

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

THIRD SECTION

CASE OF MINASYAN v. ARMENIA

(Application no. 44837/08)

JUDGMENT

STRASBOURG

8 April 2014

FINAL

08/07/2014

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



In the case of Minasyan v. Armenia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Kristina Pardalos,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 44837/08) 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 Minasyan ("the applicant"), on 16 July 2008.

2. The applicant was represented 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 detention from 7 to 15 October 2008 had been unlawful; the courts had failed to provide reasons for his continued detention and the Court of Appeal had refused to examine his appeal of 22 September 2008.

4. On 22 November 2011 the application was declared partly inadmissible and the above complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Yerevan.

A. The applicant's arrest, indictment and placement in detention

6. On 18 December 2007 criminal proceedings were instituted on account of a fight with use of firearms between two groups of people, which had taken place that day. As a result of the fight, one person died and two others were wounded. The applicant went into hiding after having participated in the fight and a search for him was declared.

7. On 22 December 2007 the applicant turned himself in to the police. He surrendered his two guns and stated that he had used them during the fight in defence against an assault by unknown persons. He was arrested and taken into custody.

8. On 25 December 2007 the applicant was charged with aggravated murder, under Article 104 § 2 (6) of the Criminal Code (CC), aggravated infliction of serious injuries, under Article 112 § 2 of the CC, and illegal possession of firearms, under Article 235 § 1 of the CC.

9. On the same day the investigator applied to the Kotayk Regional Court seeking to have the applicant detained for two months. The application stated that on 18 December 2007 the applicant, in a manner dangerous to the life of many, had opened fire from illegally-possessed guns on individuals G.S., R.V. and V.H., as a result of which he had unlawfully and intentionally deprived G.S. of his life and inflicted serious injuries on R.V. and V.H. The application further stated that the applicant had to be detained, *inter alia*, because he had committed a serious crime.

10. On the same day the Kotayk Regional Court decided to grant the motion and detain the applicant for two months, from 22 December 2007 until 22 February 2008. The court found that the applicant might abscond, obstruct the examination of the case, avoid criminal liability and serving the imposed sentence as well as hinder the execution of the judgment. In so finding, the court took into account the nature and gravity of the imputed offence and the fact that the applicant had committed a serious crime.

11. On 9 January 2008 the applicant lodged an appeal, claiming that his detention was not based on a reasonable suspicion that he had committed an offence and that the Regional Court had not adduced sufficient reasons when finding that his detention was justified. He also alleged that the principle of the presumption of innocence had been breached since the Regional Court had stated in the affirmative that he had committed a grave crime.

12. On 29 January 2008 the Criminal Court of Appeal upheld the decision of the Regional Court. The Court of Appeal found that there was sufficient evidence to raise a reasonable suspicion that the applicant had committed an offence. In this regard, it referred to the applicant's statements to the investigative bodies and the results of G.S.'s autopsy, according to which he had died from a bullet wound. As to the reasons for detention, the Court of Appeal found that the applicant might obstruct the examination of

the case. In so finding, it referred to the nature and gravity of the imputed offences, the scope of possible investigative activities and the circumstances of the case. Concerning the allegation of a violation of the presumption of innocence, the Court of Appeal found that the Regional Court's statement had to be taken solely as meaning that the offence was imputed.

13. On 25 April 2008 the applicant lodged an appeal on points of law.

14. On 19 May 2008 the Court of Cassation left the appeal unexamined on the ground that it had been lodged outside the prescribed one-month time-limit.

B. Extension of the applicant's detention

1. The first four extensions of the applicant's pre-trial detention

15. On 18 February, 18 April, 16 May 2008 and 17 June 2008 the Kentron and Nork-Marash District Court of Yerevan, on the basis of corresponding motions lodged by the investigator, extended the applicant's detention, ultimately until 22 July 2008, on the ground that, taking into account the hostility between the applicant and the victim's friends and relatives which had resulted in the burning of the applicant's property, the applicant might commit a crime. It further found that, taking into account the nature and gravity of the imputed offence the applicant, if at large, might commit a new crime, abscond, obstruct the examination of the case and avoid criminal liability.

16. The applicant appealed against the decisions of the District Court claiming, *inter alia*, that the court had provided no relevant and sufficient reasons justifying his detention.

17. On 7 March, 7 May, 6 June and 4 July 2008 the Criminal Court of Appeal upheld the respective decisions of the District Court. It held that the applicant's continued detention on remand was justified, taking into account the applicant's personality and the nature and gravity of the imputed offence, punishable by a maximum of life imprisonment, which increased the likelihood of his absconding.

18. The applicant appealed on points of law against the respective decisions of the Court of Appeal.

19. On 19 May 2008 the Court of Cassation decided to leave the applicant's first appeal unexamined on the ground that it had been lodged outside the prescribed one-month time-limit. On 2 July, 4 August and 5 September 2008 the Court of Cassation declared the applicant's other appeals inadmissible for lack of merit.

2. Modification of the charges and the fifth extension of detention

20. On 4 July 2008 the investigator decided to drop some charges against the applicant and modify others. In particular, the charge of illegal

arms possession (Article 235 § 1 of the CC) was dropped, while the charges under Article 104 § 2 (6) and Article 112 § 2 (1) were modified and replaced with a charge for two counts of aggravated attempted murder (Article 104 § 2 (1) and (6) in conjunction with Article 34) and a charge for two counts of aggravated hooliganism (Article 258 §§ 3 (1) and (4) respectively).

21. On 11 July 2008 the investigator applied to have the applicant's detention extended by two more months.

22. On 17 July 2008 the District Court, having examined the materials of the criminal case, decided to grant partially the request and to extend the applicant's detention for one month, until 22 August 2008, on the same grounds as those invoked in its previous decisions. As a reason for considering that the applicant might avoid responsibility, the court referred to the fact that the applicant had gone into hiding after committing the crime and thus obstructed the examination of the case.

23. On 1 August 2008, upon the applicant's appeal, the Court of Appeal upheld the decision of the District Court finding that the applicant, if he remained at large, might abscond, obstruct the proceedings or, given the continuing hostility between the two sides, might commit new crimes.

3. Modification of the charges and the sixth extension of detention

24. On 12 August 2008 the investigator decided to drop or modify the charges against the applicant. In particular, the charge of aggravated hooliganism under Article 258 § 3 (1) was dropped and new charges under Article 104 § 2 (1) and (6) in conjunction with Article 34 of the CC and Article 258 § 4 of the CC were brought.

25. Meanwhile, on 12 August 2008 the investigator applied to have the applicant's detention extended for two months.

26. On 15 August 2008 the District Court of Yerevan granted the investigator's request partially and extended the applicant's detention for one month, until 22 September 2008.

4. The seventh extension of detention

27. On 16 September 2008 the investigator applied again to have the applicant's detention extended for 15 days.

28. On 17 September 2008 District Court granted the request and extended the applicant's detention until 7 October 2008, taking into account the nature and dangerousness of the imputed offence, the factual circumstances of the case, and the fact that the applicant, if he remained at large, might abscond, obstruct the proceedings or avoid criminal liability.

29. On 22 September 2008 the applicant lodged an appeal.

30. It appears that, in the meantime, the investigation was completed and, on 1 October 2008, the applicant's case was referred to the Northern Criminal Court for trial.

31. On 7 October 2008 the Criminal Court of Appeal decided to leave the appeal of 22 September 2008 unexamined on the ground that the scope of judicial control over pre-trial proceedings was limited to the investigation stage. Since the investigation had been completed and the case had been referred to a court, it was now up to that court to examine questions of lawfulness and validity of detention.

32. On 7 November 2008 the applicant lodged an appeal on points of law against the Court of Appeal's decision of 7 October 2008. However, in finalising his appeal, the applicant requested that his detention be cancelled.

33. On 21 November 2008 the Court of Cassation decided to leave the applicant's appeal unexamined on the ground that it had been directed against the decision of the District Court of 17 September 2008, which was not subject to an appeal on points of law. In this respect, it referred to the fact that the request contained in the applicant's appeal on points of law was to cancel his detention as ordered by the decision of the District Court of 17 September 2008.

34. In the meantime, on 15 October 2008 the judge of the Northern Criminal Court decided to take over the examination of the case. In the same decision, the judge imposed detention on the applicant, as a preventive measure.

35. On 27 October 2008 the applicant lodged an appeal against this decision.

36. On 23 December 2008 the Court of Appeal dismissed the applicant's appeal, finding that his detention was justified because, taking into account the gravity and nature of the imputed offence, there was a high risk that he might abscond or obstruct the examination.

37. On 10 April 2009 the Court of Cassation dismissed the applicant's appeal on points of law.

38. On an unspecified date the criminal case, in accordance with procedural amendments introduced in the meantime, was transferred to the Kotayk Regional Court for examination. It appears that, during the examination of the case, the prosecutor decided to modify the charges against the applicant by replacing them with a charge of attempted murder in excess of the boundaries of necessary defence (Article 108 in conjunction with Article 34 of the CC) and a charge of aggravated hooliganism (Article 258 § 3 (1) of the CC).

39. On 8 May 2009 the Kotayk Regional Court found the applicant guilty under Article 108 in conjunction with Article 34 and Article 258 § 3 (1) and sentenced him to a total of three years' imprisonment.

II. RELEVANT DOMESTIC LAW

40. Article 136 § 2 of the Code of Criminal Procedure provides that detention may be ordered by a court decision only and that the court can adopt such a decision upon its own initiative during the court proceedings.

41. According to Article 291 § 1 a judge shall, in a procedure prescribed by law, decide to take over the examination of the case submitted to the court.

42. Article 292 § 1 provides that the judge who has taken over the examination of the case shall examine the materials of the case and within fifteen days from the date of taking over the examination of the case shall adopt a decision setting the case down for trial.

43. Article 293 § 2 provides that the decision setting the case down for trial shall contain a decision cancelling, modifying or imposing a preventive measure.

44. According to Article 300, together with adopting decisions, the court is obliged to examine the issue of whether or not to impose a measure of restraint and whether or not the type of measure of restraint imposed is justified.

THE LAW

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

45. The applicant complained that his detention from 7 to 15 October 2008 was not authorised by a court and was therefore unlawful. He relied on 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
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

A. Admissibility

46. 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

47. The Government submitted that the applicant's detention from 7 to 15 October 2008 was in compliance with the law, namely, Article 138 § 3 of the CCP.

48. The applicant contested that submission.

2. The Court's assessment

49. 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).

50. The expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof (see, among other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 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.

51. 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).

52. The Court notes that it has already examined an identical complaint in other cases 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; *Piruzyan v. Armenia*, no. 33376/07, § 79-82, ECHR 2012 (extracts); *Malkhasyan v. Armenia*, no. 6729/07, § 60-63, 26 June 2012; and *Sefilyan v. Armenia*, no. 22491/08, § 74-77, 2 October 2012). It sees no reason to reach a different conclusion in the present case

and concludes that the applicant's detention from 7 to 15 October 2008 was unlawful within the meaning of Article 5 § 1.

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

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

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

> "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

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

B. Merits

1. The parties' submissions

56. 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.

57. The Government submitted that the applicant was suspected of a serious crime, which required a thorough investigation and implied numerous actions. The fact that the applicant had fled after the crime had been committed served as additional grounds warranting the conclusion that he was liable to abscond. The Government further stressed that the length of the pre-trial investigation had been due to the complexity of the case (a fight with use of firearms between two groups of people), the necessity to take a large number of investigative steps, and the need to ensure that the parties had an opportunity to study the case file.

2. The Court's assessment

(a) General principles

58. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the

lawfulness of his or her continued detention. However, 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 continue to justify the deprivation of liberty. Where such grounds are found to have been "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, §§ 152 and 153, ECHR 2000-IV).

59. The Convention case-law has developed four basic 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 v. France*, 26 June 1991, § 51, Series A no. 207).

60. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the evidence 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 must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish the existence of such evidence or to take the place of the national authorities which ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of true statements by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

61. The applicant's pre-trial detention lasted from 22 December 2007 till his conviction on 8 May 2009. The period to be taken into consideration therefore lasted about one year, four months and sixteen days.

62. Assessing the grounds for the applicant's continued detention, the Court notes that the competent judicial authorities advanced four principal reasons for not granting the applicant's release, namely: 1) that the applicant remained under a strong suspicion of having committed the crime of which he was accused; 2) the serious nature of the offence in question; 3) the fact that the applicant would be likely to abscond and pervert the course of

justice if released, given the sentence which he faced if found guilty as charged; and 4) that there was still a risk that the applicant would commit a new crime.

63. The Court accepts that the reasonable suspicion of the applicant having committed the offence with which he had been charged, being based on cogent evidence, persisted throughout the entire period of his detention. It also agrees that although the qualification of the crime was subsequently changed by the prosecutor to a less severe one (see paragraph 38), the facts of the crime remained unchanged throughout the proceedings.

64. As regards the danger of the applicant's absconding, the Court notes that the judicial authorities relied on the likelihood that a severe sentence would be imposed on the applicant, given the serious nature of the offence at issue. The national courts also relied on the fact that immediately after the offence the applicant had gone into hiding and a search was instigated (see paragraph 22). While it is true that the domestic courts used the same reasoning concerning this ground throughout the applicant's detention and that, with the passage of time, this ground inevitably became less relevant, the Court cannot conclude on this basis alone that the authorities did not have reasonable grounds to keep him in custody in order to prevent his absconding (compare *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005). Having in mind the nature of the case (namely, the seriousness of the crime), it was reasonable to believe that the risk of the applicant's absconding persisted throughout his pre-trial detention.

65. As regards the other ground – the danger of reoffending – the Court notes that the applicant was charged with murder and inflicting heavy injuries as a result of the fight with use of firearms between two groups of people. The Court further notes that the national courts relied on the continuing hostility between the two sides and the fact that the applicant's property had been burned while he was in detention (see paragraph 15). The national courts viewed these circumstances, taken as a whole, as a serious indicator of a risk that the applicant, if at large, might commit further crimes against the victims' friends and relatives.

66. The Court lastly observes that the applicant's case was of a certain complexity, involving a difficult task of determining the facts and the degree of alleged responsibility of each of the defendants, and an examination of forensic evidence, including a number of expert opinions. Its investigation and examination at first instance lasted about one year and four months. The materials presented by the parties show that within the nine and a half months' period of investigation the prosecution had obtained several expert opinions, questioned the applicant, confronted him with witnesses and drawn up the bill of indictment. The Court, therefore, does not observe any delays in the course of the trial proceedings. The trial court took steps to ensure that the hearings were attended by the parties and other participants in the proceedings, to avoid any unjustified adjournments. The

Court is of the opinion that the trial proceedings were conducted with the requisite diligence, having regard to the complexity of the case and the amount of evidence which needed to be thoroughly examined by the trial court.

67. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

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

68. The applicant complained that the Court of Appeal had refused to examine his appeal of 22 September 2008. He invoked Article 5 § 4 of the Convention, which, in so far as relevant, reads as follows:

> "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. Exhaustion of domestic remedies

69. The Government contended that the applicant had failed to exhaust the domestic remedies available to him, within the meaning of Article 35 § 1 of the Convention. In this connection, they argued that the applicant's appeal on points of law had been directed against the decision of the District Court of 17 September 2008, which had not been subject to appeal. For this reason the Court of Cassation left the appeal unexamined.

70. The applicant submitted that the issue of non-examination by the Court of Appeal of his appeal of 22 September 2008 had been raised in his appeal on points of law.

71. Having examined the applicant's appeal of 7 November 2008, the Court observes that the applicant raised in his appeal on points of law the complaint about the non-examination of his appeal by the Court of Appeal. The fact that in finalising his appeal the applicant requested that his detention be cancelled (see paragraph 32) did not deprive the domestic courts of the opportunity of addressing the issue of non-examination. In sum the applicant provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged by him.

2. Conclusion

72. 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

73. The applicant submitted that the failure to examine his appeal of 22 September 2008 had violated the guarantees of Article 5 § 4. The Court of Appeal was not authorised to refuse to examine his appeal on the ground that in the meantime the investigation had been completed.

74. The Government did not submit any observations on the merits.

2. The Court's assessment

75. 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).

76. The Court notes that it has already examined similar complaints in cases against Armenia, in which it held that a 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 was an unjustified restriction of his right to take proceedings under Article 5 § 4 (see *Poghosyan v. Armenia*, no. 44068/07, §§ 78-81, 20 December 2011 and *Piruzyan v. Armenia*, no. 33376/07, §§ 125-127, ECHR 2012 (extracts)).

77. The circumstances of the present case are identical as in the previous Armenian cases mentioned above (see paragraph 76). The Court therefore sees no reason to reach a different conclusion.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

81. The Government submitted that this claim was unfounded.

82. The Court considers that the applicant undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award him EUR 6,000 in respect of such damage.

B. Costs and expenses

83. The applicant also claimed EUR 3,030 for 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 three postal receipts.

84. The Government submitted that the applicant had failed to substantiate his claims concerning legal fees with any documents. He had not submitted any proof that these costs had been actually incurred or were necessary, or that an agreement existed between him and his lawyers to make such payments in the future.

85. 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 30.

C. Default interest

86. 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 5 §§ 1, 3 and 4 of the Convention the complaints concerning the unlawfulness of the applicant's detention between 7 to 15 October 2008; the lack of relevant and sufficient reasons for his continued detention and the failure of the Court of

Appeal to examine his appeal of 22 September 2008, 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 7 to 15 October 2008 lacked a legal basis;

3. *Holds* that there has been no 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* 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 22 September 2008 against detention;

5. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 30 (thirty 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President