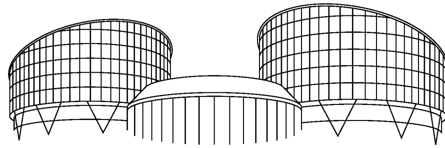

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GASPARI v. ARMENIA

(Application no. 44769/08)

JUDGMENT

STRASBOURG

20 September 2018

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

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

In the case of Gaspari v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Tim Eicke,
Jovan Ilievski, *judges,*
Siranush Sahakyan, ad hoc *judge,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 28 August 2018,

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

PROCEDURE

1. The case originated in an application (no. 44769/08) 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 Vartgez Gaspari ("the applicant"), on 10 September 2008.

2. The applicant was represented by Mr M. Shushanyan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions of his detention at Nubarashen Remand Prison between 6 March and 23 December 2008 had amounted to inhuman and degrading treatment and that the domestic courts had failed to provide relevant and sufficient reasons for his detention.

4. On 22 November 2011 the complaints concerning the conditions of the applicant's detention, the alleged unlawfulness of his detention between 23 September and 3 October 2008, and the alleged failure of the domestic courts to provide relevant and sufficient reasons for his detention were communicated to the Government and the remainder of the application was declared inadmissible.

5. Mr Armen Harutyunyan, the judge elected in respect of Armenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the President of the Chamber decided to appoint Mrs Siranush Sahakyan to sit as an ad hoc judge (Rule 29 § 1(a)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in Yerevan.

7. The applicant is an ethnic Armenian who was born and raised in Iran and who subsequently went to live in Armenia.

A. The applicant's arrest, detention and conviction

8. On 19 February 2008 a presidential election was held in Armenia. The subsequent protest rallies were eventually terminated on 1 March 2008 following intervention by the police, which resulted in clashes between protesters and law-enforcement officers and numerous arrests.

9. On 1 March 2008 the applicant, who was apparently near the main rally location around the time of the police intervention, was taken to a police station on suspicion of assaulting a police officer. It appears that when asked for his identity at the police station, the applicant introduced himself as Vardges Gasparyan.

10. In the applicant's arrest record drawn up on 2 March 2008 his name was indicated as both Vartgez Gaspari and Vardges Gasparyan.

11. In a note dated 3 March 2008 the investigator stated that the applicant's wife had presented his passport and that the information provided by the applicant about his identity did not correspond to the information contained in his passport.

12. On 5 March 2008 the applicant was formally charged and brought before the Arabkir and Kanaker-Zeytun District Court of Yerevan. The court examined an application lodged by the investigator for the applicant's pre-trial detention for a period of two months on the grounds that, if he remained at large, he could abscond, obstruct the course of justice, commit another offence and evade criminal responsibility.

13. The applicant submitted before the District Court that the application was unsubstantiated. He had a higher education, was married, was head of a company, had a minor child dependent on him and had no previous convictions. The imputed acts fell into the category of offences of medium gravity and it had not been substantiated that if he remained at large, he would evade criminal responsibility.

14. The District Court decided to allow the investigator's application, taking into account the dangerousness of the imputed offence and the fact that if the applicant remained at large, he could abscond, obstruct the proceedings, commit another offence and influence witnesses.

15. On 11 March 2008 the applicant lodged an appeal, arguing that there was no evidence suggesting that if he remained at large, he would abscond, obstruct the course of justice, unlawfully influence witnesses, commit

another offence or evade criminal responsibility. He was a respected and trusted person in the society, was known to be of good character, had a permanent place of residence and a minor child dependent on him, and had always respected the law.

16. On 20 March 2008 the Criminal Court of Appeal dismissed the applicant's appeal. The Court of Appeal stated that it followed from the case file that after having been brought to the police station, the applicant had introduced himself as Vardges Gasparyan instead of Vartgez Gaspari, thereby providing false information about his identity. His real name was discovered only after his passport had been presented. This provided sufficient grounds to believe that if the applicant remained at large, he could abscond, falsify or conceal evidence and obstruct the investigation by failing to appear when summoned by the authority conducting the criminal proceedings.

17. On 23 April 2008 the Kentron and Nork-Marash District Court of Yerevan decided to set the case down for trial and to keep the applicant in detention.

18. On 14 May, 17 June, 17 July and 5 August 2008 the applicant applied to the District Court for his release.

19. The District Court dismissed the applications of 14 May and 17 June, finding that the grounds for the applicant's detention still persisted. It adjourned the examination of the applications of 17 July and 5 August until circumstances necessary for a decision to be taken had been clarified.

20. At the hearing of 23 September 2008, the applicant once again urged the court to release him and asked it to reason its decision. The presiding judge refused to take a decision, stating that it had already been decided on 17 July to adjourn that question. It appears that an argument erupted between, on the one hand, the applicant and his lawyer, who insisted that the judge take a decision on the applicant's request or otherwise withdraw from the case, and on the other hand, the judge and the prosecutor, who objected to the demand that the judge withdraw. The applicant then wanted to leave the courtroom in protest against the allegedly unlawful actions of the judge. The judge decided to penalise the applicant by removing him from the courtroom on the grounds that he was obstructing the normal course of the hearing, abusing his procedural rights and disrespectfully refusing to follow the judge's orders. The hearing was adjourned until 29 September 2008.

21. At the hearing of 29 September 2008, the presiding judge refused to grant the applicant's lawyer permission to lodge an application for release. Thereafter the applicant declared that he wished to lodge a challenge to the judge. In response, the judge decided once again to penalise the applicant on the same grounds as previously, by removing him from the courtroom and adjourning the hearing until 3 October 2008.

22. On 22 October 2008 the applicant lodged another application, seeking to be released on bail. It appears that no decision was taken on that application.

23. On 10 November 2008 the Kentron and Nork-Marash District Court of Yerevan found the applicant guilty as charged and sentenced him to one year's imprisonment. The beginning of his sentence was to be calculated from 2 March 2008. The periods from 23 to 29 September and from 29 September to 3 October 2008, during which the court hearings were adjourned because of the applicant's removal from the courtroom, were not to be calculated as part of his sentence, pursuant to Article 314.1 § 6 of the Code of Criminal Procedure (CCP).

24. On 27 February 2009 the Criminal Court of Appeal, taking into account that Article 314.1 § 6 of the CCP had been amended in the meantime (see paragraph 35 below) and as a consequence the periods during which the trial court hearings had been adjourned were to be calculated as part of the applicant's sentence, decided to release him on the grounds that he had already served his one-year sentence.

B. Conditions of the applicant's detention

25. Between 6 March and 23 December 2008 the applicant was kept at Nubarashen Remand Prison.

26. From 6 to 7 March 2008 the applicant was held in cell no. 9, which measured about 20 by 25 sq. m and accommodated seven to eight inmates. The cell was located in a semi-basement and was very damp and unsanitary. The air was stale, as the only source of ventilation was a window measuring one square metre and facing a pit filled with several centimetres of rubbish and frequented by rats. In the evening the toilet situated in the corner of the cell became clogged and sewage from the upper floors flooded the entire cell floor. The inmates' appeals to the prison guards produced no results and they were allowed only to direct the flood towards the corridor. The applicant addressed a letter to the head of the remand prison, complaining about the unsanitary conditions in the cell and, in particular, the flooding, and requested that measures be taken.

27. At noon on 7 March the applicant was transferred to cell no. 29, which measured about 20 by 25 sq. m and accommodated about ten inmates. While in that cell, the applicant declared a hunger strike in protest against alleged human-rights violations in Armenia.

28. At around 2 p.m. on the same date the applicant was transferred to cell no. 4, where he was kept until 14 March 2008. He shared the cell with another hunger striker. The cell measured about 20 sq. m and was again situated in the detention facility's semi-basement. The conditions were allegedly unsanitary, the air was damp and it stank of sewage. The only window to the basement cell, measuring 1 sq. m, had a pit in front of it

which prevented natural light from entering the cell. No out-of-cell activities were allowed.

29. From 14 to 20 March 2008 the applicant was kept in cell no. 79, which measured 20 sq. m. The cell was relatively calm and ventilated.

30. From 20 March to 15 April 2008 the applicant was kept in cell no. 20, which measured about 20 sq. m and accommodated ten to twelve inmates. Almost all of his cell-mates smoked. Being a non-smoker, he felt asphyxiated and his eyes watered continuously. The television was switched on twenty-four hours a day, which disrupted his sleep. On 15 April 2008 the toilet became clogged and the cell floor flooded with sewage from the upper floors. The applicant complained and was transferred to cell no. 42 on the next floor.

31. From 15 April to 4 September 2008 the applicant was kept in cell no. 42, which measured about 25 sq. m and accommodated up to fourteen inmates. The cell had only eight beds, so the inmates had to sleep in turns. There was a serious lack of fresh air, since almost all of his cell-mates smoked. The sanitary conditions were relatively satisfactory.

32. From 4 September to 23 December 2008 the applicant was kept in cell no. 10, which measured about 12 sq. m and accommodated three to four inmates.

II. RELEVANT DOMESTIC LAW

A. Criminal Code (in force as of 1 August 2003)

33. Article 69 § 3 provides that one day's detention preceding the date on which a conviction becomes final is equal to one day's imprisonment imposed as a sentence.

B. Code of Criminal Procedure (in force as of 12 January 1999)

34. Article 314.1 § 1 (2) prescribed, at the material time, removal from the courtroom as a penalty that the court may impose on the parties, other participants in the proceedings and persons attending the court hearing if they showed disrespect towards the court, obstructed the normal course of the hearing, abused their procedural rights or unjustifiably failed to comply or properly comply with their procedural obligations. Article 314.1 § 6 provided that, if the accused was removed from the courtroom as a penalty, the hearing was to be adjourned for two weeks. The adjournment period could not be calculated as part of the sentence period.

35. On 5 February 2009 an amendment was introduced to Article 314.1 § 6, with retroactive effect, repealing the part concerning the non-calculation of the adjournment period as part of the sentence.

C. Law on Detention Conditions for Arrested and Detained Persons (*Ձերբակալված և կալանավորված անձանց պահելու մասին օրենք*) (in force as of 1 April 2002)

36. Section 13(3) provides that an arrested or detained person is entitled to lodge, himself or through his lawyer or statutory representative, applications and complaints alleging a violation of his rights and freedoms. The application may be lodged with the administration of the facility where the arrested or detained person is held, the relevant higher authority, a court, a prosecutor's office, the Ombudsman, bodies of public administration and local self-governance, non-governmental unions and political parties, mass-media and international institutions, and organisations protecting human rights and freedoms.

37. Section 20 provides that the living space afforded to arrested and detained persons must comply with the building and sanitary and hygienic norms established for general living spaces. The living space afforded must not be less than 4 sq. m for each individual.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Report to the Armenian Government on the visit to Armenia carried out by the CPT from 15 to 17 March 2008, CPT/Inf(2010)7

38. The CPT paid an *ad hoc* visit to Armenia from 15 to 17 March 2008. The main purpose of the visit was "to examine the treatment of persons detained in relation to events which followed the presidential election of 19 February 2008, after having received numerous reports from various sources alleging excessive use of force by law enforcement officials and expressing concern about the fate of those taken into detention". During the visit the CPT visited, among others, Nubarashen Remand Prison where a number of the above-mentioned persons were interviewed in connection with the circumstances of their arrests, including any alleged ill-treatment. As regards the conditions of detention at that facility, the CPT's report stated:

> "Given the nature of the visit, the CPT's delegation did not examine in detail the conditions of detention in the three prisons visited. However, it should be noted that a number of prisoners interviewed at Nubarashen Prison complained that they had not been provided with outdoor exercise (for periods of up to 10 days)".

B. Report by the Council of Europe Commissioner for Human Rights on His Special Mission to Armenia on 12-15 March 2008, CommDH(2008)11REV, 20 March 2008

39. The Council of Europe Commissioner for Human Rights paid a special visit to Armenia from 12 to 15 March 2008. The purpose was to "monitor the overall human rights situation and the impact of the state of emergency declared after the post-election clashes". It appears that during his visit the Commissioner interviewed a number of persons detained at Nubarashen Remand Prison in connection with those events. The Commissioner's report produced following his visit contains no mention of the conditions of detention at that facility.

C. CPT: Report to the Armenian Government on the visit to Armenia carried out by the CPT from 10 to 21 May 2010, CPT/Inf(2011)24

40. The relevant parts of this report read as follows:

"61. ... Prison overcrowding was a common feature of all the penitentiary establishments visited, Nubarashen Prison being the most striking example. The delegation witnessed the negative impact of overcrowding on many aspects of life in prison: the inmates taking turns to sleep on available beds; cramped and unhygienic accommodation; the virtual absence of structural activites and restrictions on the provision of outdoor exercise ...

81. As regards material conditions, most of the cells were seriously overcrowded, with a significant proportion of inmates taking turns to sleep on the available beds on on the floor (e.g. 19 prisoners in a cell of 26 m² containing 12 beds).

The majority of cells (and in-cell toilets) were in a state of dilapidation ... Ventilation was poor, and running water was available for a maximum of four hours a day (two hours in the morning and two hours in the evening) ...

Further, the shower facilities were generally in a poor state of repair, and prisoners had access to them at best once a week, frequently only once every two weeks.

82. The provision of outdoor exercise at Nubarashen Prison has been an ongoing problem since the CPT's first visit in 2002. Outdoor exercise was still not organised at week-ends, mainly due to staff shortages, and most prisoners interviewed indicated that, in practice, they were allowed outdoor exercise once to three times a week.

Apart from a few prisoners working in general services (e.g. cleaning, maintenance work, kitchen), the vast majority of inmates were locked up for 23 or even 24 hours a day in their cells, with no other activities than watching TV, playing board games or reading books."

D. CPT: Report to the Armenian Government on the visit to Armenia carried out by the CPT from 5 to 15 October 2015, CPT/Inf(2016)3

41. The relevant parts of this report read as follows:

> "63. Material conditions at Nubarashen Prison had remained basically the same as those observed during the 2010 periodic visit i.e. they were unacceptable. Despite some local efforts to redecorate (mostly by inmates themselves and often using their own resources or the resources of their families), the prison was in a state of advanced dilapidation. Further, it was severely overcrowded (even taking into account the drop in population since 2010), with some inmates not having their own bed and sleeping in shifts. In a number of the standard 12-bed cells seen by the delegation there could be up to 17 prisoners, and it was not exceptional to see 14 inmates, especially in the units for remand prisoners (e.g. in cells Nos. 16, 34 and 51).
>
> Many cells (especially on the ground level) were humid, damp, affected by mould, poorly lit and ventilated, dirty and infested with vermin. There were still serious problems with water supply (water continued to be available at most 4 hours per day). The communal bathrooms/showers were dilapidated and access to a shower offered at most once per week. Most cells had only semi-partitioned sanitary annexes. The kitchen and laundry were dilapidated too.
>
> Further, outdoor exercise was still not available on weekends and – when offered – it reportedly did not always last one hour. The bulk of the inmates had to use the same small and inadequate yards located on the roof of the establishment.
>
> **...**
>
> 65. More generally, the Committee is of the view that the structure and the present condition of Nubarashen Prison are so inadequate that they warrant a serious reflection as to the future of the establishment and the advisability of any further investment (rather than directing the available resources to ensure appropriate conditions of detention at some other location). In any case, were a decision to be taken to continue operating Nubarashen Prison on its current premises, a massive and comprehensive refurbishment would be indispensable, covering issues such as access to natural light, artificial lighting, ventilation, full partition of sanitary annexes, water supply, state of communal bathrooms/showers, repainting, disinfestation, hygiene in the cells and the kitchen."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that the conditions of his detention had been in breach 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

43. The Government submitted that the applicant had failed to exhaust domestic remedies, since he had never complained to a court under section 13(3) of the Law on Detention Conditions for Arrested and Detained Persons which provided persons deprived of their liberty with a possibility to lodge court complaints concerning violations of their rights.

44. The applicant did not comment on the Government's objection.

45. The Court reiterates that 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 special circumstances existed which absolved him or her from this requirement (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006; and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 77, 25 March 2014).

46. The Court notes that it has examined on a previous occasion the objection that an applicant had failed to exhaust the domestic remedy provided for under section 13(3) of the Law on Detention Conditions for Arrested and Detained Persons and decided that this remedy was not effective (see *Kirakosyan v. Armenia*, no. 31237/03, §§ 57-58, 2 December 2008). Although there are undeniable differences between that case and the instant one, the Court further notes that the Government have failed to produce any new evidence substantiating the effectiveness of the remedy they invoke. For this reason it rejects the Government's non-exhaustion objection.

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

B. Merits

1. The parties' submissions

48. The applicant submitted that the conditions of his detention at Nubarashen Remand Prison between 6 March and 23 December 2008 had amounted to inhuman and degrading treatment in breach of Article 3.

49. The Government submitted that the conditions of the applicant's detention had been in compliance with CPT standards. Referring to the

reports produced by the CPT and the Council of Europe Commissioner for Human Rights following their March 2008 visits to Armenia, including to Nubarashen Remand Prison, they argued that, since those reports did not contain any negative findings about the conditions in that facility, the conditions had been in compliance with international standards. Furthermore, section 20 of the Law on Detention Conditions for Arrested and Detained Persons guaranteed sufficient living space for inmates.

2. *The Court's assessment*

(a) General principles

50. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her 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 or her health and well-being are adequately secured (see, among other authorities, *Muršić v. Croatia* [GC], no. 7334/13, § 99, ECHR 2016).

51. The Court has held that, when the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government, who could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met: (1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor; (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and (3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (ibid., §§ 137-38).

52. In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue, the space element remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room

temperature, possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (ibid., § 139).

53. The Court has also stressed that in cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (ibid., § 140).

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

54. In the present case, the applicant alleged that the conditions of his detention at Nubarashen Remand Prison between 6 March and 23 December 2008 had fallen short of the requirements of Article 3. The Court notes at the outset that although the Government contested the applicant's allegations concerning the conditions of his detention at that facility, they failed to submit any evidence in support of their submissions or provide any details regarding the particular conditions of the applicant's detention. As regards the two reports referred to by the Government, the Court notes that neither of them examined specifically the conditions of detention at Nubarashen Remand Prison. The only comment in that respect found in the CPT's report suggested that some detainees may have experienced a lack of outdoor activities (see paragraphs 38 and 39 above). At the same time, the Court cannot overlook the CPT's findings concerning the overall conditions of detention at Nubarashen Remand Prison following its periodic visit in 2015, which were found to have remained the same since the CPT's periodic visit in 2010 and raised numerous problems (see paragraph 41 above). The Court is mindful of the fact that both periodic visits took place after the circumstances of the present case. However, there is nothing to suggest that the conditions of detention at that facility were significantly different during the period when the applicant was detained there, namely in 2008. In such circumstances, the Court has no reason to doubt the applicant's allegations and will proceed with its examination on the basis of them.

55. The Court notes that during his stay at Nubarashen Remand Prison the applicant was detained in seven different cells, in which the conditions of detention varied (see paragraphs 26-32 above). The Court considers it necessary to examine first the periods during which the applicant had less than 3 sq. m of personal space, followed by the periods during which the personal space available to him was between 3 and 4 sq. m, and lastly all the remaining periods. As the Court has not received any information from the Government in that connection, and since the applicant's submissions in that respect are not sufficiently precise, the information available to the Court regarding the size of the cells and the number of inmates is only

approximate. Nevertheless, the information which the Court has at hand allows it to reach the following conclusions.

(i) The periods during which the applicant had less than 3 sq. m of personal space

56. There were two periods during which the applicant clearly had personal space of less than 3 sq. m: on 7 March 2008, in cell no. 29 (about two hours – about 2 to 2.5 sq. m), and between 20 March and 15 April 2008, in cell no. 20 (twenty-six days – about 1.6 to 2 sq. m) (see paragraphs 27 and 30 above).

57. As regards the former period, the Court observes that it was quite short, lasting only about two hours. The Court notes, however, that the applicant was transferred to cell no. 29 from cell no. 9, which had been overcrowded and in an unsanitary condition (see paragraph 60 below). After cell no. 29 he had been placed in cell no. 4, where the conditions also fell short of the requirements of Article 3 (see paragraph 64 below). The Court further notes that the Government have failed to demonstrate that there were factors capable of rebutting the strong presumption of a violation of Article 3. Therefore, despite the overall brevity of the applicant's stay in cell no. 29, the Court considers that his detention therein should be considered as part of a longer, continuous situation and for this reason had amounted to degrading treatment within the meaning of Article 3.

58. As regards the latter period, taking into account its duration and the amount of personal space at the applicant's disposal, it is sufficient for the Court to conclude that that period does not call into question the strong presumption of a violation of Article 3. Therefore, the conditions of the applicant's detention in cell no. 20 subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounting to degrading treatment prohibited by Article 3 of the Convention (see, *mutatis mutandis*, *Muršić*, cited above, §§ 151-153).

(ii) The periods during which the applicant may have or appears to have had less than 3 sq. m of personal space

59. The Court refers here to the periods spent by the applicant in cells nos. 9 (from 6 to 7 March 2008) and 42 (from 15 April to 4 September 2008) (see paragraphs 26 and 31 above).

60. As regards the former period, the applicant's submissions do not allow the Court to ascertain whether he had more or less than 3 sq. m of personal space during his stay in cell no. 9. In any event, it is evident that the personal space available to him must have been at worst 2.5 sq. m and at best 3.57 sq. m. Even assuming that it was the latter, it would still have been below 4 sq. m and therefore amounts to a weighty factor in the Court's assessment. It is true that the applicant's stay in cell no. 9 was rather short and amounted to only one day. However, having regard to other aspects of

the physical conditions of detention in the cell, including the alleged lack of natural light and fresh air, and the unsanitary situation in the cell, the Court is of the opinion that cumulatively the conditions in cell no. 9 reached the threshold required for a finding of a violation of Article 3.

61. As regards the latter period, the Court notes that it lasted in total 143 days, during which, as it appears, there were periods when the applicant had as little as 1.78 sq. m of personal space at his disposal, that is when fourteen inmates were accommodated in the cell. It is true that the applicant failed to specify the frequency and duration of such periods. However, the Court takes note of the applicant's allegation about the lack of an individual sleeping place during that period, which – in addition to being a problem in itself – also suggests that, given the number of beds, there were at least nine inmates in the cell at any given time, leaving the applicant with no more than about 2.77 sq. m of personal space. These factors, as well as the alleged constant exposure to smoke, are sufficient for the Court to conclude that the conditions of the applicant's detention in cell no. 42 amounted to degrading treatment within the meaning of Article 3.

(iii) The period during which the applicant had between 3 and 4 sq. m of personal space

62. Between 4 September and 23 December 2008 the applicant was kept in cell no. 10, where he had between 3 and 4 sq. m of personal space (see paragraph 32 above). The applicant did not, however, make any other allegations regarding the conditions of his detention in that cell. While the space element remains a weighty factor in the Court's assessment, it is not sufficient on its own for the Court to conclude that the conditions of the applicant's detention in cell no. 10 amounted to degrading treatment within the meaning of Article 3.

(iv) The remaining periods

63. The Court refers to the last two remaining periods of detention, namely between 7 and 14 March 2008 in cell no. 4 and between 14 and 20 March 2008 in cell no. 79 (see paragraphs 28 and 29 above).

64. As regards the former period, the Court notes that cell no. 4 was a multi-occupancy cell and the applicant had 10 sq. m of personal space at his disposal during that period. Thus, no issue with regard to the question of personal space arises in connection with the applicant's stay in that cell. Nevertheless, the Court must have regard to other aspects of the physical conditions of his detention in the cell in question. It notes that during that entire period, which lasted seven days, the applicant was not allowed any out-of-cell activities and was confined to his cell. Although he was not specific about the alleged unsanitary state of the cell, the absence of any out-of-cell activities, coupled with the alleged odour of sewage and shortage of natural light, prompt the Court to conclude that the conditions of his

detention in that cell amounted to degrading treatment within the meaning of Article 3.

65. As regards the latter period, the Court notes that the applicant failed to provide any information regarding the number of inmates kept in cell no. 79. Nor did he allege that the cell had been overcrowded. On the contrary, he submitted that the cell had been "relatively calm and ventilated". Thus, there are no grounds to conclude that the conditions of his detention in that cell were in violation of the requirements of Article 3.

(v) Conclusion

66. The Court finds that there has been a violation of Article 3 of the Convention with regard to the conditions of the applicant's detention in cells nos. 29, 20, 9, 42 and 4.

67. Conversely, with regard to the conditions of the applicant's detention in cells nos. 10 and 79, the Court finds that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

68. The applicant complained that the fact that the period which he had spent in detention during the adjournment of the trial court hearings, namely between 23 September and 3 October 2008, had not been calculated as part of his sentence violated the guarantees of Article 5 § 1 of the Convention.

69. The Government submitted that the applicant could not claim to be a victim of an alleged violation of Article 5 § 1. Firstly, the District Court's decision not to calculate the detention period during which the hearings were adjourned as part of his sentence was taken in accordance with the domestic law at the material time, namely Article 314.1 § 6 of the CCP. Secondly, on 5 February 2009 Article 314.1 § 6 of the CCP had been amended with retroactive effect, as a result of which the Criminal Court of Appeal reversed the District Court's decision and calculated the period in question as part of the applicant's sentence.

70. The applicant did not comment on the Government's objection but submitted that the penalties imposed on him by the District Court had failed to satisfy the principle of lawfulness within the meaning of Article 5 § 1. In particular, although the penalties had been imposed for purposes provided for by law, they had been repressive measures aimed at hindering the exercise of his rights.

71. The Court points out that in order to be able to lodge an application in pursuance of Article 34 of the Convention, a person must be able to claim to be a "victim" of a violation of the rights enshrined in the Convention: to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008). In the present case, the requirements of Article 314.1

§ 6 of the CCP were eventually not applied in the applicant's case because the relevant part of that provision had been repealed while the applicant was still serving his sentence. As a result, the time the applicant spent in detention did not exceed his original prison sentence. In such circumstances, the Court agrees with the Government that the applicant cannot claim to be a victim of an alleged violation of Article 5 § 1 of the Convention.

72. It follows that this part of the application is incompatible *ratione personae* and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

73. The applicant complained that the domestic courts had failed to provide relevant and sufficient reasons for his detention as required by Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

75. The applicant submitted that the courts had failed to provide relevant and sufficient reasons for his detention. They had not relied on any evidence when finding the risks of improper conduct on his part to be justified, and their findings amounted to mere citations of the relevant provisions of domestic law. As regards the finding made by the Criminal Court of Appeal in its decision of 20 March 2008 about his intention to conceal his identity, the applicant submitted that he was an ethnic Armenian born and raised in Iran; his original Armenian name, Vardges Gasparyan, had been "iranianised" into Vartgez Gaspari. Since moving to Armenia, he had always introduced himself as Vardges Gasparyan and even his residence permit until 2006 had carried that version of his name. Both versions of his name had therefore been provided and indicated in the record of his arrest. Thus, in order to justify his detention the Court of Appeal had deliberately distorted the facts by stating that his identity had been discovered only after

the presentation of his passport. The investigator's note of 3 March 2008 had been false and had pursued the same aim.

76. The Government argued that the District Court had provided relevant and sufficient reasons for the applicant's detention, such as the risk of absconding and obstructing the investigation. The District Court had based its decision on a large number of materials of the case submitted by the investigator in support of his application seeking the applicant's detention. Furthermore, the applicant had provided false information about his identity, which the investigator and the courts had rightly interpreted as substantiating his intention to abscond and obstruct the investigation.

77. The Court refers to its general principles under Article 5 § 3 of the Convention relating to the right to be released pending trial (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 92-102, ECHR 2016 (extracts), and *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 48-53, 20 October 2016) and notes that it has already found the use of stereotyped formulae when imposing and extending detention to be a recurring problem in Armenia (see *Piruzyan v. Armenia*, no. 33376/07, §§ 97-100, 26 June 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74-77, 26 June 2012; *Sefilyan v. Armenia*, no. 22491/08, §§ 88-93, 2 October 2012; and, most recently, *Ara Harutyunyan*, cited above, §§54-59). In the present case, all the decisions of the trial courts followed the same pattern: they either contained no reasoning whatsoever or amounted to a mere citation of the relevant domestic legal principles with a reference to the gravity of the offence, without addressing the specific facts of the applicant's case or providing any details as to why the risks of absconding, obstructing the course of justice or reoffending were justified (see paragraphs 14, 17 and 19 above).

78. As regards the reasoning provided by the Criminal Court of Appeal in its decision of 20 March 2008, the Court accepts that when a suspect deliberately provides misleading information about his identity, this may be a relevant factor to be taken into account when deciding on the risk of improper conduct on his part. It does not consider, however, that in the present case the decision in question was sufficiently reasoned. In particular, firstly, it is not clear on what grounds the Court of Appeal concluded that the applicant had deliberately misled the investigating authority about his identity and that his real identity had been discovered only on 3 March 2008, when the record of the applicant's arrest drawn up on 2 March 2008 contained both his official name and the name by which, as the applicant alleged, he always introduced himself. No explanation was provided as to this fact, including the discrepancy between the information contained in the record of the applicant's arrest and the note drawn up by the investigator on 3 March 2008. Furthermore, the Court notes that neither the investigator nor the trial court relied on that fact when substantiating the need to keep the applicant in detention (see paragraphs 12 and 14 above). The Court of

Appeal took its decision on the basis of the appeal lodged by the applicant, who argued that the trial court had provided no reasons for his detention (see paragraph 15 above). The Court of Appeal failed to address any of the arguments raised by the applicant and instead reasoned the need to keep him in detention by stating that he had provided false information about his identity. There is nothing to suggest that that ground for detention was the subject of examination before the Court of Appeal and it appears that the court reached the relevant finding on the basis of the case file. By doing so, the Court of Appeal denied the applicant the possibility of objecting to that ground for detention, including by submitting the arguments which he raised before this Court. Thus, having regard to the overall circumstances of the applicant's case and the reasons provided, the Court considers that the domestic courts failed to provide relevant and sufficient reasons for their decisions to impose and extend the applicant's detention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 100,000 United States dollars in respect of pecuniary damage, alleging that this constituted the loss incurred by the private company he had been running prior to his deprivation of liberty. He further claimed 60,258 euros (EUR) in respect of non-pecuniary damage.

82. The Government submitted that there was no causal link between the damages claimed and the violations alleged. Nor had the applicant produced any evidence in support of his claims for pecuniary and non-pecuniary damages. Lastly, the amount claimed in respect of non-pecuniary damage was exorbitant.

83. The Court notes that the applicant indeed did not support his claim for pecuniary damage with any documentary evidence. This claim must therefore be dismissed. On the other hand, the Court considers that he undoubtedly suffered non-pecuniary damage as a result of the violations found. It therefore awards him EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant did not claim any costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the conditions of the applicant's detention and the alleged failure of the courts to provide relevant and sufficient reasons for his detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention with regard to the conditions of the applicant's detention in cells nos. 4, 9, 20, 29 and 42;

3. *Holds* that there has been no violation of Article 3 of the Convention with regard to the conditions of the applicant's detention in cells nos. 10 and 79;

4. *Holds* that there has been a violation of Article 5 § 3 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, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 amount 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 20 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Linos-Alexandre Sicilianos
Registrar	President