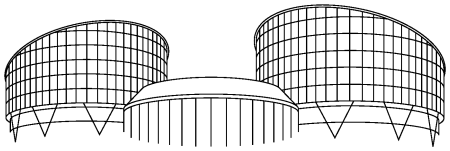

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GEISTERFER v. THE NETHERLANDS

(Application no. 15911/08)

JUDGMENT

STRASBOURG

9 December 2014

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 Geisterfer v. the Netherlands,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Stephen Phillips *Section Registrar,*

Having deliberated in private on 18 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 15911/08) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Netherlands national, Mr Richard Geisterfer ("the applicant"), on 26 March 2008.

2. The applicant was represented initially by Ms T. Spronken, at that time a lawyer practising in Amsterdam, and subsequently by Mr T. Dieben and Ms G.A. Jansen, also lawyers practising in Amsterdam. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, and their Deputy Agent, Ms L. Egmond, both of the Ministry of Foreign Affairs.

3. The applicant alleged a violation of Article 5 of the Convention in that, following the suspension of his detention on remand, he had been re-detained on insufficient grounds.

4. On 12 June 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Amsterdam.

6. The applicant was suspected of membership of a crime ring organised around one H., a person widely known to have amassed criminal

convictions for serious crimes; of complicity in extortion; and of possession of an illegal firearm.

7. On 30 January 2006 the applicant was arrested. On 2 February 2006 he was taken into initial detention on remand (*bewaring*) for fourteen days by order of an investigating judge of the Haarlem Regional Court (*rechtbank*). The order included the following grounds:

> "(*post alia*)
>
> Considering in addition that it appears that there is a serious reason of public safety requiring the immediate deprivation of liberty;
>
> Considering in this connection:
>
> that there is a suspicion of a [criminal] act which, according to the law, carries a maximum sentence of imprisonment of twelve years or more and that act has caused serious upset to the legal order (*een feit waarop naar de wettelijke omschrijving een gevangenisstraf van twaalf jaren of meer is gesteld en de rechtsorde ernstig door dat feit is geschokt*);
>
> that there is a serious likelihood (*dat er ernstig rekening mee moet worden gehouden*) that the suspect will commit a crime (*misdrijf*) by which the health or safety of persons will be endangered, since the framework of the suspicion encompasses the display of aggressive and unrestrained behaviour by the suspect;
>
> that detention on remand is necessary in reason for discovering the truth otherwise than through statements of the suspect; ..."

8. On 14 February 2006 the applicant was taken into extended detention on remand (*gevangenhouding*) for thirty days by order of the Haarlem Regional Court following a hearing *in camera*. This decision stated the following grounds:

> "considering that the Regional Court finds, after examining the case, that the suspicion, indications and grounds which have led to the order for the suspect's initial detention on remand still obtain;
>
> considering that the existence of these grounds is borne out by the conduct, facts and circumstances stated in the order for the suspect's initial detention on remand, given on 2 February 2006, which the Regional Court adopts as its own; ..."

9. The Regional Court renewed its order for a further term of thirty days on 11 April 2006. The applicant appealed against this decision; his appeal was dismissed by the Amsterdam Court of Appeal (*gerechtshof*) on 17 May 2006.

10. The order for the applicant's extended detention on remand was renewed periodically by the Regional Court until its suspension.

11. On 7 May 2007 the Haarlem Regional Court ordered the suspension (*schorsing*) of the applicant's detention on remand with effect from noon the following day. The reason stated was the following:

> "The Regional Court is of the view that the serious reasons and grounds stated in the order for extended detention on remand (*bevel tot gevangenhouding*) still exist and

that Article 67a § 3 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) is not yet applicable.

Even so, the Regional Court considers it appropriate, in view of the circumstance that it has today ordered the suspension of the trial until a date next September, to decide as follows as to the execution of the detention on remand.

The suspension of the trial is directly linked with the state of health of a co-suspect and the Regional Court's decision in principle (*uitgangspunt*) to pursue the proceedings against all suspects simultaneously.

That being so, and also in light of the length of the detention on remand until today, the Regional Court is led to suspend the detention on remand until the day on which the trial of the suspect will be pursued."

The co-suspect referred to was H., who needed time to recover from heart surgery which he had undergone in detention before his trial could resume.

12. The suspension of the applicant's detention on remand was made subject to the following conditions:

"1. that the suspect not seek to evade the execution of the detention on remand order if its suspension should be terminated;

2. that the suspect, should he be sentenced to a custodial sentence other than [in lieu of a fine or a community service order] for the criminal act for which the detention on remand was ordered, not seek to evade its execution;

3. that the suspect not perpetrate a new criminal act during the time in which his pre-trial detention shall be suspended;

4. that the suspect attend the remainder of his trial;

5. that the suspect immediately obey any summons from the police, the prosecution or the court (*politie en justitie*);

6. that the suspect not have any direct or indirect contact with (any one of) his co-suspects or the witnesses ...

7. that the suspect hand in his passport and/or his identity card ...

8. that the suspect shall report in person twice a week (*zich tweemaal per week dient te melden*) at times and places indicated to him by the public prosecution service (*openbaar ministerie*)."

13. On 20 August 2007 the applicant submitted a request for his detention on remand to be lifted altogether (*opheffing van het bevel tot voorlopige hechtenis*).

14. On 22 August 2007 the Haarlem Regional Court gave a decision in the following terms:

"This court's decision of 7 May 2007 suspended the suspect's pre-trial detention in connection with the special circumstances mentioned in that decision, which did not concern the suspect himself, which entailed the interruption of the trial for a considerable time.

The Regional Court has allowed the interest of the suspect in awaiting the resumption of his trial in freedom to prevail over the prosecution interest in keeping

the suspect in detention on remand on the grounds stated in the order for extended detention on remand only because of that special situation and only for as long as that situation might continue. As the suspect's trial will resume before long and the said special situation will from then on no longer exist, there will, from then on, be no reason to allow the suspension of the suspect's detention on remand to continue.

The Regional Court takes the view that the serious reasons and grounds, with the exception of the ground related to the investigations, still exist and considers that Article 67a § 3 [of the Code of Criminal Procedure] is not yet applicable. The mere fact stated by the suspect's counsel that since the suspect's liberation there has been no large-scale public protest and that the suspect has complied unreservedly (*onverkort*) with the suspension conditions do not mean that there is no longer any 'serious upset to the legal order' within the meaning of Article 67a § 2 under 1 or the danger of an offence within the meaning of Article 67a § 2 under 2.

Considering also the nature of the first-mentioned ground – briefly, an offence carrying a twelve-year sentence that has caused serious upset to the legal order –, the Regional Court does not consider the arguments submitted sufficient reason to suspend the detention on remand, as is requested in the alternative as a less intrusive way of using this means of coercion (*minder bezwarende wijze van toepassing van dit dwangmiddel*). ..."

No appeal was possible against this decision.

15. The trial resumed on 25 September 2007. The applicant, through his counsel, made a request at the hearing for the detention on remand order to be lifted, or in the alternative, for the suspension to be continued. He argued that his release had not caused any public outcry.

16. According to the official record (*proces-verbaal*) of the hearing, the Regional Court gave a refusal, stated by its president in the following terms:

"The Regional Court refers to its decision of 7 May last. At the time, the medical situation of the co-suspect H., the Regional Court's desire to consider the cases together, and the fairly long duration of the detention on remand led to the decision to suspend the detention on remand until such time as the trial would resume.

As soon as these reasons cease to apply the Regional Court must consider the situation afresh.

This does not mean that the Regional Court will look back to see how well things have gone and what ripples your release has caused (*hoeveel rumoer er over uw vrijlating is ontstaan*), but that it will consider whether the serious reasons and grounds still exist. It takes the view that such is the case.

As regards the alternative request, the Regional Court takes the view that the prosecution interest would not be served in sufficient measure if you could, within the framework of a suspension of your detention on remand, await the outcome of your criminal case in freedom. Your personal interest in awaiting the determination of your case in freedom does not outweigh the prosecution interest. Your detention on remand should therefore continue, given also that there is no question at the present time of applying Article 67a § 3 of the Code of Criminal Procedure.

The president stresses that the Regional Court will continue to consider *ex officio* whether it is necessary for the detention on remand to continue, and whether there may be grounds to order a variant as regards the modalities of its execution.

The Regional Court dismisses both the principal and the alternative requests."

17. The applicant was taken back into detention on remand on 27 September 2007.

18. On 15 November 2007 the applicant's counsel submitted a further request for the lifting or, in the alternative, the suspension of the detention on remand order. This too was refused.

19. On 4 December 2007 the Regional Court lifted the applicant's detention on remand. The decision was in the following terms:

> "That the Regional Court, sitting *in camera*, has come to take the view that serious reasons and grounds referred to in the order for extended detention on remand still exist, but that at this point Article 67a § 3 of the Code of Criminal Procedure leads the Regional Court to take the appertaining decision."

20. On 21 December 2007 the Regional Court convicted the applicant and sentenced him to eighteen months' imprisonment.

21. The applicant appealed. On 3 July 2009 the Amsterdam Court of Appeal quashed the first-instance judgment on technical grounds. Convicting the applicant afresh, it sentenced him to eighteen months' imprisonment, six months of which was suspended.

22. The applicant lodged an appeal on points of law (*cassatie*) with the Supreme Court, which dismissed the appeal on 12 October 2010.

II. RELEVANT DOMESTIC LAW

23. Provisions of the Code of Criminal Procedure relevant to the case are the following:

Article 67

"1. An order for detention on remand can be issued in case of suspicion of:

(a) an offence which, according to its legal definition, carries a sentence of imprisonment of four years or more;

(b) one of the offences defined in Articles 132, 137c § 2, 137d § 2, 137e § 2, 137g § 2, 285 § 1, 285b, 300 § 1, 321, 323a, 326c § 2, 350, 395, 417bis and 420quater of the Criminal Code (*Wetboek van Strafrecht*);

(c) one of the offences defined in:

- section 122 § 1 of the Animals (Health and Welfare) Act (*Gezondheids- en welzijnswet voor dieren*);

- section 175 § 2, part b, or § 3 taken together with § 1, of the 1994 Road Traffic Act (*Wegenverkeerswet 1994*);

- section 30 § 2 of the Civil Authority Special Powers Act (*Wet buitengewone bevoegdheden burgerlijk gezag*);

- section 52, 53 § 1 and 54 of the Military Service (Conscientious Objectors) Act (*Wet gewetensbezwaren militaire dienst*);

- section 31 of the Betting and Gaming Act (*Wet op de kansspelen*);

- section 11 § 2 of the Opium Act (*Opiumwet*);

- section 55 § 2 of the Weapons and Ammunition Act (*Wet wapens en munitie*);

- sections 46, 46a and 46b of the 1995 Securities Transactions (Supervision) Act (*Wet toezicht effectenverkeer*).

2. The order can further be issued if no permanent address or place of residence of the suspect in the Netherlands can be established and he is suspected of an offence within the jurisdiction of the regional courts and which, according to its legal definition, is punishable by imprisonment (*gevangenisstraf*).

3. The previous paragraphs are only applied when it appears from the facts or circumstances that there are serious indications against the suspect."

Article 67a

"1. An order based on Article 67 can only be issued:

a. if it is apparent from particular behaviour displayed by the suspect, or from particular circumstances concerning him personally, that there is a serious danger of absconding;

b. if it is apparent from particular circumstances that there is a serious reason of public safety requiring the immediate deprivation of liberty.

2. For the application of the preceding paragraph, only the following can be considered as a serious reason of public safety:

-1°. if it concerns suspicion of commission of an act which, according to its legal definition, carries a sentence of imprisonment of twelve years or more and that act has caused serious upset to the legal order;

-2°. if there is a serious risk the suspect will commit an offence which, according to the law, carries a prison sentence of six years or more or whereby the security of the State or the health or safety of persons may be endangered, or give rise to a general danger to goods;

-3°. if it concerns suspicion of one of the offences defined in Articles 285, 300, 310, 311, 321, 322, 323a, 326, 326a, 350, 416, 417bis, 420bis or 420quater of the Criminal Code, whereas less than five years have passed since the day on which, on account of one of these offences, the suspect has been irrevocably sentenced to a punishment or measure entailing deprivation of liberty, a measure entailing restriction of liberty or community service, and there is in addition a serious likelihood that the suspect will again commit one of those offences;

-4°. if detention on remand is necessary in reason for discovering the truth otherwise than through statements of the suspect.

3. An order for detention on remand shall not be issued if there are serious prospects that, in case of a conviction, no irrevocable custodial sentence or a measure entailing deprivation of liberty will be imposed on the suspect, or that he, by the enforcement of the order, would be deprived of his liberty for a longer period than the duration of the custodial sentence or measure."

Article 80

"1. The trial court can – *ex officio*, or on the application of the prosecution or at the request of the suspect – order that the detention on remand shall be suspended as soon as the suspect, after putting up guarantees or not as the case may be, has declared

himself willing to comply with the conditions governing the suspension. Such application or request shall state reasons.

2. The conditions governing the suspension shall in all cases include the following:

-1. that the suspect not seek to evade the execution of the detention on remand order if its suspension should be terminated;

-2. that the suspect, should he be sentenced to a custodial sentence other than [in lieu of a fine or a community service order] for the criminal act for which the detention on remand was ordered, not seek to evade its execution. ...”

Article 87

“1. For the public prosecutor, it shall be possible to lodge an appeal within fourteen days against the decisions of the investigating judge or the Regional Court to suspend or alter the suspension [of detention on remand] to the Regional Court or the Court of Appeal respectively.

2. A suspect who has requested the Regional Court to suspend or lift his detention on remand can appeal against a refusal of that decision to the Court of Appeal once only, no later than three days after its notification. The suspect who has appealed against the refusal of a suspension request cannot afterwards appeal against the refusal of a request to lift his detention on remand. The suspect who has appealed against the refusal to lift his detention on remand cannot afterwards appeal against the refusal of a suspension request.

3. The appeal shall be decided as speedily as possible.”

Article 406

“1. Appeals against judgments that are not final judgments (*einduitspraken*) shall be allowed only simultaneously with the appeal against the final judgment.

2. The first paragraph shall not apply in case an appeal is lodged against an order for extended detention on remand and against a refusal of a request for the lifting of an order for extended detention on remand.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (c) AND 3 OF THE CONVENTION

24. The applicant complained under Article 5 § 3 of the Convention that from 27 September 2007 until 4 December 2007 he was kept in detention on remand without adequate justification, or in the alternative, that the pertinent decision of the Regional Court gave insufficient reasons. He relied on Article 5 § 3 of the Convention.

The Court takes the view that the case should also be considered under Article 5 § 1 (c) of the Convention.

The said Convention provisions read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

The Government denied that either provision had been violated.

A. Admissibility

1. The Government's preliminary objection

25. The Government asked the Court to declare the application inadmissible on the ground that the applicant had failed to exhaust domestic remedies. They argued in the first place that the applicant had failed to appeal against the many decisions of the Regional Court refusing to lift or, in the alternative, suspend his detention on remand. In the alternative, they submitted that since the application had been lodged before the applicant's conviction became final, the applicant had passed up the chance to invoke the "allegedly unlawful nature" of his detention on remand before the Court of Appeal and the Supreme Court, both of which would have had the power to reduce his sentence by way of compensation.

26. The applicant submitted that the lawfulness of his detention until 8 May 2008 was not in dispute. In addition, Article 406 of the Code of Criminal Procedure prevented him from appealing against the refusal to continue the suspension of his detention on remand. Finally, he pointed to domestic case-law but also to case-law of this Court (*S.T.S. v. the Netherlands*, no. 277/05, ECHR 2011) which in his submission showed that the Court of Appeal and the Supreme Court would have refused to entertain any claims based on a period of detention that had already passed.

27. The Court observes that a suspect may appeal only once against the refusal to lift or, in the alternative, suspend his detention on remand (Article 87 § 2 of the Code of Criminal Procedure; see paragraph 23 above). The applicant appealed against the Regional Court's order of 11 April 2006 but was met with a refusal (see paragraph 9). The Court therefore cannot find that it would be reasonable to expect the applicant to have lodged an appeal to the Court of Appeal at any relevant time.

28. Turning to the Government's alternative submission, the Regional Court ordered his release on 7 December 2007, on the ground that his detention on remand would otherwise be likely to exceed his eventual sentence (see paragraph 19 above); it went on to hand him an unconditional sentence of eighteen months' imprisonment (see paragraph 20 above). On appeal, the Court of Appeal reduced the applicant's sentence to eighteen months' imprisonment, six months of which was suspended (see paragraph 21 above). The reduction of the unconditional portion of the sentence to twelve months was of little benefit to the applicant, who by that time had spent over one year and five months in detention.

29. The Court has pointed out on a previous occasion that a compensatory remedy in the form of a mitigation of sentence does nothing to accommodate the rights of persons who have been convicted but given a sentence shorter than the time they have already spent in pre-trial detention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 224, 10 January 2012). Such is precisely the case here. The Court therefore cannot find that seeking a reduction of sentence would have served any practical purpose for the applicant.

30. The Government's preliminary objection must therefore be dismissed.

2. The Court's decision as to admissibility

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

B. Merits

1. Argument before the Court

32. The applicant submitted that on 27 September 2007 he had been re-detained on the ground that public order so required. Yet his detention on remand had been suspended between 8 May 2007 and 27 September 2007, apparently without any effect on public order.

33. The decision of the Haarlem Regional Court did not point to any specific facts or circumstances in justification of its decision. In the applicant's submission, however, the Court's case-law – including *Letellier v. France*, 26 June 1991, Series A no. 207 – showed that although the need to prevent public disorder might exceptionally justify detention on remand, that ground could be considered relevant and sufficient only if, and for as long as, it was based on facts capable of showing that the accused's release would actually disturb public order.

34. In the applicant's submission, the absence of any public disorder caused by his conditional release for four months showed that in fact a reason related to public order for resuming his detention had not existed, and the reasons given by the Haarlem Regional Court in its decision of 25 September 2007 were therefore incomprehensible.

35. The Government referred in the first place to the crimes of which the applicant was suspected, namely membership of a group organised around one of the most notorious criminals in recent Netherlands history who committed "extensive, orchestrated extortion" to the point where the line between legitimate business and the criminal underworld had become blurred. These crimes had plainly constituted a grave affront to the legal order. This affront had still existed at the time when the applicant's detention on remand was suspended.

36. The applicant had been released, temporarily, for humanitarian reasons related to the medical condition of the main suspect, H. It had been made clear to the applicant that the suspension of his detention on remand was not prompted by any different assessment of the affront to the legal order. The applicant could therefore have been in no doubt as to why his detention on remand was resumed.

2. The Court's assessment

37. The Court has stated the general principles applicable to deprivation of liberty in the following terms (see *Medvedyev and Others v. France* [GC], no. 3394/03, ECHR 2010):

> "76. The Court reiterates that Article 5 of the Convention protects the right to liberty and security. This right is of the highest importance 'in a democratic society' within the meaning of the Convention (see, among many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).
>
> 77. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5.
>
> 78. The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311, and *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000‑IV), and only a narrow interpretation of those exceptions is consistent with the aim of that provision (see *Engel and Others v. the Netherlands*, 8 June 1976, § 58, Series A no. 22, and [*Amuur v. France*, 25 June 1996, § 42, *Reports of Judgments and Decisions* 1996-III])."

38. It is essentially the object of Article 5 § 3, which forms a whole with paragraph 1 (c) (see, among other authorities, *Lawless v. Ireland (no. 3)*, 1 July 1961, § 14, Series A no. 3; *Ciulla v. Italy*, 22 February 1989, § 38, Series A no. 148; and more recently, *Medvedyev and Others*, cited above, § 123), to require provisional release once detention ceases to be reasonable;

in consequence, the presumption is in favour of release (see *Aquilina v. Malta* [GC], no. 25642/94, § 47, ECHR 1999-III, and *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X). It follows that continuing, or resuming, detention pending trial can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq., ECHR 2000‑XI, and *McKay*, cited above, § 42).

39. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises - as does Article 67a of the Netherlands Code of Criminal Procedure - the notion of disturbance to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence. More generally, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; see also *Ječius v. Lithuania*, no. 34578/97, § 94, ECHR 2000-IX; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; *Panchenko v. Russia*, no. 45100/98, § 101, 8 February 2005; and as a recent authority, *Idalov v. Russia* [GC], no. 5826/03, § 145, 22 May 2012).

40. Turning to the facts of the present case, the Court notes that on 2 February 2006 the investigating judge of the Haarlem Regional Court ordered the applicant detained on remand on three grounds: firstly, the seriousness of the criminal act of which the applicant was suspected, which carried a maximum sentence of imprisonment of twelve years or more and had caused serious upset to the legal order; secondly, the danger that the applicant might reoffend; and thirdly, the needs of the criminal investigation (see paragraph 7 above). On 14 February 2006 the Haarlem Regional Court extended the applicant's detention on remand, adopting the reasoning given by the investigating judge as its own (see paragraph 8 above); this order was renewed, periodically, until its order of 7 May 2007 by which the applicant's detention on remand was suspended. Even so, the latter order found that the grounds for the applicant to be detained on remand still existed; for that reason, it made the applicant's temporary release from

detention subject to conditions designed to prevent him from evading justice or reoffending (see paragraph 12 above).

41. The Regional Court's decision of 22 August 2007 (see paragraph 14 above), which continued the suspension of the applicant's detention on remand rather than terminating it, no longer referred to the needs of the criminal investigation; however, it laid great stress on the seriousness of the crimes of which the applicant stood accused.

42. On 25 September 2007, when the applicant was ordered back into detention, the Regional Court did not enlarge on the grounds for so doing but merely referred in general terms to the interest of the prosecution, which it considered of overriding importance (see paragraph 16 above).

43. It has not been argued that the applicant's release into society following the Regional Court's decision of 7 May 2007 caused any threat to public order, or that for any other reason the conditions to which the applicant's release was made subject did not suffice. It appears, therefore, that the Regional Court assumed that the gravity of the charges carried such a preponderant weight that no other circumstances could have warranted allowing the applicant to remain at liberty, not even conditionally.

44. That being so, the Court finds that there has been a violation of Article 5 §§ 1 (c) and 3.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 80 euros (EUR), the sum to which he would be entitled according to domestic rates, for each day which he had spent in detention from 27 September 2007 until his release on 4 December 2007. His total claim in respect of non-pecuniary damage thus came to EUR 5,440.

47. The Government left the matter to the Court's discretion.

48. The Court awards the applicant EUR 5,440 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed EUR 94 for the costs and expenses incurred before the Court. Although legal aid had been granted by the

domestic authorities, this amount was left for him to pay as his own contribution to the cost of legal assistance.

50. The Government did not comment.

51. The Court awards the applicant the sum claimed.

C. Default interest

52. 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 application admissible;

2. *Holds* that there has been a violation of Article 5 §§ 1 (c) and 3 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 5,440 (five thousand four hundred and forty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 94 (ninety-four 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;

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

Done in English, and notified in writing on 9 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Josep Casadevall
Registrar	President