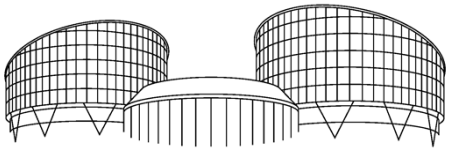

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF JHANGIRYAN v. ARMENIA

(Applications nos. 44841/08 and 63701/09)

JUDGMENT

Art 11 • Freedom of peaceful assembly • Arbitrary prosecution and conviction of opposition supporter, linked to his participation in a protest movement • Repetitive pattern of artificial and politically motivated arrests and prosecution of opposition activists Art 5 § 1 • Lawful arrest or detention • Delay between deprivation of liberty and drawing up of record of arrest • Police custody in excess of maximum period prescribed by domestic law and without judicial order Art 5 § 1 (c) • Lack of reasonable suspicion of the applicant having committed an offence Art 5 § 3 • Reasonableness of pre-trial detention • Failure of domestic courts to provide relevant and sufficient reasons for applicant's continued detention Art 6 § 1 (criminal) • Impartial tribunal • Involvement of trial court judge's son in an investigation of the protest movement

STRASBOURG

8 October 2020

FINAL

08/01/2021

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

In the case of Jhangiryan v. Armenia,

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

Krzysztof Wojtyczek, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Pauliine Koskelo,
Jovan Ilievski,
Raffaele Sabato, *judges,*
Armen Mazmanyan, ad hoc *judge,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 44841/08 and 63701/09) 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 Gagik Jhangiryan ("the applicant"), on 16 July 2008 and 17 November 2009 respectively;

the decision to give notice of the complaints concerning the alleged unlawfulness of the applicant's arrest, the alleged lack of a reasonable suspicion justifying his arrest, the alleged lack of relevant and sufficient reasons for his detention, the alleged lack of impartiality of the tribunal, the alleged violation of the applicant's right to freedom of expression and to freedom of peaceful assembly and the alleged discrimination on the basis of political opinion to the Armenian Government ("the Government") and to declare inadmissible the remainder of the applications;

the parties' observations;

the decision by the President of the Chamber to appoint Mr Armen Mazmanyan to sit as an *ad hoc* judge (Rule 29 of the Rules of Court), Mr Armen Harutyunyan, the judge elected in respect of Armenia, being unable to sit in the case (Rule 28);

Having deliberated in private on 15 September 2020,

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

INTRODUCTION

1. The case concerns the applicant's arrest, including whether it was lawful and was based on a reasonable suspicion as required by Article 5 § 1 (c) of the Convention, the alleged failure of the domestic courts to provide relevant and sufficient reasons for his detention as required by Article 5 § 3 of the Convention, the alleged lack of impartiality of the tribunal in breach of Article 6 § 1 of the Convention, and the allegation that the applicant's prosecution and conviction were in breach of the requirements of Articles 10, 11 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1955 and lives in Yerevan. The applicant was represented by Ms L. Sahakyan and Mr E. Varosyan, lawyers practising in Yerevan, and Mr A. Ghazaryan, a non-practising lawyer.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant was at the material time the Deputy General Prosecutor of Armenia, a post which he had occupied since 17 January 2006. He also held the rank of First Category State Justice Councillor. In the past, he had also occupied different high-level posts, including the post of Military Prosecutor of Armenia.

I. THE 19 FEBRUARY 2008 PRESIDENTIAL ELECTION AND THE POST-ELECTION EVENTS

6. On 19 February 2008 a presidential election was held in Armenia. The main contenders were the then Prime Minister, Mr Sargsyan, representing the ruling party, and the main opposition candidate, Mr Ter-Petrosyan.

7. Immediately after the announcement of the preliminary results of the election, Mr Ter-Petrosyan called on his supporters to gather at Freedom Square in central Yerevan in order to protest against the irregularities which had allegedly occurred in the election process, announcing that the election had not been free and fair. From 20 February 2008 onwards, nationwide daily protest rallies were held by Mr Ter-Petrosyan's supporters, their main meeting place being Freedom Square and the surrounding park. It appears that the rallies at Freedom Square attracted at times tens of thousands of people, while several hundred demonstrators stayed in that area around the clock, having set up a camp.

8. On 22 February 2008 the applicant made a speech at the rally held at Freedom Square in which he expressed his support for Mr Ter-Petrosyan and criticised the conduct of the presidential election, alleging various types of irregularities. He called on those gathered not to give up and to stand by their votes, saying that rule of law had to be finally established in Armenia.

9. The applicant alleged that, following that speech, the authorities started persecuting him and his family members.

10. On the same date the General Prosecutor applied to the President of Armenia seeking to have the applicant dismissed on the ground that he had participated in a rally and made a political speech, thereby violating the law which required prosecutors to maintain political neutrality and not to engage in political activities.

11. On 23 February 2008 the President of Armenia issued two decrees dismissing the applicant from the post of Deputy General Prosecutor and depriving him of his rank.

II. THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. The applicant's arrest

12. According to the applicant, on 23 February 2008 at around 10 p.m. he, his brother, V.J., and four others had been travelling from Ejmiatsin to Yerevan in two cars. After stopping at the intersection near Argavand village, they had been attacked by a group of masked and armed persons. Those persons had crashed their unmarked vehicle into the front of their car, come out of it and, firing their guns, had surrounded the car. He had surrendered himself and his weapon to those persons and had been taken into their car. Then those persons had tried to take V.J., who suffered from spinal tuberculosis and had mobility problems, out of the car. The attackers had started to break the car window and, as V.J. opened the door, had hit him in the face with a pistol grip, pulled him out of the car and thrown him to the ground, ignoring the warnings about V.J.'s spinal disease. The attackers had continued shooting and injured V.J. Then the applicant, his brother and two others, together with their cars, were taken into police custody.

13. According to an announcement made on the same day on the website of the Armenian police entitled "Gagik Jhangiryan is in custody", operative information had been received at the Principal Department for the Fight against Organised Crime (hereafter, the PDFOC) that the persons driving two cars (with indication of licence plates) had been armed and intended to destabilise the situation in Yerevan. At around 11 p.m. the above-mentioned cars had been pulled over near Argavand intersection by PDFOC officers who, during an inspection, encountered resistance from the persons in the cars, as a result of which one of the police officers had accidentally fired his service gun, inflicting light injuries on two other police officers and V.J., who had put up resistance. The persons in question, including the applicant, V.J. and two other persons accompanying them, had been taken to the PDFOC. A CZ-75-type pistol had been found in the applicant's possession and two other pistols in the possession of V.J. and one of the other two persons.

14. According to the "record of bringing a person in", the applicant was "brought in" to the PDFOC on 23 February 2008 at around 11.30 p.m. from the intersection of Isakov Avenue and Argavand village by PDFOC officers G.G., A.M. and R.M. "on suspicion of illegal possession, carrying and transportation of arms and ammunition, and for showing resistance to police officers". The applicant refused to sign the record.

15. On the same day the car accompanying the applicant was searched at the PDFOC and a Browning-type pistol was found, which also belonged to him.

16. On the same day a number of PDFOC officers filed reports with the chief of the PDFOC as follows.

17. Several officers who had participated in the police operation described the circumstances of that operation, including how V.J. had allegedly put up resistance and punched officer R.M. in the face.

18. One officer reported, in particular, that during the above police operation a CZ-75 B-type pistol had been retrieved, which had a serial number and had been issued to the applicant on 30 July 2003 for an indefinite period of time.

19. Two officers, A.H. and T.A., reported that, while they were taking the applicant inside the PDFOC building, the applicant, in the courtyard of that building, had disobeyed their lawful orders, punched officer A.H., torn officer T.A.'s uniform, used swear words and made threats of retribution against them and their families.

20. Several officers reported that, while in the lobby of the PDFOC building, the applicant and his brother had disobeyed the orders of police officers, used swear words and made threats.

21. The applicant contested the above account of events and denied having assaulted the officers in question. He alleged that, at the time of his arrival at the PDFOC, several hundred police officers had been present in the courtyard of the building and any resistance would have been pointless. He further alleged that, in fact, it had been he and his brother who had been ill-treated by police officers in the lobby of the PDFOC. The police officers had thrown them to the ground and started kicking and punching them. When he had pleaded with them not to hit V.J. because of his spinal disease, they had started hitting V.J. even more vigorously, aiming at his spine.

22. On 24 February 2008, at an unspecified time, a criminal case was instituted under Article 316 § 2 (life or health-threatening assault on a public official) of the Criminal Code (CC) on account of V.J.'s alleged use of violence against the police officers.

23. On the same date at 1.10 a.m. a PDFOC investigator, within the framework of the instituted criminal case, drew up a record of the applicant's arrest, indicating "1.10 a.m." as the time of the applicant's arrest and stating that the applicant was arrested on suspicion of illegal acquisition, possession and carrying of arms and ammunition, as provided for by Article 235 § 1 of the CC. In particular, on 23 February 2008 a CZ-75 B-type pistol had been found in his possession, together with 14 cartridges.

24. Later on the same day another criminal case was instituted under Article 235 § 1 of the CC (illegal acquisition, possession or carrying of arms and ammunition) in respect of the applicant, which was joined with the first

case, alleging that the applicant, in unknown circumstances, had illegally acquired from an unidentified person a Browning-type pistol loaded with 9 mm cartridges which he had illegally kept in the VAZ 21010 car accompanying him on 23 February 2008 and which had later been found during the inspection of that car.

25. The investigator took statements from a number of police officers who confirmed the information provided earlier in their reports. Officers A.H. and T.A. described, in particular, how the applicant had refused to step out of the car and how they had had to apply force in order to take him inside the PDFOC building, during which he had punched officer A.H., torn officer T.A.'s uniform, used swear words and made threats. No questions were posed by the investigator.

26. The Browning pistol was subjected to a forensic examination which concluded on 26 February 2008 that a digit had been added at the end of the serial number, engraved by hand. The applicant alleged that this had been done by the police officers after the seizure of the pistol, which he had possessed and carried legally, in order to create the appearance of an illegal nature of that pistol.

B. Charges against the applicant and his detention

27. On 26 February 2008 the applicant was formally charged under Articles 235 § 1 and 316 § 1 (non-life or health-threatening assault on a public official) of the CC. As regards the charge under Article 235 § 1, it was stated that the applicant, under circumstances yet to be disclosed, had illegally obtained a firearm, namely a 9 mm Browning pistol, together with its cartridges, which he had illegally kept in the car accompanying him. As regards the charge under Article 316 § 1 it was stated that, after being taken to the PDFOC on a suspicion of illegally carrying a firearm, the applicant, while in the courtyard of the PDFOC building, disobeying the lawful orders of the PDFOC officers to step out of the police car and to enter the building, had punched officer A.H. in the shoulder, as a result of which the officer had fallen down. Then the applicant had pulled and torn the uniform of another officer, T.A., refused to enter the building and threatened the officers with violence and retribution.

28. On 27 February 2008 at 3.30 a.m. the applicant was brought before the Kentron and Nork-Marash District Court of Yerevan, which examined the investigator's application seeking to have him detained for a period of two months on the ground that he might abscond, evade criminal responsibility, obstruct the proceedings and commit an offence.

29. The applicant submitted before the District Court that the charges against him were unsubstantiated. In particular, the Browning pistol was a registered and licensed weapon and was legally owned by him. It was not his responsibility if there had been a mix-up with its registration number.

Furthermore, he had voluntarily surrendered his CZ-75 pistol to the police officers during the raid and, in any event, all the weapons found in his and others' possession were legal. After arriving at the PDFOC, he had been met by a large crowd of police officers who forcibly took him inside the building; therefore the allegations of resistance or violence on his part were nonsense. In any event, there was no reason to believe that he, a former Deputy Prosecutor General, would obstruct the investigation or abscond, while the gravity of the charges alone could not justify his detention.

30. The District Court decided to allow the investigator's application, finding that the circumstances of the case and the evidence obtained provided sufficient reasons to believe that, if the applicant remained at large, he could commit a new offence, abscond or obstruct the proceedings.

31. On 3 March 2008 the applicant lodged an appeal arguing, *inter alia*, that his detention was not based on a reasonable suspicion since he had possessed and carried the Browning pistol legally and he had never used violence against officers A.H. and T.A. Furthermore, the District Court's decision was unreasoned since the risks of his absconding or obstructing the investigation had not been substantiated.

32. On 7 March 2008 the Criminal Court of Appeal dismissed the appeal, finding that there was a reasonable suspicion, from the materials submitted, that the applicant had committed the imputed offences and that the District Court's decision to detain the applicant was well-reasoned.

C. The events of 1-2 March 2008, institution of criminal proceedings and joinder of the applicant's case to those proceedings

33. On 1 March 2008 in the early morning a police operation was conducted on Freedom Square where several hundred demonstrators were camping, as a result of which Freedom Square was cleared of all demonstrators, resulting in clashes between the demonstrators and the police.

34. On the same date criminal proceedings were instituted regarding the events at Freedom Square on the grounds that the leaders of the opposition and their supporters had organised unlawful demonstrations, incited disobedience and committed violence against the police (for further details see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, § 15, 20 September 2018).

35. It appears that, later that day, the situation in Yerevan deteriorated and the rallies continued in a number of streets until the early morning of 2 March, involving clashes between protesters and law enforcement officers and resulting in ten deaths, including eight civilians, numerous injured and a state of emergency being declared by the President of Armenia.

36. On 2 March 2008 another set of criminal proceedings was instituted on the grounds that the leaders of the opposition and their supporters had

organised mass disorder in the streets of Yerevan, including murders, violence and other reprehensible acts (ibid., § 17).

37. On the same date both sets of proceedings were joined and examined under no. 62202608.

38. On 7 March 2008 the investigator decided to join the applicant's criminal case to case no. 62202608.

D. Extension of the applicant's detention and a new charge against him

39. On 18 April the District Court extended the applicant's detention by two months finding that, if the applicant remained at large, he could abscond or obstruct the investigation by exerting unlawful pressure on the persons involved in the proceedings, concealing or falsifying materials essential for the case or in some other way.

40. On 23 April 2008 the applicant lodged an appeal arguing, *inter alia*, that the District Court's decision was unreasoned and the risks of his absconding or obstructing the investigation were unsubstantiated.

41. On 8 May 2008 the Criminal Court of Appeal dismissed the appeal, finding that the District Court's decision to extend the applicant's detention was well-reasoned.

42. On 6 June 2008 the investigator questioned the applicant, in the main asking him to explain the speech he had made at Freedom Square on 22 February 2008.

43. On 13 June 2008 the charge of illegal possession of a weapon under Article 235 § 1 of the CC was dropped on the ground that the applicant had a licence to keep and carry the Browning pistol and it had not been possible to establish the circumstances under which the extra digit had been added to the serial number. At the same time, a new charge was brought against the applicant under Article 300 § 1 of the CC (usurpation of power) on the ground that he, following the 19 February 2008 presidential election, had joined Levon Ter-Petrosyan and his followers in masterminding and taking actions seeking to usurp power. In particular, the applicant, using his standing as Deputy General Prosecutor, had participated in discrediting the conduct of the election, casting doubt on its lawfulness among the international community, instilling distrust towards the results among large segments of the population, creating illusions of public discontent and revolt, and organising and conducting unlawful mass rallies aimed at destabilising the political situation in the country. He had planned and taken actions seeking to isolate lawful public officials, force them to resign and exercise power in their stead, and made public speeches and calls of a provocative nature aimed at usurping state power.

44. On the same date the investigator requested that the applicant's detention be extended, taking into account, *inter alia*, the fact that it was a voluminous and complex criminal case which required further numerous

investigative measures and that, beside the applicant, a number of other individuals were accused under Article 300 of the CC, including some who were in hiding.

45. On 19 June 2008 the District Court, taking into account the nature and the gravity of the imputed offences, extended the applicant's detention by two more months on the ground that, if the applicant remained at large, he could abscond, obstruct the proceedings by exerting pressure on the persons involved in the proceedings and, by his actions, hinder the further disclosure of the circumstances of the case.

46. On 23 June 2008 the applicant lodged an appeal arguing, *inter alia*, that his detention was not based on a reasonable suspicion and that the District Court had failed to provide any reasons in support of its finding that he might abscond or obstruct the proceedings.

47. On 2 July 2008 the Criminal Court of Appeal dismissed the applicant's appeal, finding that there was a reasonable suspicion from the materials submitted that the applicant had committed an offence and that the District Court's decision to extend the applicant's detention was well-reasoned.

48. On 13 August 2008 the charge of usurpation of power under Article 300 § 1 of the CC was dropped for lack of sufficient evidence. It was stated that numerous investigative measures had been taken but no new evidence of the applicant's participation in usurpation of state power had been obtained.

49. On the same day the applicant's criminal case was disjoined from case no. 62202608.

50. On 22 August 2008 the investigation into the applicant's criminal case was completed and the case was referred to the District Court for trial.

E. The court proceedings

51. On 22 August 2008 Judge Z.V. of the District Court decided to take over the applicant's criminal case and to set the case down for trial, ruling that the applicant's preventive measure was to remain unchanged.

52. On 1 September 2008 Judge Z.V. examined a challenge lodged by the applicant seeking that the judge recuse himself from the examination of the case for lack of impartiality because his son, A.V., who worked as an investigator, was a member of the investigative team entrusted with the investigation of the case. Judge Z.V. noted at the outset that he was aware that his son had been a member of the relevant investigative team. However, since his son had not performed or taken part in any investigative measure carried out in respect of the applicant during the investigation of the case, the judge found that he could still conduct an impartial examination since the fact that his son was a member of the investigative team did not in itself give rise to a reasonable doubt as regards his impartiality. Besides, domestic

law did not envisage the fact of involvement of a family member in the investigation of a case as a ground for recusal of a judge.

53. On 11 February 2009 the judge examined and dismissed a request lodged by the applicant seeking to be released, finding that it was still necessary to keep the applicant in detention.

54. During the trial the applicant pleaded not guilty and submitted that he had not put up any resistance during the police operation. Having arrived at the courtyard of the PDFOC building, he had seen around 200 to 300 people gathered there. He had then got out of the car and, together with the persons accompanying him, entered the PDFOC building. His arrest had been effected by ten masked persons who had attacked him and his brother and subjected them to ill-treatment both at the time of arrest and in the lobby of the PDFOC building.

55. Police officer A.H. testified that on 23 February 2008 at about 11.30 p.m., while at work, he had received an instruction to accompany an arrested person from the courtyard into the lobby and to hand him over to the officers of the criminal intelligence unit. The same instruction had been given to his colleague, T.A. As they approached the van parked in the courtyard, the police officers had quickly got out of the vehicle and entered the building. As T.A. opened the van door, they had recognised the applicant and requested that he step out of the vehicle. The applicant had disobeyed and tried to kick them but they had managed to take him out forcibly and, holding him by the arms, had walked towards the building. At that moment the applicant had managed to free his right hand and punch him in the shoulder, as a result of which he had lost his balance and fallen down. As T.A. intervened, the applicant, while making threats and swearing at them and their family members, had pulled and torn a pocket on T.A.'s uniform. Then they had taken the applicant inside the building by forcibly twisting his arms, and handed him over to the officers of the criminal intelligence unit.

56. Police officer T.A. gave similar testimony.

57. A number of other PDFOC officers also testified in court. Seven of them stated that the applicant had used swear words and made threats in the lobby of the PDFOC, while fourteen of them, who had overseen and/or participated in the police operation near Argavand village, including G.G., A.M. and R.M., described the circumstances of that operation stating, *inter alia*, that after arriving at the PDFOC they had been greeted by officers A.H. and T.A., and had immediately entered the building to report the incident.

58. The applicant requested that a number of persons be summoned as witnesses, including four MPs, Z.P., A.I., A.Sak. and A.D., and three other opposition supporters, S.A., V.K. and A.Sis. As regards the first four, the applicant claimed that they had visited him in the remand prison on 27 February 2008 and witnessed his bodily injuries sustained as a result of

ill-treatment in police custody. As for the last three, the applicant argued that they had also been taken and kept at the PDFOC on 24 February 2008 and allegedly possessed certain information regarding what had happened there the day before, including being told by police officers that the applicant and his brother had been beaten on the previous day and overhearing the police officers discussing the case as being "trumped up" against the applicant. The requests were dismissed by the District Court.

59. On 23 March 2009 the District Court, sitting in a single judge formation composed of Judge Z.V., found the applicant guilty as charged and sentenced him to three years' imprisonment. The District Court found it to be established as follows:

> "... on 23 February 2008 at around 11.30 p.m. [the applicant], having been brought in to the courtyard of [the PDFOC] upon a suspicion of carrying illegal firearms and ammunition, disobeying the lawful orders of public officials, namely the police officers, who were performing their official duties, and inflicting non-life or health-threatening violence on them, punched and caused pain to police officer [A.H.], whereupon he pulled and tore the uniform of an employee of the same department, [T.A.], refusing to enter [the PDFOC] building and at the same time threatening the police officers and their families with physical retribution ..."

60. The District Court, in examining the circumstances of the applicant's arrest near Argavand village, also found it to be established that the applicant had voluntarily given up his CZ-75 B-type pistol and that all the weapons retrieved during the police operation, including those belonging to the applicant, had been found, following an inspection, to have been possessed and carried legally.

61. In reaching the above findings, the District Court relied on the statements of police officers A.H. and T.A., and other officers who had testified in court. As material evidence the District Court cited officer T.A.'s torn uniform. The applicant's submissions and arguments were found to be unsubstantiated.

62. On 16 April 2009 the applicant lodged an appeal arguing, *inter alia*, that the District Court had failed to assess properly the evidence, dismissed his submissions and refused his requests seeking to prove his innocence and based its findings solely on the testimony of the police officers. He also alleged that the true reason for his prosecution and conviction was to punish him for the speech he had made at the opposition rally on 22 February 2008, arguing that he had thereby been discriminated against on the basis of his political views. He also argued that Judge Z.V. had not been impartial because of the involvement of his son in the investigative team.

63. On 20 May 2009 the Court of Appeal upheld the judgment of the District Court and dismissed the applicant's appeal, finding that the arguments contained therein were unfounded.

64. On 19 June 2009 the applicant lodged an appeal on points of law.

65. On 14 July 2009 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

66. In the meantime, on 22 June 2009, the applicant was released under amnesty.

RELEVANT LEGAL FRAMEWORK

67. For a summary of the relevant domestic law, as well as of the relevant international materials, see *Mushegh Saghatelyan* (cited above, §§ 91-134) and *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 30-37, 20 October 2016). A number of provisions of domestic law and extracts from international materials which were not quoted in those judgments provide as follows.

I. RELEVANT DOMESTIC LAW

A. Criminal Code (2003)

68. Article 300 § 1, as in force at the material time, provided that usurpation of State power, namely actions aimed at violent seizure of State power or its violent retention in violation of the Constitution, as well as violent overthrow of the constitutional order of Armenia or violent breach of the territorial integrity of Armenia, was punishable by imprisonment for a period from ten to fifteen years.

B. Code of Criminal Procedure (1999)

69. Article 90 § 1(3), as in force at the material time, provided as follows:

> "A judge is obliged to recuse himself if he is aware of facts or circumstances capable of raising a reasonable doubt as regards his impartiality in a particular case. Grounds for recusal include, *inter alia*, cases where ... a judge or his spouse or a person having kinship with him of up to the third degree may reasonably become (or has reasons to believe that he will become) a participant in the proceedings or has participated in the proceedings at a lower instance as a judge or as a participant in the proceedings. A person's children, parents, sisters and brothers are considered as having kinship of the first degree with him, within the meaning of this Article. ..."

II. RELEVANT INTERNATIONAL MATERIALS

A. Parliamentary Assembly of the Council of Europe (PACE)

70. On 15 April 2008 the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe produced the Report on the Functioning of Democratic Institutions in

Armenia (Doc. 11579). The relevant parts from the Explanatory Memorandum to this Report, produced by the co-rapporteurs, provide:

> "10. The opposition received a boost in support when a number of high-level state officials publicly denounced the election as fraudulent and announced their support for Mr Levon Ter-Petrosyan. These officials were subsequently dismissed from their positions and a number of them, as well as several opposition activists, were arrested on seemingly artificial charges, which left the impression that their prosecution was politically motivated. According to the Helsinki Association of Armenia, a total of 14 persons were arrested and placed under investigation in the period from 20 to 29 February 2008."

B. Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

71. Between April 2008 and June 2009 the OSCE/ODIHR conducted a monitoring project of about a hundred trials of opposition leaders and supporters related to the events of 1-2 March 2008, which included the applicant's case under number 94.

THE LAW

I. JOINDER OF THE APPLICATIONS

72. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

73. The applicant complained under Article 5 § 1 of the Convention that his initial arrest had been firstly unlawful and, secondly, had not been based on a reasonable suspicion. He also complained under Article 5 § 3 of the Convention that the domestic courts had failed to provide relevant and sufficient reasons for his continued detention. Article 5 §§ 1 and 3 of the Convention, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other

officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

74. The Government submitted that the applicant had failed to exhaust the domestic remedies in respect of the complaint regarding the alleged unlawfulness of his arrest and the complaint regarding his continued detention, as required by Article 35 § 1 of the Convention. Firstly, he had failed to contest the detention order of 27 February 2008 before the Court of Cassation in compliance with the relevant rules. Secondly, he had had a possibility to challenge the lawfulness of his arrest before the courts under Articles 103 and 290 of the Code of Criminal Procedure (CCP), which he had not done either.

75. The applicant submitted that an appeal to the Court of Cassation would not have been an effective remedy because it would have no prospects of success.

76. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014). The Court notes that it has already examined and dismissed similar objections of non-exhaustion by the Government in other cases against Armenia (see *Arzumanyan v. Armenia*, no. 25935/08, §§ 28-32, 11 January 2018; and *Mushegh Saghatelyan*, cited above, §§ 176-177). Given that the Government have not adduced any new elements, it sees no reasons in the present case to depart from its earlier findings and therefore dismisses the Government's objections.

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

B. Merits

1. Article 5 § 1 of the Convention

(a) Circumstances surrounding the applicant's arrest prior to the District Court's detention order of 27 February 2008

78. The applicant submitted that his deprivation of liberty prior to the detention order of 27 February 2008 had been unlawful on two grounds. Firstly, he had initially been deprived of his liberty under the "bringing-in" procedure. However, neither of the two Articles of the CCP prescribing that

procedure, namely Articles 153 and 180, had been applicable in his case. He had not been considered arrested until the record of his arrest had been drawn up some time later, after being taken into custody. Thus, his initial deprivation of liberty had been unlawful. Secondly, he had been kept in police custody in excess of the maximum 72-hour period allowed by law. In particular, he had been taken into custody at 11.30 p.m. on 23 February 2008 but brought before a judge only at 3.30 a.m. on 27 February 2008. The reasons brought by the Government to justify the breach of domestic law were not acceptable.

79. The Government submitted that the delay in bringing the applicant before a court had been justified by the complexity of the case, the existence of co-accused and a number of formalities which had made it impossible to do so earlier.

80. The Court reiterates that an arrest or detention under sub-paragraph (c) must, like any deprivation of liberty under Article 5 § 1 of the Convention, be "lawful" and "in accordance with a procedure prescribed by law". Those two expressions, which overlap to an extent, refer essentially to domestic law and lay down the obligation to comply with its substantive and procedural rules (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 186, ECHR 2017 (extracts)).

81. The Court notes that it has already examined identical complaints in a case against Armenia and found a violation of Article 5 § 1 of the Convention (see *Mushegh Saghatelyan*, cited above, §§ 166-174). In the present case, the applicant similarly was taken into custody at around 11.30 p.m. on 23 February 2008 but was considered arrested only from 1.10 a.m. on 24 February 2008, when a record of his arrest was drawn up, remaining in a state of uncertainty during that period as to his personal liberty and security. He was taken before a judge only at 3.30 a.m. on 27 February 2008, thereby remaining in police custody in excess of the maximum 72-hour period permitted by domestic law. The Court therefore has no reasons to depart from its earlier findings and concludes that the initial hours of the applicant's deprivation of liberty and his continued arrest without a judicial order for the time exceeding the 72-hour period prescribed by law were unlawful within the meaning of Article 5 § 1 of the Convention.

82. Accordingly, there has been a violation of Article 5 § 1 of the Convention on that ground.

(b) The alleged lack of a reasonable suspicion for the applicant's arrest

83. The applicant submitted that the grounds for his arrest, as indicated in the record of his arrest of 24 February 2008, namely the illegal acquisition, possession and carrying of a CZ-75-B-type pistol, had not been based on a reasonable suspicion since he had held a licence for that weapon and that fact had been known to the police. The same applied to the

Browning-type pistol. As regards the Government's submissions, the operative information referred to had never been produced in the course of the trial. In reality, no such information had ever existed and the only purpose pursued by the police had not been to carry out an arrest based on a reasonable suspicion but to punish and to isolate the applicant for having made a speech at an opposition rally. As to the alleged assault on police officers, this had allegedly happened only after he had been "brought to the police" so this could not have served as a basis for taking him into custody.

84. The Government submitted that the applicant's arrest had been based on a reasonable suspicion of his having committed an offence. Firstly, on 23 February 2008 operative information had been received by the police from a covert informer that armed people were driving the two cars in question from Ejmiatsin to Yerevan with the intention of destabilising the situation in the country. An operative team had set off to verify that information and, after the cars had been stopped for an inspection, a CZ-75 B-type pistol had been found in the applicant's possession and a Browning-type pistol in the car accompanying him. Later, after the applicant had been "brought to the police", he had assaulted and threatened two police officers. Thus, there had been sufficient grounds to arrest the applicant.

85. The Court reiterates that the "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention laid down in Article 5 § 1 (c) of the Convention. This requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182, and *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 116, 17 March 2016).

86. Turning to the circumstances of the present case, the Court notes that no arrest warrant was issued in respect of the applicant, while the only two formal documents related to the applicant's police custody, namely the record of the applicant's bringing-in and the record of his arrest, contained almost none of the grounds indicated by the Government and, in any event, contained very little detail. Thus, the record of the applicant's bringing-in was couched in very abstract terms and contained no references to any provisions of criminal law or any factual details or evidence regarding the alleged offences (see paragraph 14 above), while the record of the applicant's arrest of 24 February 2008, which served as the sole formal basis for the applicant's deprivation of liberty until a detention order was issued by the District Court on 27 February 2008, indicated the possession of a CZ-75 B-type pistol as the only ground for the applicant's arrest (see paragraph 23 above). No further factual details of the suspected offence were provided, including as to why it was believed that the pistol in

question was possessed by the applicant illegally, or any evidence which could give rise to that suspicion.

87. The Court further refers to the applicant's allegation, which the Government did not explicitly dispute, that the police had been aware at the time of his arrest of the fact that he had held a licence to possess and carry the pistol in question. Indeed, it follows from the materials of the case that this information had been known to the arresting officers, although it is not clear when exactly it came to light: during the police operation or upon verification conducted at the PDFOC (see paragraph 18 above). In any event, it is safe to assume that, at the very latest when the applicant's record of arrest was drawn up, this information was already available to the police. It is not clear whether the investigator who ordered the applicant's arrest overlooked or simply ignored that fact. Whichever it may be, as the official documents related to the applicant's arrest stand, it cannot be said that the applicant's arrest was based on a reasonable suspicion of his having committed an offence.

88. Accordingly, there has been a violation of Article 5 § 1 (c) of the Convention on that ground.

2. Article 5 § 3 of the Convention

89. The applicant submitted that the domestic courts had failed to provide relevant and sufficient reasons for his continued detention. The Government's argument that the fact that the applicant had previously held the post of Deputy General Prosecutor increased the probability of his obstructing the investigation was unacceptable, as this fact could not in itself be sufficient to reach such conclusions.

90. The Government argued that the courts had provided relevant and sufficient reasons for the applicant's detention, such as the risk of absconding, obstructing the proceedings and committing a new offence. Furthermore, the fact that the applicant had been a former long-serving Deputy General Prosecutor, namely a law enforcement official with considerable opportunities to influence the investigation, significantly increased the probability of obstructing the investigation.

91. The Court refers to its general principles under Article 5 § 3 of the Convention relating to the right to be released pending trial (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 92-102, ECHR 2016 (extracts), and *Ara Harutyunyan*, cited above, §§ 48-53) and notes that it has already found the use of stereotyped formulae when imposing and extending detention to be a recurring problem in Armenia (see, among other authorities, *Piruzyan v. Armenia*, no. 33376/07, §§ 97-100, 26 June 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74-77, 26 June 2012; *Sefilyan v. Armenia*, no. 22491/08, §§ 88-93, 2 October 2012; and *Ara Harutyunyan*, cited above, §§ 54-59). In the present case, the domestic courts similarly justified the applicant's continued detention with a mere citation of the

relevant domestic provisions and a reference to the gravity of the imputed offence without addressing the specific facts of his case or providing any details as to why the risks of absconding, obstructing justice or reoffending were justified. As to the Government's argument regarding the post held by the applicant in the past, the Court notes that this ground was never mentioned by the domestic courts to justify the applicant's continued detention (see paragraphs 30, 32, 39, 41, 45, 47, 51 and 53 above). The Court therefore concludes that the domestic courts failed to provide relevant and sufficient reasons for the applicant's detention.

92. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

93. The applicant complained that his criminal case had not been tried by an impartial tribunal. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

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

B. Merits

95. The applicant submitted that the trial court judge, Z.V., had not been impartial because his son, A.V., had been a member of the investigative team dealing with his case. The grounds relied on by the judge in dismissing his request seeking the judge's recusal had not been justified and contradicted the domestic law, including Article 90 of the CCP. Firstly, the judge's finding that A.V. had not participated in any investigative measures was not credible since the applicant's case had been joined and examined within the framework of criminal case no. 62202608 in which A.V. had conducted numerous investigative measures. Secondly, even assuming that A.V. had not participated in any investigative measures, this was not decisive since Article 90 of the CCP precluded a judge from examining a case if a close relative of his had been involved "in the examination of the case at a lower level" as opposed to simply any specific investigative measure. Thus, the involvement of the trial judge's son on the side of the

prosecution could raise objectively justified doubts as regards the judge's impartiality.

96. The Government submitted that the fact that the son of Judge Z.V. had been a member of the investigative team set up to investigate the applicant's case did not give rise to a legitimate doubt as regards the judge's impartiality. In particular, a special investigative team had been set up within the framework of criminal case no. 62202608 instituted to investigate the events of 1 and 2 March 2008, which had been composed of 150 investigators and operative officers, including the judge's son. During the period when the applicant's case was joined to criminal case no. 62202608, namely between 7 March and 13 August 2008, the judge's son had not carried out any investigative measure or made any decision in respect of the applicant. Furthermore, Judge Z.V. had taken over the applicant's case only after it had been disjoined from criminal case no. 62202608 and examined as a separate case.

97. The Court reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused. To that end Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to rule out any legitimate doubt in this respect (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009; *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015; and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 145, 6 November 2018).

98. As regards the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Kyprianou*, cited above, § 119; *Micallef*, cited above, § 94; and *Morice*, cited above, § 74).

99. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality (see *Micallef*, cited above, § 96; *Morice*, cited above, § 76; and *Ramos Nunes de Carvalho e Sá*, cited above, § 147). In this respect even appearances may be of some importance (see *Kyprianou*, cited above, § 118). This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Micallef*, cited above, § 96; *Morice*, cited above, § 76; and *Ramos Nunes de Carvalho e Sá*, cited above, § 147).

100. The objective test mostly concerns hierarchical or other links between the judge and other actors in the proceedings which objectively justify misgivings as to the impartiality of the tribunal, and thus fail to meet the Convention standard under the objective test. It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Micallef*, cited above, § 97; *Morice*, cited above, § 77; and *Ramos Nunes de Carvalho e Sá*, cited above, § 148). For example, objectively justified doubts as to the impartiality of the trial court presiding judge were found to exist when her husband was the head of the team of investigators dealing with the applicants' case (see *Dorozhko and Pozharskiy v. Estonia*, nos. 14659/04 and 16855/04, §§ 56-58, 24 April 2008).

101. In the present case, A.V., namely the son of the trial court judge, Z.V., who examined the applicant's case, had been a member of the investigative team dealing with the criminal case, no. 62202608, within the framework of which the applicant's particular case had been investigated. Thus, Judge Z.V. and Investigator A.V. are lineal consanguine relatives of the first degree (see, *mutatis mutandis*, *Ramljak v. Croatia*, no. 5856/13, § 34, 27 June 2017). As regards the involvement of A.V. in the proceedings at issue, the Court notes at the outset that, according to Article 90 § 1(3) of the CCP, A.V. was a participant and therefore a party to the criminal proceedings, which would appear to justify the judge's recusal under that provision. This element, however, was considered irrelevant and not a factor preventing the judge from sitting on the case (see paragraph 52 above). Having regard to A.V.'s actual involvement in the proceedings, it is true that the investigative team was composed of numerous investigators and there is no indication that A.V. had been involved in any specific investigative measure taken in respect of the applicant. Nevertheless, taking into account the nature of criminal case no. 62202608 and its distinctive context, the Court does not find this to be decisive in the particular circumstances of the present case. It is to be noted that criminal case no. 62202608 was instituted to investigate the leaders and supporters of the political opposition in connection with the protest movement which unfolded in Armenia following the presidential election and culminated in the events of 1 and 2 March 2008, including the applicant, who showed his support for that movement and, as a consequence, stood trial (see paragraphs 8, 34, 36 and 38 above and paragraphs 116-128 below). The son of the trial court judge was involved in the investigation of that criminal case which, given the particular**,** politically-sensitive context and the importance of appearances, understandably raised doubts in the applicant's mind as to impartiality of the judge.

102. In the Court's view the above is sufficient to conclude that, in the particular circumstances of the present case, there were ascertainable facts

which could raise objectively justified doubts as to the impartiality of the trial court judge. Thus, there was at least an appearance of a lack of impartiality by Judge Z.V., owing to his son's involvement in the pre-trial investigation of the criminal case in question (see, *mutatis mutandis*, *Dorozhko and Pozharskiy*, cited above, § 58).

103. Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of lack of impartiality of the tribunal.

IV. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

104. The applicant complained that his prosecution and conviction had violated his rights guaranteed by Articles 10 and 11 of the Convention which, in so far as relevant, provide:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"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. Submissions by the parties

1. The Government

105. The Government submitted that the applicant lacked victim status since he had failed to present any facts or evidence in support of his allegation that his prosecution or conviction had been directly or indirectly connected to his right of freedom of expression or freedom of peaceful assembly. The charges brought against the applicant for illegal arms possession, assault on a public official and usurpation of power had had no

connection to his rights guaranteed under Articles 10 and 11 of the Convention. His complaints were therefore inadmissible.

2. The applicant

106. The applicant submitted that the real reason for his prosecution and conviction had been his participation and the speech he had given at the assembly at Freedom Square on 22 February 2008. His prosecution had been initiated immediately thereafter and pursued the aim of punishing and neutralising him as he had been a known public figure of high standing in society. The applicant observed that a number of factors pointed to the existence of a clear link between his prosecution and the speech he had made at Freedom Square. Firstly, during the interview of 6 June 2008, while being charged with illegal possession of a weapon and assault on a police officer, he had been asked questions almost exclusively related to his speech at Freedom Square and unrelated to the charges against him. Secondly, on 13 June 2008 a new charge had been brought against him under Article 300 of the CC for usurpation of power which had been built entirely on the speech he had made at Freedom Square. The text of that speech had been included among the evidence in the criminal case against him. Thirdly, in his closing speech the prosecutor had requested the court to impose the harshest punishment on the applicant, reasoning that the applicant posed a danger to society in the situation that had arisen in the country.

107. The applicant also referred to the constantly changing nature of the suspicions and charges against him, which similarly suggested that they had been fabricated. Thus, he had been "brought in" to the police on one ground, arrested on another ground, then charged and detained on a third ground and had his detention extended on a fourth ground. Furthermore, he had spent four months in detention on the ground of alleged illegal possession of a weapon which had been, moreover, eventually dropped, despite the fact that the authorities had had evidence at their disposal from the very beginning that both weapons had been legally kept and carried by him. The applicant lastly alleged that he had been considered as number one political prisoner in Armenia, referring in this connection to reports by international organisations and embassies regarding his criminal case, as well as various media publications alleging political motives behind his prosecution. In sum, his prosecution, detention and conviction amounted to an interference with his Article 11 rights. Such interference had been arbitrary since it had pursued disguised aims and could not be considered lawful. Furthermore, it did not pursue a legitimate aim and was not necessary in a democratic society, since his speech at Freedom Square had not incited violence, public disorder or hatred.

B. Admissibility

108. The Court notes that by contesting the applicant's victim status the Government in essence disputed the existence of an interference with the applicant's rights guaranteed under Articles 10 and 11 of the Convention. This question, however, is closely linked to the substance of the applicant's complaints and must be joined to the merits.

109. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

C. Merits

1. The scope of the applicant's complaints

110. The Court notes that the applicant's complaints under Articles 10 and 11 are mainly based on the allegation that his prosecution and conviction were a measure to prevent him from participating in demonstrations and to punish him for having done so. In such circumstances, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis*. The Court therefore finds that the applicant's complaints should be examined under Article 11 alone (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 85, ECHR 2015).

111. On the other hand, notwithstanding its autonomous role and the particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (see *Ezelin*, cited above, § 37; *Kudrevičius and Others*, cited above, § 86; and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 102, 15 November 2018).

2. Whether there has been an interference with the exercise of the right to freedom of peaceful assembly

112. The Court reiterates that an interference with the freedom of peaceful assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly, such as a prior ban, dispersal of the rally or the arrest of participants, and those, such as punitive measures, taken afterwards, including penalties imposed for having taken part in a rally (see *Mushegh Sathatelyan*, cited above, § 228).

113. In the present case, it is in dispute between the parties whether there was an interference with the applicant's right to freedom of assembly. The applicant alleged that the true reason behind his prosecution and

conviction was to punish him for the speech he had given at Freedom Square and to neutralise him as an opposition supporter of high standing, while the Government denied that and argued that he had been prosecuted exclusively for the offences in question.

114. The Court notes that in essence the parties are disputing the factual basis for the applicant's prosecution and conviction. The Court has emphasised on many occasions that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, ECHR 2011 (extracts), and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR 2012).

115. The Court further reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005‑VII).

116. The Court notes at the outset that it has already examined a number of cases against Armenia in which applicants made similar allegations of interference under Article 11 during periods of increased political sensitivity, usually involving mass protests around election periods resulting in various types of punitive measures against opposition supporters or activists by means of administrative or criminal proceedings in which police testimony was the sole evidence directly implicating the applicants and

served as the only basis for their eventual convictions, if any (see, among other authorities, *Hakobyan and Others v. Armenia*, no. 34320/04, §§ 87-90, 10 April 2012; *Virabyan v. Armenia*, no. 40094/05, §§ 203-210, 2 October 2012, which concerned similar allegations but in the context of Article 14 of the Convention; and *Mushegh Saghatelyan*, cited above, §§ 241-243, which concerned the same protest movement as in the present case). In the case of *Hakobyan and Others*, in particular, the Court found that during a period when opposition rallies had been held in protest against the results of the presidential election of 2003 there had been an administrative practice of deterring or preventing opposition activists from participating in those rallies, or punishing them for having done so, by resorting to the procedure of short-term imprisonment under the Code of Administrative Offences, including on such grounds as using foul language or disobeying police orders in circumstances unrelated to the rallies. Finding that the applicants, three opposition supporters, had fallen victim to that practice, the Court rejected the factual basis for their convictions on those grounds and concluded that the true reason for their imprisonment was to prevent or discourage them from participating in the ongoing opposition protests (see *Hakobyan and Others*, cited above, §§ 90-99). A similar conclusion was reached in the case of *Virabyan* in respect of the applicant's arrest on suspicion of illegal possession of a weapon and subsequent administrative proceedings for alleged disobedience against police (cited above, §§ 203-210). The Court has applied a similar approach in the context of Article 11 also in a number of cases against other countries (see *Nemtsov v. Russia*, no. 1774/11, §§ 66-71, 31 July 2014; *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, §§ 194-206, 6 October 2015; and *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, §§ 87-97, 11 February 2016).

117. The Court further draws attention to the general context surrounding the circumstances of the present case. As already noted in the case of *Mushegh Saghatelyan*, this was a period of increased political sensitivity in Armenia involving opposition rallies held in protest against an allegedly unfair presidential election result. The response of the authorities that followed, including the arrests and detention of scores of opposition supporters, was condemned by the PACE and described as a "*de facto* crackdown on the opposition". The charges brought against many of them, especially those under Articles 225 and 300 of the CC and those based solely on police evidence, were suspected to have been "artificial and politically motivated" (see *Mushegh Saghatelyan*, cited above, §§ 125-131 and 243). Moreover, there was evidence suggesting that some opposition activists, including some unnamed high-level public officials who had been sacked from their posts after denouncing the election and declaring their support for the protest movement, may have fallen victim to arrests and prosecutions on "seemingly artificial charges" already in the period from 20

to 29 February, that is before the events of 1 March 2008 and institution of the main criminal case no. 62202608 against the leaders and supporters of the opposition (see paragraph 70 above). Bearing in mind the description of the general context provided in the above-mentioned reports by various Council of Europe bodies, which are cause for grave concern and call for special vigilance and scrutiny on the part of the Court in dealing with the applicant's particular case, the Court will refer in this connection to the following factors.

118. Firstly, the Court points to the fact that the applicant was a high-ranking public official who was fired from his post after publicly expressing his support for the protest movement and criticising the election as fraudulent. On the day following his speech at Freedom Square critical of the authorities, and on the very day of his dismissal, a police operation was conducted that resulted in initiation of a criminal case against the applicant.

119. Secondly, the Court notes the controversial manner in which the criminal case against the applicant was initiated. In particular, it appears from the announcement made on 23 February 2008 on the website of the Armenian police that the trigger for the police operation that led to the applicant's arrest was some unspecified "operative information" received at the PDFOC (see paragraph 13 above). The precise nature and source of that information were never revealed or examined at any stage of the proceedings. Thus, it is not clear on what grounds the applicant and those accompanying him were believed to be illegally armed and, moreover, to have the intention, as it was stated in very vague terms, to "destabilise the situation in Yerevan". No details of that plan were provided, including the manner in which such destabilisation was to be carried out or the motives behind it, including whether it was in any way linked to the ongoing protest movement. It is notable that the allegation that the applicant was part of an armed group planning to destabilise the situation in Yerevan was never investigated or even brought up during the ensuing investigation and the case was treated as an ordinary case of illegal possession of a weapon without any wider context, which gives an impression that no such information ever existed and that it was simply used as a pretext to stop and search the applicant.

Furthermore, as regards the CZ-75 B-type pistol found in the applicant's possession which served, at least formally, as a ground for his arrest, it is undisputed that the pistol was possessed and carried by the applicant legally and that this information was known to the arresting officers (see paragraph 18 above). However, as already noted above, the materials of the case are silent as to when this information came to light (see paragraph 87 above). According to the applicant, this information was provided to the arresting officers already at the time of the police operation which, assuming this had been the case, would suggest that the applicant was taken into custody arbitrarily. However, even assuming that this information had

come to light only upon verification at the PDFOC, a question would still arise as to why it had been impossible to verify this information on the spot and thereby prevent the applicant's unnecessary deprivation of liberty. It is notable that this initial reason for taking the applicant into custody was almost immediately forgotten once new grounds for prosecuting him emerged following his arrest. The applicant was never even questioned in connection with that initial suspicion but instead a criminal case was instituted on a different ground, namely alleged illegal possession of another pistol found after a search of one of the cars conducted at the PDFOC (see paragraph 24 above). All the above factors, as well as the striking vagueness of all the official documents concerning the initial reasons for the applicant's arrest (see paragraphs 86-87 above), prompt the Court to believe that there were no genuine reasons for taking the applicant into custody and the fact that he was arrested on such precarious grounds actually gives an impression that the intention was to deprive the applicant of his liberty at any cost and that his arrest may have been effected in bad faith (compare with *Virabyan*, cited above, §§ 205-207, and *Mushegh Saghatelyan*, cited above, § 249).

120. Thirdly, the Court notes that, while the initial charges against the applicant, namely the alleged illegal possession of a Browning pistol and an assault on two police officers while in custody, appeared to be unrelated to the protest movement that gripped Armenia following the disputed presidential election of 19 February 2008, for unexplained reasons his case was joined with the main criminal case no. 62202608 instituted against the leaders and supporters of the opposition in connection with that protest movement (see paragraph 38 above). Moreover, during one of his interviews the applicant, while facing those charges, was asked questions almost exclusively related to the speech he had given at Freedom Square on 22 February 2008 (see paragraph 42 above). Furthermore, at a later stage a charge was brought against the applicant under Article 300 of the CC of "usurpation of power" which, even if drafted in a rather vague manner, can be understood to have concerned the applicant's involvement in the protest movement led by Mr Ter-Petrosyan, including the support shown by the applicant to that movement through his participation in the assembly at Freedom Square and the speech he had given there (see paragraph 43 above). While that charge was eventually dropped, the investigator requested an extension of the applicant's detention with reference to that charge, as well as to the main criminal case instituted to investigate the protest movement (see paragraph 44 above).

121. Fourthly, it is undisputed that the Browning pistol, similarly to the CZ-75 B-type pistol, was legally owned by the applicant. No explanation was provided at any stage of the investigation as to why it was suspected to be an illegal weapon, given that the applicant had a valid licence (see paragraphs 24 and 27 above). The charge, once again, lacked detail and was

eventually dropped for lack of evidence, apparently without any meaningful investigation into it and with reasoning that failed to clarify the question as to why it was necessary to bring that charge in the first place (see paragraph 43 above). Thus, the sole basis for the applicant's eventual conviction was an act which he had allegedly committed after having been taken into custody, namely an assault on two police officers (compare with *Virabyan*, cited above, § 209). Moreover, that conviction was based exclusively on the testimony of the police officers concerned and the findings of fact made in that respect by the domestic courts appear to have been a mere and unquestioned recapitulation of the circumstances as presented in that testimony (compare with *Hakobyan and Others*, cited above, § 98, and *Mushegh Saghatelyan*, cited above, § 243). Thus, the manner in which the proceedings relating to that charge were conducted is strikingly similar to other cases where opposition activists had been prosecuted and convicted for similar acts, in similar circumstances and on the basis of similar evidence, which points to the existence of a repetitive pattern and casts doubt on the credibility of the criminal proceedings against the applicant (see *Hakobyan and Others*, cited above, §§ 97-98; *Virabyan*, cited above, §§ 204-209; and *Mushegh Saghatelyan*, cited above, § 253).

122. Lastly, it is notable that the applicant's criminal case, while on the whole seemingly unrelated to the protest movement, was, nevertheless, included among the cases monitored by the OSCE/ODIHR as part of a trial monitoring project of more than a hundred cases instituted against the leaders and supporters of the opposition in connection with the events of 1-2 March 2008 (see paragraph 71 above).

123. The Court therefore finds a number of striking resemblances between the applicant's case and those cited above (see paragraph 116 above). In view of all the above factors, the Court considers that there are cogent elements in the present case prompting it to doubt whether the true reasons for the applicant's arrest and subsequent prosecution were those indicated in the relevant police materials. The entirety of the materials before it allow the Court to draw sufficiently strong, clear and concordant inferences as to the applicant's prosecution, and consequently the resulting conviction, being linked to his involvement in and the support shown for the protest movement led by the opposition. The Court is, therefore, prepared to assume that the entirety of the facts on which the applicant's prosecution and conviction were based can be regarded, on arguable grounds, as an instance of an "interference" with his right to freedom of peaceful assembly (see, *mutatis mutandis*, *Hakobyan and Others*, cited above, § 99; *Virabyan*, cited above, § 210; and *Mushegh Saghatelyan*, cited above, § 234).

3. Whether the interference was prescribed by law

124. 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 (see *Kudrevičius and Others*, cited above, § 102).

125. The first step in the Court's examination is to determine whether the interference with the applicant's right to freedom of peaceful assembly was "prescribed by law". The applicant alleged that the interference had been unlawful and arbitrary since his prosecution had been a disguised way of preventing him from participating in the rallies and punishing him for having done so. The Court reiterates that the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (see *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 37, 27 February 2007). It notes that it has already found instances of similar interferences to be unlawful and arbitrary and therefore not in compliance with the requirement that any interference be prescribed by law (see *Hakobyan and Others*, cited above, §§ 107-108, and *Huseynli and Others*, cited above, §§ 98-100).

126. Having regard to its findings regarding the existence of an interference, the Court considers that the situation in the present case is comparable to that examined in the cases of *Hakobyan and Others* and *Huseynli and Others*, cited above. Indeed, the applicant was prosecuted and convicted of certain acts, namely an assault on two police officers, under Article 316 § 1 of the CC criminalising such acts, whereas the true reason for his criminal punishment was his active participation in the protest movement. In these circumstances, the impugned interference with the applicant's freedom of peaceful assembly could only be characterised as manifestly arbitrary and, consequently, unlawful for the purposes of Article 11 of the Convention (see, *mutatis mutandis*, *Hakobyan and Others*, cited above, § 107, and *Huseynli and Others*, cited above, § 98).

127. The Court therefore concludes that the interference in question did not meet the Convention requirement of lawfulness. That being so, it is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued. For the same reasons the Court dismisses the Government's objection regarding the lack of victim status.

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

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

129. The applicant further complained that his prosecution and conviction had been motivated by his political opinion and had amounted to discrimination in breach of 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."

130. The Government contested that argument.

131. Having regard to its findings under Article 11 of the Convention (see paragraphs 116-128 above), the Court declares this complaint admissible but considers that there is no need to examine whether, in this case, there has been a violation of Article 14 of the Convention in conjunction with Article 11.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

134. The Government submitted that the applicant had failed to support his allegations that he had suffered non-pecuniary damage with any evidence.

135. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violations found. It therefore awards the applicant EUR 14,000 in respect of non-pecuniary damage.

B. Costs and expenses

136. The applicant also claimed 3,000,000 Armenian drams for the legal costs incurred before the Court, supported by a copy of a contract for legal services, and EUR 173 for postal expenses.

137. The Government submitted that, since the applicant had not yet paid the sum in question and was only obliged under the contract to do so in case of a favourable outcome, the legal costs claimed could not be considered as actually incurred. In any event, the amount claimed was exaggerated and unreasonable. As regards the alleged postal expenses, these were only partly substantiated.

138. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

139. 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. *Decides* to join the applications;

2. *Decides* to join to the merits the preliminary objection concerning lack of victim status and dismisses it;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's arrest;

5. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in that the applicant's arrest was not based on a reasonable suspicion;

6. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that the domestic courts failed to provide relevant and sufficient reasons for the applicant's detention;

7. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the impartiality of the tribunal;

8. *Holds* that there has been a violation of Article 11 of the Convention as regards the applicant's prosecution and conviction;

9. *Holds* that there is no need to examine the complaint under Article 14 of the Convention in conjunction with Article 11 of the Convention;

10. *Holds*

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

(i) EUR 14,000 (fourteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,000 (two thousand 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;

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

Done in English, and notified in writing on 8 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Krzysztof Wojtyczek
Deputy Registrar	President