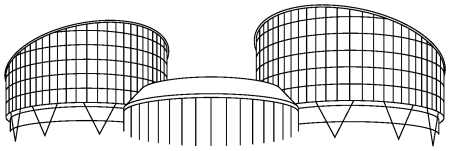

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ARA HARUTYUNYAN v. ARMENIA

(Application no. 629/11)

JUDGMENT

STRASBOURG

20 October 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ara Harutyunyan v. Armenia,

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

Mirjana Lazarova Trajkovska, *President,*
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Robert Spano,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 27 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 629/11) 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 Ara Harutyunyan ("the applicant"), on 14 December 2010.

2. The applicant was represented by Mr E. Marukyan and Mr K. Tumanyan, lawyers practising in Vanadzor. 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 the domestic courts had failed to provide relevant and sufficient reasons for his detention.

4. On 19 June 2013 the complaint concerning the alleged failure of the domestic courts to provide relevant and sufficient reasons for the applicant's detention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1989 and lives in Vanadzor.

A. The institution of criminal proceedings against the applicant and his placement in detention

6. On 2 August 2010 the applicant appeared voluntarily at the Gugark Town Police Department and confessed that earlier that day, during a street fight, he had injured another individual, Y.P., with a knife after the latter threatened him with a gun. The applicant also surrendered his knife and Y.P.'s gun, which he had seized from Y.P.

7. On the same date the investigator decided to institute criminal proceedings against the applicant under Article 113 Criminal Code (CC) on account of wilful infliction of medium gravity damage to Y.P.'s health, and to apply a written undertaking not to leave his place of residence as a preventive measure in respect of the applicant. The investigator cited the following grounds for his decision:

> "... Taking into account that the materials of the criminal case provide sufficient grounds to believe that, if at large, [the applicant] will not abscond from the authority dealing with the case, obstruct the investigation and commit a criminal offence ..."

8. On 9 August 2010 the charge against the applicant was modified to a more severe one under Article 112 of the CC following the results of the forensic medical examination, according to which the damage to health suffered by Y.P. was grave and life-threatening.

9. On the same date the investigator filed a motion with the Lori Regional Court seeking to have the applicant detained, taking into account the fact that the materials of the case provided sufficient reasons to believe that, if at large, the applicant could obstruct the investigation by exerting unlawful influence on the persons involved in the proceedings and commit a new criminal offence, as well as the nature and dangerousness of the offence.

10. The applicant objected to this motion, arguing, *inter alia*, that it was unreasoned and did not contain any arguments in support of the allegation that he could commit any of the acts prescribed by Article 135 of the Code of Criminal Procedure (CCP). It was incompatible with Article 5 of the Convention to provide stereotyped reasoning for detention or to rely solely on the severity of the sentence. The applicant requested that the written undertaking not to leave his place of residence be maintained.

11. On 10 August 2010 the Lori Regional Court, having heard the applicant, found the investigator's motion to be well-founded and decided to grant it by ordering the applicant's detention for a period of two months:

> "... taking into account the nature and dangerousness of the act committed by [the accused], and the fact that, if at large, he may abscond from the authority dealing with the case or obstruct the investigation by exerting unlawful influence on the persons involved in the criminal proceedings, as well as avoid liability and sentence."

12. On 12 August 2010 the applicant lodged an appeal arguing, *inter alia,* that his detention on conditions provided by Article 135 of the CCP

was incompatible with the guarantees of Article 5 of the Convention. The Regional Court had failed to take into account the fact that the investigator's motion did not indicate any actions that he might commit if at large. He had appeared voluntarily with a confession and had assisted the investigation by appearing every time upon the investigating authority's summons, participating in various investigative measures and confrontations; his identity and place of residence were known to the authorities. There were therefore no circumstances precluding the application of a written undertaking not to leave his place of residence. The investigator had not produced any evidence that he had ever tried to abscond or obstruct the investigation or that he would abscond, obstruct the proceedings, commit a criminal offence or avoid criminal liability or serving the imposed sentence. The applicant further argued that the sole reason for changing the type of preventive measure and imposing detention was the modification of the charge against him to a more severe one.

13. On 3 September 2010 the Criminal Court of Appeal decided to uphold the Regional Court's decision, finding that:

> "... the severity of the sentence risked by [the applicant] provides sufficient ground to believe that, if at large, [the applicant] may abscond from the authority dealing with the case, obstruct the investigation and avoid criminal liability and serving the imposed sentence ...
>
> ...
>
> Thus, the Regional Court ... has ensured the requirement of [Article 134 of the CCP] to prevent the accused's inappropriate behaviour in the course of the criminal proceedings, as it was impossible to ensure this by applying other available preventive measures in this particular case and was also in the public interest."

14. On 24 September 2010 the applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by the Court of Cassation's decision of 29 October 2010.

B. Prolongation of the applicant's detention

1. The first extension of the detention period

15. On 23 September 2010 the investigator filed a motion seeking to have the applicant's detention, which was to expire on 9 October 2010, extended by two months. This motion stated that there was a need to carry out further investigative measures, while the reasons for the applicant's detention, namely the risks of his obstructing the investigation and committing a new offence, still persisted.

16. The applicant objected to this motion and requested that the Regional Court release him on bail.

17. On 4 October 2010 the Regional Court decided to grant the investigator's motion, finding that the grounds for the applicant's detention

– as stated in its decision of 10 August 2010 – still persisted, and it was necessary to extend the detention in order to complete the investigation. It further decided to dismiss the applicant's motion for release on bail on the same grounds.

18. On 7 October 2010 the applicant lodged an appeal, arguing, *inter alia*, that the Regional Court had failed to state any concrete facts or evidence suggesting that, if at large, he would abscond or obstruct the investigation. As regards the refusal to apply bail, the applicant argued that it was not based on any of the grounds envisaged by Article 143 of the CCP. In particular, his identity was known, he had a permanent place of residence and had never tried to abscond.

19. On 20 October 2010 the Criminal Court of Appeal upheld the decision to extend the applicant's detention and to refuse his release on bail, finding it to be lawful and well-founded. As regards specifically the question of bail, the Court of Appeal stated at the outset that the grounds for refusal of bail mentioned in Article 143 of the CCP were not exhaustive. It then concluded that it was impossible to replace the applicant's detention with bail on the same grounds which justified the necessity of keeping him in detention.

20. The applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by the Court of Cassation's decision of 16 December 2010.

2. The applicant's motion seeking release on bail and the second extension of his detention period

21. On 8 November 2010 the applicant filed a motion with the Lori Regional Court seeking to be released on bail. He submitted, *inter alia*, that he had a permanent place of residence, had never absconded or obstructed the investigation and that on the contrary he had assisted in the disclosure of the crime.

22. On 19 November 2010 the Regional Court decided to dismiss the motion, finding that the grounds for the applicant's detention – as stated in its previous decisions – still persisted. This decision was subject to appeal before the Criminal Court of Appeal within ten days.

23. On 24 November 2010 the investigator filed a motion seeking to have the applicant's detention, which was to expire on 9 December 2010, extended by one month, citing similar reasons as previously.

24. The applicant objected to this motion and requested the Regional Court to release him on bail.

25. On 3 December 2010 the Regional Court decided to grant partially the investigator's motion, finding that the grounds for the applicant's detention still persisted and extending his detention by fifteen days. The applicant's motion for release was dismissed on the same grounds. This

decision was subject to appeal before the Criminal Court of Appeal within five days.

C. The applicant's release on bail and the termination of the criminal proceedings against him

26. On 10 December 2010 the investigator filed a motion seeking to have the applicant's detention, which was to expire on 24 December 2010, extended by another month. This motion stated, *inter alia*, that the bill of indictment was not ready yet and the grounds for the applicant's detention still persisted.

27. On 15 December 2010 the Regional Court decided to grant partially the investigator's motion, extending the applicant's detention by fifteen days. At the same time, the Regional Court examined the question of the applicant's release on bail and concluded that it "found it possible to replace the detention imposed on [the applicant] with bail".

28. On 16 December 2010 the applicant was released upon the payment of the amount of bail fixed by the Regional Court.

29. On 25 January 2011 the investigator decided to drop the charges against the applicant, cancel the bail and terminate the criminal proceedings. This decision stated, *inter alia*, that the applicant had inflicted grave damage on Y.P's health in self-defence and therefore his actions lacked *corpus delicti*.

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure

30. Article 134 provides that preventive measures are measures of compulsion imposed on the suspect or the accused for the purpose of preventing their inappropriate behaviour in the course of criminal proceedings and ensuring the enforcement of the judgment. Preventive measures include, *inter alia*, detention, bail and written undertaking not to leave one's place of residence. Bail is considered an alternative preventive measure to detention and may be imposed only if a court decision has been issued to detain the accused.

31. Article 135 provides that the court, the prosecutor, the investigator or the body of inquiry can impose a preventive measure only when the materials obtained in the criminal case provide sufficient grounds to believe that the suspect or the accused may: (1) abscond from the authority dealing with the case; (2) obstruct the investigation or the court proceedings by exerting unlawful influence on the persons involved in the criminal proceedings, by concealing or falsifying materials significant for the case,

by failing to appear upon a summons of the authority dealing with the case without valid reasons, or by other means; (3) commit a criminal offence; (4) avoid criminal liability and serving the imposed sentence; or (5) hinder the execution of the judgment. Detention and bail can be imposed on the accused only if the maximum punishment prescribed for the imputed offence is imprisonment for a period exceeding one year or if there are sufficient grounds to believe that the accused may commit any of the actions referred to above. When deciding on the necessity of imposing a preventive measure or choosing the type of preventive measure to be imposed on the suspect or the accused, the following must be taken into account: (1) the nature and dangerousness of the imputed act; (2) the personality of the suspect or the accused; (3) his or her age and state of health; (4) his or her gender; (5) his or her occupation; (6) his or her family status and existence of dependants; (7) his or her property status; (8) whether he or she has a permanent residence; and (9) other important circumstances.

32. Article 136 provides that the decision imposing a preventive measure must be reasoned and must contain notes on the offence imputed to the suspect or the accused and a substantiation of the necessity of choosing the relevant preventive measure. Detention and bail can be imposed only by a court decision upon the investigator's or the prosecutor's motion or, during the trial proceedings, of the court's own motion. The court can replace the detention with bail also upon the motion of the defence.

33. Article 137 provides that detention is the holding of a person in custody in places and on conditions prescribed by law. When deciding on detention, the court also decides on the possibility of releasing the accused on bail and, if such release is possible, sets the amount of bail.

34. Article 138 provides that the accused's detention period shall be calculated from the moment of his actual taking into custody when being arrested or, if he was not arrested, from the moment of enforcement of the court decision imposing detention. During the pre-trial proceedings of a criminal case the detention period may not exceed two months, except for cases prescribed by the Code. The detention period may be extended by the court up to six months, taking into account the particular complexity of the case, while in exceptional cases – when a person is accused of a grave or particularly grave crime – up to twelve months.

35. Article 139 provides that, when deciding on the extension of the accused's detention period, the court may extend the detention period within the limits prescribed by the Code, on each occasion for a period not exceeding two months. It can also approve the release of the accused on bail and set the amount of bail.

36. Article 143 provides that bail is the money, shares or other assets deposited with the court by one or more persons for the purpose of securing the release of a person accused of an offence of minor or medium gravity in order to ensure that he remains at the disposal of the authority dealing with

the case. The court may, by providing relevant reasons, find it impossible to release the accused on bail in certain cases, in particular, when his identity is not known, he has no permanent place of residence or he has tried to abscond from the authority dealing with the case.

37. Article 144 provides that a suspect or an accused who has given a written undertaking not to leave his place of residence may not go anywhere else or change his place of residence without the authorisation of the body of inquiry, the investigator, the prosecutor or the court. He is obliged to appear upon the summons of the body of inquiry, the investigator, the prosecutor and the court and to inform them about the change of place of residence.

B. The Criminal Code

38. Article 112 provides that wilful infliction of bodily harm or other grave damage to health which is life-threatening or causes loss of vision, speech or hearing or loss of an organ or a function of an organ or causes an irreparable disfigurement of the face, or other life-threatening damage to health or its deterioration resulting in the steady loss of at least one third of the general working capacity or a complete loss of professional capacity evident to the offender or in interruption of pregnancy, or causes mental illness or drug or substance addiction, shall be punishable by imprisonment of between three and seven years.

39. Article 113 provides that wilful infliction of bodily harm or any other damage to health which is not life-threatening and does not have the consequences envisaged by Article 112 but causes lasting deterioration of health or a considerable and steady loss of less than one third of the general working capacity, shall be punishable by detention from three to six months or imprisonment for a period not exceeding three years.

THE LAW

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

40. The applicant complained that the domestic courts had failed to provide relevant and sufficient reasons for his detention as required by 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 ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

41. The Government contested that argument.

A. Admissibility

42. The Government claimed that the applicant had failed to exhaust the domestic remedies by not lodging appeals against the Lori Regional Court's decisions of 19 November and 3 December 2010. Such appeals could have provided him with a possibility of an earlier release, taking into account that he was eventually released on bail.

43. The applicant argued that the Government's claim was groundless as he had lodged appeals against the Lori Regional Court's decisions of 10 August and 4 October 2010 imposing and extending his detention. The appeals had been examined and dismissed by the courts of all higher instances. He had lodged his application with the Court after exhausting these remedies.

44. The Court considers that this issue is closely linked to the substance of the applicant's complaint and must therefore be joined to the merits.

45. 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

46. The applicant submitted that the domestic courts had failed to provide relevant and sufficient reasons for their decision to impose detention as a preventive measure. Detention was one of five preventive measures available under the domestic law and was considered an exceptional one. A written undertaking not to leave his place of residence had already been applied to him as a preventive measure on the ground that there were no reasons to believe that he would abscond, obstruct the investigation or commit an offence. He had not violated the conditions of that preventive measure, always appeared upon the investigator's summons and assisted the investigation by participating in various investigative measures. The courts had no grounds to conclude that he might abscond or obstruct the proceedings, other than the fact that the charge against him had been modified to a more severe one. However, the severity of the sentence was not sufficient to justify detention and the courts were under an obligation to consider his personality and character. The courts failed nevertheless to carry out a proper examination and simply copied the text of Articles 134 and 135 of the CCP into their decisions without providing any concrete facts or evidence and limiting themselves to identical, abstract and stereotyped wording.

47. The Government submitted that the applicant's detention had been based on relevant and sufficient grounds. The severity of the sentence was a

relevant factor to be taken into account. Therefore, the modification of the charge against the applicant to a more severe one had been regarded as a factor which might influence his behaviour, increasing the risk of his avoiding liability and sentence. This was also demonstrated by the fact that the applicant had not objected to the initial charge but later, when a more severe charge was brought, started to claim that he had acted in self-defence. Furthermore, the applicant's confession could not serve as an example of his willingness to cooperate, since he had turned himself in only after the police had visited his place of residence, where they had been told that the applicant had gone out the day before and had not yet returned. The extension of the applicant's detention had been justified by the necessity to complete the investigation and the fact that the grounds for his detention persisted. Those same grounds also justified the refusal of the applicant's release on bail.

2. The Court's assessment

(a) General principles

48. The Court reiterates that, according to its established case-law under Article 5 § 3 of the Convention, the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV, and *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

49. The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for the judicial officer to give "relevant" and "sufficient" reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 102, 5 July 2016). Furthermore, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures for ensuring his appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000, and *Idalov*, cited above, § 140).

50. Justifications which have been deemed "relevant" and "sufficient" reasons in the Court's case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending,

the risk of causing public disorder and the need to protect the detainee (see, for instance, *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9; *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7; *Tomasi v. France*, 27 August 1992, § 95, Series A no. 241-A; *Toth v. Austria*, 12 December 1991, § 70, Series A no. 224; *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; and *I.A. v. France*, 23 September 1998, § 108, *Reports of Judgments and Decisions* 1998-VII).

51. The presumption is always in favour of release. The national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated 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 (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be general and abstract (see, among other authorities, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts); *Becciev v. Moldova*, no. 9190/03, § 56, 4 October 2005; *Piruzyan v. Armenia*, no. 33376/07, § 92, 26 June 2012; *Zayidov v. Azerbaijan*, no. 11948/08, § 57, 20 February 2014; and *Merčep v. Croatia*, no. 12301/12, § 79, 26 April 2016).

52. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, among other authorities, *Letellier*, cited above, § 43; *Becciev*, cited above, § 58; *Piruzyan*, cited above, § 95; and *Zayidov*, cited above, § 59). Consideration must be given to the character of the person involved, his or her morals, home, occupation, assets, family ties and all kinds of links with the country in which he or she is prosecuted, as well as the person's international contacts (see, among other authorities, *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8, and *Buzadji*, cited above, § 90).

53. The danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence (see *Trzaska v. Poland*, no. 25982/94, § 65, 11 July 2000; *Becciev*, cited above, § 59; *Piruzyan*, cited above, § 96; and *Merčep*, cited above, § 89).

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

54. In the present case, the applicant alleged that the courts had failed to provide relevant and sufficient reasons for their decisions to impose and extend his detention, in breach of Article 5 § 3 of the Convention. The Court notes at the outset that Article 135 of the CCP prescribed the grounds which justified the imposition of a preventive measure, including detention, which appear to resemble those established in the Court's case-law under Article 5 § 3 of the Convention (see paragraph 31 above). Furthermore, Article 136 of the CCP required the decision imposing detention to be reasoned and to contain a substantiation of the necessity of choosing detention as a preventive measure (see paragraph 32 above).

55. On 10 August 2010 the applicant was brought before the Lori Regional Court which examined and granted the investigator's motion to have him detained. In so doing, the Regional Court relied, in addition to the existence of reasonable suspicion, on the risk of the applicant's absconding and obstructing the investigation by influencing the victim and/or witnesses as the grounds justifying his detention. The Court notes, however, that the Regional Court limited itself to indicating those grounds in its decision in an abstract and stereotyped manner, without providing any reasons, including facts or evidence, as to why it found those grounds to be justified in the applicant's case and basically confining its reasoning to a mere citation of the relevant parts of Article 135 of the CCP (see paragraph 11 above). No explanation was provided as to why the investigator's motion was well-founded and why it was necessary to replace the written undertaking with detention, in spite of the fact that this motion was in contradiction with the investigator's earlier finding that the applicant was not likely to commit any inappropriate acts, including absconding or obstructing the investigation (see paragraph 7 above). The Regional Court failed to take into account such important factors as the applicant's behaviour during the investigation and his personal situation, as well as any other relevant factor. It also failed to address any of the objections raised by the applicant or to consider the possibility of releasing him on bail.

56. The Court observes that the applicant's appeals and motions for release, as well as the investigator's subsequent motions seeking an extension of the applicant's detention, were examined by the courts in a similar manner, with the only exception being that the Criminal Court of Appeal referred to the severity of the sentence risked as a ground justifying the fears of inappropriate behaviour (see paragraphs 13, 17, 19, 22, 25 and 27 above). However, this alone was not sufficient, in the Court's opinion, to justify the applicant's detention. The Court notes that it has frequently found a violation of Article 5 § 3 of the Convention where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see, among

other authorities, *Smirnova*, cited above, § 70; *Vasilkoski and Others v. "the former Yugoslav Republic of Macedonia"*, no. 28169/08, § 64, 28 October 2010; and *Tretyakov v. Ukraine*, no. 16698/05, § 59, 29 September 2011).

57. The Court further notes that eventually, after over four months in detention, the applicant was released on bail, but no justification was provided as to why it had not been possible to apply that measure earlier (see paragraph 27 above).

58. The Court lastly notes that the use of stereotyped formulae when imposing and extending detention appears to be a recurring problem in Armenia and a violation of Article 5 § 3 of the Convention has already been found in a number of cases (see *Piruzyan v. Armenia*, no. 33376/07, §§ 97-100, 26 June 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74-77, 26 June 2012; and *Sefilyan v. Armenia*, no. 22491/08, §§ 88-93, 2 October 2012).

59. In the light of the above, the Court considers that the domestic courts failed to provide relevant and sufficient reasons, in addition to the existence of reasonable suspicion, for their decisions imposing and extending the applicant's detention.

60. Having reached this conclusion, the Court considers it necessary to address the Government's objection as to non-exhaustion. They argued, in particular, that the applicant had failed to exhaust the domestic remedies by failing to lodge appeals against the Lori Regional Court's decisions of 19 November and 3 December 2010. The former concerned the Regional Court's rejection of the applicant's motion seeking release on bail, while the latter partially granted the investigator's motion seeking a second extension of the applicant's detention (see paragraphs 22 and 25 above).

61. The Court notes, however, that the applicant had previously contested similar decisions before the Criminal Court of Appeal and his appeals were dismissed always in a stereotyped manner without any case-specific reasoning (see paragraphs 13 and 19 above). It is therefore doubtful that appeals against the decisions of 19 November and 3 December 2010 would have had a different outcome. Furthermore, should the applicant have lodged such appeals, and assuming that they would have been successful, this would have secured the applicant's release theoretically only at some point around the end of November or beginning of December 2010 and would not have affected in any way the applicant's detention period prior to that. As regards that period, the applicant had exhausted all the domestic remedies by lodging appeals against the relevant decisions. The Government's objection as to non-exhaustion must therefore be dismissed.

62. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 7,620 euros (EUR) in respect of non-pecuniary damage.

65. The Government submitted that the applicant had failed to prove that he had actually suffered any non-pecuniary damage.

66. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violation found. It therefore awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant also claimed EUR 540 or 300,000 Armenian drams (AMD) for the costs and expenses incurred before the domestic courts and EUR 1,200 for those incurred before the Court. The applicant submitted a contract for the sum of AMD 300,000 concluded on 2 August 2010 with his representative whereby the latter agreed to provide legal assistance to the applicant for the purpose of the criminal proceedings against him.

68. The Government raised the following objections. Firstly, the only document submitted by the applicant in support of these claims was a contract signed with his lawyer for a sum of AMD 300,000 for the provision of legal assistance in the domestic proceedings. Thus, his claim in respect of legal costs incurred before the Court was not substantiated with any proof. Secondly, even this contract could not serve as sufficient evidence to allow the applicant's claim because it contained only general information about the work allegedly done by his lawyer and was not accompanied by any document containing more specific information, namely the number of hours of work and the hourly rate.

69. 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's claim for costs and expenses incurred before the Court is indeed not supported by any evidence. As regards his claim for costs and expenses incurred before the domestic courts, it is true that the applicant did not submit an itemised bill. Nevertheless, it is evident from the circumstances of the case that a certain

amount of work was performed by the applicant's lawyer in relation to his detention, as stipulated by the contract concluded between them. Since this contract was not limited exclusively to questions of detention, the Court cannot award this claim in full. However, regard being had to the documents in its possession and the circumstances of the case, the Court considers it reasonable to award the sum of EUR 300 for costs and expenses in the domestic proceedings.

C. Default interest

70. 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. *Decides* to join to the merits the Government's claim of non-exhaustion of domestic remedies and *rejects* it;

2. *Declares* the complaint concerning the alleged lack of relevant and sufficient reasons for the applicant's detention admissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Mirjana Lazarova Trajkovska
Registrar	President