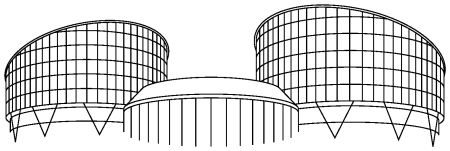

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CONTOLORU v. ROMANIA

(Application no. 22386/04)

JUDGMENT

STRASBOURG

25 March 2014

FINAL

25/06/2014

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

In the case of Contoloru v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 6 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 22386/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Dumitru Contoloru ("the applicant"), on 24 May 2004.

2. The applicant was represented by Mr S. Răduleţu, a lawyer practising in Craiova. The Romanian Government ("the Government") were represented by their Agents, Ms I. Cambrea and Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that his state of health had deteriorated because of the length of his pre-trial detention, which was unlawfully extended for almost one and a half years.

4. On 17 May 2011 the complaints concerning the length of the pre-trial detention and its connection with the applicant's state of health were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Târgu-Jiu.

6. On 25 August 2003 the applicant, who was the director of a local bank branch, was arrested and charged with several economic crimes,

namely approving loans without respecting the legal requirements, abuse of office, fraud, forgery and conspiracy to commit crimes. Seven other individuals were also charged with various bank frauds allegedly committed in association with the applicant between January 2002 and April 2003.

7. On 27 July 2007 the Sibiu County Court acquitted the applicant of all the charges against him. The court held that the applicant was not guilty of the crimes of abuse of office, fraud, forgery and conspiracy to commit crimes. As regards the crime of approving loans without respecting the legal requirements, the court held that from 26 March 2007 this was no longer an offence in law and therefore acquitted the applicant of this offence too. On 2 November 2011 the applicant's acquittal was finally upheld by a judgment of the High Court of Cassation and Justice.

A. The applicant's pre-trial detention

8. Following the applicant's arrest on 25 August 2003 for a period of three days, the investigating prosecutor requested the Gorj County Court to confirm the applicant's pre-trial detention for a total period of thirty days. The prosecutor reasoned the request by quoting the text of Article 148 (1) of the Code of Criminal Procedure which provided for the cases in which a defendant may be arrested, namely that the defendant had made preparations to abscond from the authorities; that there was sufficient evidence that the defendant had tried to obstruct the investigation by influencing witnesses and destroying evidence; that the defendant had committed crimes for which the punishment was imprisonment for more than four years; that there was evidence that if released the defendant would pose a danger to public order and that there were sufficient data to justify the concern that the defendant would exert pressure on the victim or that he would try to make a fraudulent settlement of the case with the latter. No specific reference was made to the applicant's situation or to the application of the legislation quoted in his particular case.

9. On 26 August 2003, on the basis of the reasons advanced by the prosecutor, the Gorj County Court granted this request and remanded the applicant in pre-trial custody for twenty-seven days. By the same judgment and with the same reasoning the court remanded the other three co-defendants who were arrested at the same time as he applicant in pre-trial custody.

10. On 29 August 2003 the Craiova Court of Appeal rejected an appeal by the applicant on points of law against the above-mentioned interlocutory judgment as ill-founded. The court held "In the current case the applicant has committed the above-mentioned offences and their nature leads to the conclusion that the defendant's release would constitute an actual danger to public order."

11. The applicant's and his co-defendants' pre-trial detention was subsequently extended on 10 September 2003, with the reasoning that the motives which had justified their arrest still existed. In taking this decision the court also held relevant the fact that two more suspects had been arrested since the beginning of the investigation. An appeal by the applicant on points of law against this judgment was rejected by the Craiova Court of Appeal on 12 September 2003; the court held that the applicant's release had been correctly deemed by the lower court to be a threat to public order.

12. Between 10 September and 2 December 2003 the applicant's and his co-defendants' pre-trial detention was extended each month by the Gorj County Court with the same reasoning, namely that there was sufficient evidence for the conclusion that the defendants had committed the offences for which they were on trial, and that therefore their release would constitute a danger to public order. On 2 December 2003 the Gorj County Court additionally held that the defendants' pre-trial detention was also justified by the fact that new crimes had been discovered by the investigators to have been committed at the same bank branch. No details were given about these crimes or about the defendants' personal situation in this connection.

13. From 23 December 2003 to 24 June 2004 the Gorj County Court extended the applicant's and his co-defendants' pre-trial detention jointly, with the reasoning that there were no new facts capable of justifying a revocation of the remand in custody, the defendants had not yet been heard in court, and the financial losses caused by the crimes had not yet been recovered.

14. On 24 June 2004 the Gorj County Court decided to allow the applicant's request for the replacement of his pre-trial detention with a prohibition on leaving the town. The court noted that the applicant had already been held in pre-trial detention for approximately one year, and there was no evidence that he had tried to obstruct the investigation during this period. An appeal by the prosecution on points of law against this decision was allowed on 28 June 2004 by the Craiova Court of Appeal. The court of appeal held that pre-trial detention continued to be justified for all the defendants because of the high number of offences involved, the severity of the punishment provided by law for these offences, and the fact that the defendants had rendered the investigation more difficult by requesting expert reports as well as submitting documents in their defence for the first time before the court and not during the investigation phase.

15. Between 8 July and 9 November 2004 the applicant's pre-trial detention was extended a number of times, on the basis of the same reasoning, relying on the severity of the offence and the implied danger to public order. On 30 September 2004 the Gorj County Court additionally held that the defendants' pre-trial detention was also justified by the fact

that new accusations had been made against three of them including the applicant.

16. The applicant appealed against all the decisions extending his pre-trial detention, alleging that there was not enough evidence from which to acquire a reasonable suspicion that he had committed the offences, and there was no proof that if released he would present a danger to public order. The applicant also emphasised to the courts that the investigation was based mainly on bank documents which had all already been seized, and therefore it would not be possible for him to obstruct the investigation if released from prison. He further mentioned that he was a respected person in his local community, with a family and three minor children for whom he was responsible. He made numerous requests to the courts for his pre-trial detention to be replaced with a prohibition on leaving the town. However, his appeals were rejected as ill-founded, the courts considering that the reasons for his initial pre-trial detention still existed, without analysing the applicant's specific allegations or his personal situation.

17. On 11 November 2004 the Gorj County Court again decided to revoke the applicant's pre-trial detention, but that decision was quashed by the Craiova Court of Appeal on 15 November 2004, with the reasoning that not all the evidence gathered by the prosecutor had been produced before the court.

18. On 6 December 2004 the High Court of Cassation and Justice decided to grant a request made by one of the defendants and changed the location of the trial to the Sibiu County Court.

B. The applicant's requests for the revocation of his pre-trial detention on medical grounds

19. At the time he was placed in pre-trial detention the applicant was suffering, among others, from chronic coronary heart disease.

20. On 15 September 2003 the applicant submitted a request to the Gorj County Court for the revocation of his pre-trial detention for medical reasons. He requested a forensic medical expert report and enclosed medical documents attesting to his state of health.

21. At a hearing on 13 January 2004 the court ordered that the applicant be examined by the Gorj Forensic Medicine Service.

22. On 11 February 2004 the Gorj Forensic Medicine Service submitted to the court a forensic report concluding that the applicant was suffering from several diseases. The report estimated that the applicant's conditions required treatment under strict medical supervision and further cardiology, neurology and orthopaedic tests, hence making him unable to cope with the detention regime. The report also suggested that the suspension of the applicant's detention was necessary for a period of three months in order for him to seek treatment in a civil hospital. Finally, the report concluded that a

failure to undertake the treatment recommended by a specialist doctor might endanger the applicant's life.

23. The court requested on 12 February 2004 that the forensic report be supplemented with specific medical recommendations for the applicant's health problems. A new amended report was submitted on 25 February 2004.

24. On 4 March 2004, at the request of the prosecutor, the court ordered the revision of the amended report by the Craiova County Control Commission (*Comisia de avizare si control a actelor medico-legale*) for more clarifications.

25. At the hearing of 25 March 2004 the court took note that the Craiova County Control Commission had confirmed the forensic report drafted by the Gorj Forensic Medicine Service, but had recommended the suspension of the applicant's pre-trial detention for only one month instead of three. Again at the request of the prosecutor, the court ordered clarifications from the Control Commission, given that the suspension of the pre-trial detention was not provided by law.

26. In view of the lack of response from the Control Commission, on 13 May 2004 the court ordered a new forensic report to be drawn up by the Bucharest National Institute of Forensic Medicine.

27. On 16 September 2004, the court took note of the receipt of the opinion from the Bucharest Control Commission, which concluded that the applicant's condition required a coronarography procedure, which could be done in detention and did not require him to be released for one month as previously recommended. Therefore, the court decided that the applicant could be treated within the prison health system, and refused his request for revocation of his pre-trial detention for medical reasons. An appeal by the applicant on points of law against this decision was rejected as ill-founded on 22 September 2004 by the Craiova Court of Appeal.

28. On 30 November 2004 the applicant complained to the court that his state of health had worsened during his detention, and requested a new forensic expert report to establish whether he could be treated within the prison health system. The court granted the applicant's request and ordered the report to be carried out by the Gorj Forensic Medicine Service. No such report was ever submitted to the court.

29. On 5 January 2005, on the basis of the medical documents available in the file, the Sibiu County Court ordered the revocation of the applicant's pre-trial detention for medical reasons. The applicant was ordered not to leave his town of residence without authorisation. An appeal by the prosecutor against this judgment on points of law was rejected on 10 January 2005 by the Alba Iulia Court of Appeal. The applicant was released the same day.

C. The civil procedure for damages instituted by the applicant

30. In 2012, after his final acquittal by the judgment of the High Court of Cassation and Justice of 2 November 2011, the applicant brought a civil action before the domestic courts which was based on the provisions of Article 504 of the Code of Criminal Procedure. He requested pecuniary damages, alleging that his pre-trial detention had been unlawfully ordered by the prosecutor and excessively and unlawfully extended by the courts, an issue which had caused him material losses and also caused his state of health to worsen.

31. On 4 February 2013 the Craiova Court of Appeal finally refused the applicant's request. The court held that the applicant was acquitted of one of the offences he had been charged with because it was no longer punishable by law. Therefore, given that he was not held in detention once the new law entered into force, his pre-trial detention was lawful and he was not entitled to receive any kind of damages.

II. RELEVANT DOMESTIC LAW

32. The relevant provisions of the Code of Criminal Procedure concerning the placement in pre-trial detention and the extension of pre-trial detention during criminal trials, in force at the relevant time, are described in *Pantea v. Romania* (no. 33343/96, § 150, CEDH 2003-VI).

33. The relevant provisions of the Code of Criminal Procedure concerning the revocation of pre-trial detention for medical reasons, in force at the relevant time, read as follows:

Article 139 (3^4)

"Also, when a court notes, on the basis of a forensic medical report, that a person held in pre-trial detention is suffering from a condition which cannot be treated within the prison health system, it shall order on request or of its own motion the revocation of the pre-trial detention."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

34. In their observations on the admissibility and merits of the case the Government raised an objection of non-exhaustion of domestic remedies by the applicant with respect to all the complaints raised before the Court. They contended that, as he had been acquitted of the offences he had been charged with, the applicant had available a civil action for damages for unlawful pre-trial detention. Therefore, having in mind that for the moment

the criminal proceedings were still pending against the applicant, the Government submitted that the applicant's complaints before the Court were premature.

35. On 5 November 2012 the Government informed the Court that the applicant had indeed brought a civil action for damages, but stated that they maintained their previous objection, since the applicant had raised different issues before the domestic courts from those he had raised before the Court. More specifically, they contended that before the domestic courts the applicant had requested only pecuniary damages for the losses he had suffered during his pre-trial detention, while before the Court he requested pecuniary damages for costs incurred on account of pre-trial detention and his medical treatment, and compensation for non-pecuniary damage for suffering allegedly caused him by the pre-trial detention.

36. The applicant submitted that the authorities had never acknowledged the violations he complained about and he had never received any compensation in this respect.

37. The Court reiterates that the purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. Thus, the only remedies that must be exhausted are those that are effective and capable of redressing the alleged violation. More specifically, those that relate to the breaches alleged and at the same time are available and sufficient; the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It falls to the respondent State, if it pleads non-exhaustion of domestic remedies, to establish that these various conditions are satisfied (see, among other authorities, *Paksas v. Lithuania* [GC], 6 January 2011, § 75, ECHR 2011 (extracts)).

38. The Court notes that in his civil action the applicant asked for damages for his pre-trial detention, which he considered unlawful. He also mentioned that the alleged unlawful detention had worsened his state of health. The Court considers that these are in substance the main complaints raised by the applicant in the current application.

39. Further on, the Court observes that the domestic courts held by final judgment that the applicant's detention was lawful. Therefore, the applicant would not have been entitled to receive any damages, whether in compensation for pecuniary or for non-pecuniary damage.

40. Therefore, in the light of the foregoing, the Court considers that the Government's preliminary objection on the ground of non-exhaustion of domestic remedies must be dismissed.

Noting further that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court concludes that it must be declared admissible.

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

41. The applicant complained that his pre-trial detention was excessively long and that the decisions ordering the extension of his pre-trial detention were not based on relevant and sufficient reasons as provided in Article 5 §§ 1 and 3 of the Convention. Having in mind the nature of the applicant's complaints, the Court will analyse them under Article 5 § 3, which reads as follows:

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

A. The parties' submissions

42. The applicant alleged that his pre-trial detention was unlawfully prolonged for almost one and a half years because the domestic courts had reasoned their decisions essentially by citing the provisions of the law, without taking into consideration his specific situation, including his severe medical condition. This breached both the domestic law provisions and his rights under the Convention.

43. The Government contested that argument. They submitted that the applicant's pre-trial detention had been correctly and thoroughly justified by the prosecutor and the courts. They further argued that its duration was not unreasonable, having in mind the nature of the charges against the applicant and the complexity of the case. With respect to the applicant's health condition, the Government submitted that there was no proof that his state of health had deteriorated during his pre-trial detention.

B. The Court's assessment

1. General principles

44. The Court reiterates that a person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify continued detention (see, as classic authorities, *Wemhoff v. Germany*, 27 June 1968, § 12, Series A no. 7, and *Yagci and Sargin v. Turkey*, 8 June 1995, § 52, Series A no. 319-A).

45. The Convention case-law has developed four basic reasons for refusing bail: the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9); the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff*, cited above, § 14) or commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A

no. 10), or cause public disorder (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207).

46. The issue of whether a period of detention is reasonable cannot be assessed in the abstract. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable length. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the factual matters set out by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Letellier*, cited above, § 35, and *Rossi v. France*, no. 60468/08, § 77, 18 October 2012).

47. Arguments for and against release must not be "general and abstract" (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225). Regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts (see *W. v. Switzerland*, 26 January 1993, § 33 with further references, Series A no. 254-A).

2. Application of these principles in the present case

48. The length of the applicant's detention is not short in absolute terms. Nevertheless, the Court cannot rule out the possibility that it might have been justified in the circumstances. But to reach such a conclusion the Court would first need to evaluate the reasons given by the domestic authorities to justify the detention. And it is these reasons that appear insufficient.

49. Indeed, in the initial decision to remand the applicant in pre-trial custody the prosecutor only listed the situations provided by law in which pre-trial detention was justified, without any attempt to relate these provisions to the applicant's situation (see paragraph 8 above).

50. Further on, the decisions which the Court has at its disposal are remarkably terse; they all use reasons considered valid for all defendants held in pre-trial detention and do not describe the characteristics of the applicant's situation. Hence, the decisions issued by the domestic courts for a period of seven months used the same stereotypical reasoning, based on the seriousness of the charges against the applicant and his co-defendants and the implied danger to public order, to justify their detention. In this respect the Court considers that the systematic reference to the seriousness of the offences cannot replace the provision of substantial reasoning for the prolongation of the applicant's detention, a reasoning based on facts connected to the applicant's personality which would justify the existence of an actual threat to public order, or the provision of any other reason as

provided in the Court's case-law (see *Lauruc v. Romania*, no. 34236/03, § 82, 23 April 2013). Therefore, the Court notes that the domestic courts did not offer any explanation as to why the applicant's release would have a negative impact on public order.

51. Other decisions prolonged the applicant's pre-trial detention using, besides the above-mentioned stereotypical justifications, reasons such as that other people had been arrested and other crimes had allegedly been discovered at the same bank branch since the beginning of the investigation. The Court observes that no analysis was made by the domestic courts of how these new facts related to the individuals on trial, and specifically to the applicant.

52. For six more months the applicant's pre-trial detention was extended using the reasoning, similar to that given for all defendants in detention, that the defendants had not yet been heard in court, and the financial losses caused by the crime had not yet been recovered. The Court reiterates that the danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*; it must be supported by factual evidence such as factors relating to the person's character, his morals, home, occupation, assets, family ties (see *Trzaska v. Poland*, no. 25792/94, § 65, 11 July 2000, and *Becciev v. Moldova*, no. 9190/03, § 59, 4 October 2005). In addition, the possibility of obtaining guarantees may have to be used to offset any risk of absconding (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). The Court notes, on the basis of the documents available in the current case file, that the domestic courts made no such assessment of the applicant's personal circumstances, and no factual evidence was put before them that he might try to avoid trial or to hider the recovery of the financial losses caused by the crimes.

53. Finally, on one occasion the domestic court relied on the additional reasoning that the defendants had rendered the investigation more difficult by requesting expert reports, as well as on the fact that they had submitted documents in their defence for the first time before the court and not during the investigation phase (see paragraph 14 above). The Court notes that these are elements of the right of defence in a criminal trial and cannot be relied upon to justify an accused's pre-trial detention (see *Tiron v. Romania*, no. 17689/03, § 43, 7 April 2009, and *Ţurcan v. Moldova*, no. 39835/05, § 51, 23 October 2007).

54. The Court also notes that the applicant advanced before the national courts substantial arguments questioning the grounds for his detention. He referred to the fact that there was not enough evidence from which to infer a reasonable suspicion that he had committed the offences, that he was a respected person in his community, he had a family and three children and there was no proof that if released he would pose a danger to public order. However, the Court observes that the domestic courts devoted no consideration to any of these arguments in their relevant decisions (see

paragraph 16 above). They limited themselves to repeating in an abstract way the formal grounds for detention provided by law. These grounds were cited without any attempt to show how they applied to the applicant's case. In this respect the Court observes again that such an approach is not compatible with the requirements of Article 5 § 3 of the Convention (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II, and *Lauruc*, cited above, § 83).

55. The foregoing considerations are sufficient to enable the Court to conclude that the repeated extensions of the applicant's pre-trial detention for a period of one year, four months and two weeks on the basis of insufficiently reasoned decisions amounts to a violation of Article 5 § 3 of the Convention.

III. OTHER ALLEGED VIOLATION

56. The applicant alleged that his pre-trial detention had been prolonged excessively by the authorities' passivity in the face of his requests for its revocation for medical reasons and in spite of the seriousness of his medical condition established by medical documents. The applicant further submitted that this situation had caused him suffering and aggravated his state of health invoking in substance a breach of Article 3 of the Convention.

57. The Government contended firstly that the applicant had failed to raise before the Court a complaint under the procedural head of Article 3 of the Convention concerning the length of the procedures for the revocation of his pre-trial detention for medical reasons. They further submitted that the applicant did not contract any disease in detention and that there was no proof that his state of health had deteriorated during his pre-trial detention. Therefore, they concluded that the suffering allegedly experienced by the applicant due to the extension of his pre-trial detention did not reach the minimum level of severity so as to fall within the ambit of Article 3 of the Convention.

58. The Court is ready to consider that the applicant raised in substance a complaint under Article 3 of the Convention and that this complaint must be declared admissible within the meaning of Article 35 § 3 (a) of the Convention. However, having regard to the particular circumstances of the present case and to the reasoning which led it to find a violation of Article 5 § 3 of the Convention, the Court considers that it is not necessary also to examine the case under Article 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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. Damages and costs and expenses

60. The applicant claimed 120,000 euros (EUR) in compensation for pecuniary damage sustained because of expenses he was forced to incur in respect of food and medical treatment while in detention, as well as for the costs and expenses incurred before the domestic courts. He did not provide any supporting documents in this respect. He also claimed EUR 1,500,000 in compensation for non-pecuniary damage in connection with the suffering caused by the physical and mental hardship he had sustained due to his excessively prolonged pre-trial detention and having in mind his state of health.

61. The Government requested the Court to reject the claim for pecuniary damages and costs and expenses as unsubstantiated. With respect to the claim for non-pecuniary damages, the Government contended that the amount claimed by the applicant was excessive and asked the Court to rule that the mere acknowledgment of a violation of the Convention would represent in itself a just satisfaction as to non-pecuniary damage.

62. Concerning the applicant's claim for pecuniary damages the Court considers that the applicant did not submit sufficient information for it to be able to conclude that the pecuniary damage alleged was actually incurred and in what exact amount; it therefore rejects this claim.

63. With respect to the non-pecuniary damages requested, the Court notes that it has found in the current case a violation of Article 5 § 3 of the Convention. It considers that the excessive prolongation of the applicant's pre-trial detention, given his state of health, must have caused the applicant feelings of distress and anxiety. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in compensation for non-pecuniary damage.

64. Finally, 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 applicant's failure to provide any supporting documents and the above criteria, the Court rejects the claim for costs and expenses (see *Alkaya v. Turkey*, no. 42811/06, § 48, 9 October 2012).

B. Default interest

65. 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 remainder of the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
   (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;

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

Done in English, and notified in writing on 25 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President