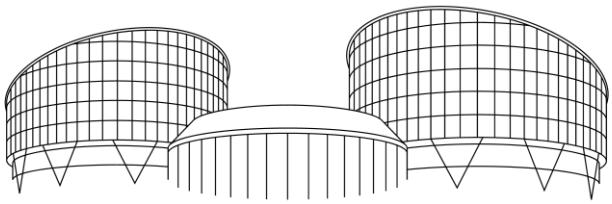

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF POGHOSYAN AND BAGHDASARYAN v. ARMENIA

(Application no. 22999/06)

JUDGMENT

STRASBOURG

12 June 2012

FINAL

12/09/2012

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Poghosyan and Baghdasaryan v. Armenia**,**

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

Josep Casadevall, *President*,
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Luis López Guerra,
Kristina Pardalos, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 22999/06) 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 two Armenian nationals, Mr Armen Poghosyan and Mrs Anahit Baghdasaryan ("the applicants"), on 16 May 2006.

2. The applicants were represented by Ms S. Safaryan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. Mr Poghosyan ("the first applicant") alleged, in particular, that no compensation for non-pecuniary damage had been awarded to him in respect of his ill-treatment, unlawful arrest and detention, and unfair conviction.

4. On 20 November 2008 the application was communicated 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

5. The applicants were born in 1976 and 1932 respectively and live in Saratovka, Armenia.

6. The second applicant is the mother of the first applicant.

7. On 8 October 1998 the first applicant was taken to a police station on suspicion of having committed rape and murder. A record of the applicant's arrest was drawn up, stating murder as the reason for his arrest and was signed by him. At the police station the first applicant was subjected to ill-treatment by a number of police officers and later, when questioned by the investigator, confessed to the crime.

8. On 11 October 1998 the first applicant was placed in pre-trial detention and on 21 October 1998 he was formally accused of rape and murder.

9. On 29 March 1999 the Lori Regional Court found the first applicant guilty as charged and sentenced him to fifteen years' imprisonment, basing the conviction on, *inter alia*, his confession. This judgment was upheld by the Criminal and Military Court of Appeal and the Court of Cassation on 20 May and 16 June 1999 respectively. It appears that throughout the proceedings the first applicant unsuccessfully claimed that his confession had been obtained under duress.

10. The Convention and Protocol No. 7 thereto came into force in respect of Armenia on 26 April and 1 July 2002 respectively.

11. On 24 November 2003 the General Prosecutor's Office filed an application to have the first applicant's case reopened on grounds of newly discovered circumstances establishing his innocence. In particular, the real perpetrator of the offences imputed to the first applicant had been found, following the commission of a similar offence. Furthermore, the first applicant's conviction had been based on fabricated evidence obtained in violation of the law.

12. On 2 April 2004 the Court of Cassation decided to grant the application and to quash the first applicant's conviction, remitting the criminal case for a fresh investigation. In doing so, the Court of Cassation found it established that new circumstances had been discovered following the first applicant's conviction which had been unknown to the courts at the material time. These circumstances provided grounds for believing that violations of statutory criminal procedure had taken place during the examination of the first applicant's criminal case which might have had an impact on the objective, thorough and full examination of the case.

13. On 17 April 2004 criminal proceedings were instituted against the investigator and a number of police officers who had dealt with the initial investigation. They were accused of exceeding their powers by forcing the first applicant to testify.

14. On the same date the first applicant was released from prison upon a written undertaking not to leave his place of residence, after serving about five years and six months of his sentence.

15. On 29 April 2004 the criminal proceedings against the first applicant were terminated under Article 35 § 1(2) of the Code of Criminal Procedure for lack of *corpus delicti*.

16. On the same date the General Prosecutor's Office sent a letter to the first applicant informing him of that decision and of the fact that he was henceforth considered an "acquitted person" and had the right to claim compensation under civil law. The letter added that the General Prosecutor's Office asked for his forgiveness for the miscarriage of justice.

17. On 6 May 2004 the first applicant was recognised as a victim. The relevant decision stated that he had suffered psychological, physical and material damage as a result of the unlawful actions of the police officers and the investigating authority.

18. On 15 June 2005 the Lori Regional Court found two of the police officers guilty as charged, sentencing them to three years' imprisonment and prohibiting them from holding certain posts for a period of two years, but applying an amnesty which dispensed them from serving their prison sentences. The Regional Court found, *inter alia*, that on 8 October 1998 the first applicant and his brother had been taken to a police station, where the police officers had ill-treated the first applicant in order to extract a confession. When the first applicant had refused to confess, one of the police officers had kicked and punched him and then unlawfully detained him at the police station. Later that day, two of the police officers had continued beating the first applicant. One of them had slapped his ears with both hands, as a result of which his left eardrum exploded. They had then brought a bottle in and tried to sit the first applicant on it. Simultaneously, another police officer had been beating the first applicant's brother in a nearby office and the first applicant had heard his brother's cries. Realising that he had no other way of avoiding the ill-treatment, the first applicant had confessed to the murder. The next day, before taking the first applicant to the scene of the crime for an inspection, one of the police officers had punched him several times as a warning. Thereafter, on 14, 16 and 19 October 1998 the first applicant had been taken from his detention cell to the police station, where the police officers had continued ill-treating him in order to make him confess to having raped the victim before murdering her, which the first applicant was forced to do, because he was unable to endure the ill-treatment.

19. No appeal was lodged against that judgment.

20. On 17 September 2004 the first applicant lodged a civil claim with the courts, seeking compensation for pecuniary damage in the amount of 34,050,000 Armenian drams (AMD) for the ill-treatment, unlawful detention and unfair conviction he had suffered. He relied on Articles 3, 5 and 6 of the Convention.

21. On an unspecified date Mrs Baghdasaryan ("the second applicant") joined the civil proceedings as a co-claimant, seeking approximately half the pecuniary damages claimed by the first applicant.

22. On an unspecified date the first applicant lodged an additional claim, seeking compensation for non-pecuniary damage in the amount of

AMD 60,000,000. He submitted, *inter alia*, that, although he had so far claimed compensation only for pecuniary damage, he had in fact suffered greater non-pecuniary damage. The Convention case-law required that compensation for non-pecuniary damage be awarded in such cases.

23. On 28 April 2005 the Kentron and Nork-Marash District Court of Yerevan dismissed the claim for non-pecuniary damage on the ground that that type of damage was not envisaged under Article 17 of the Civil Code. The District Court awarded the claim for pecuniary damage in part, finding, *inter alia*, that, pursuant to Article 66 of the Code of Criminal Procedure, the first applicant – as an acquitted person – was entitled to claim pecuniary compensation for unlawful arrest, detention, indictment and conviction, and awarding him AMD 6,250,000 for lost income for the period between 11 October 1998 and 17 April 2004. The second applicant was awarded AMD 1,500,000 for travel expenses, postage for parcels, and legal costs.

24. On 12 May 2005 the first applicant lodged an appeal.

25. On 31 August 2005 the Civil Court of Appeal dismissed the first applicant's appeal and upheld the judgment of the District Court.

26. On 16 September 2005 the applicants lodged an appeal on points of law.

27. On 18 November 2005 the Court of Cassation dismissed the applicants' appeal.

II. RELEVANT DOMESTIC LAW

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

28. The relevant provisions of the Civil Code provide as follows.

Article 17 – Compensation for damage

"1. Anyone 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 property or damage thereto (material damage), including loss of earnings which the person would have gained in normal conditions of civil life, had his rights not been violated (lost income). ..."

Article 1064 – Liability for damage caused by unlawful actions of the inquiry officer, 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 inquiry officer, the investigating authority, the prosecutor's office or the courts. ..."

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

29. The relevant provisions of the Code of Criminal Procedure provide as follows.

Article 35 – Circumstances precluding criminal proceedings or criminal prosecution

"1. Neither criminal proceedings [*Քրեական գործի վարույթ*] nor a criminal prosecution [*քրեական հետապնդում*] shall be instituted, and any criminal proceedings already instituted shall be terminated, if:

...

(2) the act lacks *corpus delicti*;

..."

Article 66 – An acquitted person

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

...

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

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

Explanatory Report to Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117)

30. The relevant sections of the Explanatory Report read as follows.

Article 3

"22. This Article provides that compensation shall be paid to a victim of a miscarriage of justice, on certain conditions.

First, the person concerned has to have been convicted of a criminal offence by a final decision and to have suffered punishment as a result of such conviction. According to the definition contained in the Explanatory Report of the European Convention on the International Validity of Criminal Judgments, a decision is final 'if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them'. It follows therefore that a judgment by default is not considered as final as long as the domestic law allows the proceedings to be taken up again. Likewise, this Article does not apply in cases where the charge is dismissed or the accused person is acquitted either by the court of first instance or, on appeal, by a higher tribunal. If, however, in one of the States in which such a possibility is provided for, the person has been granted leave to appeal after the normal time of appealing has expired, and his conviction is then reversed on appeal, then subject to the other conditions of the Article, in particular the conditions described in paragraph 24 below, the Article may apply.

23. Secondly, the Article applies only where the person's conviction has been reversed or he has been pardoned, in either case on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice – that is, some serious failure in the judicial process involving grave prejudice to the convicted person. Therefore, there is no requirement under the Article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the Article seek to lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice. This is a matter for the domestic law or practice of the State concerned. The words 'or he has been pardoned' have been included because under some systems of law pardon, rather than legal proceedings leading to the reversal of a conviction, may in certain cases be the appropriate remedy after there has been a final decision.

24. Finally, there is no right to compensation under this provision if it can be shown that the non-disclosure of the unknown fact in time was wholly or partly attributable to the person convicted.

25. In all cases in which these preconditions are satisfied, compensation is payable 'according to the law or the practice of the State concerned'. This does not mean that no compensation is payable if the law or practice makes no provision for such compensation. It means that the law or practice of the State should provide for the payment of compensation in all cases to which the Article applies. The intention is that States would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgment that the person concerned was clearly innocent. The Article is not intended to give a right of compensation where all the preconditions are not satisfied, for example, where an appellate court had quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge."

THE LAW

I. THE SECOND APPLICANT'S VICTIM STATUS

31. The Court first considers it necessary to decide on the victim status of the second applicant. It reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is in issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004).

32. In the present case, it was only the first applicant who was subjected to ill-treatment and detention and to a conviction that was subsequently overturned. The Court therefore considers that the application, in so far as it concerns the second applicant, is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

33. The Court will therefore limit its examination of the complaints raised in the application to those which concern the first applicant, whom – for the sake of simplicity – it will henceforth refer to as "the applicant".

II. ALLEGED VIOLATION OF ARTICLES 5 § 5 AND 13 OF THE CONVENTION AND ARTICLE 3 OF PROTOCOL No. 7 TO THE CONVENTION

34. The applicant complained about the dismissal of his claim for non-pecuniary damages in respect of his ill-treatment, unlawful arrest and detention, and unfair conviction. He relied on Articles 3, 5 and 6 of the Convention. The Court considers that this complaint falls to be examined under Articles 5 § 5 and 13 of the Convention and Article 3 of Protocol No. 7 to the Convention, which read as follows:

Article 5 § 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."

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 3 of Protocol No. 7

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

A. Admissibility

35. The Court notes that an issue may arise as to whether it has temporal jurisdiction to examine the circumstances of the applicant's complaint, taking into account that his complaints under Articles 3, 5 and 6 of the Convention concerning his ill-treatment, unlawful arrest and detention, and unfair conviction fall outside the Court's competence *ratione temporis* (see paragraphs 55-57 below). The Court notes, however, that the investigation into the applicant's ill-treatment, the conviction of the police officers and the ensuing compensation proceedings took place after the date of the Convention's entry into force in respect of Armenia. The Court therefore considers that the applicant's complaints under Articles 5 § 5 and 13 of the Convention and Article 3 of Protocol No. 7 to the Convention fall within its competence *ratione temporis*.

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

B. Merits

1. The parties' submissions

(a) The Government

37. The Government argued, in respect of Article 5 § 5, that that Article presupposed a violation of one or more of the other provisions of Article 5, which was absent in this case. The applicant's arrest and detention at the material time were not in violation of Article 5, since the domestic courts had acted in accordance with the law. There was no violation of Article 5 § 1 (a) since the applicant had been convicted by a competent court and there was no violation of Article 5 § 1 (c) since the aim of arresting the applicant had been to bring him before a competent authority on suspicion of having committed rape and murder. At the material time the domestic

court had not had at its disposal any evidence that would justify adopting a different decision. There had been no violation of Article 5 § 2 because the applicant had signed the record of his arrest on the day he was taken to the police station, so had evidently been aware of the reason for his arrest. Accordingly, there had been no violation of Article 5 §§ 3 and 4 either.

38. The Government further argued that the subsequent quashing of the applicant's conviction and the termination of the criminal proceedings against him had not rendered his arrest and detention incompatible with Article 5, since these had been carried out in compliance with the requirements of that Article and on the basis of a reasonable suspicion.

39. The Government also claimed, in respect of Article 13, that proper redress was available to the applicant. In particular, once the new facts had been discovered, criminal proceedings had immediately been instituted against the police officers, the applicant had been granted victim status, the officers convicted, the criminal proceedings against the applicant terminated and his claim for pecuniary damage granted. Furthermore, the General Prosecutor had sent an official apology to the applicant for the miscarriage of justice. All those measures should be considered sufficient compensation for any non-pecuniary damage suffered. Moreover, the facts of the present case were different from those in *Keenan v. the United Kingdom* (no. 27229/95, § 130, ECHR 2001-III) and *Kontrová v. Slovakia* (no. 7510/04, § 64, 31 May 2007) because this case did not raise an issue under Article 3.

40. The Government maintained, lastly, in respect of Article 3 of Protocol No. 7 that adequate compensation had been awarded to the applicant. In particular, he had been awarded compensation for pecuniary damage and had received an official apology from the General Prosecutor's Office, which should be considered as sufficient compensation for the non-pecuniary damage. Furthermore, Article 3 of Protocol No. 7 required the payment of compensation according to the law or practice of the State concerned. Thus, the compensation – in the form of an apology – which he had received for non-pecuniary damage had not been arbitrary, since such a practice was common in similar situations.

(b) The applicant

41. The applicant argued that Articles 3, 5 and 6 were applicable to his case and that an award of just compensation was therefore of paramount importance. The apology which he had received could not be taken seriously because, in addition to the official letter, the General Prosecutor had presented him with a copy of Alexandre Dumas's *The Count of Monte Cristo*. In any case, the hardship, mental anguish and acute physical pain he had suffered for five and a half years deserved to be compensated in a more reasonable manner than just an apology. Furthermore, on 1 September every year of his detention Armenian State television had broadcast a programme

prepared by the Armenian police affirming that he had admitted his guilt. Thus, he had been consistently degraded in the eyes of the public and nothing had been done by the authorities after his acquittal to restore his reputation. In 2007 he had married, but was still unable to have a child. The doctors attributed this to the circumstances of his conviction. He also suffered from adhesive otitis media in his left eardrum and first- to second-degree bilateral perceptive deafness on account of the blows to his ears. He was still using painkillers and his deafness was irreversible. No compensation for this had been awarded by the domestic courts, despite the fact that it had been established that he had suffered ill-treatment. Lastly, the Government's argument that his arrest had been effected in accordance with Article 5 and had been based on a reasonable suspicion was unacceptable, since the signs of his ill-treatment were clearly visible on his person. Furthermore, he had persistently refused to admit to the charges against him before the courts and had appealed to the higher instances against his conviction.

2. The Court's assessment

42. The Court considers it necessary to address firstly the complaints under Article 13 of the Convention and Article 3 of Protocol No. 7 and then the complaint under Article 5 § 5 of the Convention.

(a) Article 13 of the Convention

43. The Court notes once again that it is precluded – for lack of competence – from examining the circumstances of the applicant's treatment at the police station with a view to determining whether it fell short of the requirements of Article 3 of the Convention (see paragraphs 55-57 below). However, it reiterates that the existence of an actual breach of another provision of the Convention is not a prerequisite for the application of Article 13. Article 13 guarantees the availability of a remedy at national level to enforce – and hence to allege non-compliance with – the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, for Article 13 to apply it is sufficient for an individual to have an arguable claim in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

44. The Court observes that the fact of the applicant's ill-treatment by police officers was unequivocally established by the domestic courts, namely, the judgment of the Lori Regional Court of 15 June 2005 convicting two of the police officers involved (see paragraph 18 above). The Court therefore considers that the applicant undoubtedly had an arguable claim before the domestic courts under Article 13 of having been subjected to treatment prohibited by Article 3 of the Convention.

45. The applicant lodged his civil claim for compensation, including for the ill-treatment suffered, by instituting a separate set of proceedings following the police officers' conviction, seeking, *inter alia*, compensation for non-pecuniary damage (see paragraph 22 above). However, no compensation for non-pecuniary damage was awarded to the applicant because that type of compensation was not envisaged by the domestic law.

46. The question therefore arises whether Article 13 in this context requires that such compensation be made available. The Court will itself in appropriate cases award just satisfaction, recognising pain, stress, anxiety and frustration as rendering compensation for non-pecuniary damage appropriate. It has previously found that, in the event of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies (see *Keenan*, cited above, § 130, and *Kontrová*, cited above, § 64).

47. In this case the Court concludes that the applicant should have been able to apply for compensation for the non-pecuniary damage suffered by him as a result of his ill-treatment. Since no such compensation had been available to him under Armenian law, the applicant was deprived of an effective remedy.

48. There has accordingly been a violation of Article 13 of the Convention.

(b) Article 3 of Protocol No. 7 to the Convention

49. The Court reiterates that the aim of Article 3 of Protocol No. 7 is to confer the right to compensation on persons convicted as a result of a miscarriage of justice where such conviction has been reversed by the domestic courts on the ground of a new or newly discovered fact. Therefore, Article 3 of Protocol No. 7 does not apply before the conviction has been reversed (see *Matveyev v. Russia*, no. 26601/02, §§ 38-39, 3 July 2008).

50. In the present case, inasmuch as the applicant's conviction was quashed and he applied for compensation after 1 July 2002, the date of entry into force of Protocol No. 7 in respect of Armenia, the conditions for jurisdiction *ratione temporis* are satisfied (ibid.). Furthermore, the Court has no doubts that this Article is applicable to the applicant's case, all the necessary conditions being satisfied.

51. As regards compliance with the guarantees of Article 3 of Protocol No. 7, the Court considers that, while this provision guarantees payment of compensation according to the law or the practice of the State concerned, it does not mean that no compensation is payable if the domestic law or practice makes no provision for such compensation (see also paragraph 25 of the Explanatory Report to Protocol No. 7 to the Convention, paragraph 30 above). Furthermore, the Court considers that the purpose of

Article 3 of Protocol No. 7 is not merely to recover any pecuniary loss caused by a wrongful conviction but also to provide a person convicted as a result of a miscarriage of justice with compensation for any non-pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life. No such compensation, however, was available to the applicant in the present case.

52. There has accordingly been a violation of Article 3 of Protocol No. 7 to the Convention.

(c) Article 5 § 5 of the Convention

53. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

54. Having regard to its finding under Article 3 of Protocol No. 7 (see paragraph 52 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 5 § 5 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant also complained that his ill-treatment, unlawful arrest and detention, and unfair conviction violated the guarantees of Articles 3, 5 and 6 of the Convention.

56. The Court reiterates that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III). The Court observes that the events complained of took place prior to the date of the Convention's entry into force in respect of Armenia, namely, 26 April 2002.

57. It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

58. Lastly, the applicant complained, under the same Articles, that his claim for pecuniary damage was not granted in full.

59. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 34,000,000 Armenian drams (AMD) in respect of pecuniary damage, including costs and loss of earnings. He further claimed 274,959 euros (EUR) in respect of non-pecuniary damage.

62. The Government submitted that the applicant's claim in respect of pecuniary damage was unsubstantiated and had in fact already been granted by the domestic courts and that his claim in respect of non-pecuniary damage was unfounded.

63. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed AMD 1,000,000 for the costs and expenses incurred before the Court, including legal costs, translation and postage.

65. The Government submitted that the applicant's claim for costs and expenses was not fully substantiated.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

67. 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 dismissal of the applicant's claim in respect of non-pecuniary damage admissible under Articles 5 § 5 and 13 of the Convention and Article 3 of Protocol No. 7 to the Convention and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 7 to the Convention;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President