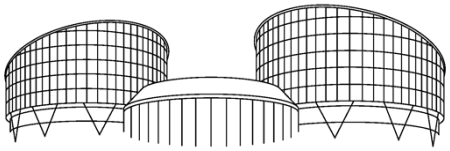

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VARDAN MARTIROSYAN v. ARMENIA

(Application no. 13610/12)

JUDGMENT

Art 5 § 1 • Lawful detention • Absence of grounds for authorising continuation of detention during trial and for an uncertain duration
Art 5 § 3 • Reasonableness of pre-trial detention • Failure to provide relevant and sufficient reasons
Art 5 § 4 • Procedural guarantees of review • Violation of equality of arms
Art 5 § 5 • Compensation • No enforceable right to compensation for non-pecuniary damage either prior to or after delivery of Court judgment
Art 6 § 2 • Presumption of innocence • Wording of decisions examining continued detention not amounting to explicit and unqualified declaration of guilt in the circumstances, and rectified by Court of Appeal • No acknowledgment of error or rectification of explicit and unqualified statement in decision committing applicant to trial "in order to hold [him]...criminally liable"

STRASBOURG

15 June 2021

FINAL

15/09/2021

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

In the case of Vardan Martirosyan v. Armenia,

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

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 13610/12) 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 Martirosyan ("the applicant"), on 7 March 2012;

the decision to give notice to the Armenian Government ("the Government") of the complaints concerning the lawfulness of the applicant's detention during the court proceedings, the alleged lack of reasons for the applicant's continued detention, the alleged violation of the principle of equality of arms and failure to address the applicant's arguments in the appeal proceedings, the alleged absence of an enforceable right to compensation and the alleged breach of the principle of presumption of innocence and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 27 May 2021,

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

INTRODUCTION

1. The case raises several issues under Article 5 of the Convention, including the alleged unlawfulness of the applicant's detention during the court proceedings (Article 5 § 1); the alleged failure of the domestic courts to provide relevant and sufficient reasons for the applicant's continued detention (Article 5 § 3); the alleged lack of equality of arms at a detention hearing before the appeal court (Article 5 § 4) and the alleged absence of an enforceable right to compensation (Article 5 § 5). It also examines whether the applicant's right to be presumed innocent was violated by the decisions taken by the courts during the pre-trial and the trial proceedings (Article 6 § 2).

THE FACTS

2. The applicant was born in 1984 and, at the material time, was detained at Nubarashen Remand Prison in Yerevan. The applicant was represented by Mr T. Safaryan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT AND HIS PRE-TRIAL DETENTION

5. On 1 July 2011 the applicant was taken into custody on suspicion of involvement in an attempted drug smuggling.

6. On 2 July 2011 criminal proceedings were instituted on account of attempted drug smuggling.

7. On 3 July 2011 the applicant was charged with attempted drug smuggling and on the same date the Kentron and Nork-Marash District Court of Yerevan allowed an application lodged by the investigator seeking to have the applicant detained for a period of two months. The court held, with reference to, *inter alia*, Article 136 of Code of Criminal Procedure ("CCP" – see paragraph 26 below), that, since there was a reasonable suspicion that the applicant had committed the offence imputed to him, he could abscond and obstruct the proceedings by exerting unlawful influence on those involved in the proceedings and suppressing evidence.

8. On 26 August, 28 October and 28 December 2011 the same District Court extended the applicant's detention, upon applications lodged by the investigator, on the same grounds as before, on each occasion for a period of two months.

9. As regards, in particular, the decisions of 28 October and 28 December 2011, the District Court first summarised the circumstances of the case, as "established by the investigation", mentioning that the applicant had been arrested on a suspicion of having committed attempted drug smuggling and later charged with that offence, followed by a brief summary of the investigator's application and the parties' submissions, and then proceeded with the following reasoning:

> "The court, having examined [the investigator's] application, checked the documents confirming its well-foundedness and the attached materials, and heard the investigator and [the applicant's] lawyer, [as well as] taking into account the nature and the dangerousness of the act committed by the accused (*հաշվի առնելով մեղադրյալի կատարած արարքի բնույթը, վտանգավորության աստիճանը*), finds that the application must be allowed...".

10. On 2 November and 29 December 2011 the applicant lodged appeals against the decisions of 28 October and 28 December 2011. He submitted, *inter alia*, that the District Court had authorised his detention and refused to release him on bail without any factual basis or evidence suggesting that he would abscond or obstruct the proceedings and despite the fact that he had no criminal record or past involvement in drugs trade and had permanent residence and employment. He had fully cooperated with the investigating authority by providing all the information known to him and had never tried to hide from the prosecution. The applicant further submitted that the court's statements referring to the nature and the dangerousness of the act "committed" by him reflected an opinion that he was guilty of the offence in question, in breach of the principle of presumption of innocence.

11. On 10 November 2011 and 19 January 2012 the Criminal Court of Appeal dismissed the applicant's appeals, finding that the grounds for the applicant's continued detention still persisted. As for the allegations of a breach of the presumption of innocence, it held as follows.

12. In its decision of 10 November 2011, the Court of Appeal agreed with the applicant's argument that a court overseeing pre-trial proceedings did not have authority to use terms about a person's guilt but considered that, in making the impugned statement when granting the investigator's application, the District Court had been guided by the provisions of the CCP related to pre-trial detention. The applicant's allegations of unlawfulness of that decision were therefore unfounded.

13. In its decision of 19 January 2012 reviewing the decision of the District Court of 28 December 2011 (see paragraph 9 above), the Court of Appeal stated, with reference to, *inter alia*, Article 18 § 3 of the CCP (see paragraph 34 below), that the courts were competent at that stage of the proceedings to determine the question of existence of a reasonable suspicion but not questions of guilt. The former required less evidential basis than the latter, while the courts should not proceed on the assumption that the accused was guilty of an offence. It concluded that the District Court had exceeded the authority vested in it at that stage of the proceedings by making the impugned statement. Consequently, the statement in question could not serve as a ground for granting the investigator's application.

14. On 28 February 2012 the District Court extended the applicant's detention, upon the investigator's application, by another month on the same grounds as before.

15. On 4 March 2012 the applicant lodged an appeal.

16. By a letter dated 14 March 2012 the Criminal Court of Appeal summoned the applicant's defence lawyer to a hearing on the applicant's appeal, scheduled for 4 p.m. on 15 March 2012. This letter was dispatched on 15 March 2012 and was received by the applicant's lawyer on 16 March 2012.

17. On 15 March 2012 the Criminal Court of Appeal held the hearing as scheduled and dismissed the applicant's appeal, stating that there was still reasonable suspicion that the applicant would abscond. Neither the applicant nor his lawyer were present at this hearing, which was held in the presence of the investigator who made submissions in support of his application to have the applicant's detention on remand extended. The Court of Appeal stated in its decision that the applicant's lawyer, being aware of the time and place of the hearing, had failed to appear and had informed the court by telephone that he was busy with another criminal case and did not object to the hearing being held in his absence, as evidenced by the relevant "transcript of a telephone conversation".

18. The Government alleged that the applicant's lawyer had been duly notified of the hearing and, in support of their allegations, submitted several documents entitled "transcript of a telephone conversation". According to one such transcript dated 14 March 2012, the presiding judge called the applicant's lawyer on that day and informed him that the hearing was scheduled for 4 p.m. on 15 March 2012. According to another transcript dated 15 March 2012, before the start of the hearing the lawyer told the presiding judge by telephone that he thought that the hearing was scheduled for 16 March 2012. After the judge pointed out to the lawyer that he had been notified of the hearing both in writing and by telephone, the lawyer stated that he did not object to the hearing being held in his absence since he was attending another hearing at that time.

19. The applicant contested the findings made by the Court of Appeal regarding his lawyer's absence and the content of the submitted transcripts, alleging that it was only on 15 March 2012, around 4.30 p.m., that is half an hour after the hearing had already begun, that his lawyer had been contacted for the first time regarding that hearing. The telephone call was made by the investigator – and not the judge – who inquired with the lawyer whether he was going to appear, to which the lawyer replied that he had not been notified of that hearing and that he was unable to attend because of other business. The lawyer, however, had never given his consent for the hearing to be held in his absence.

II. THE APPLICANT'S DETENTION DURING TRIAL

20. On 12 March 2012 the investigation into the applicant's criminal case was completed and the case was transferred to the Malatia-Sebastia District Court of Yerevan for examination on the merits.

21. On 15 March 2012 Judge F. of the Malatia-Sebastia District Court took over the applicant's criminal case.

22. On 27 March 2012 Judge F. took a decision setting the criminal case down for trial (*Որոշում քրեական գործը դատական քննության նշանակելու մասին*). The relevant part of the decision stated as follows:

> "I, [Judge F.] of the Malatia-Sebastia District Court of Yerevan, having examined the criminal case against [the applicant and the two co-accused] ..., have established that ... there are no circumstances in the materials of the case warranting termination of the proceedings [and that] the investigation has been conducted without significant violations of the criminal procedure law...
>
> In the light of the above and being guided by the requirements of Articles 292 and 293 of [the CCP], I have decided to set [the criminal case] down for trial on 6 April 2012 at 12.30 p.m. at the Malatia-Sebastia District Court of Yerevan in order to hold ... [the applicant and the two co-accused] criminally liable [(*քրեական պատասխանատվության ենթարկելու համար*)] under [the relevant Articles of the Criminal Code], ... [and to] leave unchanged the list of persons summoned to court and the preventive measure applied in respect of the accused."

23. On 25 February 2013 the applicant lodged an application with the judge seeking to be released from detention.

24. On the same date Judge F. dismissed the application on the ground that there were sufficient facts confirming the reasonable suspicion of the applicant's involvement in the offence and that the grounds and conditions for applying detention were still present.

25. On 20 August 2013 the Malatia-Sebastia District Court, sitting in a single judge formation composed of Judge F., delivered its judgment finding the applicant guilty and sentencing him to four years and six months in prison.

RELEVANT LEGAL FRAMEWORK

I. THE CODE OF CRIMINAL PROCEDURE (1999 – "THE CCP")

A. Pre-trial detention

26. Article 136 of the CCP provides that a decision of the authority conducting the proceedings which imposes a preventive measure must be reasoned and must contain an indication of the offence imputed to the suspect or the accused and a substantiation of the necessity of applying the relevant preventive measure. Detention may be imposed only by a court decision upon the investigator's or the prosecutor's application or, during the court proceedings, of the court's own motion.

27. Article 138 provides that, during the pre-trial proceedings of a criminal case, the detention period may not exceed two months, except for cases prescribed by the CCP. The detention period may be extended by the court up to six months, taking into account the particular complexity of the case, and in exceptional cases – when a person is accused of a grave or particularly grave crime – up to twelve months. During the pre-trial proceedings of a criminal case, the accused's detention period may not exceed one year. There are no limits on the duration of the accused's detention period during the court proceedings of a criminal case.

28. Article 139 describes the procedure for extending the accused's pre-trial detention period upon the investigator's or the prosecutor's application and provides, *inter alia*, that, when extending the detention period, the court may do so within the limits prescribed by the CCP, on each occasion for a period not exceeding two months.

B. Review of decisions imposing or extending detention by the Court of Appeal

29. Article 288 provides that the judicial review of the lawfulness and well-foundedness of the detention order and any extension of the detention period is carried out by the Court of Appeal. The judicial review takes place *in camera* in the presence of the prosecutor and the defence lawyer. If a party who has been notified beforehand of the date of examination of the appeal fails to appear, this will not prevent the judicial review from taking place.

C. Preparatory stage of the trial

30. Article 292 provides that the judge who has taken over a case examines the materials of the case and within fifteen days from the date of taking over the case adopts, *inter alia*, a decision setting the case down for trial.

31. Article 293 § 2 provides that the decision setting the case down for trial shall contain, *inter alia*, a decision discontinuing, changing or applying a preventive measure.

32. Article 300 provides that, when adopting decisions, the court is obliged to decide whether to apply a preventive measure in respect of the accused and, in case a preventive measure has been applied, whether the type of the preventive measure chosen is justified.

D. Compensation for unlawful deprivation of liberty

33. Article 66 § 3 provides that an acquitted person is entitled to claim full compensation for pecuniary damage sustained as a result of unlawful arrest, detention, prosecution and conviction – that is to say any possible lost profits.

E. Presumption of innocence

34. Article 18 § 1 provides that a person suspected or accused of an offence is presumed innocent until his or her guilt is proven by a final judicial judgment in accordance with the procedure prescribed by the CCP. Article 18 § 3 provides that conclusions regarding a person's guilt may not

be based on assumptions and must be confirmed by the entirety of sufficient, correlated and compelling evidence.

II. THE CIVIL CODE (1999 – "THE CC")

A. The relevant provisions as in force at the material time

35. Article 17 of the CC provides that a person whose rights have been violated may claim full compensation for the damage suffered, unless the law or a contract provides for a lower level of compensation. Damage that may be compensated includes the expenses borne or to be borne by a person whose rights have been violated in connection with (i) restoring those violated rights, (ii) the loss of his property or damage to it (pecuniary damage), including lost earnings, which the person would have realised under normal conditions of civil life had his rights not been violated.

36. Article 1064 provides that damage caused as a result of unlawful conviction, criminal punishment, the imposition of a preventive measure in the form of detention or a written undertaking not to leave one's residence, or the imposition of an administrative penalty shall be compensated for in full by the Republic of Armenia, in accordance with a procedure prescribed by law, regardless of whether it was the officials of the relevant body of inquiry, investigating authority, prosecutor's office or courts who were at fault in that regard.

B. The amendments introduced in 2014

37. Since 1 November 2014 Article 17 of the CC has included non-pecuniary damage in the list of the types of civil damage for which compensation can be claimed in civil proceedings in specific cases. The CC was supplemented by a new Article 162.1 whose paragraph 2 currently provides that a person may claim compensation for non-pecuniary damage if it has been established by the prosecuting authority or the court that a decision, action or omission of a public authority has resulted in a breach of a number of rights guaranteed by the Armenian Constitution and the European Convention on Human Rights, including the right to liberty and security of person.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

38. The applicant raised a number of complaints under Article 5 of the Convention: (a) under Article 5 § 1 he alleged that the decision of 27 March 2012 (see paragraph 22 above) and the ensuing detention had been unlawful

(b) under Article 5 §§ 1 and 3 he alleged that the domestic courts had failed to provide reasons for his continued detention and that the respective judicial decisions lacked lawfulness; (c) under Article 5 § 4 he alleged that the procedural guarantees of that Article had not been respected at the hearing of 15 March 2012 and that the Court of Appeal had failed to address his arguments when reviewing the decisions of the District Court; and (d) under Article 5 § 5 he alleged that he had had no enforceable right to compensation.

Article 5 of the Convention, in so far as relevant, provides 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;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 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.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

39. The Government submitted that the applicant had failed to exhaust the domestic remedies in respect of his complaints under Article 5 §§ 3 and 4 of the Convention, because he had not lodged an appeal on points of law with the Court of Cassation against the decision of the Criminal Court of Appeal of 15 March 2012 (see paragraph 17 above).

40. The applicant submitted that an appeal on points of law had not been an effective remedy in respect of his complaints and had not been capable of affording redress.

41. The Court refers to the general principles on exhaustion of domestic remedies stated, *inter alia*, in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Gherghina v. Romania* ((dec.) (GC], no. 42219/07, §§ 83-89, 9 July 2015). The Court notes that it has already examined and dismissed a similar objection of non-exhaustion by the Government in a number of cases against Armenia, finding that an appeal on points of law was not an

effective remedy in detentions cases (see *Arzumanyan v. Armenia*, no. 25935/08, §§ 28-32, 11 January 2018; *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, § 76, 8 October 2020; and *Smbat Ayvazyan v. Armenia*, no. 49021/08, § 78, 8 October 2020). Given that the Government have not adduced any new elements, it sees no reasons in the present case to depart from its earlier findings and therefore dismisses the Government's objection.

42. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention (alleged unlawfulness of the applicant's detention during trial (from 27 March 2012 to 20 August 2013))

(a) The parties' submissions

43. The applicant submitted that the decision of the Malatia-Sebastia District Court of Yerevan of 27 March 2012 setting the case down for trial (see paragraph 22 above) could not be considered as being "prescribed by law" because it was limited to the following words: "to leave the preventive measure unchanged". While relying on Articles 292 and 293 of the CCP, the District Court had failed to comply with the requirement of Article 300 of the CCP to provide reasons for its decision extending his detention imposed at the pre-trial stage (see paragraph 32 above) and had simply rubber-stamped the decisions taken at that stage without providing any reasons or setting any time-limits for his continued detention. Such practice was contrary to the Court's case-law (the applicant refereed, notably, to *Nakhmanovich v. Russia*, no. 55669/00, §§ 70 and 71, 2 March 2006, and *Yeloyev v. Ukraine*, no. 17283/02, § 54, 6 November 2008), since it had failed to comply with the principle of protection from arbitrariness and had left him in a state of uncertainty as to the grounds and time-limits for his detention after 27 March 2012. The Government's assertion that the judge, having studied the case file, had reached conclusions about the existence of a reasonable suspicion and grounds for his continued detention (see paragraph 44 below) had been erroneous because the decision of 27 March 2012 did not contain any such findings. Thus, during the 15 months which he had spent in detention following that decision and until his conviction on 20 August 2013 (see paragraph 25 above) the court never reviewed the question of necessity of detention, the only exception being the decision of 25 February 2013 whereby the court had dismissed his application for release (see paragraph 24 above). The Government's argument that the decision of 27 March 2012 was to be viewed in the light of the decision of

25 February 2013 was contrary to the very notion of the right to liberty and security, especially taking into account the timing of those two decisions and the fact that the latter was the only other decision taken during such a long period of time.

44. The Government submitted that the decision of 27 March 2012 had been lawful and in compliance with domestic law, namely Articles 292 and 293 of the CCP (see paragraphs 30 and 31 above). During the 15 days allocated to the judge after taking over the applicant's case, the judge had examined the overall lawfulness of the pre-trial investigation, including of the applied preventive measure. Having studied the case file, the judge had concluded that the reasonable suspicion and the grounds for detention still persisted. The fact that the judge decided to set the case down for trial, as opposed to returning it for further investigation, implied that he did not find any grave breaches of substantive or procedural law during the pre-trial stage, which was indicated in the relevant decision (see paragraph 22 above). Furthermore, the decision of 27 March 2012 leaving the detention imposed on the applicant unchanged was to be viewed in the light of the assessment provided by the same court in its decision 25 February 2013 dismissing the applicant's application for release, which indicated the grounds and conditions which served as a basis for the applicant's continued detention (see paragraph 24 above).

(b) The Court's assessment

45. The Court reiterates that, in order to comply with Article 5 § 1 of the Convention, the detention in issue must take place "in accordance with a procedure prescribed by law" and be "lawful". The Convention here refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the aim of Article 5, namely to protect the individual from arbitrariness (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 47, ECHR 2003-IV; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; and *Vasenin v. Russia*, no. 48023/06, § 108, 21 June 2016).

46. In the present case, the Court notes that, in accordance with Article 293 of the CCP, the decision setting a criminal case down for trial must contain also a decision regarding the preventive measure (see paragraph 31 above). The decision of 27 March 2012 setting the applicant's criminal case down for trial contained the following finding in that regard: "to leave unchanged ... the preventive measure applied in respect of the accused" (see paragraph 22 above). Thus, the District Court's entire decision regarding the applicant's continued detention was limited to that single phrase. The applicant argued that this had been in breach of the requirements of Article 300 of the CCP (see paragraph 32 above), as well as the Court's case-law (see paragraph 43 above).

47. As regards the former, the Court notes that Article 300 of the CCP requires the trial court, "when adopting decisions", to take also a decision on the preventive measure, if such a measure has been applied (see paragraph 32 above). It is not clear, however, whether the vague reference to "decisions" also includes decisions setting the case down for trial taken during the preparatory stage of the trial in accordance with Article 292 of the CCP (see paragraph 30 above), in this case the decision of 27 March 2012 (see paragraph 22 above). It is notable that that decision did not make any reference to Article 300 of the CCP. In any event, even assuming that Article 300 of the CCP was applicable to the decision in question, it cannot be said that that Article explicitly requires the trial court to provide reasons for its decision regarding the necessity of keeping the accused in detention. As to whether such requirement may have been implicit in that Article and, if so, whether it has been complied with, the Court does not consider it necessary to determine these questions in view of its findings below.

48. The Court reiterates that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002; *Nakhmanovich v. Russia*, no. 55669/00, § 70, 2 March 2006; and *Yeloyev v. Ukraine*, no. 17283/02, § 54, 6 November 2008). It notes that it has already found a violation of Article 5 § 1 on that ground in circumstances similar to those in the present case (see, for example, *Nakhmanovich*, cited above, §§ 70-72; *Yeloyev*, cited above, §§ 54-55; *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, § 76, 27 November 2008; and *Kharchenko v. Ukraine*, no. 40107/02, §§ 75-76, 10 February 2011). Similarly to those cases, the District Court, in its decision of 27 March 2012 setting the applicant's criminal case down for trial, simply upheld the detention imposed on him at the pre-trial stage without providing any reasons whatsoever for its decision or setting any time-limits for the applicant's continued detention (see paragraph 22 above). This left the applicant in a state of uncertainty as to the grounds and duration of his detention after that date. As for the decision of 25 February 2013 taken upon the applicant's application for release, the Court notes that, contrary to the Government's assertion (see paragraph 44 above), that decision did not contain any specific reasons justifying the applicant's detention and, moreover, was taken almost one year after the decision of 27 March 2012 (see paragraph 24 above). It therefore cannot be regarded as rectifying the flaws of that decision.

49. The Court notes that this appears to have been the general practice at the material time, since the relevant provisions of domestic law explicitly required the courts to provide reasons and to set time-limits for continued detention only during the pre-trial stage of the proceedings (see paragraphs 7, 8, 14 and 26-28 above) and it is not clear whether such

requirements applied to decisions taken at the preparatory stage of the trial, like in the present case (see paragraphs 22, 30 and 31 above, and compare *Molodorych v. Ukraine*, no. 2161/02, § 105, 28 October 2010). In these circumstances, the Court considers that the District Court's decision of 27 March 2012 did not afford the applicant an adequate protection from arbitrariness which is an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention, and that, therefore, the applicant's detention from 27 March 2012 to 20 August 2013 failed to comply with the requirements of Article 5 § 1 of the Convention.

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

2. Article 5 §§ 1 and 3 of the Convention (alleged lack of relevant and sufficient reasons for the applicant's pre-trial detention and alleged unlawfulness of the decisions of 28 October and 28 December 2011 and 28 February 2012)

51. The applicant submitted that the domestic courts had failed to provide relevant and sufficient reasons for his continued detention in breach of Article 5 § 3 of the Convention. Their respective decisions taken during the pre-trial proceedings, namely the decisions of 28 October 2011 and 28 December 2011 and 28 February 2012 (see paragraphs 8 and 14 above), had failed to comply with domestic law which required the courts to reason their decisions on pre-trial detention (see paragraph 26 above), and had therefore been unlawful in breach of Article 5 § 1 of the Convention.

52. The Government submitted that the domestic courts had provided relevant and sufficient reasons for the applicant's continued detention as stated in their respective decisions which had been adopted in compliance with the relevant domestic rules.

53. The Court considers it necessary first to address the applicant's complaint under Article 5 § 3 of the Convention and refers to its general principles under that Article relating to the right to be released pending trial (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 92-102, ECHR 2016 (extracts), and *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 48-53, 20 October 2016). It notes that it has already found the use of stereotyped formulae when imposing and extending detention to be a recurring problem in Armenia (see, as most recent authorities, *Jhangiryan*, cited above, § 91, and *Smbat Ayvazyan*, cited above, § 88). In the present case, the domestic courts, when ordering and extending the applicant's detention with reference to the risks of his absconding and obstructing the proceedings, similarly limited themselves to repeating those grounds in an abstract and stereotyped manner, without addressing the specific facts of the applicant's case or providing any specific reasons as to why they considered those risks to be justified (see paragraphs 7, 8, 11, 14, 17, 22 and 24 above).

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

55. In view of its findings under Article 5 § 3 of the Convention (see paragraph 53 and 54 above), the Court does not find it necessary to address separately whether there has also been a violation of Article 5 § 1 of the Convention in respect of the alleged unlawfulness of the decisions of 28 October and 28 December 2011 and 28 February 2012.

3. Article 5 § 4 of the Convention

(a) Compliance with the procedural guarantees of Article 5 § 4 at the hearing of 15 March 2012 before the Court of Appeal

(i) The parties' submissions

56. The applicant submitted that neither he nor his lawyer had been notified of the hearing of 15 March 2012 before the Criminal Court of Appeal (see paragraphs 17 and 19 above). The statement contained in the respective decision regarding his lawyer being duly notified was untrue. His lawyer had never received any telephone calls from the judge or replied that he was unable to attend because of another court hearing. The applicant questioned the form and the substance of the "transcripts of telephone conversations" submitted by the Government and argued that never in his career had his lawyer been contacted by telephone by a judge. The proper manner of notification was sending a summons in due time, which had not been done in his case (see paragraph 16 above). The applicant submitted that, as a result, neither he nor his lawyer had been present at the hearing, whereas the investigator had appeared before the court and made submissions, to which the defence had been unable to respond or object. He had therefore been placed at a significant disadvantage vis-à-vis his opponent and the hearing of 15 March 2012 before the Court of Appeal had failed to comply with the procedural guarantees of Article 5 § 4.

57. The Government contested the applicant's submissions and, relying on the transcripts of telephone conversations submitted by them (see paragraph 18 above), alleged that the applicant's lawyer had been duly notified of the hearing in question. Furthermore, the lawyer's absence had been in compliance with domestic law, namely Article 288 of the CCP (see paragraph 29 above), and it had not actually affected the adversarial nature of the hearing since the Court of Appeal had not been provided with any additional evidence and the judicial review had been conducted within the scope of the applicant's appeal. Nor had it resulted in a breach of the principle of equality of arms, taking into account that the lawyer had explicitly agreed to the hearing being held in his absence.

(ii) The Court's assessment

58. 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 (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Şandru v. Romania*, no. 33882/05, § 46, 15 October 2013).

59. In the present case, the Government did not dispute the applicant's allegation that he had not been personally summoned to the hearing of 15 March 2012. Nor is it in dispute between the parties that the summons sent to the applicant's lawyer by post was served on the lawyer belatedly, namely on the day following the scheduled hearing (see paragraph 16 above). The parties did, however, disagree as to whether any telephone calls had been made by the judge notifying the lawyer of the hearing.

60. The Court notes that it has already examined a similar situation in another case against Armenia and found a violation of Article 5 § 4 (see *Ghavalyan v. Armenia*, no. 50423/08, §§ 92-96, 22 October 2020). It held in that case that the domestic criminal procedure law did not contain any rules on notifying parties of hearings concerning detention, by telephone or other means, and that such lack of rules significantly increased the likelihood of arbitrariness. Bearing that in mind, the Court was not satisfied with the Government's assurances regarding the manner in which the authorities had allegedly tried to fulfil their obligation to ensure the presence of the applicant's lawyers at the respective hearing.

61. The Court observes that the circumstances of the present case took place about four years after the *Ghavalyan* case and there is nothing to suggest that there had been any legislative changes introduced in the CCP by that time. Thus, the alleged attempts to notify the applicant's lawyer by telephone were not based on any rules. Furthermore, in the absence of any rules regulating that procedure, there is no objective way of verifying whether the alleged telephone calls were actually made and, if so, whether the transcripts in question accurately reflected their content (see, *mutatis mutandis*, *Ghavalyan*, cited above, § 93).

62. The Court therefore has no reason to reach different findings in the present case and concludes that, in the absence of clearly defined rules, the manner in which the authorities allegedly tried to fulfil their obligation to ensure the presence of the applicant's lawyer at the hearing of 15 March 2012 failed to provide sufficient safeguards against arbitrariness. As a result, the applicant's lawyer was absent from that hearing, whereas the investigator was present and made submissions. Thus, the manner in which that hearing was conducted breached the adversarial nature of the proceedings and the principle of equality of arms between the parties (compare *Ghavalyan*, cited above, § 95).

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

(b) The alleged failure of the Court of Appeal to address duly the arguments raised by the applicant in his appeals against the District Court's decisions extending the applicant's pre-trial detention

64. The applicant further complained under Article 5 § 4 that the Criminal Court of Appeal had failed to address the arguments raised in his appeals concerning the failure of the District Court to provide relevant and sufficient reasons for his continued detention.

65. The Government contested the applicant's allegations.

66. Having regard to its findings under Article 5 § 3 of the Convention (see paragraphs 53 and 54 above), the Court declares this complaint admissible but considers that there is no need to examine whether, in this case, there has also been a violation of Article 5 § 4 of the Convention on similar grounds.

4. Article 5 § 5 of the Convention

(a) The parties' submissions

67. The applicant submitted that he had not enjoyed in law or in practice an enforceable right to compensation for his unlawful detention as required by Article 5 § 5 of the Convention. Under Article 66 of the CCP compensation for unlawful detention could be sought only by an acquitted person and only in respect of pecuniary damages (see paragraph 33 above). As for Article 1064 of the CC (see paragraph 36 above), a right to compensation under that provision could arise only if the unlawfulness of a detention were to be established by a court. However, it was unclear what procedure the phrase "procedure prescribed by law" referred to in that Article, since the Armenian law did not envisage any procedure, according to which compensation could be claimed in respect of unlawful detention. In any event, the relevant decisions extending the applicant's detention had not been found unlawful, which had deprived him of a possibility to claim compensation.

68. The Government submitted that the applicant's detention had complied with the requirements of Article 5 of the Convention. No breach of that provision or of domestic law had been established in his case by the domestic courts, whereas the right to compensation could arise only in the event of a finding of unlawfulness of detention. Hence, Article 5 § 5 was not applicable to the applicant's case.

69. The Government added that, for the purpose of compliance with the Court's case-law and with Armenia's obligations as a member of the Council of Europe, the authorities had enacted legislative amendments introducing non-pecuniary damage as a type of compensation for a breach

of Convention rights and freedoms, including the right to liberty and security of person.

(b) The Court's assessment

70. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions. In this connection, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see, among other authorities, *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012).

71. Turning to the present case, the Court observes that, regard being had to its finding of a violation of paragraphs 1, 3 and 4 of Article 5 (see paragraphs 50, 54 and 63 above), paragraph 5 is applicable. It must therefore ascertain whether, prior to the present judgment, the applicant had an enforceable right at domestic level to compensation for damage, or whether he will have such a right following the adoption of this judgment (see *Stanev*, cited above, § 183).

72. The Court notes that none of the domestic authorities at any stage found – explicitly or implicitly – a breach of the applicant's rights guaranteed by Article 5 of the Convention. He had therefore had no grounds to claim compensation under domestic law. Moreover, even assuming that he had had such grounds, the Court has already found that the Armenian law, prior to the amendments of 2014 and at the time of the present case (see paragraphs 35 and 36 above), failed to comply with the requirements of Article 5 § 5 of the Convention in view of the impossibility to claim compensation for damage of a non-pecuniary nature (see, as a most recent authority, *Norik Poghosyan v. Armenia*, no. 63106/12, §§ 38 and 39, 22 October 2020).

73. The Court further notes that, as indicated by the Government (see paragraph 69 above), after the circumstances of the present case, namely in 2014, the Armenian law was amended, introducing non-pecuniary damage as a type of compensation that could be claimed for a breach of Convention rights, including the right to liberty and security of person (see paragraph 37 above). It is therefore necessary to determine whether the judgment in the present case, in which violations of paragraphs 1, 3 and 4 of Article 5 have been found (see paragraphs 50, 54 and 63 above), will entitle the applicant to claim such compensation. The Court notes that the Government have not alleged that the applicant enjoys such an entitlement or pointed to any provisions of domestic law providing for such a right. Nor does the Court have any information or material at its disposal suggesting that such a remedy exists in domestic law.

74. It has therefore not been shown that the applicant was able to avail himself prior to the Court's judgment in the present case, or will be able to do so after its delivery, of a right to compensation for the violation of Article 5 §§ 1, 3 and 4.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

76. The applicant complained that the wording of the decisions of 28 October and 28 December 2011 (see paragraph 9 above) and that of 27 March 2012 (see paragraph 22 above) had violated his right to be presumed innocent.

He relied on Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

77. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

78. The applicant submitted that his right to be presumed innocent had been breached on the following two grounds. Firstly, when deciding to extend his pre-trial detention on 28 October and 28 December 2011, the Kentron and Nork-Marash District Court of Yerevan referred to the nature and the dangerousness of the act "committed" by him (see paragraph 9 above), thereby suggesting that it was an established fact that he had committed an offence. Secondly, the statement contained in the decision of 27 March 2012 of the Malatia-Sebastia District Court of Yerevan taken at the beginning of his trial, according to which that court had decided to set the case down for trial in order "to hold him criminally liable" for the offences with which he had been charged (see paragraph 22 above), also fell short of the requirements of Article 6 § 2 of the Convention. Such statement had conveyed the judge's conviction about the applicant's guilt and suggested that the upcoming trial had been simply a formality necessary for bringing to completion the process of holding him and his co-accused criminally liable. The impugned decisions had not only described a status of suspicion but implied that he was already considered guilty without any

qualification or reservation. Moreover, a breach of his right to be presumed innocent had been indirectly admitted by the Court of Appeal in its decision of 19 January 2012 (see paragraph 13 above). The Court's judgments referred to by the Government (see paragraph 79 below) had different facts and were therefore not relevant to his case.

79. The Government, referring to the Court's judgments in the cases of *Shuvalov v. Estonia* (nos. 39820/08 and 14942/09, § 80, 29 May 2012) and *Konstas v. Greece* (no. 53466/07, § 33, 24 May 2011), submitted that the impugned statements of the domestic courts should not be read out of context. The wording of the decisions of 28 October and 28 December 2011 had not breached the applicant's right to be presumed innocent since the court had based its conclusions on the provisions of the CCP related to pre-trial detention and the court's reasoning as a whole had not suggested that the applicant was guilty. Moreover, the lawfulness of the disputed formulations had been addressed by the Criminal Court of Appeal in its decisions of 10 November 2011 and 19 January 2012 (see paragraphs 11-13 above). As regards, in particular, the decision of 27 March 2012, the formulation "to hold criminally liable" could not be interpreted as a recognition of the applicant's guilt.

2. The Court's assessment

(a) General principles

80. The Court reiterates that Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law". The presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law (see, among other authorities, *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; *Matijašević v.Serbia*, no. 23037/04, § 45, ECHR 2006-X; and *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013). It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty, while a premature expression of such an opinion by the tribunal itself will inevitably run foul of the said presumption (see *Minelli v.* Switzerland, 25 March 1983, § 37, Series A no. 62, and *Matijašević v. Serbia*, cited above, § 45). In this regard the Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X; *Marziano v. Italy*, no. 45313/99, § 28, 28 November 2002; and *Karaman v. Germany*, no. 17103/10, § 63, 27 February 2014).

81. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear

declaration, in the absence of a final conviction, that an individual has committed the crime in question (see *Matijašević*, cited above, § 48). The latter infringe the presumption of innocence, whereas the former have been regarded as unobjectionable in various situations examined by the Court (see *Marziano*, cited above, § 31). While the use of language is of critical importance in this respect, the Court has further pointed out that whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made. Even the use of some unfortunate language may not be decisive when regard is had to the nature and context of the particular proceedings (see *Allen*, cited above, §§ 125 and 126, and *Karaman*, cited above, § 63).

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

82. The Court notes at the outset that the applicant's complaints concern two distinct situations: the decisions of 28 October and 28 December 2011 taken by the Kentron and Nork-Marash District Court at the pre-trial stage when extending the applicant's detention (see paragraph 9 above) and the decision of 27 March 2012 taken by the Malatia-Sebastia District Court at the preparatory stage of the applicant's trial (see paragraph 22 above). The Court will therefore address those two situations separately.

(i) The decisions of 28 October and 28 December 2011

83. As noted above, these two decisions were taken by the District Court examining the question whether the applicant's continued detention was justified. The Court has found a violation of Article 6 § 2 in a number of cases where the domestic courts, in pre-trial detention decisions, stated in an unqualified manner that the applicant had committed an offence (see, for example, *Matijašević*, cited above, §§ 47-51; *Garycki v. Poland*, no. 14348/02, §§ 71-73, 6 February 2007; *Nešťák v. Slovakia*, no. 65559/01, §§ 89-91, 27 February 2007; *Fedorenko v. Russia*, no. 39602/05, §§ 89-93, 20 September 2011; *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 202-204, ECHR 2013 (extracts); *Mugoša v. Montenegro*, no. 76522/12, §§ 68 and 69, 21 June 2016; and *Grubnyk v. Ukraine*, no. 58444/15, §§ 138-147, 17 September 2020). Conversely, in a number of cases the Court has found that the wording employed by the domestic courts when deciding on the applicant's detention did not amount to a declaration of the applicants' guilt in breach of the presumption of innocence (see, for example, *Karan v. Croatia* (dec.), no. 21139/05, 7 December 2006; *Perica Oreb v. Croatia*, no. 20824/09, §§ 142-143, 31 October 2013; *Miladinov and Others v. the former Yugoslav Republic of Macedonia*, nos. 46398/09 and 2 others, §§ 74-77, 24 April 2014; and *Ramkovski v. the former Yugoslav Republic of Macedonia*, no. 33566/11, §§ 83-85, 8 February 2018).

84. In the present case, the District Court was called upon to determine whether there was a reasonable suspicion and relevant grounds justifying the extension of the applicant's pre-trial detention. In doing so, it referred to the nature and the dangerousness of the act "committed" by the applicant (see paragraph 9 above). Having regard to the impugned decisions and the context in which they were taken, as well as the above-cited case-law, the Court considers that, although the wording employed by the District Court may be considered unfortunate, it cannot be said to amount to an explicit and unqualified declaration of the applicant's guilt before he was proved guilty according to law. The District Court did not refer to the applicant as the perpetrator of the offence (contrast *Matijašević*, cited above, § 48; *Garycki*, cited above, § 71; and *Fedorenko*, cited above, § 90) and, in fact, all the extension decisions contained concomitant statements clearly saying that the applicant "was charged with that offence" (compare *Miladinov and Others*, cited above, § 75). Furthermore, the language used by the District Court was criticised by the Court of Appeal which held, with reference to Article 18 of the CCP that guarantees the right to be presumed innocent (see paragraph 34 above), that the applicant's guilt was not an issue to be determined in the context of detention and that the impugned phrase should not be taken into account (see paragraph 13 above; compare *A.L. v. Germany*, no. 72758/01, § 38, 28 April 2005; and contrast *Ismoilov and Others v. Russia*, no. 2947/06, § 169, 24 April 2008).

85. In such circumstances, being satisfied that the District Court in its decisions was referring not to the question whether the applicant's guilt had been established but to whether there were legal grounds for the applicant's continued detention and taking into account the rectification made by the Court of Appeal, the Court concludes that the wording of the decisions of 28 October and 28 December 2011 did not breach the principle of the presumption of innocence.

86. There has accordingly been no violation of Article 6 § 2 of the Convention as regards the decisions of 28 October and 28 December 2011.

(ii) The decision of 27 March 2012

87. The Court notes that the situation is different as far as the decision of 27 March 2012 is concerned. That decision was taken at the start of the applicant's trial by the District Court which was called upon to determine the merits of the charge against the applicant and which should have exercised particular caution in its choice of words. However, in its decision committing the applicant for trial, the District Court stated that it was doing so "in order to hold [the applicant] ... criminally liable" (see paragraph 22 above). The Court considers that such an explicit and unqualified statement, moreover made by the same judge who eventually ruled on the applicant's guilt, was well capable of being understood as meaning that the District

Court considered the applicant's guilt as an established fact and that the purpose of the trial was simply to confirm that pre-determined outcome.

88. The Court is prepared to entertain the possibility that the District Court may have merely committed a technical error in poorly wording its decision. However, the District Court never acknowledged that any such error had been committed or attempted to correct it at any stage of the proceedings (see, *mutatis mutandis*, *Grubnyk*, cited above, § 146). Nor was such a rectification made by the Court of Appeal or any other domestic authority, the impugned decision not being amenable to appeal.

89. The fact that the applicant was ultimately found guilty and sentenced to four years and six months in prison (see paragraph 25 above) cannot negate his initial right to be presumed innocent until proved guilty according to law. As noted repeatedly in this Court's case-law, Article 6 § 2 governs criminal proceedings in their entirety "irrespective of the outcome of the prosecution" (see, among other authorities, *Minelli*, cited above, §30, and *Matijašević*, cited above, § 49).

90. The Court therefore considers that the wording of the decision of 27 March 2012 was in breach of the principle of the presumption of innocence.

91. There has accordingly been a violation of Article 6 § 2 of the Convention as regards the decision of 27 March 2012.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 26,000 euros (EUR) in respect of non-pecuniary damage.

94. The Government submitted that the amount claimed was excessive.

95. Having regard to the nature of the violations found in the present case and to its practice, the Court awards the applicant EUR 5,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

96. The applicant also claimed 1,181,500 Armenian drams (AMD) for the costs and expenses incurred before the domestic courts and AMD 1,803,020 for those incurred before the Court.

97. The Government submitted that there had been no violation of the applicant's rights guaranteed by Articles 5 and 6 of the Convention and therefore he was not entitled to any compensation for costs and expenses.

98. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 27 March 2012 to 20 August 2013;

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

4. *Holds* that there is no need to examine the complaint under Article 5 § 1 of the Convention as regards the lawfulness of the decisions of 28 October and 28 December 2011 and 28 February 2012;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention in that the hearing of 15 March 2012 was conducted in violation of the principle of equality of arms;

6. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention as regards the alleged failure of the Criminal Court of Appeal to address duly the arguments raised in the applicant's appeals;

7. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

8. *Holds* that there has been no violation of Article 6 § 2 of the Convention as regards the decisions of 28 October and 28 December 2011;

9. *Holds* that there has been a violation of Article 6 § 2 of the Convention as regards the decision of 27 March 2012;

10. *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 5,200 (five thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand 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;

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

Done in English, and notified in writing on 15 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Yonko Grozev
President