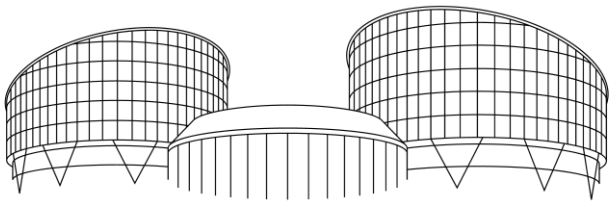

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF KARAPETYAN v. ARMENIA

(Application no. 22387/05)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Karapetyan v. Armenia**,**

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges,*
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 22387/05) 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 Zaven Karapetyan ("the applicant"), on 15 September 2003.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz and Ms L. Claridge, lawyers of the Kurdish Human Rights Project (KHRP) based in London, and Mr T. Ter-Yesayan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 12 September 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in the village of Karakert, Armenia. He works as a school principal.

A. Administrative proceedings against the applicant

5. In February and March 2003 a presidential election took place in Armenia. Following the first and second rounds of the election, a series of protest rallies were organised in Yerevan by the opposition parties, alleging irregularities.

6. On 21 March 2003 the applicant travelled to Yerevan in order to visit his son who had been placed in a mental hospital the previous day.

7. On that day a demonstration took place in Yerevan. The applicant alleged that he had not attended the demonstration. According to him, after visiting his son at 3 p.m. he went to the bus station to take a bus back to his village but all public transport to Yerevan had been suspended because of the demonstration. At the bus station he met two co-villagers, Lavrent Kirakosyan and Arman Mkhitaryan, who were intending to participate in the demonstration. They were planning to return home by car in the evening, so he arranged to meet them at 5 p.m. to join them on their return journey to his village.

8. On 22 March 2003 two police officers from the Baghramyan Police Department (*ՀՀ ոստիկանության Բաղրամյանի բաժին*) visited the applicant at his home.

9. The applicant alleged that this visit had taken place at 8 a.m. The police officers informed him that he was required to accompany them to the police station, without providing further reasons.

10. The Government agreed that the visit had taken place at 8 a.m. but contested the applicant's allegation that no reasons had been given. The Government alleged that the police officers had visited the applicant in order to obtain an explanation concerning his possible participation in an unauthorised demonstration the previous day.

11. It appears from the materials of the case that the applicant was asked by the police officers to accompany them to the police station. He showed resistance but was nevertheless taken to the police station. According to the Government, the reasons for the applicant's arrest were orally communicated to him by the arresting police officers.

12. At the police station the arresting police officers drew up a record of the applicant's arrest (*արձանագրություն բերման ենթարկելու մասին*) in which it was stated that "[the applicant] had been brought to the Baghramyan Police Department for having used foul language and maliciously disobeyed the lawful orders of the police officers for five to six minutes". The time of the arrest was indicated as 9.30 a.m. This record was signed by the applicant.

13. The police officers drew up a record of an administrative offence (*վարչական իրավախախտման արձանագրություն*) in which it was stated that the applicant "had maliciously disobeyed the lawful orders of the police officers and had maliciously used foul language for about five to

seven minutes". The applicant was charged under Article 182 of the Code of Administrative Offences (*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք* – "the CAO"). This record was signed by the applicant.

14. The applicant alleged that he had not been able to read the contents of the above documents, including his written statement (*արձանագրություն բացատրություն վերցնելու մասին*) in which he had admitted committing the alleged acts, since he did not have his reading glasses. Nor were the contents of those documents read out to him. The documents had allegedly been prepared by the police officers who asked him to sign them, which he did on the understanding that this would result in his immediate release from the police station. The applicant further alleged that the chief of police told him that he would be detained since there were instructions from the Minister of the Interior to arrest temporarily all political activists.

15. The Government contested these allegations and submitted that the applicant had signed all the materials without any objections. The police officers had explained to the applicant his procedural rights and had advised him to avail himself of his right to have a lawyer but he had not wished to do so.

16. About two hours after his arrest the applicant was taken to Judge S. of the Armavir Regional Court (*Արմավիրի մարզի առաջին ատյանի դատարան*).

17. Judge S., after a brief hearing, sentenced the applicant under Article 182 of the CAO to ten days of administrative detention. The judge's entire finding amounted to the following sentence:

> "On 22 March 2003 at 9.30 a.m. in the village of Karakert in the Armavir Region [the applicant] maliciously refused to obey the lawful order of the officers of the Baghramyan Police Department acting in pursuance of their duties of preserving public order, in particular, while being taken to the police station, he disobeyed the police officers, used foul language and prevented them from performing their duty."

18. The applicant alleged that the above hearing was held in the judge's office. Only the judge, the accompanying police officer and himself were present at the hearing. He was unaware at the time of the hearing that he had been found guilty of a public order offence. The judge asked no questions and explained that he was in no position to make any decision other than that which he had made because "he was told to do so". The entire hearing lasted a few minutes.

19. The Government contested this allegation and claimed that the above hearing was held in public. The judge explained to the applicant his right to have a lawyer, to lodge challenges and motions, and to make submissions before the court. The applicant did not wish to lodge any challenges or to

have a lawyer. The judge then proceeded with the examination of the materials of the case, heard the applicant and rendered his decision.

B. The applicant's detention

20. On the same date the applicant was taken to the Armavir Temporary Detention Facility of the Armavir Regional Department of Internal Affairs to serve his sentence.

21. According to the applicant, he was placed in a small cell with eight other people. There was not enough air and no lighting. No food was provided to the detainees. The administration of the detention facility took the best products from the food brought by the detainees' relatives and gave the rest to the detainees. The applicant alleged that his health deteriorated as a result of his detention because he suffered from cardiovascular problems. He was not allowed by the administration to buy medicine.

22. According to the Government, the applicant's cell met the requirements of healthcare and hygiene. He was afforded a reasonable amount of space. The cell had sufficient natural light, fresh air and artificial light which complied with the technical standards. The applicant had access to water and necessary toilet articles. He was provided with a separate bed and appropriate bedding. Food was provided at regular intervals and in rations defined by the relevant governmental decrees.

23. On 31 March 2003 the applicant was released from detention after fully serving his sentence.

II. RELEVANT DOMESTIC LAW

24. For a summary of the relevant domestic provisions and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") reports, see the judgments in the case of *Galstyan v. Armenia* (no. 26986/03, § 26, 15 November 2007) and *Kirakosyan v. Armenia* (no. 31237/03, §§ 29-34, 2 December 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that the conditions of his detention were incompatible with the requirements of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

26. The Government submitted that the applicant had failed to exhaust the domestic remedies. It was open to him to complain about the conditions of his detention under Section 13 of the Law on Conditions for Holding Arrested and Detained Persons, which he had failed to do. The applicant was kept in the same cell with the applicant in the case of *Kirakosyan*, who had availed himself of the above remedy and was transferred to another cell (see *Kirakosyan*, cited above, §§ 24-25). He was therefore aware of the existence of this remedy. Furthermore, he was informed about his rights, including his right to lodge an appeal, by the administration of the detention facility. Finally, the alleged lack of knowledge about the existence of a remedy did not absolve the applicant from his obligation to comply with the exhaustion rule.

27. The applicant submitted that he was unaware of the existence of any appeal procedure. He was not able to benefit from legal advice during his detention which could have allowed him to learn about any appeal procedure. Thus, no appeal procedure was sufficiently accessible to him. In any event, the existence of an appeal procedure in law did not absolve the authorities from their obligation to ensure adequate conditions of detention.

28. The Court reiterates that the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006).

29. The Court further emphasises that Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism. Moreover, the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically. In reviewing whether the rule has been observed, it is essential to have regard to the existence of formal remedies in the legal system of the State concerned**,** the general legal and political context in which they operate**,** as well as the particular circumstances of the case and whether the applicant did everything that

could reasonably be expected in order to exhaust available domestic remedies (ibid.).

30. In the present case, the Government claimed that the applicant had a remedy at his disposal, namely a complaint that he could have lodged under Section 13 of the Law on Conditions for Holding Arrested and Detained Persons. The Court observes, however, that the Government did not produce any evidence to demonstrate that the remedy relied on was sufficient and effective. They failed even to specify to which of the numerous authorities mentioned in that provision the applicant was supposed to apply and what specific measures could have been taken by them to provide redress for the applicant's complaints, especially taking into account that the issues raised by the applicant were apparently of a structural nature and did not only concern the applicant's personal situation (see *Kirakosyan*, cited above, § 58; *Mkhitaryan v. Armenia*, no. 22390/05, § 43, 2 December 2008; and *Tadevosyan v. Armenia*, no. 41698/04, § 41, 2 December 2008).

31. The Court further points out that it found in the case of *Kirakosyan*, referred to by the Government, that a complaint under Section 13 of the Law on Conditions for Holding Arrested and Detained Persons had failed to produce sufficient and effective results, since the applicant's transfer to the second cell brought little, if any, improvement in the conditions of his detention (see *Kirakosyan*, cited above, § 58). There is nothing to suggest in the present case that, had the applicant lodged a similar complaint, it would have had a different outcome, especially since he was kept in the same detention facility as the applicant in the case of *Kirakosyan*. In view of the above, the Government's objection as to non-exhaustion must be dismissed.

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

B. Merits

33. The Government submitted that there was no breach of the requirements of Article 3. The applicant did not submit any evidence of damage caused to his mental or physical health. Furthermore, the authorities did not intend to humiliate or debase the applicant since he had been kept in the general conditions which prevailed in the prison. Lastly, the Government claimed that substantial changes had taken place in Armenia in the penitentiary system in terms of both improving the general conditions and the regime applied within prisons notwithstanding the existing socio-economic problems.

34. The applicant submitted that the conditions of his detention at the Armavir Temporary Detention Facility amounted to inhuman treatment within the meaning of Article 3. The Government's account of the

conditions of his detention lacked detail and contained only general assertions. As to the alleged improvements introduced in the penitentiary system, it was not clear whether these had taken place before or after the applicant's detention.

35. The Court observes at the outset that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

36. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

37. Treatment has been held by the Court to be "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). Furthermore, in considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2821-22, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III). In order for a punishment or treatment associated with it to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

38. Measures depriving a person of his liberty may often involve such an element. However, it is incumbent on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). When

assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

39. In the present case, the applicant was kept in detention for a total period of ten days. The Court observes that the parties are in dispute about the conditions in the applicant's cell. The Court notes, however, that the Government's description of the conditions of the applicant's detention lack detail: no information was provided about the size of the cell and the number of inmates, the sleeping facilities available, the size of the cell window, and so on. Nor did the Government submit any documentary proof in support of their allegations such as, for example, copies of registers containing information on occupancy level.

40. On the other hand, the Government admitted that the applicant was kept in the same cell as the applicant in the above case of *Kirakosyan*. Moreover, both applicants were detained on exactly the same dates (see paragraphs 20 and 23 above, and *Kirakosyan*, cited above, §§ 8, 20 and 28). The Court observes that in the *Kirakosyan* case it was established that the cell in question measured 8.75 sq. m and was shared by eight inmates (ibid., § 46). Even if the applicant in the *Kirakosyan* case was transferred to another cell on the fourth day of their common detention period (ibid., § 25), nothing suggests that any other changes took place to the number of inmates sharing the cell in question during that period. Thus, the applicant in the present case was afforded not more than 1.25 sq. m of personal space.

41. In this respect, the Court notes that the space afforded to the applicant was smaller than 4 sq. m, which is the minimum requirement for a single inmate in multi-occupancy cells according to the CPT standards (see, for example, the CPT Report on its visit to Latvia in 2002 – CPT/Inf (2005) 8, § 65, and the CPT Report on its visit to Armenia in 2002 – CPT/Inf (2004) 25, § 83) and smaller even than the 2.5 sq. m minimum required at the material time under the domestic law. Furthermore, the applicant's situation was comparable to that in the *Kalashnikov* case, in which the applicant had been confined in a space measuring less than 2 sq. m. In that case the Court held that such a severe degree of overcrowding raised in itself an issue under Article 3 of the Convention (see *Kalashnikov*, cited above, §§ 96-97). Nothing suggests that the applicant was allowed any out-of-cell activities to compensate for this serious lack of space (see *Cenbauer v. Croatia*, no. 73786/01, § 49, ECHR 2006-III; *Malechkov v. Bulgaria*, no. 57830/00, § 141, 28 June 2007, and, by contrast, *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

42. The Court further notes that it was established in the *Kirakosyan* case that the cell in question was infested with pests, there was a lack of natural light, there were no sleeping facilities whatsoever and the toilet was in an unsanitary condition (see *Kirakosyan*, cited above, §§ 46 and 48).

43. The Court observes that the length of the applicant's detention in the above conditions was relatively short, amounting to a total of ten days. However, it points out that conditions of detention of comparable and even of much shorter length have previously been found to be incompatible with the requirements of Article 3 (see *Riad and Idiab*, cited above, §§ 100-111, in which the applicants were kept in detention for fifteen and eleven days; *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005, in which the applicant was detained for twenty-two hours with no food and water or access to a toilet; and also the several cases against Armenia, *Kirakosyan*, *Mkhitaryan* and *Tadevosyan*, cited above, §§ 46-53, §§ 51-59 and §§ 51-59 respectively, in which the applicants were also detained for ten days during the same period and in the same detention facility as the applicant in the present case). Therefore, while the length of a detention period may be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his detention (see, for example, *Kalashnikov*, cited above, § 102, and *Dougoz*, cited above, § 48), the relative brevity of such a period alone will not automatically exclude the treatment complained of from the scope of Article 3 if all other elements are sufficient to bring it within the scope of that provision.

44. The same applies to the Government's argument that the conditions of the applicant's detention did not have a detrimental effect on his health. The Court considers that, while evidence of health damage caused to a detainee by the conditions of his detention may be a relevant factor to be considered (see, for example, *Labzov v. Russia*, no. 62208/00, § 47, 16 June 2005), the existence of such consequences is by no means a precondition for finding a violation of Article 3 (see, for example, *Dougoz*, cited above, §§ 45-49; *Cenbauer*, cited above, §§ 45-53; *Shchebet*, cited above, §§ 86-96, and *Fedotov*, cited above, §§ 66-70).

45. Against this background, and having regard to the conditions of the applicant's detention as described above, the Court considers that these conditions must have caused the applicant suffering, diminishing his human dignity and arousing in him feelings of humiliation and inferiority.

46. As regards the Government's submission that the authorities had no intention to debase him, as already indicated above, the absence of any purpose to humiliate or debase the victim cannot exclude a finding of a violation of Article 3 (see paragraph 37 above). The Court therefore concludes that the conditions of the applicant's detention amounted to degrading treatment within the meaning of Article 3.

47. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ARREST

48. The applicant complained that he was not informed of the legal and factual grounds for his arrest. He invoked Article 5 § 2 of the Convention which provides:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

Admissibility

49. The Government submitted that the applicant had been informed by the police officers about the reasons for his arrest. Furthermore, on arrival at the police station an arrest record and a record of an administrative offence were drawn up, in which the reasons for the applicant's arrest were indicated. These records were signed by the applicant. Therefore the applicant had been informed promptly about the reasons for his arrest and his denial of this fact was not supported by the materials of the case.

50. The applicant submitted that he had never been informed of the legal and factual grounds for his arrest.

51. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40, and *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 31, § 72).

52. In the present case, the Court notes that the reasons for the applicant's arrest and immediate prosecution were indicated in the record of arrest and the record of an administrative offence. Both documents were signed by the applicant (see paragraphs 12 and 13 above). The Court therefore concludes that the applicant was aware of the reasons why he had been brought to the police station and his assertion to the contrary is not supported by the materials of the case.

53. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. THE GOVERNMENT'S OBJECTION AS TO NON-EXHAUSTION IN CONNECTION WITH THE APPLICANT'S CONVICTION

54. The Government claimed that the applicant had failed to exhaust domestic remedies in respect of his conviction by not lodging an appeal against the decision of 22 March 2003 with the President of the Criminal and Military Court of Appeal under Article 294 of the CAO.

55. The applicant contested the Government's objection.

56. The Court notes that it has already examined this issue and found that the review possibility provided by Article 294 of the CAO was not an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Galstyan*, cited above, § 42). The Government's preliminary objection must therefore be rejected.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ADMINISTRATIVE DETENTION

57. The applicant complained under Article 5 §§ 1, 3 and 4 of the Convention about his administrative detention. The relevant provisions of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...

3. Everyone arrested or detained in accordance with the provisions of paragraph1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trail within a reasonable time or to release pending 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."

Admissibility

58. The Government submitted that the applicant's administrative detention was permissible under Article 5 § 1 (a) of the Convention as "the lawful detention of a person after conviction by the competent court". His case was examined by the trial court which was the sole competent authority to do so. The trial was conducted in compliance with the guarantees of Article 5 § 3. As to the judicial supervision required by Article 5 § 4, this was incorporated in the trial court's decision.

59. The applicant submitted that his administrative detention was arbitrary, in violation of Article 5 § 1. He further submitted that the manner in which the trial was conducted fell short of the requirements of Article 5 §§ 3 and 4.

60. The Court observes that it has already examined a similar complaint under Article 5 § 1 and found that the administrative detention had been imposed on the applicant after a "conviction by a competent court" within the meaning of Article 5 § 1 (a) and in accordance with a procedure prescribed by law (see *Galstyan*, cited above, §§ 47-49). It sees no reason to depart from that finding in the present case. The Court further reiterates that the guarantees of Article 5 § 3 apply only to detention imposed under Article 5 § 1 (c) (see *Ječius v. Lithuania*, no. 34578/97, § 75, ECHR 2000-IX). It follows that the guarantees of that provision are not applicable to the applicant's administrative detention which, as already indicated above, was imposed under Article 5 § 1 (a). Lastly, the Court reiterates that, where a sentence of imprisonment is pronounced after a "conviction by a competent court" within the meaning of Article 5 § 1 (a), the supervision required by Article 5 § 4 is incorporated in that decision (see *Galstyan*, cited above, § 51). However, as already indicated above, no issue arises in the present case under Article 5 § 1 (a).

61. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

62. The applicant made several complaints about the administrative proceedings against him under Article 6 §§ 1 and 3 (a)-(d) of the Convention, which, in so far as relevant, provides:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

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

B. Merits

64. The Government submitted that the applicant had had a fair and public hearing. He had failed to submit any proof in support of his allegation that the judge had not been impartial. The applicant had been provided with an opportunity to call witnesses, submit evidence and to lodge requests and challenges, which he had failed to do. The police officers and the judge had advised the applicant to avail himself of his right to have a lawyer but he himself had not wished to do so. The materials of the case had been revealed to the applicant prior to the hearing, which was demonstrated by the fact that those materials had been signed by the

applicant. Thus, taking into account that the applicant had signed the record of an administrative offence without any objections, had refused to have a lawyer, had not lodged any requests and had not availed himself of other procedural rights, the police officers had considered two hours to be sufficient for the preparation of the applicant's defence.

65. The applicant submitted that the trial had not been fair and the tribunal had not been independent and impartial. Furthermore, it had not been public since it had been held in camera in a judge's office. The speed with which the proceedings had been conducted, the failure to provide him with adequate time and facilities to prepare his defence and the fact that he had been denied the right to call witnesses, examine witnesses and give evidence in his defence had put him at a significant disadvantage vis-à-vis his opponent. The materials of the case against him had not been revealed to him prior to the hearing and the court had failed to provide a reasoned decision. The hearing had taken place immediately after his questioning at the police station and he had been denied access to a lawyer prior to and during the trial.

66. The Court notes from the outset that similar facts and complaints have already been examined in a number of cases against Armenia, in which the Court found a violation of Article 6 § 3 (b) taken together with Article 6 § 1 (see *Galstyan*, cited above, §§ 86-88, and *Ashughyan v. Armenia*, no. 33268/03, §§ 66-67, 17 July 2008). The circumstances of the present case are practically identical. The administrative case against the applicant was examined in an expedited procedure under Article 277 of the CAO. The applicant was similarly taken to and kept in a police station – without any contact with the outside world – where he was presented with a charge and in a matter of hours taken to a court and convicted. The Court therefore does not see any reason to reach a different finding in the present case and concludes that the applicant did not have a fair hearing, in particular on account of not being afforded adequate time and facilities for the preparation of his defence.

67. There has accordingly been a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention.

68. In view of the finding made in the preceding paragraph, the Court does not consider it necessary to examine also the other alleged violations of Article 6.

VI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 7

69. The applicant complained under Article 13 of the Convention that he had no right to contest the decision of 22 March 2003. The Court considers it appropriate to examine this issue under Article 2 of Protocol No. 7 which, in so far as relevant, reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

A. Admissibility

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

B. Merits

71. The Government submitted that the applicant had had the right to have his conviction reviewed, this right being prescribed by Article 294 of the CAO.

72. The applicant submitted that all the legal provisions regarding the right to appeal were inadequate and confused.

73. The Court notes that the applicant in the present case was convicted under the same procedure as in the above-mentioned case of *Galstyan* in which the Court concluded that the applicant did not have at his disposal an appeal procedure which would satisfy the requirements of Article 2 of Protocol No. 7 (see *Galstyan*, cited above, §§ 124-127). The Court does not see any reason to depart from that finding in the present case.

74. Accordingly, there has been a violation of Article 2 of Protocol No. 7.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

75. Lastly, the applicant complained that the administrative penalty had been imposed on him because of his political opinion. He alleged that he had been seen coming home with two co-villagers who had participated in a demonstration and had therefore been targeted by the police. He invoked Article 14 of the Convention in conjunction with all the above articles, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Admissibility

76. The Court observes with concern that similar complaints have been previously raised in numerous applications against Armenia (see, for example, *Kirakosyan v. Armenia*, no. 31237/03, § 87, 2 December 2008; *Tadevosyan v. Armenia*, no. 41698/04, § 81, 2 December 2008; *Mkhitaryan v. Armenia*, no. 22390/05, § 87, 2 December 2008; and *Gasparyan v. Armenia (no. 2)*, no. 22571/05, § 32, 16 June 2009). It, nevertheless, does not disclose sufficient evidence in the present case to support the applicant's allegation that he was subjected to an administrative penalty because of his political opinion.

77. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

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

80. The Government submitted that, if the Court were to find a violation, that would be sufficient just satisfaction. In any event, the amount claimed was excessive.

81. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of being sanctioned through unfair proceedings and having no possibility to appeal against this sanction, which resulted in his detention for a period of ten days in degrading conditions. Ruling on an equitable basis, it awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant also claimed 4,147 United States dollars (USD) and 6,809.98 pounds sterling (GBP) for the costs and expenses incurred before the Court. The applicant submitted detailed time sheets stating hourly rates in support of his claims.

83. The Government submitted that the claims in respect of the domestic and foreign lawyers were not duly substantiated with documentary proof, since the applicant had failed to produce any contracts certifying that there was an agreement with those lawyers to provide legal services at the alleged hourly rate, while the submitted time sheets and invoice lacked any signatures or seals. Furthermore, the applicant had used the services of an excessive number of lawyers, despite the fact that the case was not so complex as to justify such a need. Moreover, the hourly rates allegedly charged by the domestic lawyer were excessive. As to the cost of translating the application form and the enclosed documents, these expenses were not necessary since it was open to the applicant to submit such documents in Armenian.

84. 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 Court notes at the outset that no invoice has been submitted to substantiate the translation costs. As regards the lawyers' fees, it considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the foreign and the domestic lawyers, as set out in the relevant time sheets. Furthermore, a reduction must also be applied in view of the fact that a substantial part of the initial application and communicated complaints was declared inadmissible. Making its own estimate based on the information available and deciding on an equitable basis, the Court awards the applicant EUR 3,000 in respect of costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 and Article 6 §§ 1 and 3 (a)-(d) of the Convention and Article 2 of Protocol No. 7 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;

3. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) of the Convention in that the applicant did not have a fair hearing, in particular on account of the fact that he was not afforded adequate time and facilities for the preparation of his defence in the administrative proceedings against him;

4. *Holds* that there is no need to examine the other complaints under Article 6 of the Convention;

5. *Holds* that there has been a violation of Article 2 of Protocol No. 7;

6. *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:
(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom;
(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;

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

Done in English, and notified in writing on 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President