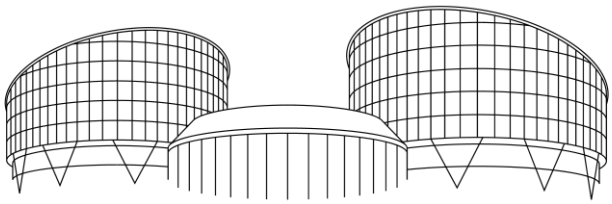

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KHACHATRYAN AND OTHERS v. ARMENIA

(Application no. 23978/06)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

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

In the case of Khachatryan and Others v. Armenia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 23978/06) 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 nineteen Armenian nationals, Mr Hayk Khachatryan ("the first applicant"), Mr Tigran Abrahamyan ("the second applicant"), Mr Narek Alaverdyan ("the third applicant"), Mr Taron Ayvazyan ("the fourth applicant"), Mr Harazat Azatyan ("the fifth applicant"), Mr Artur Chilingarov ("the sixth applicant"), Mr Vagharshak Margaryan ("the seventh applicant"), Mr Gagik Davtyan ("the eighth applicant"), Mr Boris Melkumyan ("the ninth applicant"), Mr Edgar Chteyan ("the tenth applicant"), Mr Edgar Dilanyan ("the eleventh applicant"), Mr Vahe Grigoryan ("the twelfth applicant"), Mr Garegin Melkonyan ("the thirteenth applicant"), Mr Aghvan Mhlamyan ("the fourteenth applicant"), Mr Gerasim Mhlamyan ("the fifteenth applicant"), Mr Henrik Safaryan ("the sixteenth applicant"), Mr Shaliko Sargsyan ("the seventeenth applicant"), Mr Arsen Sevoyan ("the eighteenth applicant") and Mr Karlen Simonyan ("the nineteenth applicant"), on 31 May 2006.

2. The applicants were represented by Mr A. Carbonneau, Mr R. Khachatryan and Mr R. Kohlhofer, lawyers practising in Patterson (USA), Yerevan and Vienna respectively. 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 20 October 2009 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule

on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1982, 1981, 1986, 1984, 1986, 1986, 1986, 1986, 1985, 1983, 1986, 1985, 1986, 1987, 1985, 1986, 1986, 1985 and 1986 respectively and live in Yerevan, Vanadzor, the villages of Baghramyan and Zolakar, Artik, Martuni and Hrazdan, Armenia.

A. Background to the case

5. The applicants are Jehovah's Witnesses who were eligible for call-up.

6. Following the entry into force of the Alternative Service Act on 1 July 2004, the applicants applied to the authorities asking to perform alternative labour service instead of military service. It appears that their requests were granted and the applicants were assigned to various institutions to perform the service, such as hospitals, nursing homes and dispensaries. The applicants allege that, while performing the service, they realised that the alternative labour service was not a truly civilian service.

7. In May and June 2005 the applicants wrote letters to the directors of the institutions where they were individually serving stating that, since the alternative labour service was in reality under the control of the military, they could not continue to serve in good conscience. They requested that the Alternative Service Act be modified so that they could serve in a genuine civilian alternative service. After filing these letters, all applicants left the service.

B. Criminal proceedings against the applicants

1. Proceedings against the first, second, fifth, sixth, seventh, eighth, ninth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and nineteenth applicants and their detention

(a) Institution of criminal proceedings

8. On 23 June 2005 criminal proceedings were instituted under Article 361 § 5 of the Criminal Code (CC) in respect of the sixth, seventh,

eighth and ninth applicants on account of their joint abandonment of the civilian institution where they were performing alternative labour service.

9. On the same date criminal proceedings were instituted under Article 361 § 4 of the CC in respect of the seventeenth applicant on account of his abandonment of the civilian institution where he was performing alternative labour service.

10. On 27 June 2005 criminal proceedings were instituted under Article 361 § 4 of the CC in respect of the first, second, fifth, twelfth, thirteenth, sixteenth and nineteenth applicants on account of their abandoning the civilian institutions where they were performing alternative labour service. These proceedings were divided into individual sets of proceedings in respect of each of these applicants on 18 August 2005.

(b) The first, fifth, thirteenth and sixteenth applicants

11. On 22 August 2005 the first, fifth, thirteenth and sixteenth applicants were formally charged under Article 361 § 4 of the CC.

12. On the same date the Gegharkunik Regional Court examined the investigator's motion seeking to have them detained on the grounds that they had committed an offence under Article 361 § 4 of the CC and could abscond. The Regional Court decided to grant this motion, stating that the imputed acts fell into the category of crimes of medium gravity and taking into account their nature and degree of dangerousness. The applicants were present at the respective hearings. These decisions were subject to appeal to the Criminal and Military Court of Appeal within fifteen days.

13. On 31 August 2005 the investigator decided to modify the charges against the applicants by bringing a new charge under Article 362 § 1 of the CC on the ground that, pursuant to Section 21 § 2 of the Alternative Service Act, persons performing alternative labour service bore equal liability for the unauthorised abandonment of the place of service to that borne by servicemen performing compulsory military service.

14. On 6 and 8 September 2005 the prosecutor approved the indictments under Article 362 § 1 of the CC and the cases were transferred to the Regional Court for examination on the merits.

15. On 29 November 2005 the fifth, thirteenth and sixteenth applicants filed a motion with the Regional Court, arguing that Article 362 § 1 of the CC was not applicable to their cases, since they were not servicemen, and seeking to have the proceedings terminated.

16. On 1 and 2 March 2006 the Regional Court decided to remit the cases for further investigation upon the prosecutor's motions in order to clarify, *inter alia*, which norms of criminal law had been breached by the imputed acts and whether the applicants could be considered as subjects of a military crime as defined by Article 356 § 5 of the CC, taking into account that it applied only to servicemen. The Regional Court stated that the applicants' detention was to remain unchanged.

17. On 9 March 2006 the applicants filed motions with the General Prosecutor, seeking to be released. They argued that they had fully cooperated with the investigating authority, had always appeared whenever summoned, had never obstructed the investigation, had never committed an offence and had never made any attempts to abscond.

18. On 13 and 16 March 2006 the first, fifth, thirteenth and sixteenth applicants lodged appeals against the decisions of 1 and 2 March 2006, seeking to have the proceedings terminated and to be released. They argued that Article 362 § 1 of the CC was not applicable to their cases since they were not servicemen. The acts committed by them were not a criminal offence, since at the material time the CC did not prescribe any penalties for the unauthorised abandonment of the place of alternative labour service. In spite of this, they were charged and detained which violated their right to liberty. The criminal law required that all offences be incorporated into the CC, so the reliance on Section 21 § 2 of the Alternative Service Act had been unlawful. The applicants further raised the same arguments as in their motions of 9 March 2006. They invoked, *inter alia*, Article 5 §§ 1 (c) and 3 of the Convention.

19. On 10 April 2006 the Criminal and Military Court of Appeal decided to dismiss the first applicant's appeal and to uphold the Regional Court's decision in its part remitting the first applicant's case for further investigation. The Court of Appeal found that the investigating authority had failed to clarify whether the first applicant could be considered as a subject of an offence against military rules. Therefore it was necessary to do so in the course of further investigation. Similar decisions were taken in respect of the fifth, thirteenth and sixteenth applicants on 11 and 13 April 2006.

20. At the same time, the Court of Appeal decided to grant the applicants' appeals in their part concerning their release from detention. As regards the first and thirteenth applicants' detention, the Court of Appeal found that the grounds envisaged by Article 135 of the Code of Criminal Procedure (CCP) necessitating their detention were absent. In particular, before abandoning their places of service the first and thirteenth applicants had informed the prosecutor of their addresses and had not made any attempts to abscond during the first three months of the investigation. They had never obstructed the proceedings and there were no grounds to believe that they would commit another offence. In such circumstances, the first and thirteenth applicants had shown proper behaviour during the proceedings and it was no longer necessary to keep them in detention.

21. As regards the fifth and sixteenth applicants' detention, the Court of Appeal found that the Regional Court had provided no reasons for leaving the detention unchanged, despite the fact that there were no grounds to keep the fifth and sixteenth applicants in detention.

22. On 17, 18 and 20 April 2006 the applicants lodged appeals on points of law against these decisions, which were dismissed by the Court of Cassation on 26 May and 1 June 2006.

(c) The second, twelfth and nineteenth applicants

23. On 22 August 2005 the second, twelfth and nineteenth applicants were formally charged under Article 361 § 4 of the CC.

24. On the same date the Gegharkunik Regional Court granted the investigator's motion seeking to have them detained on the same grounds as in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 12 above). The applicants were present at the respective hearings. These decisions were subject to appeal to the Criminal and Military Court of Appeal within fifteen days.

25. On 31 August 2005 the charges against the applicants were changed to Article 362 § 1 of the CC, with reliance on Section 21 § 2 of the Alternative Service Act. The indictments under that Article were approved on 6 and 8 September 2005 and the cases were transferred to the Regional Court for examination on the merits.

26. On 21 November 2005 the applicants filed a joint motion with the Regional Court, arguing that Article 362 § 1 of the CC was not applicable to their cases, since they were not servicemen, and seeking to have the proceedings terminated and to be released.

27. On 2 December 2005 the Regional Court found the applicants guilty under Article 361 § 4 of the CC and sentenced them to two years and six months' imprisonment.

28. On 14 December 2005 they lodged appeals against their conviction, in which they argued that the acts committed by them were not punishable under criminal law and had not been qualified correctly since they were not servicemen. They sought to be acquitted and released from detention.

29. On 21 February 2006 the Criminal and Military Court of Appeal, upon the prosecutor's motion, quashed the twelfth applicant's conviction and remitted the case for further investigation on the same grounds as in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 19 above). The Court of Appeal stated that the twelfth applicant's detention was to remain unchanged.

30. On 24 February 2006 the nineteenth applicant filed a motion with the Criminal and Military Court of Appeal, arguing that his detention was unjustified and seeking to be released.

31. On the same date the Court of Appeal quashed the nineteenth applicant's conviction and remitted the case for further investigation on the same grounds as in the twelfth applicant's case (see paragraph 29 above). The Court of Appeal stated that the nineteenth applicant's detention was to remain unchanged. A similar decision was taken by the Court of Appeal in the second applicant's case on 27 February 2006.

32. On 3 and 6 March 2006 the second, twelfth and nineteenth applicants filed motions with the General Prosecutor, raising the same arguments as in the motions filed in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 17 above) and seeking to be released.

33. On 3, 6 and 7 March 2006 the applicants lodged appeals on points of law against the decisions of 21, 24 and 27 February 2006, raising arguments similar to those raised in the appeals lodged on 13 and 16 March 2006 in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 18 above).

34. On 13 March the twelfth applicant was released from detention upon a written undertaking not to leave.

35. On 14 April 2006 the Court of Cassation dismissed the nineteenth applicant's appeal on points of law. The Court of Cassation ordered, however, that the nineteenth applicant be released, finding that the grounds envisaged by Article 135 of the CCP necessitating his detention were absent. In particular, he had a permanent place of residence and had not made any attempts to abscond during the first three months of the investigation. He had never obstructed the proceedings and there were no grounds to believe that he would commit another offence. The circumstances of the case indicated that there was no need to keep the nineteenth applicant in detention.

36. On 21 April 2006 the second applicant was released from detention upon a written undertaking not to leave.

37. On 7 July 2006 the Court of Cassation dismissed the second and twelfth applicants' appeals on points of law.

(d) The sixth, seventh, eighth and ninth applicants

38. On 17 August 2005 the seventh and ninth applicants and on 18 August 2005 the sixth and eighth applicants were formally charged under Article 361 § 5 of the CC.

39. On 17 August 2005 the Gegharkunik Regional Court granted the investigator's motion seeking to have the seventh and ninth applicants detained on the same grounds as in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 12 above). Similar decisions were taken in respect of the sixth and eighth applicants on 18 August 2005. The applicants were present at the respective hearings. These decisions were subject to appeal to the Criminal and Military Court of Appeal within fifteen days.

40. On 1 September 2005 the charges against the applicants were changed to Article 362 § 1 of the CC, with reliance on Section 21 § 2 of the Alternative Service Act. The joint indictment under that Article was approved on 6 September 2005 and the case was transmitted to the Regional Court for examination on the merits.

41. On 20 October 2005 the applicants filed a motion with the Regional Court, seeking to have the criminal proceedings terminated and to be released.

42. On 3 November 2005 the Regional Court found the applicants guilty under Article 361 § 5 and sentenced them to three years' imprisonment.

43. On an unspecified date they lodged a joint appeal, in which they argued that the acts committed by them were not punishable under criminal law and had not been qualified correctly since they were not servicemen.

44. On 27 February 2006 the Criminal and Military Court of Appeal quashed their conviction and remitted the case for further investigation on the same grounds as in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 19 above). It further added that criminal liability could be imposed only if the committed act contained all the elements of an offence. Both the investigating authority and the Regional Court had failed to clarify whether the applicants could be considered as subjects of military offences under Articles 361 and 362 of the CC, taking into account that only servicemen could be considered as such subjects pursuant to Article 356 of the CC. As regards the applicants' detention, the Court of Appeal found that it was to remain unchanged, since the grounds for their detention had not ceased.

45. On 7 March 2006 the applicants lodged a joint appeal on points of law, raising arguments similar to those raised in the appeals lodged on 13 and 16 March 2006 in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 18 above).

46. On 9 March 2006 the applicants filed a joint motion with the General Prosecutor, seeking to be released, raising the same arguments as in the motions filed on 9 March 2006 in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 17 above).

47. On 20 April 2006 the Court of Cassation dismissed the appeal on points of law. The Court of Cassation ordered, however, that the applicants be released on the same grounds as in the nineteenth applicant's case (see paragraph 35 above).

(e) The fourteenth applicant

48. On 22 August 2005 criminal proceedings were instituted under Article 361 § 1 of the CC in respect of the fourteenth applicant on account of his abandonment of the civilian institution where he was performing alternative labour service.

49. On 27 September 2005 the applicant was formally charged under Article 362 § 1 of the CC.

50. On the same date the Avan and Nor Nork District Court of Yerevan granted the investigator's motion seeking to have the applicant detained, finding that he could abscond, obstruct the proceedings and avoid serving his penalty. The applicant was present at this hearing. This decision was

subject to appeal to the Criminal and Military Court of Appeal within fifteen days.

51. On 28 September 2005 the prosecutor approved the indictment under Article 362 § 1 of the CC and the case was transmitted to the District Court for examination on the merits.

52. On 2 February 2006 the applicant filed a motion with the District Court, arguing that Article 362 § 1 was not applicable to his case, since he was not a serviceman, and seeking to have the criminal proceedings terminated or to be released.

53. On 27 February 2006 the District Court decided to remit the case for further investigation upon the prosecutor's motion for the same reasons as in the other applicants' cases. The District Court replaced the applicant's detention with a written undertaking not to leave and ordered his release, stating that his behaviour during the trial provided grounds to believe that he would not abscond or commit another crime.

54. On 13 March 2006 the applicant lodged an appeal against this decision, seeking to have the proceedings terminated since he was not a serviceman and the act committed by him was not criminally punishable.

55. On 3 May 2006 the Criminal and Military Court of Appeal dismissed the appeal, finding that there was a need to carry out further investigation.

56. On 8 May 2006 the applicant lodged an appeal on points of law which was dismissed by the Court of Cassation on 9 June 2006.

(f) The fifteenth applicant

57. On 14 October 2005 criminal proceedings were instituted under Article 362 § 1 of the CC in respect of the fifteenth applicant on account of his abandonment of the civilian institution where he was performing alternative labour service.

58. On 19 October 2005 the applicant was formally charged under Article 362 § 1 of the CC.

59. On the same date the Kentron and Nork-Marash District Court of Yerevan granted the investigator's motion seeking to have the applicant detained, finding that there were sufficient grounds to believe that he could abscond, obstruct the investigation and commit another offence. The applicant was present at this hearing. This decision was subject to appeal to the Criminal and Military Court of Appeal within fifteen days.

60. On 4 November 2005 the prosecutor approved the indictment under Article 362 § 1 of the CC and the case was transmitted to the District Court for examination on the merits.

61. On 3 March 2006 the District Court decided to remit the case for further investigation upon the prosecutor's motion for the same reasons as in the other applicants' cases. The District Court stated that the applicant's detention was to remain unchanged.

62. On 9 March 2006 the applicant filed a motion with the General Prosecutor, raising the same arguments as in the motions filed by other applicants and seeking to be released.

63. On 17 March 2006 the applicant lodged an appeal against the decision of 3 March 2006, seeking to have the proceedings terminated and to be released. He raised the same arguments as in the appeals lodged on 13 and 16 March 2006 in the first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 18 above).

64. On the same date the applicant was released from detention upon a written undertaking not to leave.

65. On 19 April 2006 the Criminal and Military Court of Appeal dismissed the appeal, finding that there was need to carry out further investigation.

66. On 28 April 2006 the applicant lodged an appeal on points of law which was dismissed by the Court of Cassation on 1 June 2006.

(g) The seventeenth applicant

67. On 24 August 2005 at 6 p.m. the seventeenth applicant was arrested in connection with the criminal proceedings against him.

68. On 26 August 2005 he was formally charged under Article 362 § 1.

69. On the same date at 4 p.m. the applicant was brought before Judge A. of the Kentron and Nork-Marash District Court of Yerevan who, after having heard him, decided to grant the investigator's motion seeking to have him detained, finding that the applicant, if he remained at large, could obstruct the investigation and abscond. This decision was subject to appeal to the Criminal and Military Court of Appeal within fifteen days.

70. On 2 September 2005 the prosecutor approved the indictment under Article 362 § 1 of the CC and the case was transmitted to the District Court for examination on the merits.

71. On 15 September 2005 the District Court found the applicant guilty under Article 362 § 1 of the CC and sentenced him to two years and six months' imprisonment.

72. On an unspecified date the applicant lodged an appeal.

73. On 8 February 2006 the applicant filed a motion with the Criminal and Military Court of Appeal, arguing that his detention was unjustified and seeking to be released.

74. On 16 March 2006 the Criminal and Military Court of Appeal quashed the applicant's conviction and remitted the case for further investigation upon the prosecutor's motion for the same reasons as in the other applicants' cases. The Court of Appeal stated that the applicant's detention was to remain unchanged.

75. On 23 March 2006 the applicant lodged an appeal on points of law, seeking to have the proceedings terminated and to be released. He raised the same arguments as in the appeals lodged on 13 and 16 March 2006 in the

first, fifth, thirteenth and sixteenth applicants' cases (see paragraph 18 above).

76. On 24 March 2006 the applicant filed a motion with the General Prosecutor, raising the same arguments as in the motions filed by other applicants and seeking to be released.

77. On 20 April 2006 the Court of Cassation dismissed the applicant's appeal on points of law, finding that the Court of Appeal's decision was well-founded. The Court of Cassation ordered, however, that the applicant be released on the same grounds as in the nineteenth applicant's case (see paragraph 35 above).

3. Proceedings against the third, fourth and eighteenth applicants

78. On 9 August 2005 separate sets of criminal proceedings were instituted under Article 361 § 4 of the CC in respect of the third and eighteenth applicants on account of their unauthorised abandonment of the civilian institutions where they were performing alternative labour service.

79. On the same date the third and eighteenth applicants made written undertakings not to leave.

80. On 15 August 2005 they were formally charged under Article 361 § 4.

81. On 16 August 2005 similar criminal proceedings were instituted in respect of the fourth applicant.

82. On 12 September 2005 he was formally charged under Article 361 § 4 and made a written undertaking not to leave.

83. On 28 October 2005 the Syunik Regional Court found the third and eighteenth applicants guilty under Article 361 § 4 of the CC and sentenced them to two years' imprisonment. They were taken into custody.

84. On 8 November 2005 the Shirak Regional Court found the fourth applicant guilty under Article 361 § 4 of the CC and sentenced him to two years and six months' imprisonment. He was taken into custody.

85. On 10 November 2005 the third applicant lodged an appeal, seeking to be acquitted and released from detention since he was not a serviceman and the act committed by him was not criminally punishable. On unspecified dates the fourth and eighteenth applicants also lodged appeals.

86. On 8 February 2006 the third and fourth applicants filed motions with the Criminal and Military Court of Appeal, arguing that the acts committed by them had not constituted a criminal offence at the material time and seeking to have the proceedings terminated and to be released.

87. On 9 February 2006 the eighteenth applicant filed a motion with the Court of Appeal, arguing that his continued detention was unjustified and seeking to be released.

88. On 28 February 2006 the third and fourth applicants filed similar motions.

89. On the same date the Court of Appeal quashed the third and fourth applicants' convictions and remitted the cases for further investigation upon the prosecutor's motions for the same reasons as in the other applicants' cases. The Court of Appeal stated that their detention was to remain unchanged.

90. On 6 March 2006 the eighteenth applicant filed two more motions with the Court of Appeal, arguing that the act committed by him had not constituted a criminal offence at the material time and seeking to have the proceedings terminated and to be released.

91. On the same date the Court of Appeal quashed the eighteenth applicant's conviction and similarly remitted the case for further investigation. The Court of Appeal stated that his detention was to remain unchanged.

92. On 8 March 2006 the third and fourth applicants lodged appeals on points of law against the Court of Appeal's decisions of 28 February 2006 (see paragraph 89 above), seeking to have the proceedings terminated and to be released.

93. On 9 March 2006 the third and fourth applicants filed motions with the General Prosecutor, seeking to be released.

94. On 14 and 15 March 2006 a similar appeal and motion were lodged by the eighteenth applicant.

95. On 7 April 2006 the Court of Cassation dismissed the applicants' appeals, finding that the Court of Appeal's decision was well-founded. The Court of Cassation ordered, however, that they be released on the same grounds as in the nineteenth applicant's case (see paragraph 35 above).

4. Proceedings against the tenth and eleventh applicants

96. On 17 August 2005 separate sets of criminal proceedings were instituted under Article 361 § 4 of the CC in respect of the tenth and eleventh applicants on account of their unauthorised abandonment of the civilian institutions where they were performing alternative labour service.

97. On 14 October 2005 the applicants were formally charged under Article 361 § 4 and made written undertakings not to leave.

98. On 3 and 7 March 2006 the Malatia-Sebastia District Court of Yerevan decided to remit the applicants' cases for further investigation upon the prosecutor's motion for the same reasons as in the other applicants' cases.

99. The applicants' appeals against these decisions were dismissed by the Criminal and Military Court of Appeal and the Court of Cassation on 13 and 14 April and 26 May and 1 June 2006 respectively.

5. Termination of the criminal proceedings against the applicants

100. On 22 June 2006 the Gegharkunik Regional Prosecutor decided to terminate the criminal proceedings against the first applicant on the ground that the offence in question was of medium gravity, he had spent about eight months in detention and the act in question had ceased to be dangerous for society.

101. On 12 September 2006 the General Prosecutor decided to quash this decision and to terminate the proceedings for the lack of *corpus delicti*, with reference to Article 35 § 1 (2) of the CCP. The General Prosecutor found, in particular, that at the material time the CC did not prescribe an offence for the act of unauthorised abandonment of the place of alternative labour service and such an offence was incorporated in the CC only by the amendments introduced on 1 June 2006 (see also paragraphs 112-113 below). The General Prosecutor apologised to the first applicant and informed him that it was open to him to claim compensation pursuant to Article 66 of the CCP.

102. Around the same period, identical decisions were taken in respect of all the other applicants.

C. Claims for compensation

103. On various dates in December 2006 and January, February, March and May 2007 the applicants instituted civil proceedings against the Ministry of Finance and Economy, seeking pecuniary and non-pecuniary damages in connection with the criminal proceedings against them, including their detention. The claims for pecuniary damage included alleged transportation and medical costs, expenses related to food parcels and lost earnings.

104. On various dates in March, April, May and July 2007 the Kentron and Nork-Marash District Court of Yerevan examined and dismissed all the applicants' claims, finding the claims for pecuniary damage to be unsubstantiated. As regards the claims for non-pecuniary damage, these claims were dismissed because Armenian law did not provide such a form of compensation.

105. On various dates in March, April, May, June and July 2007 the applicants lodged appeals.

106. On various dates in June, July, September, October and November 2007 the Civil Court of Appeal decided to dismiss the appeals and to uphold the judgments of the District Court.

107. On various dates in December 2007 and January and February 2008 the applicants lodged appeals on points of law, which were declared inadmissible by the Court of Cassation for lack of merit on 21 January and 11 February 2008.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code (in force from 1 August 2003)

108. The relevant general and other provisions read as follows:

Article 1: Criminal legislation of Armenia

"1. Criminal legislation of Armenia consists of this Code. New laws which envisage criminal liability shall be incorporated into the Criminal Code. ..."

Article 3: Grounds for criminal liability

"The only ground for criminal liability is the commission of an offence, that is of an act which has all the features of *corpus delicti* envisaged by criminal law."

Article 5. Principle of lawfulness

"1. Only criminal law determines whether an act is criminal and punishable, as well as its other criminal and legal consequences.

2. The application of criminal law by analogy is prohibited."

Article 327: Evasion of regular military service, military training or draft

"1. Evasion of regular military service, military training or draft, in the absence of lawful grounds for exemption from such service, shall be punishable by a penalty in the amount of three hundred to five hundred times the minimum wage, or by detention for a period not exceeding two months or imprisonment for a period not exceeding two years."

109. The relevant provisions of Chapter 35 of the CC, entitled "Offences Against the Military Service Rules", as in force at the material time, read as follows:

Article 356: Refusal to carry out an order

"5. The subjects of offences against the military service rules envisaged by this Chapter are the persons who serve in the armed forces of Armenia and in other forces of Armenia on the basis of conscription or a contract, as well as, during training sessions, the persons liable for military service."

Article 361: Unauthorised abandonment of the military unit or the place of service

"1. Unauthorised abandonment of the military unit or the place of service by a serviceman performing military service on the basis of conscription or a contract ... for a period not exceeding one month [or] three or more times within three months, each time for a period from one to three days, shall be punishable by detention for a

period not exceeding three months or placement into a disciplinary battalion for a period not exceeding one year.

...

4. The [act] envisaged in [paragraph 1] of this Article, if the unauthorised absence lasted longer than one month, but for the purpose of temporary evasion from military service, shall be punishable by imprisonment for a period not exceeding three years.

5. The [act] envisaged in [paragraph 1] of this Article, if committed by a group of people with prior agreement, shall be punishable by imprisonment from two to five years."

Article 362: Desertion

"1. Desertion, that is unauthorised abandonment of the military unit or the place of service for the purpose of definitive evasion from military service, as well as the failure to report for service for the same purpose, shall be punishable by imprisonment for a period not exceeding four years. ..."

B. Amendments to the Criminal Code (Laws HO-34-N and HO-59-N)

110. On 19 May 2005 the Government presented to the National Assembly a draft law, proposing to introduce an amendment in Article 327 of the CC which prescribed a penalty for evading military service, by inserting into the phrase "military service" the words "or alternative". The Explanatory Note to the draft law stated that the adoption of the Alternative Service Act violated the principle of equality of all before the law because persons evading alternative service remained unpunished in contrast to those who evaded regular military service.

111. This law was adopted by the National Assembly on 16 December 2005 and entered into force on 4 February 2006 (Law HO-34-N).

112. On 30 March 2006 the Government presented another draft law to the National Assembly, proposing to introduce another amendment to Article 327 of the CC by adding a new provision, namely Article 327.1, that would make punishable the act of unauthorised abandonment of the place of service by a person performing alternative labour service. The Explanatory Note to the draft law stated that there were currently up to 29 criminal cases pending before the courts in which charges were brought under Article 361 of the CC. The CC was adopted before the Alternative Service Act and naturally it could not prescribe a penalty for the unauthorised abandonment of the place of service by persons performing alternative labour service.

113. This law was adopted by the National Assembly on 1 June 2006 and entered into force on 1 July 2006 (Law HO-59-N).

C. The Code of Criminal Procedure (in force from 12 January 1999)

114. The relevant provisions of the CCP, as in force at the material time, provide:

Article 35: Circumstances not allowing criminal proceedings or criminal prosecution

"1. Criminal proceedings may not be instituted and criminal prosecution may not be carried out, while instituted criminal proceedings must be terminated, if: ... (2) the act lacks *corpus delicti*; ..."

Article 66: An acquitted person

"1. A person shall be considered to be acquitted if criminal prosecution or criminal proceedings against him were terminated on ... the grounds envisaged by[, *inter alia*, Article 35 § 1(2)] of this Code or if he was acquitted by a court judgment.

...

3. An acquitted person shall be ... entitled to claim full compensation of pecuniary damage caused as a result of unlawful arrest, detention, indictment and conviction, taking into account the possible lost profits. ..."

Article 135: Grounds for imposing a preventive measure

"1. The court, the prosecutor, the investigator or the body of inquest can impose a preventive measure only when the materials obtained in the criminal case provide sufficient grounds to believe that the suspect or the accused may: (1) abscond from the authority dealing with the case; (2) obstruct the examination of the case during the pre-trial or court proceedings by exerting unlawful influence on persons involved in the criminal proceedings, by concealing or falsifying materials significant for the case, by failing to appear upon the summons of the authority dealing with the case without valid reasons or by other means; (3) commit an act prohibited by criminal law; (4) avoid criminal liability and serving the imposed sentence; and (5) hinder the execution of the judgment."

D. The Civil Code (in force from 1 January 1999)

115. The relevant provisions of the Civil Code provide:

Article 17: Compensation of damage

"1. The person whose rights have been violated may claim full compensation for the damage suffered, unless the law or a contract envisages a lower amount of compensation.

2. Damages are the expenses borne or to be borne by the person, whose rights have been violated, in connection with restoring the violated rights, loss of his property or damage to it (material damage), including lost earnings which the person would have

gained in normal conditions of civil circulation, had his rights not been violated (lost income). ...”

Article 1064: Liability for damage caused by unlawful actions of the body of inquiry, the investigating authority, the prosecutor’s office or the courts

“1. Damage caused as a result of unlawful conviction, [unlawful] criminal prosecution, [unlawful] imposition of a preventive measure in the form of detention or a written undertaking not to leave, and [unlawful] imposition of an administrative penalty shall be compensated in full, in a procedure prescribed by law, by the Republic of Armenia, regardless of the fault of the officials of the body of inquiry, the investigating authority, the prosecutor’s office or the courts. ...”

E. The Alternative Service Act (in force from 1 July 2004)

116. The relevant provisions of the Act, with their subsequent amendments which were introduced on 22 November 2004 and entered into force on 9 January 2005, read as follows:

Section 2: The notion and types of alternative service

“1. Alternative service, within the meaning of this Act, is the service replacing the compulsory fixed-period military service which does not involve the carrying, keeping, maintenance and use of arms, and which is performed both in military and civilian institutions.

2. Alternative service includes the following types: (a) alternative military [service, namely] military service performed in the armed forces of Armenia which does not involve being on combat duty, and the carrying, keeping, maintenance and use of arms; and (b) alternative labour [service, namely], labour service performed outside the armed forces of Armenia.

3. The purpose of alternative service is to ensure the fulfilment of a civic obligation before the motherland and society and it does not have a punitive, depreciatory or degrading nature.”

Section 3: Grounds for performing alternative service

“1. An Armenian citizen, whose creed or religious beliefs do not allow him to carry out military service in a military unit, including the carrying, keeping, maintenance and use of arms, may perform alternative service.”

Section 21: Liability of persons performing alternative service

“2. Persons performing alternative labour service shall bear liability for violations of the law and crimes, as well as for pecuniary damage caused to the state, on general principles, according to a procedure prescribed by law.

Persons performing alternative labour service shall bear equal responsibility for the unauthorised abandonment of the place of service to that borne by servicemen performing compulsory military service, according to a procedure prescribed by law [Note: this paragraph was repealed on 1 July 2006].”

THE LAW

I. THE SCOPE OF THE CASE

117. The Court notes at the outset that the applicants jointly raised a number of complaints under various provisions of Article 5 of the Convention. It points out, however, that the tenth and eleventh applicants were never deprived of their liberty in the course of the criminal proceedings against them (see paragraphs 96-99 above). In such circumstances, they cannot claim to be victims of an alleged violation of Article 5 of the Convention and their relevant complaints under that Article are incompatible *ratione personae* and must be declared inadmissible.

118. The Court will therefore limit its examination of the complaints under Article 5 of the Convention to the remaining seventeen applicants. Hence, its subsequent references to “the applicants” will not include the tenth and eleventh applicants.

119. The Court further considers it possible to examine the complaints of all seventeen applicants jointly in view of their factual similarity and the identical nature of their allegations.

II. PRELIMINARY OBJECTIONS

A. The Government’s objection related to the third, fourth and eighteenth applicants

120. The Government claimed that the third, fourth and eighteenth applicants had not been subjected to detention. The only preventive measure imposed on them was the written undertaking not to leave their places of residence.

121. The Court notes that indeed the third, fourth and eighteenth applicants were not detained prior to their conviction. However, after their sentences were overturned by the Court of Appeal on 28 February and 6 March 2006 they remained in pre-trial detention (see *Solmaz v. Turkey*, no. 27561/02, § 34, 16 January 2007), until their release on 7 April 2006 (see paragraphs 87, 89 and 93 above). Thus, they can claim to be victims of

an alleged violation of Article 5 §§ 1 (c) and 3 of the Convention in respect of those periods.

122. The Government's objection must therefore be dismissed.

B. The Government's objection as to non-exhaustion

123. The Government submitted that the applicants had failed to exhaust the domestic remedies, because they had not lodged appeals against the first instance courts' decisions imposing detention. Furthermore, they had not raised any arguments or objections when the question of their placement in detention was examined at the first detention hearings in the first instance courts.

124. The applicants submitted that they had filed numerous appeals and motions seeking a termination of the criminal proceedings and to be released. Any appeal against detention was futile as it would certainly be dismissed, as demonstrated by the systematic dismissal of numerous motions and appeals requesting release, until it became apparent to the General Prosecutor's Office that the charges lacked *corpus delicti*. Thus, the Armenian courts at the material time were not inclined to grant any remedy against the illegal actions of the prosecutors who prosecuted in the absence of *corpus delicti*. No matter how many appeals they filed, the domestic courts were not willing to rule against the General Prosecutor's Office.

125. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Assenov and Others v. Bulgaria* no. 24760/94, § 85, ECHR 1999-VIII).

126. Furthermore, under Article 35 the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77, and *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). 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 (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

127. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006).

128. The Court further emphasises that Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism (see *Sejdovic v. Italy* [GC], no. 56581/00, § 44, ECHR 2006-II). Moreover, the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically. In reviewing whether the rule has been observed, it is essential to have regard to the existence of formal remedies in the legal system of the State concerned**,** the general legal and political context in which they operate**,** as well as the particular circumstances of the case and whether the applicant did everything that could reasonably be expected in order to exhaust available domestic remedies (see *Salman v. Turkey* [GC], no. 21986/93, § 86, ECHR 2000-VII, and *Melnik*, cited above, § 67).

129. Turning to the circumstances of the present case, it indeed appears that the applicants did not lodge appeals against the decisions of the first instance courts imposing detention or raise during those first detention hearings their allegation that the acts of which they were accused were not an offence under the domestic law and that therefore their detention was not based on a reasonable suspicion of their having committed an offence. However, almost all of the applicants raised this issue in substance in one way or another at a later stage, either as separate motions filed with the first instance courts or the Court of Appeal (see paragraphs 15, 26, 41, 52, 86 and 90 above) or in their appeals against the decisions remitting their cases for further investigation (see paragraphs 18, 33, 45, 54, 63 and 75 above) or in their appeals against their convictions (see paragraphs 28, 43 and 85 above). In all of those cases, both the first instance and appeal courts either failed to address this issue or at most expressed doubts and refrained from making any conclusive findings, adding that this issue was to be clarified during further investigation and refusing to release the applicants (see paragraphs 29, 31, 44, 74, 89 and 91 above). Even in those few cases in which the applicants were released, this was always done on a ground unrelated to the existence of a reasonable suspicion of their having committed an offence, namely on the ground that there were no risks that the applicants would abscond, obstruct the investigation or commit another offence (see paragraphs 20, 21, 35 and 53 above).

130. In the light of the above, the Court has serious doubts that there were any reasonable prospects of success had the applicants raised this issue in their earlier appeals or during the first detention hearings before the first

instance courts. Furthermore, judging by the overall manner in which the domestic courts approached the applicants' allegation of the lack of a reasonable suspicion, it appears that the judicial practice at the material time was not to address this question in any conclusive manner, until legislative changes were introduced and the prosecution dropped the charges. The Court therefore concludes that the remedies pointed out by the Government were not effective or capable of providing redress in respect of the applicants' complaint in question and did not offer reasonable prospects of success in the particular circumstances of the case. The Government's objection as to non-exhaustion must be therefore dismissed.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

131. The applicants complained that they had been detained for an act which did not constitute an offence at the material time. They invoked Article 5 § 1 (c) of the Convention, which 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;"

A. Admissibility

132. 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

133. The applicants submitted that their detention had not been based on a reasonable suspicion of their having committed an offence. The law at the material time did not prescribe an offence for unauthorised abandonment of the place of alternative service, which was also confirmed by the General

Prosecutor who found that their actions lacked *corpus delicti*. Thus, their detention was in violation of Article 5 § 1 (c) of the Convention.

134. The Government submitted that Article 5 of the Convention required compliance with domestic law. The applicants had breached the law by wilfully abandoning the places of their service. Since they were subject to all the obligations prescribed by the Constitution, the investigating authority, based on a reasonable suspicion that they had committed acts prohibited by law, filed motions for detention. Furthermore, the investigating authority applied Section 21 § 2 of the Alternative Service Act which was in force at the material time. Accordingly, the investigating authority and the District Courts had issued lawful decisions and detained the applicants for having committed an act prohibited by law. Hence, the applicants' detention was lawful. They had been charged for their actions under Articles 361 and 362 of the CC. Following an examination of the applicants' cases on the merits and after additional investigation, the domestic authorities found out that the acts committed by the applicants lacked *corpus delicti*, the prosecutor terminated the proceedings and released the applicants. According to the Court's case-law, detention was in principle lawful if carried out pursuant to a court order. A court error under domestic law in making the order would not necessarily retrospectively affect the validity of the intervening period of detention. In conclusion, there was no violation of Article 5 § 1 (c) of the Convention.

2. The Court's assessment

135. The Court reiterates that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty which must be interpreted strictly and no deprivation of liberty will be lawful unless it falls within one of those grounds (see, among other authorities, *Ciulla v. Italy*, 22 February 1989, § 41, Series A no. 148, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008).

136. A person may be detained under Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on suspicion of his having committed an offence (see *Jėčius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX, and *Włoch v. Poland*, no. 27785/95, § 108, ECHR 2000-XI). Apart from its factual side, which is most often in issue, the existence of such suspicion additionally requires that the facts relied on can be reasonably considered as behaviour criminalised under domestic law. Thus, there could clearly not be a "reasonable suspicion" if the acts held against a detained person did not constitute an offence at the time when they were committed (see *Kandzhov v. Bulgaria*, no. 68294/01, § 57, 6 November 2008).

137. The Court must therefore examine whether the applicants' arrest and detention were "lawful" within the meaning of Article 5 § 1 and

whether their deprivation of liberty was based on a reasonable suspicion of their having committed an "offence".

138. The applicants are Jehovah's Witnesses who were performing alternative civilian service but chose to abandon their service without authorisation, alleging that it was not of a truly civilian nature. They were subsequently charged under Articles 361 and 362 of the CC which prescribed penalties for desertion and unauthorised abandonment of the military unit. Most of the applicants were placed in pre-trial detention, while others were deprived of their liberty following their convictions and stayed in detention after their convictions were overturned.

139. The Court notes that at the time when the applicants committed the above acts, Armenian law did not prescribe an offence for unauthorised abandonment of a place where one performed alternative service and such offence was incorporated in the CC only on 1 June 2006 with effect from 1 July 2006, that is following the circumstances of the present case. This was in fact established on the domestic level, namely acknowledged by the General Prosecutor, who, following the remittals of the applicants' cases by the domestic courts for an additional investigation, decided to terminate the proceedings against the applicants on this ground (see paragraph 101 above). Articles 361 and 362 of the CC were applicable only to servicemen and were wrongly applied to the applicants (see also paragraphs 110-113 above). It follows that the acts of which the applicants were accused and which provided the basis for their detention did not constitute an offence under the domestic law at the material time. The Court therefore concludes that the applicants' deprivation of liberty was not based on a reasonable suspicion of their having committed an "offence" within the meaning of Article 5 § 1 (c) of the Convention. The fact that the criminal proceedings against the applicants had been terminated and they were released from detention is not sufficient reason for finding that the applicants could not claim to be victims of a violation of Article 5 § 1 (c) of the Convention. No compensation for unlawful detention had been awarded to them at the domestic level, and furthermore**,** the Government**,** in their observations**,** did not acknowledge that the applicants had been unlawfully deprived of their liberty.

140. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

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

141. The seventeenth applicant complained that he had not been brought before a judge following his arrest. The applicants also complained that the domestic courts had failed to provide reasons for their continued detention. They invoked Article 5 § 3 of the Convention, which reads as follows:

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

1. The alleged non-appearance of the seventeenth applicant before a judge

142. The Government submitted that the seventeenth applicant was promptly brought before a judge following his arrest. In particular, he was arrested on 24 August 2005 at 6 p.m. and brought before a judge on 26 August 2005 at 4 p.m. Thus, he was brought before a judge in about 46 hours which was compatible with the requirements of Article 5 § 3.

143. The applicant submitted that he was not brought promptly before a judicial officer. The period of 46 hours was excessive in the particular circumstances of the case. Besides, the judge who examined the question of placing him in detention lacked the requisite independence to be regarded as a judicial officer within the meaning of Article 5 § 3 because he failed to provide proper reasons for his detention.

144. The Court observes that Article 5 § 3 requires that an arrested individual be brought promptly before a judge or judicial officer, to allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual liberty (see *Kandzhov v. Bulgaria*, no. 68294/01, § 65, 6 November 2008). While promptness has to be assessed in each case according to its special features (see *Aquilina v. Malta* [GC], no. 25642/94, § 48, ECHR 1999-III), the scope for flexibility in interpreting and applying the notion of "promptness" is very limited (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 62, Series A no. 145-B). Furthermore, the judicial officer must offer the requisite guarantees of independence from the executive and the parties (see *McKay v. the United Kingdom* [GC], no. 543/03, § 35, ECHR 2006-X).

145. In the present case, the seventeenth applicant was brought before a judge less than two days after his arrest, namely in about 46 hours (see paragraphs 65 and 67 above). The Court is of the opinion that this period could be regarded as "prompt" for the purposes of Article 5 § 3. Furthermore, the applicant has failed to submit any evidence or convincing arguments in support of his allegation that the judge of the Kentron and Nork-Marash District Court of Yerevan, who examined the question of placing him in pre-trial detention, lacked the requisite independence. The Court therefore concludes that there is nothing in the materials before it to

suggest that the seventeenth applicant's appearance before a judge following his arrest was incompatible with the requirements of Article 5 § 3.

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

2. The alleged failure to provide reasons

147. 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

148. The applicants submitted that the domestic courts had failed to provide reasons for their continued detention. They posed no threats warranting detention and were charged in the absence of *corpus delicti*. All the detention decisions lacked legal basis. There was no reasonable and sufficient justification for detaining them.

149. The Government submitted that the domestic courts had provided reasons as required by Article 135 of the CCP. In particular, there were sufficient grounds to believe that the applicants might abscond, obstruct justice, avoid responsibility and the imposed punishment, and oppose the execution of the verdict. They also took into account the nature and the degree of dangerousness of the imputed acts. The courts adopted reasoned decisions since the applicants could have prejudiced the administration of justice, committed further offences, caused public disorder, as well as served as a bad example for other servicemen and other persons performing alternative service.

150. The Court notes that this complaint concerns the same period of detention which it has found was not based on a reasonable suspicion in violation of Article 5 § 1 (c). It therefore does not consider it necessary to rule on this complaint separately.

V. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

151. The applicants complained that they were denied compensation for non-pecuniary damage for a violation of their rights under Article 5 of the Convention. They invoked Article 5 § 5 of the Convention, which reads as follows:

> "5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

152. 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

153. The applicants submitted that the domestic law did not provide for an enforceable right to compensation of a non-pecuniary nature in violation of Article 5 § 5 of the Convention.

154. The Government submitted that the fact that no non-pecuniary damage in the form of monetary compensation was available to the applicants did not deprive them of compensation. Thus, the General Prosecutor apologised to them in an official letter, which should also be considered as compensation for any non-pecuniary damage suffered by them.

2. The Court's assessment

155. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see, among other authorities, *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

156. In the present case, the Court found a violation of Article 5 § 1 (c) of the Convention. Consequently, Article 5 § 5 is applicable to the applicants' case.

157. The Court notes that it has previously found unavailability of compensation of a non-pecuniary nature for distress, anxiety and frustration which may result from violations of the guarantees of Article 5 to be in violation of paragraph 5 of that Article (see *Pavletić v. Slovakia*, no. 39359/98, § 96, 22 June 2004). Indeed, Article 5 § 5 should not be construed as affording a right to compensation of purely pecuniary nature, but should also afford such right for any distress, anxiety and frustration that a person may suffer as a result of a violation of other provisions of Article 5.

158. The Court observes that the Armenian law at the material time did not provide a right to claim compensation for any non-pecuniary damage suffered, including as a result of a breach of any of the first four paragraphs

of Article 5 of the Convention. In particular, Article 66 of the CCP afforded an acquitted person with a possibility to claim compensation only for pecuniary damage. Similarly, while Article 1064 of the Civil Code provided for a possibility to claim compensation as a result of unlawful detention, Article 17 of the Civil Code limited such compensation only to pecuniary damage, such as any expenses borne or lost income. It follows that the applicants did not enjoy in law or in practice an enforceable right to compensation within the meaning of Article 5 § 5.

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

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

160. The applicants lastly raised a number of other complaints under Article 5 §§ 3 and 5, Article 6 §§ 1 and 2, and Articles 9, 13 and 14 of the Convention.

161. 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.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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

163. The applicants claimed the following amounts in respect of pecuniary and non-pecuniary damage respectively:

(a) the first applicant: 1,085 euros (EUR) and EUR 21,000;
(b) the second applicant: EUR 1,085 and EUR 22,000;
(c) the third applicant: EUR 872 and EUR 14,000;
(d) the fourth applicant: EUR 530 and EUR 13,500;
(e) the fifth applicant: EUR 1,698 and EUR 21,000;
(f) the sixth applicant: EUR 669 and EUR 22,000;
(g) the seventh applicant: EUR 1,798 and EUR 22,000;
(h) the eighth applicant: EUR 1,141 and EUR 22,000;

(i) the ninth applicant: EUR 1,557 and EUR 22,000;
(j) the twelfth applicant: EUR 1,559 and EUR 18,000;
(k) the thirteenth applicant: EUR 591 and EUR 21,000;
(l) the fourteenth applicant: EUR 849 and EUR 13,500;
(m) the fifteenth applicant: EUR 637 and EUR 13,000;
(n) the sixteenth applicant: EUR 1,898 and EUR 21,000;
(o) the seventeenth applicant: EUR 980 and EUR 21,000;
(p) the eighteenth applicant: EUR 1,183 and EUR 14,000;
(q) the nineteenth applicant: EUR 943 and EUR 21,000.

The pecuniary damages claimed included the alleged travel, food and medical treatment expenses which they and their relatives had incurred as a result of their unlawful detention, as well as the alleged lost income.

164. The Government submitted that the applicants had been provided with food and, if necessary, any medical treatment while in detention at the expense of the State. Hence, any alleged extra expenses could not be considered necessary. In any case, the applicants had failed to support their claims with any documentary evidence. Furthermore, their claim for lost income was hypothetical. The Government lastly objected to their claims for non-pecuniary damage.

165. The Court notes that the applicants' claims for pecuniary damage are not supported by any evidence. It therefore rejects these claims. On the other hand, it considers that the applicants must have undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award each of the applicants EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

166. The applicants also claimed EUR 38,000 for the costs and expenses incurred before the domestic courts and EUR 10,850 for those incurred before the Court.

167. The Government submitted that the applicants' claims for costs and expenses were not duly documented and they had failed to demonstrate that those costs had been actually incurred. The invoices submitted by the applicants could not be regarded as proof of payment or an agreement between them and their lawyers to make such payments in the future. Furthermore, the lawyers' fees were inflated, exorbitant and unreasonable. Lastly, part of the lawyers' work concerned complaints which were inadmissible.

168. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* (just satisfaction) [GC],

no. 33202/96, § 27, 28 May 2002). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the applicants jointly the sum of EUR 10,000 covering costs under all heads.

C. Default interest

169. 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 dismiss the Government's objections as to the victim status of third, fourth and eighteenth applicants, and as to non-exhaustion;

2. *Declares* the complaints of all the applicants, except the tenth and eleventh applicants, concerning the lack of a reasonable suspicion of their having committed an offence, the alleged lack of relevant and sufficient reasons for their continued detention and the lack of an enforceable right to compensation of a non-pecuniary nature admissible under Article 5 §§ 1 (c), 3 and 5 of the Convention and the remainder of the application inadmissible;

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

4. *Holds* that there is no need to examine the complaint under Article 5 § 3 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros) to the applicants jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President