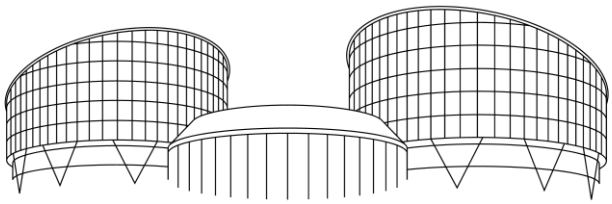

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ASATRYAN v. ARMENIA

(Application no. 24173/06)

JUDGMENT

STRASBOURG

9 February 2010

FINAL

09/05/2010

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

In the case of Asatryan v. Armenia**,**

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

Josep Casadevall, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 19 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 24173/06) 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, Ms Silva Asatryan ("the applicant"), on 22 May 2006.

2. The applicant was represented by Mr K. Mezhlumyan, 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 6 December 2007 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 1960 and lives in Yerevan.

5. On 23 September 2005, at 5.50 p.m., the applicant was taken into custody on suspicion of attempted murder.

6. On 26 September 2005 formal charges were brought against the applicant.

7. On the same date the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the investigator's relevant motion and ordered the applicant's detention on remand for a period of two months, to be calculated from 23 September 2005.

8. On 14 November 2005 the investigator filed a motion with the District Court, seeking to have the applicant's detention on remand prolonged for another two months.

9. On 22 November 2005 the District Court examined and dismissed this motion. This decision was subject to appeal.

10. On 23 November 2005 at around 11 a.m. a copy of this decision was presented by the applicant's lawyer to the Chief of the Yerevan-Kentron Detention Facility (*«Երևան-Կենտրոն» քրեակատարողական հիմնարկի պետ*) where the applicant was held.

11. On the same date the prosecutor lodged an appeal against the above decision.

12. Later that day at 5.30 p.m. the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարան*) commenced the examination of the prosecutor's appeal. The applicant was escorted to the hearing by four national security officers in an official car.

13. At 5.45 p.m. the applicant's lawyer arrived and requested a ten-minute recess to be able to consult with the applicant. The Government alleged that the lawyer was deliberately late for the hearing, while the applicant claimed that her lawyer was informed by telephone about this hearing only at 5.30 p.m.

14. At 5.50 p.m. the applicant's detention period authorised by the decision of 26 September 2005 expired.

15. Following the recess, the lawyer challenged the impartiality of the bench. He first alleged that the court had not given the applicant sufficient time to prepare her defence and also failed to ensure equality of arms. Furthermore, there were four national security officers in the court building who prevented the applicant, who was formally already at liberty, from going out of the building. Thus, the fact that such things were happening in the building of the Court of Appeal suggested that the outcome of the proceedings was already pre-determined.

16. The court departed to the deliberation room to examine this challenge, after which it returned and announced its decision dismissing it.

17. Thereafter another twenty-minute recess was announced by the court for the defence to be able to familiarise itself with the prosecutor's appeal and the materials of the case. During the recess an ambulance was called because the applicant felt unwell. Her blood pressure rose to 180/100 but no

injections could be administered as she was allergic, so the doctor recommended adjourning the hearing.

18. The hearing resumed at 8.03 p.m. The applicant's lawyer requested the adjournment of the hearing in view of the deterioration of the applicant's health and in order for him to be able to familiarise himself with the prosecutor's appeal in adequate conditions. The court granted this request and adjourned the hearing until 1 p.m. on 24 November 2005.

19. The court hearing was over at around 8.30 p.m.

20. The applicant alleged and the Government did not dispute that during the entire court hearing she was monitored by four national security officers and was not allowed to move freely, to leave the courtroom during the breaks or to go home. After the court hearing was over, she was forcibly taken by these officers and pushed into the same car and taken back to the Yerevan-Kentron Detention Facility. This was done after one of the officers had a private consultation and received instructions from the presiding judge in the deliberation room.

21. On 24 November 2005 at 1 p.m. the Court of Appeal resumed the examination of the prosecutor's appeal. The applicant was not present at this hearing.

22. The applicant's lawyers again challenged the impartiality of the bench, alleging that the court had manifested a biased attitude. In particular, the court summoned a hearing on the prosecutor's appeal immediately before the expiry of the applicant's detention period. Furthermore, the court did not release the applicant despite the fact that her detention had not been prolonged. Finally, after the hearing was over, the presiding judge departed to the deliberation room where he had a consultation with a national security officer, as a result of which it was decided to keep the applicant in detention. Thereafter she was transported to a national security isolation cell. The lawyers claimed that all the above suggested that the Court of Appeal was not impartial.

23. The court examined and dismissed this challenge.

24. Thereafter, one of the applicant's lawyers made a declaration stating that, following the court hearing of 23 November 2005, the applicant had been taken away by national security officers in an unknown direction, despite the fact that she was already free by virtue of the law. The lawyers refused to participate in the hearing in such circumstances and left the courtroom.

25. The Court of Appeal examined the prosecutor's appeal in their absence and decided to quash the decision of the District Court of 22 November 2005 and to prolong the applicant's detention on remand for another two months.

26. On 28 November 2005 one of the applicant's lawyers addressed a letter to the Chief of the Yerevan-Kentron Detention Facility, complaining:

"... You ..., as the chief of administration of the detention facility where [the applicant] is kept, at 5.45 p.m. on 23 November 2005 not only did not release her, but had her escorted to court by four officers in an official car having State licence no. 150 SS 02, during the entire [court hearing] you monitored her actions until 8.30 p.m. on [that date], forbidding her to move freely, and at around 8.30-8.45, with the assistance of the same officers, you forcibly (holding her arms, pushing her) placed her in the above car and transported her to the Yerevan-Kentron Detention Facility where you received her, according to the information at our disposal, without a relevant court decision. In that period (between 9 p.m. and 11 p.m.) the defence called you on numerous occasions and you stated that you would keep [the applicant] until the court hearing scheduled for 1 p.m. on the next day was over..."

27. On 5 December 2005 the applicant's lawyers lodged an appeal on points of law against the Court of Appeal's decision. In their appeal, they again complained about the fact that the applicant had not been released from custody on 23 November 2005.

28. On 8 December 2005 the applicant's lawyers made a similar declaration addressed to the Prosecutor General.

29. By a letter of 9 December 2005 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) returned the appeal since it was no longer competent to examine it following the constitutional amendments.

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure (CCP)

30. The relevant provisions of the CCP read as follows:

Article 11: Security of person

"5. The court, the body of inquest, the investigator and the prosecutor are obliged immediately to release any person illegally deprived of his liberty. The chief of administration of a detention facility does not have the right to receive a person for purposes of detention without a relevant court decision and is obliged immediately to release any person whose period of detention has expired."

Article 136: Imposition of a preventive measure

"2. Detention ... shall be imposed only by a court decision upon the investigator's or the prosecutor's motion or of the court's own motion during the court examination of the criminal case..."

Article 137: Detention

"5. The court's decision to choose detention as a preventive measure can be contested before a higher court."

Article 138: Detention period

"1. The accused's detention period shall be calculated from the moment of him being actually taken into custody at the time of the arrest...

...

3. In the pre-trial proceedings of a criminal case the detention period cannot exceed two months, except for cases prescribed by this Code...

4. In the pre-trial proceedings of a criminal case the accused's detention period can be prolonged by a court for up to one year in view of the particular complexity of the case."

Article 139: Prolongation of the detention period

"1. If it is necessary to prolong the accused's detention period, the investigator or the prosecutor must submit a well-grounded motion to the court not later than ten days before the expiry of the detention period. The court, if it agrees on the necessity of prolonging the detention period, shall adopt an appropriate decision not later than five days before the expiry of the detention period.

...

3. When deciding on the prolongation of the accused's detention period, the court shall prolong the detention period within the limits prescribed by this Code, on each occasion for a period not exceeding two months."

Article 141: Obligations of the administration of a detention facility

"The administration of a detention facility is obliged: ... (10) immediately to release a person kept in detention without an appropriate court decision or whose detention period imposed by a court decision has expired."

Article 142: Releasing the accused from detention

"1. The accused must be released from detention upon the decision of the relevant authority dealing with the criminal case, if: ... (4) when deciding on the question of detention, the detention period set by the court has expired and has not been prolonged...

...

3. ... In cases envisaged under [sub-paragraph 4] of paragraph 1 of this Article ... the chief of administration of the detention facility shall immediately release the detainee."

Article 150: Appeals against preventive measures

"2. A court decision imposing a preventive measure can be contested before the court of appeal."

B. The Law on Conditions for Holding Arrested and Detained Persons (*«Ձերբակալված և կալանավորված անձանց պահելու մասին» ՀՀ օրենք*)

31. The relevant provisions of the Law read as follows:

Section 13: Rights of arrested and detained persons

"An arrested or detained person is entitled to ... lodge applications and complaints, both himself and through his lawyer or lawful representative, with ... the courts..."

Section 18: The procedure for examining proposals, applications and complaints of arrested and detained persons

"...[C]omplaints ... addressed to ... a judge ... shall be sent to [him] in a sealed envelope within one day."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

32. The applicant complained that her detention between 5.50 p.m. on 23 November 2005 and the time when the Criminal and Military Court of Appeal decided on 24 November 2005 to prolong her detention was unlawful. She invoked Article 5 §§ 1 (c) and 4 of the Convention which, in so far as relevant, reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Article 5 § 1 (c) of the Convention

1. The parties' submissions

33. The Government admitted that the applicant had indeed been deprived of her liberty between 5.50 p.m. on 23 November 2005 and the moment when the Criminal and Military Court of Appeal decided on the next day to prolong her detention. They claimed, however, that she had failed to exhaust the domestic remedies. In particular, it was the administration of the Yerevan-Kentron Detention Facility that was responsible for the applicant's continued unlawful detention, by not taking any steps to release her despite having been presented with a copy of the District Court's decision of 22 November 2005. The applicant, however, failed to challenge the inaction of the administration before the domestic courts.

34. The Government further claimed that on 23 November 2005 the Court of Appeal did everything possible to examine the prosecutor's appeal and to resolve the issue. The same cannot be said of the applicant and her lawyers who did everything possible to hamper the examination of the prosecutor's appeal. In particular, the lawyer arrived late at the hearing and on several occasions requested a recess which was granted by the court. The court was not able to finish the examination of the prosecutor's appeal and had to adjourn the hearing due to the applicant's state of health. Thus, the main reasons for the delay in reaching a decision on 23 November 2005 and the eventual adjournment of the hearing were the conduct of the applicant's lawyers and the deterioration of her health. In such circumstances, the position adopted in the case of *Giulia Manzoni v. Italy* (1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV) was also applicable in the present case.

35. The applicant submitted that her detention authorised by a court, which had not been prolonged, was to expire at 5.50 p.m. on 23 November 2005 and the law required that she be released not later than 5.51 p.m. on that day. The court received the prosecutor's appeal in the afternoon of that day and scheduled a hearing for the same day, informing her lawyers about this by telephone at around 5.30 p.m. However, when her detention period expired, the court did not set her free and she was held in the courtroom with the help of national security officers. She was not even allowed to leave the courtroom during the breaks, despite being already formally at liberty. Afterwards, following a consultation with the presiding judge and upon his instructions, four national security officers forcibly

transported her back to the detention facility where she was kept until the Court of Appeal decided the next day to prolong her detention. The applicant claimed that her detention following this decision was also unlawful, arguing that if a detention period was over it could no longer be extended.

36. The applicant further submitted that she had exhausted all available domestic remedies. In particular, given that she was at the Court of Appeal when her detention period expired and the court did not release her from detention in spite of the requirements of Article 11 § 5 of the CCP, she lodged a challenge against the bench. Furthermore, she lodged an appeal on points of law against the Court of Appeal's decision of 24 November 2005, in which she also raised this complaint. Moreover, the Government's argument placing all the blame for the failure to release her on the administration of the detention facility was ill-founded, because she was in court when her detention period expired and it was the court's duty to release her. Thus, the applicant's continued unlawful detention was the joint responsibility of the court, the national security officers and the administration of the detention facility.

2. The Court's assessment

(a) Admissibility

37. The Court notes at the outset that the applicant raised her complaint about the alleged unlawfulness of her detention following the Court of Appeal's decision of 24 November 2005 for the first time in her observations to the Court submitted on 11 November 2008. It follows that this complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

38. As regards the complaint concerning the alleged unlawfulness of the detention period between 5.50 p.m. on 23 November 2005 and the time when the Criminal and Military Court of Appeal decided on 24 November 2005 to prolong her detention, the Court considers that the Government's claim as to non-exhaustion is closely linked to the substance of this complaint and should therefore be joined to the merits.

39. 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

40. The Court reiterates that any detention must be lawful. The words "in accordance with a procedure prescribed by law" essentially refer to domestic law and lay down an obligation to comply with its substantive and

procedural provisions, but also require that any measure depriving the individual of his liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33, and *Lukanov v. Bulgaria*, 20 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II).

41. The Court further reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim and purpose of that provision (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311; *Giulia Manzoni*, cited above, § 25; *K.-F. v. Germany*, 27 November 1997, §§ 70, *Reports of Judgments and Decisions* 1997-VII; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Nikolov v. Bulgaria*, no. 38884/97, § 80, 30 January 2003).

42. The Court has previously accepted that, in certain circumstances, there may be some limited delay before a detained person is released. However, this has been in cases where the period of detention ended as a result of a court order and not conditions laid down by statute. Practical considerations relating to the running of the courts and the completion of administrative formalities mean that the execution of such a court order may take time which, nevertheless, should be kept to a minimum and, in any event, not exceed several hours (see *Quinn*, cited above, § 42; *Giulia Manzoni*, cited above, § 25; *Labita*, cited above, § 171; and *Nikolov*, cited above, § 82). However, where the maximum detention period and the release are conditioned by law, as opposed to a court order, the authorities are under a duty to take all necessary precautions to ensure that the permitted duration is not exceeded (see *K.-F.*, cited above, §§ 72, in which even a delay of 45 minutes was found to be in breach of Article 5 § 1 (c), since the maximum period of detention was known in advance and was absolute).

43. Turning to the circumstances of the present case, the Court notes that pursuant to Article 136 § 2 of the CCP detention can be imposed only by a court decision. Pursuant to Article 138 of the CCP a detention period is calculated from the moment that a person is actually taken into custody and cannot exceed two months unless prolonged by a court. The applicant was taken into custody at 5.50 p.m. on 23 September 2005. Thus, her detention period authorised by the decision of the Kentron and Nork-Marash District Court of Yerevan of 26 September 2005 was valid until 5.50 p.m. on 23 November 2005. On 22 November 2005 the District Court refused to prolong the applicant's detention period. However, the applicant was not released from detention at 5.50 p.m. on the next day. Instead, 20 minutes before the expiry of her detention period she was taken to court to take part in the hearing on the appeal lodged by the prosecutor against the decision of 22 November 2005. Moreover, after this hearing was adjourned at around

8.30 p.m., the applicant was taken back to the detention facility despite the fact that Article 141 of the CCP required the administration of the detention facility immediately to release a detainee when his or her detention period authorised by a court had expired.

44. The Court observes that the Government admitted that the applicant had indeed been deprived of her liberty between 5.50 p.m. on 23 November 2005 and the time when the Court of Appeal decided on 24 November 2005 to quash the decision of the District Court and to prolong her detention. They claimed, however, that the approach adopted in the *Giulia Manzoni* case, cited above, was to be applied. The Court does not agree with the Government's claim. In particular, that and other similar cases concerned a situation in which the court ordered the applicant's release but some time was necessary for the authorities to complete all the relevant administrative formalities in order to execute that order. In the present case, however, the District Court, by its decision of 22 November 2005, did not order the applicant's release but simply refused to prolong her detention. Thus, the applicant's authorised detention period continued to run and was to expire on the next day, a fact of which the authorities were aware and with which they were obliged to comply unless in the meantime the District Court's decision was overturned. In that sense the present case is more similar to the case of *K.-F.*, cited above, than the case pointed out by the Government. However, it must be distinguished even from that case for the following reasons.

45. The Government argued that the delayed examination of the applicant's case in the Court of Appeal was attributable to the applicant's lawyers, while after being taken to the detention facility she failed to contest the inaction of its administration. The Court, however, is not convinced by these arguments. It reiterates that it is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty (see *Shukhardin v. Russia*, no. 65734/01, § 93, 28 June 2007, and *Matyush v. Russia*, no. 14850/03, § 73, 9 December 2008). The Court observes that Article 139 of the CCP required that a motion seeking the prolongation of a detention period be submitted to the trial court and examined by it not later than ten and five days respectively before the expiry of the detention period. However, both the investigator and the District Court failed to comply with these time-limits, thereby creating undue delays in the examination of the question of prolongation of the applicant's detention (see paragraphs 8 and 9 above). Furthermore, the applicant was brought before the Court of Appeal only 20 minutes before the expiry of her detention period. The Government, however, failed to come up with any explanation for these delays. In such circumstances, the applicant cannot reasonably be blamed for the failure of the Court of Appeal to finish the examination of the question of prolongation of her detention period before its expiry, especially

in view of the fact that the entire hearing before that court lasted much longer than 20 minutes, namely about three hours, and was, moreover, eventually adjourned.

46. In any event, even assuming that a short delay at the beginning of the appeal hearing could be attributable to the applicant's lawyer, this does not affect the fact that the applicant's authorised detention period expired shortly after the start of such a belatedly scheduled hearing and the law required that she be set free. In spite of this, the Court of Appeal continued to treat the applicant as a detainee. Not only did the court not set her free at 5.50 p.m., when her authorised detention period expired, but even after the hearing was adjourned. Furthermore, the applicant alleged, which the Government did not dispute, that her transfer back to the detention facility was effected in full knowledge of the court and even upon its informal instructions. In such circumstances, it appears that the authorities had no intention of setting the applicant free until the appeal against the District Court's decision of 22 November 2005 received its final determination. No steps were taken to that effect and all the attempts made by the applicant's lawyers to secure her release were simply ignored. Thus, the present case does not concern a certain delay in complying with the legal rules requiring a detainee's release, as in the case of *K.-F.*, cited above, but rather the reluctance of the authorities, including the courts, to comply with such rules.

47. In such circumstances, it is doubtful that a separate complaint lodged with the courts against the failure of the administration of the detention facility to release the applicant after she was taken there following the court hearing could have produced any different results and secured the applicant's release. Furthermore, the Government failed to specify what judicial procedure the applicant had at her disposal that could have provided her with an effective and immediate remedy capable of leading to her release, given the specificities of her case. In this respect, it should firstly be noted that the applicant was taken back to the detention facility at a relatively late hour and, in any event, outside regular working hours. Furthermore, the period of her unauthorised stay at the detention facility was relatively short, about seventeen hours. However, Section 18 of the Law on Conditions for Holding Arrested and Detained Persons did not require any immediacy in such matters and even allowed up to one day for detainees' complaints to be sent to a judge. The Court reiterates that the only remedies to be exhausted are those which are effective and accessible, that is available in theory and in practice at the relevant time, and which are capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006). In view of the above, the Court considers that the Government's claim as to non-exhaustion must be dismissed.

48. The Court concludes that between 5.50 p.m. on 23 November 2005 and the time when the Court of Appeal decided on 24 November 2005 to prolong her detention the applicant continued to be deprived of her liberty, despite the fact that there was no court decision authorising her detention for that period as required by law. It follows that the applicant's deprivation of liberty during that period was unlawful.

49. Accordingly, there has been a violation of Article 5 § 1 (c) of the Convention.

B. Article 5 § 4 of the Convention

50. The Court notes that the applicant also invoked Article 5 § 4 of the Convention in connection with the same facts, alleging that her unauthorised detention also gave rise to a violation of that provision.

51. The Court considers, however, that this complaint results from the main issues arising in the case under Article 5 § 1 (c) of the Convention. Having regard to its findings in respect of Article 5 § 1 (c), it does not consider it necessary to examine separately the admissibility and merits of this complaint.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage as she had suffered distress and frustration as a result of the failure of the domestic authorities to release her from detention.

54. The Government claimed that the applicant had failed to adduce any evidence to support her allegation that she had suffered non-pecuniary damage. Even assuming that she had suffered such damage, a finding of a violation would be sufficient just satisfaction. In any event, the amount claimed was excessive.

55. The Court takes the view that the applicant has suffered non-pecuniary damage as a result of her unlawful detention. Ruling on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the Court. These included EUR 5,000 for legal costs and EUR 1,000 for translation and administrative costs, such as postal, photocopying and other expenses. As regards legal costs, the applicant submitted that under Armenian law, once a lawyer had taken over the case, he could no longer withdraw. She did not pay any money to the lawyer for lodging complaints with the domestic authorities and bringing her case before the Court, but the lawyer performed his work conscientiously. Therefore, no payment proof exists which could be submitted to the Court.

57. The Government submitted that these claims must be rejected since the applicant had not produced any proof that the expenses had been actually incurred. Nor did she substantiate that these alleged costs were necessary and reasonable.

58. 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 were reasonable as to quantum. In the present case, the applicant admitted that she had not paid any money to her lawyer who represented her both before the domestic courts and the Court. Nor was she bound by any contract to make such a payment in the future. As to the alleged translation costs, no documentary proof was submitted substantiating these costs either. Therefore, these claims must be dismissed. On the other hand, the Court considers it appropriate to award the applicant EUR 500 for the costs incurred in the proceedings before it.

C. Default interest

59. 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. *Decides* to join to the merits the Government's objection as to non-exhaustion and to dismiss it;

2. *Declares* the applicant's complaint concerning the unlawfulness of her detention between 5.50 p.m. on 23 November 2005 and the time when the Criminal and Military Court of Appeal decided on

24 November 2005 to prolong her detention admissible under Article 5 § 1 (c) of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

4. *Holds* that it is not necessary to examine separately the admissibility and merits of the complaint under Article 5 § 4 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Armenian drams at the rate applicable at the date of settlement;

(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Armenian drams at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 9 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President