the applicant on bail on Article 143 § 1 of the CCP; however, no such ground was cited by the Court of Appeal in reviewing that decision on 25 January 2007. The Court of Appeal examined the particular circumstances of the case and based its refusal on such factors as the existence of a reasonable suspicion and the danger of his absconding and obstructing justice. Thus, there was no automatic refusal of bail on the basis of Article 143 § 1 of the CCP. In conclusion, that Article had not been applied to the applicant and the complaint was therefore incompatible *ratione personae*.

85. The applicant argued that the fact that the Court of Appeal, in its decision of 25 January 2007, did not explicitly refer to Article 143 § 1 of the CCP did not deprive him of victim status. The Court of Appeal had simply failed to address the question of his release on bail. Furthermore, it had upheld the decision of the Lori Regional Court, thereby confirming the grounds for refusal of bail given by that court. In any event, Article 143 § 1 of the CCP had been applied to him by the Regional Court on two subsequent occasions, namely, on 12 January and 8 August 2007, in decisions which were not subject to review by the Court of Appeal. Thus, he could claim to be a victim of a violation of Article 5 § 3 on that ground.

(b) The Court's assessment

86. The Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004).

87. In the present case, the applicant requested to be released on bail on several occasions. On at least two occasions the Lori Regional Court dismissed the applicant's requests on the grounds provided for by Article 143 § 1 of the CCP with an explicit reference to that provision, which precluded release on bail of a detainee accused of a serious or a particularly serious offence (see paragraphs 16 and 20 above). The Government's assertion that the Court of Appeal, in reviewing one of those decisions, refused bail on a different ground appears to contradict the materials of the case. In particular, even though the Court of Appeal did not make an explicit reference to Article 143 § 1 of the CCP, the content and

essence of that decision show that it confirmed the findings reached by the Regional Court, including those concerning the refusal to grant bail. Thus, the Court agrees with the applicant that his application for bail was refused on the grounds provided by Article 143 § 1 of the CCP and that he can claim to be a victim of an alleged violation of Article 5 § 3 on that ground. The Government's objection as to incompatibility *ratione personae* must therefore be dismissed.

2. Conclusion

88. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The alleged lack of reasons for the applicant's continued detention

(a) The parties' submissions

89. The Government argued that the domestic authorities had provided relevant and sufficient reasons for the applicant's continued detention, such as the danger of his absconding, obstructing the proceedings and committing a further offence given his previous convictions.

90. The applicant submitted that the domestic courts had failed to provide reasons for his continued detention and had merely cited the relevant legal provisions without making any assessment of his particular circumstances.

(b) The Court's assessment

(i) General principles

91. 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).

92. 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).

93. 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).

94. 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).

95. 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 a 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).

96. 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).

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

97. 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 obstructing the proceedings in view of the serious nature of the charge, and on several occasions on the fact that certain investigative measures were to be carried out and that the proceedings were still pending.

98. The Court observes at the outset that grounds such as the need to carry out further investigative measures or the fact that the proceedings have not yet been completed do not correspond to any of the acceptable reasons for detaining a person pending trial under Article 5 § 3.

99. As to the risk of absconding or obstructing the proceedings, the Court notes that both the Regional 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 why they considered well founded the allegations that the applicant might abscond or obstruct the proceedings. Nor did they attempt 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, on which the courts relied on several occasions, cannot be considered as a sufficient justification of the alleged risks.

100. In the light of the above, the Court considers that the reasons relied on by the Lori Regional 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". Accordingly, there has been a violation of Article 5 § 3 of the Convention on this account.

2. Impossibility of release on bail

(a) The parties' submissions

101. The applicant submitted that the refusal to release him on bail on the ground provided for by Article 143 § 1 of the CCP conflicted with the guarantees of Article 5 § 3.

102. The Government did not comment on this point.

(b) The Court's assessment

103. The Court reiterates that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures to ensure his appearance at trial. Indeed, that Article lays down not only the right to "trial within a reasonable time or release pending trial" but also provides that "release may be conditioned by guarantees to appear for trial" (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

104. The Court further observes that it has previously found a violation of Article 5 § 3 in a number of cases in which an application for bail was refused automatically by virtue of the law (see *Caballero v. the United Kingdom* [GC], no. 32819/96, § 21, ECHR 2000-II, and *S.B.C. v. the United Kingdom*, no. 39360/98, §§ 23-24, 19 June 2001).

105. In the present case the applicant's requests to be released on bail were similarly dismissed, on the grounds that he was accused of an offence

which, under Article 19 of the CC, qualified as a serious offence and that Article 143 § 1 of the CCP precluded release on bail in such cases. The Court considers that such automatic rejection of the applicant's applications for bail, devoid of any judicial control of the particular circumstances of his detention, was incompatible with the guarantees of Article 5 § 3.

106. There has accordingly been a violation of Article 5 § 3 of the Convention on this account.

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

107. The applicant complained that the detention hearing of 12 December 2006 had not been adversarial and had failed to ensure equality of arms. Furthermore, his arguments concerning the lack of a reasonable suspicion had not been adequately addressed. Lastly, the Court of Appeal had refused to examine his appeal of 27 January 2007. He invoked Article 5 § 4 of the Convention, which, in so far as relevant, 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. Admissibility

1. Adversarial proceedings and equality of arms

108. The Government submitted that Article 5 § 4 was not applicable to the detention hearing of 12 December 2006 since that hearing had determined the question of extension of the applicant's detention on an application by the investigator, whereas that Article was applicable only to proceedings initiated by the detainee. The detention hearing in question therefore fell within the ambit of Article 5 § 3, which did not require that proceedings in the first-instance court be adversarial.

109. The applicant submitted that the Government's argument regarding inapplicability of Article 5 § 4 to the proceedings in question was unacceptable. He argued that the guarantees of Article 5 § 3 and Article 5 § 4 were applicable concurrently. The fact that the hearing had concerned extension of his detention was immaterial; what was important was the subject matter of his arguments at that hearing, namely that he was deprived of access to important documents. Thus, Article 5 § 4 was applicable.

110. The Court notes that the Government's objection is closely linked to the substance of the applicant's complaint and must therefore be joined to the merits.

2. Conclusion

111. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Adversarial proceedings and equality of arms

(a) The parties' submissions

(i) The Government

112. The Government submitted that Article 201 of the CCP allowed preliminary investigation materials to be made public only with the permission of the investigating authority. Hence, before the hearing of 12 December 2006 the investigator had submitted certain documents to the Regional Court in support of his application to have the detention extended. The investigator had not deemed it appropriate to show all the files to the applicant and his lawyer because, according to the law, the accused had the right to familiarise himself with the materials of the case only after completion of the investigation. In their submission, this did not raise an issue, however, because the proceedings in question fell within Article 5 § 3, as opposed to Article 5 § 4, and the requirement of an adversarial hearing did not apply.

(ii) The applicant

113. The applicant submitted that the investigator had given the case file, which was not disclosed to the applicant, to the judge before the latter withdrew to the deliberation room. He had been provided only with documents of a procedural nature – such as the decision to institute criminal proceedings, the arrest report and the charge – which had been attached to the investigator's application. The fact that the judge had taken the entire investigation file with him to the deliberation room meant that the judge had relied on certain documents in that file without giving the applicant the opportunity to challenge or oppose them. The decision of 12 December 2006 stated that it was based on materials confirming that the investigator's

application was well-founded, materials which he had neither been able to comment on or challenge.

(b) The Court's assessment

114. The Court will first address the question of applicability of Article 5 § 4 to the proceedings in question, namely the detention hearing of 12 December 2006 at which the Lori Regional Court decided to grant the investigator's application to extend the applicant's detention.

115. It notes that a similar objection to the one raised by the Government in the present case was examined and dismissed in the case of *Lebedev v. Russia*. In that case, the Court held that it was of little relevance whether the domestic court decided on an application for release lodged by the defence or a request for detention introduced by the prosecution (see *Lebedev v. Russia*, no. 4493/04, § 72, 25 October 2007). In reaching that conclusion the Court referred to a number of cases in which it had decided that the extension of the applicant's detention by a court at the request of the prosecution also attracted the guarantees of Article 5 § 4 (see *Graužinis v. Lithuania*, no. 37975/97, § 33, 10 October 2000; *Włoch v. Poland*, no. 27785/95, §§ 125 et seq., ECHR 2000-XI; and *Telecki v Poland* (dec.) no. 56552/00, 3 July 2003). The Court went on to conclude that Article 5 § 4 was applicable to proceedings determining questions of extension of the applicant's detention (see *Lebedev*, cited above, § 74). The Court therefore concludes that the guarantees of Article 5 § 4 are applicable to the detention hearing of 12 December 2006 and decides to dismiss the Government's objection.

116. The Court reiterates that Article 5 § 4 requires that a court examining an appeal against detention provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (see *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; and *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001).

117. Turning to the circumstances of the present case, the Court notes that on 8 December 2006 the investigator sought an order from the Lori Regional Court extending the applicant's detention. Attached to that application were a number of documents in the case, such as the decision to institute criminal proceedings, the applicant's arrest report and the decision to bring charges, namely, documents which had previously been presented to the applicant. That application was examined at the hearing of 12 December 2006, at which both the applicant and his lawyer were present. However, before withdrawing to the deliberation room to take his decision,

the presiding judge requested the entire criminal case file from the investigator. The Government conceded that the applicant had not had access to all the materials of the case file.

118. It is not for the Court to speculate whether, in deciding to extend the applicant's detention, the presiding judge also had regard to documents which had not been made available to the applicant. The fact that the presiding judge, before taking his decision, requested the entire case file creates a strong presumption that this may indeed have been the case. In any event, the manner in which the judge examined the investigator's application is in itself sufficient to conclude that the applicant was deprived of an effective opportunity to challenge that application and that there was therefore a failure to ensure adversarial proceedings and equality of arms between the parties.

119. There has accordingly been a violation of Article 5 § 4 of the Convention on this account.

2. Scope and nature of judicial control

120. The Government submitted that the judicial control of the lawfulness of the applicant's detention carried out on the investigator's application of 8 December 2006 complied with the requirements of Article 5 § 4.

121. The applicant claimed that at the detention hearing of 12 December 2006 the judge had refused to address the question of the existence of a "reasonable suspicion". The judge had justified this by saying that the court was not examining the matter of the applicant's guilt. That refusal had narrowed the scope and nature of the judicial control to limits unacceptable under Article 5 § 4.

122. The Court notes that this complaint likewise concerns the detention hearing of 12 December 2006 and is closely linked to the one examined above (see paragraphs 114-19 above). In view of the findings reached above, the Court does not find it necessary to examine this complaint separately.

3. Non-examination of the appeal of 27 January 2007

(a) The parties' submissions

123. The Government submitted that the Court of Appeal's decision not to examine the applicant's appeal of 27 January 2007 was in compliance with Article 5 § 4. That decision was justified by the fact that the investigation had been completed and the case fell outside the scope of judicial control of the pre-trial stage of the proceedings.

124. The applicant submitted that the failure to examine his appeal of 27 January 2007 had violated the guarantees of Article 5 § 4. First, the

Court of Appeal was not authorised under the domestic law and practice to leave his appeal unexamined. Furthermore, it was unacceptable to delay the examination of his appeal until 19 February 2007 and then to refuse to examine it on the ground that in the meantime the investigation had been completed.

(b) The Court's assessment

125. The Court reiterates that, according to its case-law, Article 5 § 4 enshrines, as does Article 6 § 1, the right of access to a court, which can only be subject to reasonable limitations that do not impair its very essence (see *Shishkov v. Bulgaria*, no. 38822/97, § 82-90, ECHR 2003-I (extracts), and *Bochev v. Bulgaria*, no. 73481/01, § 70, 13 November 2008).

126. The Court notes that it has already examined a similar complaint in another case against Armenia, in which it held that denial of judicial review of the applicant's detention on the sole ground that the criminal case was no longer considered to be in its pre-trial stage had been an unjustified restriction on his right to take proceedings under Article 5 § 4 and concluded that there had been a violation of that provision (see *Poghosyan v. Armenia*, no. 44068/07, §§ 78-81, 20 December 2011). The circumstances of the present case are almost identical (see paragraph 26 above). The Court therefore sees no reason to reach a different conclusion.

127. There has accordingly been a violation of Article 5 § 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

128. Lastly, the applicant raised a number of other complaints under Article 5 §§ 1 and 4 and Article 6 §§ 1 and 2 of the Convention.

129. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The applicant claimed a total of 11,761 euros (EUR) in respect of pecuniary damage. This included the cost of food parcels delivered by his family (EUR 5,900), travel expenses to the detention facility borne by his family (EUR 1,280) and loss of income during fourteen months of detention (EUR 4,581). In support of the latter claim the applicant submitted a certificate from a private company which stated that he had been employed by them as a stone quarry worker with an average monthly salary of 152,000 Armenian drams and had been released from work on 19 October 2006 as a result of his arrest. He further claimed EUR 30,000 in respect of non-pecuniary damage.

132. The Government claimed that the alleged expenses for food parcels were not necessary as the applicant had been provided with food at the detention facility. Furthermore, the alleged food parcel and travel expenses did not concern any pecuniary loss incurred by him. Moreover, they were not duly documented. As regards the alleged lost income, there was no causal link between the applicant's detention and loss of his work. Furthermore, the certificate submitted by the applicant could not be considered as proper evidence in support of his claim. Such evidence had to be either an employment contract or the relevant extract from the applicant's workbook.

133. The Court notes in respect of the alleged food and travel expenses that these do not concern any pecuniary loss incurred by the applicant and are expenses allegedly borne by his family members, who were not applicants in the present case and cannot therefore be regarded as persons directly affected by the violations found (see *Harutyunyan v. Armenia*, no. 36549/03, § 71, ECHR 2007-III). As regards the applicant's claim for lost income, the Court does not discern a causal link between the damage claimed and the violations found. It therefore rejects the applicant's claim in respect of pecuniary damage. At the same time, the Court considers that the applicant undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award him EUR 8,000 in respect of such damage.

B. Costs and expenses

134. The applicant also claimed EUR 3,030 for the costs and expenses incurred before the Court, including EUR 3,000 for legal costs and EUR 30 for postal expenses. In support of his claims he submitted a breakdown of the lawyers' work and two postal receipts (20 March 2008 – AMD 2,820 and 5 February 2008 – AMD 5,650).

135. The Government submitted that the applicant had failed to produce any evidence that the legal costs had been actually incurred. This shows that his representatives had worked free of charge. As to the postal expenses, the applicant had submitted only two postal receipts which did not reflect all the alleged expenses.

136. 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, the applicant did not produce any documentary proof in support of his claim for lawyers' fees. This claim must therefore be rejected. As to the postal expenses, regard being had to the documents in its possession, the Court considers it reasonable to award EUR 18.

C. Default interest

137. 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* admissible under Article 3 and Article 5 §§ 1, 3 and 4 of the Convention the complaints concerning the applicant's placement in a metal cage; the unlawfulness of his detention between 19 February and 12 March 2007; the lack of relevant and sufficient reasons for his continued detention; the impossibility of release on bail; the failure to ensure adversarial proceedings and equality of arms at the detention hearing of 12 December 2006; the failure to address adequately his arguments concerning the lack of a reasonable suspicion; and the failure of the Court of Appeal to examine his appeal of 27 January 2007, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's placement in a metal cage during the court proceedings;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in that the applicant's detention between 19 February and 12 March 2007 lacked a legal basis;

4. *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;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the automatic rejection of the applicant's applications for bail;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention in that the proceedings in the Lori Regional Court of 12 December 2006 were not adversarial and failed to ensure equality of arms;

7. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention about the alleged failure to address adequately his arguments concerning the alleged lack of a reasonable suspicion;

8. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the refusal to examine the applicant's appeal of 27 January 2007 against detention;

9. *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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 18 (eighteen 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;

10. *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
Registrar

Josep Casadevall
President