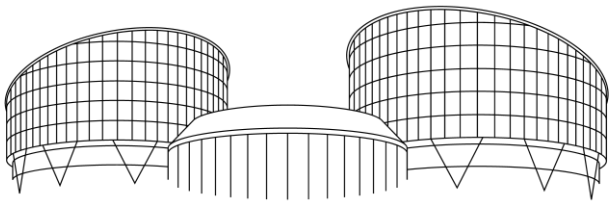

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF STEPANYAN v. ARMENIA

(Application no. 45081/04)

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 Stepanyan 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. 45081/04) 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 Stepan Stepanyan ("the applicant"), on 7 December 2004.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz, Ms A. Stock 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 9 July 2008 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 1951 and lives in Artashat, Armenia. He is a member of the National Democratic Union (NDU) political party. He is also the party's representative in the Ararat Region of Armenia.

1. The applicant's alleged harassment and political persecution

5. In 2003 a presidential election was held in Armenia with its first and second rounds taking place on 19 February and 5 March respectively. The applicant was involved with the work of the main opposition candidate and his responsibilities included monitoring the voting process. He alleges that, following the election, he prepared a report on various irregularities which had allegedly taken place during the election, but high officials from the Government and the Ararat Region tried to prevent him from making his report public, which he refused.

6. The applicant further alleges that from February 2003 until his arrest on 20 May 2004 he was repeatedly harassed because of his political activity. In particular, the police frequently called him to the local police station without any reasons and demanded that he stop his political activities. Furthermore, on 9 April 2004 his son was arrested and subjected to an administrative fine for disobeying the lawful orders of police officers and using foul language. Finally, from the date of his participation in a major demonstration held on 10 April 2004 until 19 May 2004, the police officers of the Ararat Police Department visited his home on a daily basis between 5 a.m. and 9 a.m., demanding that his whereabouts be disclosed. As a result of these actions, he was forced to stay away from his home and returned there only on 20 May 2004 after, in reply to his complaint, he had allegedly been assured by the Ombudsman that these visits would stop.

2. The administrative proceedings against the applicant

7. On 20 May 2004 the applicant was taken to Ararat Police Department. According to the record on bringing the applicant into custody (*արձանագրություն անձին բերման ենթարկելու մասին*), he was brought to the police station by two police officers at 1.15 p.m. for disobeying the lawful orders of a police officer and for using foul language.

8. At the Police Department an administrative case was prepared against the applicant. One of the arresting police officers reported to the Chief of Police:

> "On 20 May at 1 p.m. [we] were in the yard of building no. 26 on Kharazyan Street in Artashat where the resident of flat no. 55 of the same building, [the applicant], was speaking loudly with an unknown man. We approached and demanded [the applicant] to lower his voice and not to violate public order. Having heard this, [the applicant] turned from the unknown man towards us and spoke to us in the same manner, saying that it was not our business to judge how he was speaking and then he said that we should stop poking our noses into everything and pestering. We tried to calm him down but he continued insulting us and using insulting language. This lasted about five minutes, after which he was brought to the police station."

9. A record of an administrative arrest was drawn up in which it was stated that the applicant had "disobeyed lawful orders and used foul language" which constituted an offence under Article 182 of the Code of

Administrative Offences (CAO). It was also stated that the applicant had refused to make any statements. This record was signed by the applicant.

10. On the same date the applicant was taken to the Ararat Regional Court (*Արարատի մարզի առաջին ատյանի դատարան*) where Judge S. examined his case and found him guilty under Article 182 of the CAO, sentencing him to eight days of administrative detention. This decision stated the following:

> "On 20 May 2004 at around 1.15 p.m. next to building no. 26 on Kharazyan Street in Artashat the resident of the same building, [the applicant], was speaking loudly and making a loud noise with an unknown person, disturbing public order[. In this connection the police officers of the Ararat Police Department] tried to call him to order but [the applicant] continued to make a loud noise and to use foul language, not obeying the lawful orders of [the police officers].
>
> [The applicant] refused to give explanations at the court hearing.
>
> Police officers of the Ararat Police Department [N.S. and G.N.] stated that indeed on 20 May 2004 at around 1.15 p.m. next to building no. 26 on Kharazyan Street the resident of the same building, [the applicant], while being called to order, used foul language, telling them: "stop poking your noses into everything and pestering", and [using] other disrespectful words, and disobeyed their lawful orders.
>
> The court finds that [the applicant] has violated public order and disobeyed the lawful orders of [the police officers] so he should be subjected to an administrative penalty."

11. According to the record of the court hearing, the hearing started at 4.30 p.m. with the participation of the applicant and the two arresting police officers. The applicant did not wish to have a lawyer and did not file any motions. The judge read out the materials of the administrative case. The applicant refused to make any submissions. The two arresting police officers testified, repeating their earlier statements. The judge departed to a deliberation room, after which he came back and pronounced the decision.

12. The applicant contests the circumstances of his trial as presented in the above record and alleges that he was taken to Judge S.'s office where the hearing took place at 3 p.m. He was not allowed legal representation. Nor was he allowed properly to familiarise himself with the materials of the case but was only told of the formal charges against him. Despite his requests he was not allowed to make any submissions, to question the two arresting police officers or to call other witnesses. The entire hearing lasted about 10 to 15 minutes.

13. Following the hearing the applicant was taken to a detention facility. It appears that, while serving his sentence, he decided to go on a hunger strike.

14. It appears that on 26 May 2004 the administration of the detention facility applied to the Regional Court, seeking to have the detention

imposed on the applicant changed to some other administrative penalty due to the deterioration of the applicant's health.

15. On 26 May 2004 the same Judge S. examined this request and decided to grant it partially. While refusing to change the type of penalty imposed on the applicant, the judge ordered that the applicant be released and the sentence be postponed for one month.

16. On 3 June 2004 the applicant lodged an extraordinary appeal with the President of the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարանի նախագահ*). In his appeal, he argued in general terms that the decision of the Regional Court had been unfounded and unlawful and had been taken in violation of the procedural law. The Regional Court had failed to carry out an objective and thorough examination of the case and had convicted him without any compelling evidence, relying on the false testimony of the police officers. In support of his allegations the applicant presented in detail his account of the events of 20 May 2004. He submitted that this account could be confirmed by a number of witnesses, including his neighbours and family members, but the Regional Court had not summoned and examined them. Finally, he complained about the persecution by the police to which, allegedly, he had been subjected in the past.

17. On 8 June 2004 the President of the Criminal and Military Court of Appeal, on the basis of the written materials of the case, reviewed the decision of the Regional Court of 20 May 2004 with the following reasoning:

> "[The applicant] was subjected to eight days of administrative detention under Article 182 of the CAO by the decision of the Ararat Regional Court of 20 May 2004 for having made loud noise, violated public order and maliciously disobeyed the lawful orders of the police officers who tried to prevent those acts, next to building no. 26 on Kharazyan Street in Artashat on 20 May 2004 at around 1 p.m. ...
>
> By applying to the Criminal and Military Court of Appeal [the applicant] seeks to have [the above decision] quashed and the proceedings terminated in view of the fact that he has not committed an administrative offence.
>
> Having acquainted myself with the appeal and the materials of the administrative case (the reports [and] the records), I find that the appeal must be dismissed because [the applicant] did commit the acts in question on 20 May 2004, in connection with which he had been brought to the police station, an appropriate record had been drawn up and an administrative penalty under Article 182 of the CAO had been imposed by the first instance court."

18. The President of the Court of Appeal nevertheless decided, due to the applicant's state of health, to mitigate the sentence to six days of administrative detention, which the applicant had already served.

II. RELEVANT DOMESTIC LAW

19. For a summary of the relevant provisions concerning administrative proceedings see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, § 26, 15 November 2007). The relevant provisions of the CAO which were not cited in the above judgment, as in force at the material time, provide:

Article 182: Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police

> "Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police made in the performance of his duties of preserving public order leads to an imposition of a fine of between 50% and double the fixed minimum wage, or of correctional labour between one and two months with deduction of 20% of earnings or, in cases where, in the circumstances of the case, taking into account the offender's personality, the application of these measures would be deemed insufficient, of administrative detention not exceeding 15 days."

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH RULE AS REGARDS THE DECISION OF 20 MAY 2004

20. The Government submitted that the final decision in the applicant's case was taken by the Ararat Regional Court on 20 May 2004 and therefore the application was lodged out of time.

21. The applicant submitted that the decision of the President of the Criminal and Military Court of Appeal of 8 June 2004 restarted the running of the six-month period in respect of his complaints. Therefore his application was lodged within the prescribed time-limit.

22. The Court observes that the applicant raised a number of complaints in connection with his conviction of 20 May 2004. In particular, he alleged under Article 5 §§ 1 and 2 that his arrest and detention were arbitrary and unlawful and that he was not informed of the reasons for his arrest, and under Article 5 § 4 and 13 that there was no clear and accessible procedure for appeal against his conviction. Under Article 6 §§ 1 and 3 (b-d) he alleged that there was no equality of arms, that he was not allowed to call witnesses, to have a lawyer and to have sufficient time and facilities to prepare his defence, that he was not informed of the accusation against him, that the hearing was brief and not public and that the court failed to give reasons for its decision. The applicant further alleged that his conviction

violated his rights guaranteed by Articles 8, 10, 11 and 14 of the Convention and Article 3 of Protocol No. 1.

23. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter where it has been introduced within six months from the date of the final decision in the process of exhaustion of domestic remedies (see, among other authorities, *Danov v. Bulgaria*, no. 56796/00, § 56, 26 October 2006). However, the obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-III). Where no effective remedy is available to the applicant, the time-limit expires six months after the date of the acts or measures complained of, or after the date of knowledge of that act or its effect or prejudice on the applicant (see *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I). Thus, the pursuit of remedies which fall short of the above requirements will have consequences for the identification of the "final decision" and, correspondingly, for the calculation of the starting point for the running of the six-month rule (see *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002).

24. The Court observes that it has consistently rejected applications in which the applicants have submitted their complaints within six months from the decisions rejecting their requests for reopening of the proceedings on the ground that such decisions could not be considered "final decisions" for the purpose of Article 35 § 1 of the Convention (see, among other authorities, *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II; *Riedl-Riedenstein and Others v. Germany* (dec.), no. 48662/99, 22 January 2002; and *Babinsky v. Slovakia* (dec.), no. 35833/97, 11 January 2000). However, the Court has also accepted that situations in which a request to reopen the proceedings is successful and actually results in a reopening may be an exception to this rule (see *Pufler v. France*, no. 23949/94, Commission decision of 18 May 1994, Decisions and Reports 77-B, p. 140; *Korkmaz v. Turkey* (dec.), no. 42576/98, 17 January 2006; and *Atkın v. Turkey*, no. 39977/98, § 33, 21 February 2006).

25. Turning to the circumstances of the present case, the Court notes that the applicant raised a number of complaints in his application in connection with the decision of the Ararat Regional Court of 20 May 2004. This decision, however, was final and there were no further sufficiently accessible and effective remedies to exhaust, including the extraordinary remedies which could be initiated under Article 294 of the CAO with a prosecutor or the president of a higher court (see *Galstyan*, cited above, §§ 40-42). The applicant nevertheless tried one of these avenues for review by submitting an appeal to the President of the Criminal and Military Court of Appeal. On 8 June 2004 the President of the Criminal and Military Court of Appeal decided to review the final decision of the Regional Court of

20 May 2004, on the basis of the applicant's extraordinary appeal. The applicant lodged his application with the Court on 7 December 2004, which is more than six months from the date of the Regional Court's decision but less than six months from the date of the decision of the Court of Appeal. It is therefore necessary to determine whether the decision of the Court of Appeal taken on the basis of the applicant's extraordinary appeal restarted the running of the six-month period as far as the final decision of the Regional Court is concerned.

26. The Court observes that it has already examined a situation similar to the one in the present case in a number of cases against Armenia and has concluded that the mere fact of reopening proceedings will not restart the running of the six month period. In cases where proceedings are reopened or a final decision is reviewed the running of the six month period in respect of the initial set of proceedings or the final decision will be interrupted only in relation to those Convention issues which served as a ground for such a review or reopening and were the object of examination before the extraordinary appeal body (see *Sapeyan v. Armenia*, no. 35738/03, § 24, 13 January 2009; *Amiryan v. Armenia*, no. 31553/03, § 22, 13 January 2009; and *Gasparyan v. Armenia (no. 1)*, no. 35944/03, § 31, 13 January 2009).

27. In the present case, the Court notes that the applicant did not raise in his extraordinary appeal to the Court of Appeal, either explicitly or in substance, any of the complaints which he is currently raising before the Court in connection with the decision of 20 May 2004 (see paragraphs 16 and 22 above). It further notes that the Court of Appeal did not address of its own motion any of those issues either, apart from upholding the applicant's conviction under Article 182 of the CAO and decreasing the sentence imposed by the Regional Court. Thus, the complaints raised by the applicant before the Court in connection with the decision of the Regional Court were not the object of examination before the Court of Appeal and the grounds on which the Court of Appeal decided to review the final decision of the Regional Court cannot be seen as being in any way related to those complaints. The Court therefore concludes that the review of the final decision of the Regional Court by the Court of Appeal upon the applicant's extraordinary appeal did not re-start the running of the six-month period in respect of those complaints (see, *mutatis mutandis*, *Amiryan* and *Gasparyan*, cited above).

28. It follows that the applicant's complaints concerning the decision of 20 May 2004 were lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE DECISION OF 8 JUNE 2004

29. The applicant complained about the proceedings before the Criminal and Military Court of Appeal and invoked Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

A. Admissibility

1. Applicability of Article 6

30. The Court points out that Article 6 of the Convention applies to proceedings where a person is charged with a criminal offence until that charge is finally determined. It further reiterates that Article 6 does not apply to proceedings concerning a failed request to reopen a case. Only the new proceedings, after the reopening has been granted, can be regarded as concerning the determination of a criminal charge (see *Vanyan v. Russia*, no. 53203/99, § 56, 15 December 2005).

31. The Court notes that the President of the Criminal and Military Court of Appeal examined the applicant's extraordinary appeal against the decision of the Ararat Regional Court of 20 May 2004. In doing so, the President reviewed the applicant's case, upheld his conviction and imposed a new sentence.

32. In view of the above, the Court considers that the proceedings before the President of the Criminal and Military Court of Appeal concerned the determination of a criminal charge against the applicant. It finds, and this was not disputed between the parties, that Article 6 § 1 of the Convention under its criminal head applies to those proceedings.

2. Substantive issues

33. The Government submitted that the proceedings before the Criminal and Military Court of Appeal were compatible with the requirements of Article 6.

34. The applicant alleged that the Court of Appeal had failed to provide a reasoned decision. Furthermore, he was deprived of effective access to that court because of the lack of a clear procedure for appeal. Finally, no proper notice was given to him or his lawyers of the appeal hearing and as a consequence the appeal was heard in their absence.

(a) The right to a reasoned judgment

35. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, and *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001).

36. In the present case, the applicant was convicted under Article 182 of the CAO for disobeying the lawful orders of police officers and using foul language. This reason, including the underlying facts, was indicated in the decision of the Ararat Regional Court of 20 May 2004. The Court of Appeal, in its decision of 8 June 2004, recapitulated the findings of the Regional Court and decided to uphold them. The Court considers that the fact that the Court of Appeal endorsed the findings of the Regional Court does not suggest that it failed to adopt a reasoned decision.

37. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) The right of access to court

38. The Court observes that this complaint is in essence a restatement of the complaint concerning the lack of a clear and accessible procedure for appeal against the decision of the Ararat Regional Court. The applicant, however, has failed to comply with the six-month rule when lodging this complaint (see paragraph 27 above).

39. It follows that this part of the application was similarly lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(c) The right to an oral hearing

40. Lastly, the applicant complained that no proper notice was given to him or his lawyers of the hearing before the Criminal and Military Court of Appeal and he was therefore deprived of the possibility to be present during the examination of his case before that court. The Court observes, however, that the President of the Criminal and Military Court of Appeal did not hold an oral hearing on the applicant's extraordinary appeal, which was examined on the basis of written documents (see paragraph 17 above). The applicant's

complaint therefore in essence concerns the lack of an oral hearing before that court.

41. 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

42. The Court reiterates that an oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 and where an applicant has an entitlement to have his case "heard", with the opportunity *inter alia* to give evidence in his own defence, hear the evidence against him and examine and cross-examine the witnesses (see *Jussila v. Finland* [GC], no. 73053/01, § 40, ECHR 2006-...).

43. However, the personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing (see *Belziuk v. Poland*, 25 March 1998, § 37, *Reports of Judgments and Decisions* 1998-II). The manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Provided that there has been a public hearing at first instance, the absence of "public hearings" before a second or third instance may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given an opportunity of being heard in person by the appeal or cassation court (see *Ekbatani v. Sweden*, 26 May 1988, §§ 27 and 31, Series A no. 134).

44. Furthermore, even where an appellate court has full jurisdiction to review the case on questions of both fact and law, Article 6 does not always require a right to a public hearing and a right to be present in person. Regard must be had to the nature of the issues to be decided by the appellate court (see *Helmers v. Sweden*, 29 October 1991, § 36, Series A no. 212-A; *Kremzow v. Austria*, 21 September 1993, § 58, Series A no. 268-B; *Belziuk*, cited above, § 37; and *Jussila*, cited above, § 42). What is at stake for the appellant may also be of relevance (see *Helmers*, cited above, § 38, and *Botten v. Norway*, 19 February 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-I).

45. In the present case, it is not clear from the relevant provisions of the CAO whether the jurisdiction of the President of the Criminal and Military

Court of Appeal was limited only to questions of law or also fact (see, in particular, Article 294 of the CAO as cited in the *Galstyan* judgment, cited above). However, it appears from the substance of the President's decision of 8 June 2004, and in particular its finding that "[the applicant] did commit the acts in question" that the President was competent to examine not only questions of law but also of fact. Furthermore, the President was competent to make a full assessment of the applicant's guilt or innocence and to impose a sentence, which he did on the basis of the written materials of the case.

46. The Court observes that in this respect the circumstances of the present case are similar to those in the above case of *Ekbatani*, in which the Court was called upon to examine how the "public hearing" requirement should apply in appeal proceedings before a court with jurisdiction as to both the facts and the law. The applicant in that case denied the facts upon which the charge against him was founded. However, he was convicted by the District Court on the basis of the evidence given by the complainant. For the Court of Appeal the crucial question therefore concerned the credibility of the two persons involved. Nevertheless, the Court of Appeal decided, without a public hearing, to confirm the District Court's conviction, which led to a finding of a violation of Article 6 § 1 (see *Ekbatani*, cited above, §§ 32 and 33).

47. In the present case, the applicant's conviction was based on the evidence given by the two arresting police officers, who acted as the main and only witnesses in the case. The applicant, in his extraordinary appeal, denied in detail the account of events as presented by the police officers in question. However, the President of the Criminal and Military Court of Appeal upheld the applicant's conviction without having heard him and the above-mentioned police officers. The Court considers that, in the particular circumstances of the case, the applicant's guilt or innocence could not, as a matter of fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant and the two police officers in question.

48. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Lastly, the applicant complained under Articles 3 and 8 of the Convention that from 2003 until his conviction he had been subjected to continual harassment by the authorities for his political activities, in the form of frequent visits to his home by the police, preventing his election report from becoming public and subjecting his son to an administrative fine.

50. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not

disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

53. The Government claimed that, should the Court find a violation of the applicant's rights under the Convention, the amount claimed was excessive.

54. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage on account of the breach of the Convention found in the present judgment. Ruling on an equitable basis, the Court awards the applicant EUR 1,200.

B. Costs and expenses

55. The applicant also claimed 2,850 United States dollars (USD) and 4,123.73 pounds sterling (GBP) for the costs and expenses incurred before the Court. The applicant submitted detailed time sheets stating hourly rates in respect of his domestic lawyer and the three KHRP lawyers.

56. The Government submitted that these claims were not duly substantiated with documentary proof.

57. 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 Court notes at the outset that no invoice or even a time sheet has been submitted by the applicant to substantiate the fees allegedly paid to the United Kingdom-based barrister. As regards the three KHRP lawyers, the Court observes that only one of these lawyers, Ms L. Claridge, was indicated among the applicant's representatives and no power of attorney has ever been submitted to the Court in respect of the remaining two lawyers (see paragraph 2 above). The

Court therefore rejects the claims submitted in connection with the above lawyers.

58. The Court further reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* [GC], no. 33202/96, § 27, ECHR 2000-I). The Court notes that in the present case only a violation of Article 6 was found on one count while the entirety of the written pleadings, including the initial application and the subsequent observations, concerned numerous Articles of the Convention and Protocol No. 1. Therefore the claim cannot be allowed in full and a considerable reduction must be applied. Making its assessment on an equitable basis, the Court awards the applicant a total sum of EUR 1,000 for costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

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. *Declares* the complaint concerning the lack of an oral hearing before the Criminal and Military Court of Appeal admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 1,200 (one thousand two 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 1,000 (one 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;

4. *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 Deputy Registrar	Josep Casadevall President