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

THIRD SECTION

CASE OF GASPARYAN v. ARMENIA (NO. 1)

(Application no. 35944/03)

JUDGMENT

STRASBOURG

13 January 2009

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

In the case of Gasparyan v. Armenia (no. 1),

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele, *judges,*
and Stanley Naismith, *Deputy Section Registrar,*

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 35944/03) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Maksim Gasparyan ("the applicant"), on 30 October 2003.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz, Ms A. Stock and Ms L. Claridge, lawyers of the Kurdish Human Rights Project (KHRP) based in London, Mr T. Ter-Yesayan, a lawyer practising in Yerevan, and Mr A. Ghazaryan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 6 September 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Yerevan.

5. In 2003 a presidential election was held in Armenia with its first and second rounds taking place on 19 February and 5 March respectively. The

applicant acted as an authorised election assistant (*վստահված անձ*) for the main opposition candidate in this election. Following the first and second rounds of the election, a series of protest rallies were organised in Yerevan by the opposition parties.

6. According to the materials of the case, the applicant attended one of these rallies on 23 February 2003. The applicant denied this fact and alleged that he had not attended the rallies.

7. On 26 February 2003 at 8 a.m. the applicant was visited at home by two police officers from the Shengavit District Police Department (*ՀՀ ոստիկանության Շենգավիթի բաժին*). He was informed that the chief of the police department wished to speak to him and was taken to the police station.

8. At the police station an administrative case was initiated against the applicant who was charged under Article 172 of the Code of Administrative Offences (*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք* – "the CAO") with minor hooliganism on the ground that he had participated in the unauthorised demonstration of 23 February 2003 and had violated public order.

9. On the same date, several hours later, the applicant was taken to the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*). There he was brought before Judge H. who, after a brief hearing, found the applicant guilty as charged and sentenced him to ten days of administrative detention, finding that:

> "On 23 February 2003 on Mashtots Avenue in Yerevan [the applicant] participated together with a group of people in an unauthorised demonstration and march, and violated public order."

10. The decision stated that it could be protested against by the prosecutor under Article 289 of the CAO.

11. The applicant was taken to a detention facility to serve his sentence.

12. The applicant alleged that on 1 March 2003 he was taken from his cell to another room. On the table in this room there were two sample applications, one of which was handed to him with the instruction to write and sign his name on it. The content of the application was a statement which declared: "I regret what I have done and request a review of my case." This request was addressed to the President of the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարանի նախագահ*). The applicant alleged that he had to sign this document, even though he disagreed with its contents, in order to be released and to be able to perform his authorised election assistant duties in the second round of the presidential election.

13. On the same date the President of the Criminal and Military Court of Appeal reviewed the applicant's conviction, finding that:

> "[The applicant, according to the decision of the District Court, was subjected to administrative detention] ... for attending an unauthorised demonstration in the Kentron District of Yerevan on 23 February 2003 and violating public order.
>
> Having familiarised myself with [the applicant's] appeal and the materials concerning the administrative offence, I find that the penalty imposed on [the applicant] must be changed."

14. The President changed the penalty to an administrative fine of 2,000 Armenian drams (AMD) (approximately 3 euros (EUR) at the material time) and ordered the applicant's release.

15. On the same evening the applicant was released from detention after having served about three days of his sentence.

16. On 26 March 2003 the applicant sent applications to the Ministry of Justice (*ՀՀ արդարադատության նախարարություն*), the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) and the Presidential Human Rights Commission (*ՀՀ նախագահին առընթեր մարդու իրավունքների հարցերի հանձնաժողով*), arguing that he had never participated in any demonstrations, and in particular the one held on 23 February 2003, and seeking a review of his case.

17. By a letter of 3 April 2003 the Court of Cassation forwarded the applicant's application to be dealt with by the Criminal and Military Court of Appeal.

18. By a letter of 11 April 2003 the Ministry of Justice informed the applicant that the rights of persons charged with an administrative offence were defined in Article 276 of the CAO and should have been invoked by the applicant during the examination of his case. The letter further stated that the decision of 26 February 2003 could be protested against by the prosecutor.

19. By a letter of 16 April 2003 the President of the Criminal and Military Court of Appeal informed the applicant that his application of 26 March 2003 could not be examined, since the applicant had missed the prescribed 10-day time-limit for appeal.

20. By a letter of 17 April 2003 the General Prosecutor's Office gave a similar reply to the applicant's application addressed to the Human Rights Commission.

21. On 27 April 2003 the applicant again complained to the Ministry of Justice that the decision of 26 February 2003 had been unlawful since he had not participated in any demonstration.

22. By a letter of 6 May 2003 the Ministry of Justice gave the same reply.

23. On 10 June 2003 the Department for the Enforcement of Judicial Acts (*Դատական ակտերի հարկադիր կատարման ծառայություն –*

"the DEJA") instituted enforcement proceedings on the basis of an execution writ issued by the District Court on 15 May 2003.

24. The applicant alleged that, around that period, he was visited at home by an officer of the DEJA who informed him that the decision of 26 February 2003 had been reviewed on 1 March 2003 and a fine had been imposed. He further alleged that only then did he become aware of the existence of the decision of the President of the Criminal and Military Court of Appeal of 1 March 2003. The applicant paid the fine.

25. On 12 June 2003 the DEJA decided to terminate the enforcement proceedings since the terms of the execution writ had been complied with.

II. RELEVANT DOMESTIC LAW

26. For a summary of the relevant domestic provisions and international documents and reports see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, §§ 25-32, 15 November 2007).

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH RULE AS REGARDS THE DECISION OF 26 FEBRUARY 2003

27. The applicant raised a number of complaints under Article 5 §§ 1, 2, 3 and 4, Article 6 §§ 1 and 3 (a-d), Article 11, Article 13 and Article 14 of the Convention and Article 3 of Protocol No. 1 thereto in connection with his conviction of 26 February 2003.

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

the running of the six-month rule (see *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002).

29. Turning to the circumstances of the present case, the Court notes that the applicant raised a number of complaints in his application in connection with the decision of the Kentron and Nork-Marash District Court of Yerevan of 26 February 2003. This decision, however, was final and there were no further sufficiently accessible and effective remedies to exhaust, including the extraordinary remedies which could be initiated under Article 294 of the CAO with a prosecutor or the president of a higher court (see *Galstyan*, cited above, §§ 40-42). The applicant nevertheless tried one of these avenues for review by submitting a request for review to the President of the Criminal and Military Court of Appeal (see paragraph 12 above). On 1 March 2003 the President of the Criminal and Military Court of Appeal decided to review the final decision of the District Court of 26 February 2003, on the basis of the applicant's extraordinary appeal. The applicant lodged his application with the Court on 30 October 2003, which is more than six months from the date of the District Court's decision but less than six months from the date on which the applicant alleged that he became aware of the decision of the Court of Appeal. It is therefore necessary to determine whether the decision of the Court of Appeal taken on the basis of the applicant's extraordinary appeal restarted the running of the six-month period as far as the final decision of the District Court is concerned.

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

31. It appears that the situation in the present case may be regarded as falling into the category of exceptional cases, given that the applicant's extraordinary remedy actually led to a review of the final decision on his administrative case. The Court, however, does not consider that the mere fact of reopening proceedings will restart the running of the six month period. It cannot be excluded that a case may be reopened on grounds unrelated to the Convention complaints which an applicant may later lodge

with the Court and the Court doubts that such a reopening will affect the calculation of the six month period. Since Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court before his position in connection with his complaint has been finally settled at the domestic level (see *Petrie and Others v. the United Kingdom* (dec.), no. 29703/05, 6 February 2007), it means that an applicant is required under that Article to seize the Court once his position in connection with his complaint has finally been settled and the reopening of a case on unrelated grounds will not affect the finality of the settlement in respect of that particular issue. The Court therefore considers that, in cases where proceedings are reopened or a final decision is reviewed, the running of the six month period in respect of the initial set of proceedings or the final decision will be interrupted only in relation to those Convention issues which served as a ground for such a review or reopening and were the object of examination before the extraordinary appeal body. A different approach would also be contrary to the principle of subsidiarity, on which the Convention machinery is founded and which requires that the complaints intended to be made at the international level should first be aired in substance before the domestic courts (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

32. In the present case, the Court notes that the applicant did not raise in his extraordinary appeal to the Court of Appeal, either explicitly or in substance, any of the complaints which he is currently raising before the Court (see paragraph 27 above). It further notes that the Court of Appeal did not address of its own motion any of those issues either, apart from upholding the applicant's conviction under Article 172 of the CAO and modifying the penalty imposed by the District Court. Thus, the complaints raised by the applicant before the Court in connection with the decision of the District Court were not the object of examination before the Court of Appeal and the grounds on which the Court of Appeal decided to review the final decision of the District Court cannot be seen as being in any way related to those complaints. The Court therefore concludes that the review of the final decision of the District Court by the Court of Appeal upon the applicant's extraordinary appeal did not re-start the running of the six-month period in respect of those complaints.

33. It follows that the applicant's complaints concerning the decision of 26 February 2003 were lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION AS REGARDS THE DECISION OF 1 MARCH 2003

34. The applicant complained that his conviction had unlawfully interfered with his rights guaranteed by Article 11 of the Convention which, in so far as relevant, provides:

> "1. Everyone has the right to freedom of peaceful assembly...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."

A. Admissibility

35. The Government submitted that, by lodging his application on 30 October 2003, the applicant had failed to comply with the six-month rule in respect of the decision of the Criminal and Military Court of Appeal of 1 March 2003. The applicant's claim that he was not aware of that decision until June 2003 was unfounded because he was released from detention on the same date by virtue of that decision. Furthermore, that decision was taken on the applicant's own appeal of 1 March 2003. The six months should therefore be calculated from that date.

36. The applicant submitted that he had not been informed of the decision of 1 March 2003 until June 2003, when he was visited by a DEJA official for the purpose of enforcement of that decision. The Government had failed to submit any evidence that he had been informed of the reasons for his release at the time of release. Furthermore, he had not been present at the hearing before the Court of Appeal. It was therefore the Court of Appeal's obligation to inform him about the outcome of his appeal. As regards the latter, he had not even been aware that an appeal to the Court of Appeal was being made. All that he was able to recall was signing a declaration to the effect that he regretted his actions. Finally, none of the replies to his subsequent letters requesting a review of his case mentioned the fact that an appeal had already been heard.

37. The Court reiterates the basic principles established in its case-law concerning the six-month rule (see paragraph 28 above). It further observes that it is for the Government pleading non-respect of the six-month rule to demonstrate the date on which the applicant became aware of the final decision (see *Ali Sahmo v. Turkey* (dec.), no. 37415/97, 1 April 2003). In the present case, the Government argued that the applicant became aware of the decision of 1 March 2003 on that very day, because that decision resulted in his release from detention. The Court, however, is not convinced by this

argument. It is true that the applicant was released from detention before the expiry of his ten-day sentence. However, the Government have failed to produce any evidence that the applicant was ever informed – through service of a copy of the Court of Appeal's decision or in any other manner – about the Court of Appeal examining and rendering a decision on his request for review of 1 March 2003 before he was asked in June 2003 by the DEJA to comply with the terms of that decision. The fact of the applicant's release alone is not sufficient to conclude that he was unequivocally aware of the existence of the decision of 1 March 2003, especially in view of the fact that the review proceedings before the Court of Appeal were not a part of normal procedure (see *Galstyan*, cited above, § 41). Indeed, the fact that the applicant continued, upon his release, to make attempts seeking to review that decision suggests that he was probably not aware that a review had already taken place. None of the replies received by the applicant in that period contained any mention of the decision of 1 March 2003. Moreover, and quite surprisingly, the President of the Criminal and Military Court of Appeal himself, when refusing by his letter of 16 April 2003 to examine the applicant's application for review of 26 March 2003, did so on the ground that this application had been submitted out of time and *not* on the ground that an appeal had already been examined by him on 1 March 2003. In view of all the above factors, the Court does not find the Government's position to be convincing and their objection as to the applicant's failure to comply with the six-month rule must be rejected.

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

B. Merits

39. The Government submitted that there had been no interference with the applicant's right to freedom of peaceful assembly as he was convicted of minor hooliganism under Article 172 of the CAO. In any event, even assuming that there had been an interference, it was prescribed by law, pursued a legitimate aim and was necessary in a democratic society since the applicant was found to have committed reprehensible acts.

40. The applicant submitted that his conviction for minor hooliganism had been based on the fact of participation in a demonstration and therefore interfered with his rights under Article 11. In the absence of any details of the public order offence allegedly committed by him, it was the fact of participation itself which was qualified as a violation of public order. Furthermore, Article 172 of the CAO was too vague, the interference did not pursue a legitimate aim and it was not necessary in a democratic society.

41. The Court observes that it has already examined a number of cases against Armenia in which the applicants, whose actions were formally qualified as "minor hooliganism", were in fact convicted for their participation in peaceful demonstrations, and found that such convictions amounted to an interference with the right to freedom of peaceful assembly (see *Galstyan*, cited above, §§ 100-102, and *Ashughyan v. Armenia*, no. 33268/03, §§ 75-77, 17 July 2008). The Court does not see any reasons to reach a different finding in the present case and concludes that the decision of the President of the Criminal and Military Court of Appeal of 1 March 2003 constituted an interference with the applicant's right to freedom of peaceful assembly.

42. Turning to the question of whether the interference was justified, the Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims. The Court has already found, in similar circumstances, that an interference in the form of conviction under Article 172 of the CAO complied with the requirement of lawfulness (see *Galstyan*, cited above, § 107, and *Ashughyan*, cited above, §§ 81 and 82). Furthermore, similarly to those cases, the conviction in the present case pursued the legitimate aim of the "prevention of disorder" (see *Galstyan*, cited above, § 110, and *Ashughyan*, cited above, § 85).

43. As regards the necessity of the interference, the Court reiterates that the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, § 53; *Galstyan*, cited above, § 115; and *Ashughyan*, cited above, § 90).

44. In the present case, as in the cases of *Galstyan* and *Ashughyan*, the Court of Appeal failed to provide details of any acts allegedly committed by the applicant at the demonstration of 23 February 2003 which could be characterised as reprehensible, including any violent or offensive acts, and limited itself to a very abstract finding that the applicant had "violated public order" (see, *mutatis mutandis*, *Galstyan*, cited above, § 117, and *Ashughyan*, cited above, §§ 92 and 99). No other material before the Court contains any such details either. Furthermore, it is not clear on what grounds the Court of Appeal stated that the applicant had participated in an unauthorised demonstration, taking into account that at the material time there was no legal act applicable in Armenia containing rules for organising and holding rallies and street marches, including the rules for authorising such events (see *Mkrtchyan v. Armenia*, no. 6562/03, § 43, 11 January 2007). The Court has already found in the above cases of

Galstyan and *Ashughyan* that the very essence of the right to freedom of peaceful assembly would be impaired, if the State chose not to prohibit a demonstration but subsequently imposed sanctions on its participants for the mere fact of attending it, without committing any reprehensible acts, and concluded that such interferences were not "necessary in a democratic society" (see *Galstyan*, cited above, § 117, and *Ashughyan*, cited above, § 93). It does not see any reasons to reach a different conclusion in the present case.

45. There has accordingly been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE DECISION OF 1 MARCH 2003

46. The applicant complained that the Criminal and Military Court of Appeal failed to adopt a reasoned decision. He invoked Article 6 § 1 of the Convention which, in so far as relevant, provides:

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

Admissibility

47. The Court points out at the outset that Article 6 of the Convention applies to proceedings where a person is charged with a criminal offence until that charge is finally determined. It further reiterates that Article 6 does not apply to proceedings concerning a failed request to reopen a case. Only the new proceedings, after the reopening has been granted, can be regarded as concerning the determination of a criminal charge (see *Vanyan v. Russia*, no. 53203/99, § 56, 15 December 2005). The Court does not, however, consider it necessary to determine this issue in the present case, since the applicant's complaint under Article 6 about the proceedings before the Criminal and Military Court of Appeal is, in any event, inadmissible for the following reasons.

48. The Court reiterates that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the court and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question of whether a court has failed to fulfil the obligation to state reasons can only be determined in the light of the circumstances of the case

(see, among other authorities, *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B).

49. In the present case, the applicant was convicted under Article 172 of the CAO for participating in an unauthorised demonstration and violating public order. This reason was stated in the Court of Appeal's decision. In such circumstances, even if this decision was not detailed, it still cannot be said that the Court of Appeal failed to indicate the reasons for the applicant's conviction.

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

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION AS REGARDS THE DECISION OF 1 MARCH 2003

51. The applicant alleged discrimination on political grounds also in connection with the decision of the Court of Appeal of 1 March 2003. He invoked Article 14 of the Convention which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Admissibility

52. The Court notes that all the materials in its possession indicate that the applicant was penalised for his participation in an unauthorised demonstration and march, and his alleged violation of public order. There is nothing in the case file to suggest that he was subjected to a penalty because of his political opinion.

53. The Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

56. The Government claimed that a finding of a violation of the Convention should be sufficient compensation for any non-pecuniary damage allegedly suffered by the applicant. In any event, the amount claimed was excessive.

57. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of being sanctioned for his participation in a demonstration and a march. Ruling on an equitable basis, it awards him EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

58. The applicant also claimed 3,947 United States dollars (USD) (approximately EUR 3,345) and 7,095 pounds sterling (GBP) (approximately EUR 10,358) for the costs and expenses incurred before the Court. These claims comprised:

(a) USD 3,900 for the fees of his domestic lawyer (total of 26 hours at USD 150 per hour respectively);

(b) USD 47 for translation costs;

(c) GBP 7,000 for the fees of his three United Kingdom-based lawyers, including two KHRP lawyers and one barrister (totals of 20 and 40 hours at GBP 150 and 100 per hour respectively); and

(d) GBP 95 for administrative costs incurred by the KHRP.

59. The Government submitted that these claims were not duly substantiated with documentary proof, since the applicant had failed to produce any contract certifying that there was an agreement with the lawyers to provide legal services at the alleged rate. Furthermore, the applicant had used the services of an excessive number of lawyers, despite the fact that the case was not so complex as to justify such a need. Finally, the rates allegedly charged by the domestic representatives were excessive.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable

as to quantum. In the present case, the Court notes at the outset that no invoice has been submitted to substantiate the translation costs. As regards the lawyers' fees, it considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the foreign and the domestic representatives, as set out in the relevant time sheets. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* [GC], no. 33202/96, § 27, ECHR 2000-I). The Court notes that only a violation of Article 11 was found in the present case while the entirety of the written pleadings, including the initial application and the subsequent observations, concerned numerous Articles of the Convention and Protocol No. 1. Therefore the claim cannot be allowed in full and a considerable reduction must be applied. Making its assessment on an equitable basis, the Court awards the applicant a total sum of EUR 2,000 for costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 11 of the Convention concerning the decision of 1 March 2003 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds*

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

(i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of

settlement and to be paid into his representatives' bank account in the United Kingdom;

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

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

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President