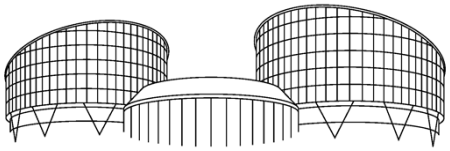

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MUSHEGH SAGHATELYAN v. ARMENIA

(Application no. 23086/08)

JUDGMENT

STRASBOURG

20 September 2018

FINAL

20/12/2018

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

In the case of Mushegh Saghatelyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Ksenija Turković,
Pauliine Koskelo,
Tim Eicke, *judges,*
Siranush Sahakyan, ad hoc *judge,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 28 August 2018,

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

PROCEDURE

1. The case originated in an application (no. 23086/08) 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 Mushegh Saghatelyan ("the applicant"), on 22 April 2008.

2. The applicant was represented by Mr V. Grigoryan and Mrs S. Safaryan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated at the time of his apprehension and after his arrival at the police station, that the authorities had failed to carry out an effective investigation into his allegations of ill-treatment, that his arrest had been unlawful and arbitrary on various grounds, that he had not been informed promptly of the reasons for his arrest, that his arrest and continued detention had not been based on a reasonable suspicion or relevant and sufficient reasons, that the trial had been unfair since the entire criminal case against him had been based solely on police testimony and the principle of equality of arms and his right to call witnesses had been breached, and that the dispersal of the demonstrators and his subsequent prosecution and conviction had violated his right to freedom of expression and peaceful assembly.

4. On 30 November 2010 the application was communicated to the Government.

5. Mr Armen Harutyunyan, the judge elected in respect of Armenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the

President of the Chamber decided to appoint Mrs Siranush Sahakyan to sit as an ad hoc judge (Rule 29 § 1(a)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Yerevan.

A. The 19 February 2008 presidential election and the post-election events

1. The presidential election and the demonstrations held between 20 February and 1 March 2008

7. 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, who had also served as President of Armenia between 1991 and 1998.

8. The applicant, who had occupied the post of Head of the Penitentiary Department at the Ministry of the Interior during Mr Ter-Petrosyan's presidency, was an active supporter of his candidacy.

9. 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 (also known as Opera Square) 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, held during the daytime and late into the night, attracted at times tens of thousands of people, while several hundred demonstrators stayed in that area around the clock, having set up a camp. It further appears that the applicant was an active participant in the rallies and was often on the podium, and had made a speech on the first day of the rallies.

10. On 24 February 2008 the Central Election Commission announced that Mr Sargsyan had won the election with around 52% of all votes cast, while Mr Ter-Petrosyan received around 21% of votes.

11. On 29 February 2008 the rallies were still in full swing. That night the applicant camped at Freedom Square.

2. The early morning police operation on 1 March 2008 and institution of criminal case no. 62202508

12. The applicant alleged that on 1 March 2008 at around 6 a.m. the police had arrived at Freedom Square. The several hundred demonstrators who were camping there were mostly still asleep, although some of them were awake, having been informed in advance about the arrival of a large number of police officers. In total about 800 heavily armed police officers appeared. The police cordon started approaching the tents and panic broke out among the demonstrators who started waking the others up. Some of the demonstrators managed to switch on the microphones and the lights on the square. Mr Ter-Petrosyan, who was also at the square, addressed the demonstrators: "We see that police forces have arrived at the square. Please, do not have any contact with them and do not touch them in any way. Please keep your distance from them. Let us wait and see what they want from us. If they have something to tell us, we are ready to listen. Please, be patient and peaceful". Then there was silence for about a minute. By then the police forces had already encircled the square with a triple cordon. Suddenly, without any prior warning or orders to disperse, the police forces, shouting loudly, attacked the demonstrators, most of whom were still asleep in their tents, violently beating them with rubber batons and destroying the camp. Mr Ter-Petrosyan was immediately arrested and taken away. Within a few minutes no demonstrator remained at the square, since everybody, including the applicant, had tried to save themselves by fleeing. He and other activists were then pursued by the police through the streets and arrested (see paragraph 25 below).

13. The Government contested the applicant's allegations and claimed that the reason for the police operation of 1 March 2008 at Freedom Square had been information obtained on 29 February 2008 by the Armenian Police and National Security Service, according to which a large number of weapons, including metal rods, wooden clubs, firearms, grenades and explosives, were to be distributed to the protesters to incite provocative actions and mass disorder in Yerevan on 1 March 2008. The police operation had aimed to verify that information. For that purpose, members of the relevant police force, without being equipped with any protective gear, had arrived at Freedom Square where about 800 to 900 demonstrators armed with metal rods and wooden clubs had gathered waiting for the police. The demonstrators had attacked the police officers, hitting them and throwing stones, pointed metal objects and Molotov cocktails at them, as a result of which numerous police officers had been injured.

14. The Government, in support of their allegations, submitted a number of official documents, including six records of inspection of the scene drawn up by investigators of the Principal Department for Investigations of the Armenian Police. According to those records, the inspections were carried out on 1 March 2008 at several locations in Freedom Square and the

surrounding park at various times between 8.30 a.m. and 11.45 a.m. and a number of different objects were found including pistols, cartridges, grenades and other explosives, wooden and rubber clubs, metal rods and other metal objects having a spiky, hedgehog-like shape. The Government also submitted a number of expert conclusions produced following the forensic examination of the objects in question.

15. On the same date the Special Investigative Service instituted criminal case no. 62202508 under Article 225.1 §§ 1 and 2, Article 235 §§ 1 and 2 and Article 316 § 2 of the Criminal Code (CC) (see paragraphs 97, 91, 98 and 94 below) in connection with the events at Freedom Square. This decision stated:

> "After the announcement of the preliminary results of the presidential election of 19 February 2008, the presidential candidate, Mr Levon Ter-Petrosyan, members of parliament, [K.S. and S.M.], the chief editor of Haykakan Zhamanak daily newspaper, [N.P.], and others organised and held mass public events at Yerevan's Freedom Square in violation of the procedure prescribed by law and incited disobedience to the decisions ordering an end to the events held in violation of the procedure prescribed by law, while a number of participants in the mass events illegally possessed and carried illegally obtained arms and ammunition.
>
> On 1 March 2008 at around 6 a.m., when the police took measures aimed at forcibly ending the public events held in violation of the procedure prescribed by law, in compliance with the requirements of section 14 of the Assemblies, Rallies, Marches and Demonstrations Act, the organisers and participants of the events, disobeying the lawful orders of the [police officers], who were performing their official duties, committed a life- and health-threatening assault on them with clubs, metal rods and other adapted objects, which had been in their possession for that purpose, causing the police officers injuries of varied severity."

3. The subsequent developments and institution of criminal case no. 62202608

16. It appears that, after Freedom Square was cleared of demonstrators, some of them relocated to the area near the French Embassy, the Yerevan Mayor's Office and the Yerevan Press Building, situated at Grigor Lusavorich and Arshakunyats Streets about 1.7-2 km from Freedom Square, where they were later joined by thousands of others who apparently poured into the streets of Yerevan in response to the events of the early morning in order to voice their discontent. It further appears that the rallies continued throughout the city until late at night, 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 incumbent President Kocharyan. The state of emergency, *inter alia*, prohibited the holding of any further rallies and other mass public events for a period of twenty days.

17. On 2 March 2008 another criminal case was instituted, no. 62202608, under Article 225 § 3 and Article 235 § 2 of the CC (see

paragraphs 96 and 98 below), in connection with the above-mentioned events. The decision stated:

> "[Mr Ter-Petrosyan], the candidate running for president at the presidential election of 19 February 2008, and his followers and supporters, members of parliament [K.S. and S.M.], the chief editor of Haykakan Zhamanak daily newspaper, [N.P.], and others, not willing to concede defeat at the election, with the aim of casting doubt on the election, instilling distrust towards the results among large segments of the population, creating illusions of public discontent and revolt and discrediting the election and the authorities, from 1 March 2008 in the area of the Yerevan Mayor's Office and central streets organised mass disorder involving murders, violence, pogroms, arson, destruction of property and armed resistance to public officials, with the use of firearms, explosives and other adapted objects."

18. It appears that on the same date a number of police officers who had been involved in the events of 1-2 March 2008, including officers A.Arsh. and A.Aru., were granted victim status within the scope of criminal case no. 62202508 and later gave testimony. It further appears that police officer A.Arsh. underwent a forensic medical examination and, according to the relevant medical conclusion, was found to have suffered a bruise to the left side of his forehead, which had been inflicted by a blunt object and caused light damage to health.

19. According to the testimony of police officer A.Arsh., dated 2 March 2008, on 1 March 2008 he had been on duty at Freedom Square as a member of the Patrol Guard Service (PGS) deployed there for the purpose of preserving public order and assisting the police units which were entrusted with the task of verifying intelligence information concerning the possession of arms by the demonstrators. The demonstrators started assaulting the police officers. The PGS officers tried to calm the demonstrators but one of them, who was a slim man of around 55 with greying hair, a wide forehead and a sharp nose, hit him twice on the head with a stick and fled in the direction of Northern Avenue. Another PGS officer, A.Aru., tried to assist him, after which A.Aru. left in the same direction.

20. According to the testimony of police officer A.Aru., dated 11 March 2008, after the demonstrators started assaulting and resisting the police officers, while standing behind the Hovhannes Tumanyan statue, he had seen one demonstrator assault police officer A.Arsh. by hitting him twice on the head with a stick. Later he had continued to perform his duties in the area of Arshakunyats Street where, near the Yerevan Press Building, he had noticed the same person, who was a slim man of around 50 with a wide forehead, of medium height and with short black hair. He had approached the man and asked him to follow him to a police station but the man had refused to comply with his order and punched him a few times in the chest, kicked his shield and fled.

21. By a letter of 10 March 2008 the Chief of the Special Investigative Service requested detailed information from the Deputy Chief of the

Armenian Police concerning the police operation of 1 March 2008 at Freedom Square, including its aim, planning, the number of police officers involved and the weapons and other means of personal protection used.

22. By a letter of 27 March 2008 the Deputy Chief of the Armenian Police replied to the above request as follows. The organisers and the participants in the unauthorised rallies that had been held between 20 and 29 February 2008 had, on numerous occasions, been informed about the unlawful nature of those events. The police operation of 1 March 2008 was based on intelligence information received the previous day by the police and the national security service, according to which a large quantity of metal rods, wooden clubs, firearms, grenades and explosives was to be distributed to the demonstrators in order to instigate mass disorder. The aim of the operation was to verify that information and to inspect the area. A number of unarmed police officers had entered Opera Square where they were attacked by 800-900 demonstrators armed with metal rods and wooden clubs, who were expecting the arrival of the police. The police officers were beaten and stones, pointed metal objects and Molotov cocktails were thrown at them. In order to prevent the disorder, an on-the-spot decision had been taken to engage the auxiliary police forces, which had been deployed earlier on the approaches to the square to prevent a possible deterioration of the situation and had been equipped with helmets, shields and rubber batons. The engagement of the said forces resulted in the demonstrators fleeing Freedom Square. The operation was carried out between 7 and 7.30 a.m. and was followed by a search, as a result of which numerous specially adapted metal objects, arms, ammunition and Molotov cocktails were found. Dozens of the most active and aggressive participants in the mass disorder were taken to various police stations.

23. It appears that many participants in the post-election rallies, including a number of opposition leaders, were charged and stood trial within the scope of the instituted criminal cases. The outcome of criminal cases nos. 62202508 and 62202608, however, is unclear.

B. The criminal proceedings against the applicant

1. The applicant's arrest and alleged ill-treatment

24. According to a handwritten document entitled "the record of bringing-in" (*արձանագրություն բերման ենթարկելու մասին*), the applicant was "brought in" (*բերման է ենթարկվել*) to Kentron Police Station on 1 March 2008 at around 6.30 a.m. by three police officers, E.R., H.S. and A.A., from 1 Grigor Lusavorich Street "for organising unauthorised demonstrations at Freedom Square in support of Mr Ter-Petrosyan, resisting police officers and disobeying their lawful orders". The record was signed by the three police officers and an officer of

Kentron Police Station who had drafted it. At the bottom of the record it was noted that the applicant had refused to sign it.

25. The applicant alleged that the above-mentioned record had never been presented to him. In reality he had been taken into custody by about 10-15 persons who did not introduce themselves as police officers and were masked. Those persons had been pursuing him all the way from Freedom Square. He had managed to catch a taxi, but the taxi had been blocked after about 1-2 km by a police car at the intersection of Arshakunyats and Grigor Lusavorich Streets near the Yerevan Press Building. The above-mentioned persons had forced him out of the taxi and started kicking, punching and hitting him with rubber batons. He had then lost consciousness and been transported to Kentron Police Station.

26. The applicant further alleged that upon his arrival at Kentron Police Station the same persons had continued to beat and humiliate him. Different parts of his body had been hit, including his head and legs, as a result of which he had fallen on the floor, bleeding and unable to get up. He had then been hit on the head again, which had resulted in concussion and loss of consciousness. Twice an ambulance had been called to provide medical assistance. His ill-treatment had been inflicted upon the instructions of the police chief.

27. One of the above-mentioned three officers, E.R., reported to the Chief of the Kentron Police Station that:

> "...today at around 7.30 a.m. I, together with [police officers H.S. and A.A.] brought [the applicant] in to Kentron Police Station from near Yerevan circus for having resisted police officers. While showing resistance, [the applicant] dropped a knife, two mobile telephones and a bunch of keys..."

28. Another report addressed by police officer E.R. to the Chief of the Kentron Police Station and signed by all three officers stated that:

> "...following an alert received on 1 March [2008, I, together with police officers H.S. and A.A.] was in the area of the unauthorised demonstration held at Freedom Square where the demonstrators were ordered to terminate the unauthorised demonstration and to clear the square. However, they disobeyed our lawful orders and, while showing resistance, swore at the authorities. The crowd, which showed resistance to the police, started running towards the adjacent streets, while continuing to show resistance to the police. During this mass disorder we continued to pursue the most active demonstrators who ran towards the [Yerevan] Press Building through Northern Avenue and Abovyan Street. While pursuing them I noticed one person near Yerevan circus who was showing overly active resistance to the police and who climbed into a random taxi... Being nearby, I approached the car and removed that person, who dropped a knife at that moment. I took the knife and together with the above-mentioned police officers brought that person in to Kentron Police Station, where he was identified as [the applicant]."

29. Police officers E.R., H.S. and A.A. further addressed several other reports to the Chief of the Kentron Police Station, all of which had practically identical content, stating as follows:

> "...following an alert received on 1 March [2008, we] were in the area of the unauthorised demonstration held at Freedom Square where the demonstrators were ordered to terminate the unauthorised demonstration and to clear the square. However, they disobeyed our lawful orders and [showed] resistance to the police officers, while hitting and swearing at them and the authorities. The most active of these citizens were brought in to the police station from the streets adjacent to the square."

30. A memorandum signed by the Chief of Kentron Police Station in Yerevan and the Chief of the Yerevan Police, entitled "Assaults and insults of a public official; organisation of public events in violation of the procedure prescribed by law; mass disorder within the territory of Kentron Police Station", stated:

> "As a result of mass events organised and held at Yerevan's Freedom Square in violation of the procedure prescribed by law, on 1 March 2008 at around 7 a.m. officers of the Armenian police, having received an order, demanded the persons gathered at the square to vacate the square and to terminate the mass event that they had been holding for days[. H]owever, they did not obey the lawful orders of the police officers and, by committing health- and life-threatening assault, subjected [them] to mass beatings and did not obey their lawful orders, for which the activists of the above-mentioned rally were brought in to Kentron Police Station in Yerevan, among them: [A.M., the applicant, D.A., M.A., V.H. and H.B.].
>
> A clasp knife was discovered in [the applicant's] possession during his personal inspection conducted at the police station..."

31. The knife in question was at a later date examined by a forensic expert who classified it as a "bladed weapon". The applicant alleged that he had never carried a knife, therefore no such object had ever been found in his possession.

32. From 7.20 to 7.40 p.m. the investigator questioned the applicant as a witness. According to the relevant record, the applicant stated that he had been informed in connection with which criminal case he had been summoned to testify as a witness and that it had been explained to him that as a witness he was obliged to testify or risk criminal sanctions. He, nevertheless, did not wish to testify because he had not committed any offence.

33. The applicant was kept in a cell at Kentron Police Station until around 10 p.m., when the investigator came to question him again. The applicant alleged that he had been unable to testify because of the ill-treatment he had endured earlier.

34. At around 10.30 p.m. the investigator drew up a record of the applicant's arrest (*արձանագրություն անձի ձերբակալման մասին*) by filling in the relevant template, indicating "10.30 p.m." as the time of the applicant's arrest and "Articles 225.1 § 2 and 316 § 2 of the CC" (see paragraphs 91 and 94 below) as the provisions under which the applicant was suspected of having committed offences. The arrest record was signed by the applicant.

35. On 2 March 2008, in the early morning, the applicant was transferred to police holding cells where, following a medical examination, a number of injuries were noted, including an open wound on the left side of his head and a bluish-red left eye. The applicant complained of pain in his legs.

36. The applicant alleged that the medical examination had not been carried out properly and only the obvious injuries had been recorded for purely formal reasons.

37. At 3.10 p.m. the applicant was questioned as a suspect by the investigator within the scope of criminal case no. 62202508 in the presence of his lawyer. Asked to provide his account of events, the applicant submitted that he had not committed any offence and had been participating in a peaceful demonstration at Freedom Square when, at around 6.30 a.m., thousands of police officers had started beating peaceful demonstrators with rubber batons without prior warning or orders to disperse. He and others had fled, but the police officers had pursued them armed with rubber batons. He had been followed for about 2 km. Being of an advanced age, he had not been able to continue running so he had sat in a random taxi. The police officers had blocked the taxi with a police car, taken him out and brutally beaten him, constantly repeating his name and swearing at the same time. He had then been taken to Kentron Police Station where he had again been beaten by the same police officers, after which they had left. The injuries on his body had been sustained in those circumstances. He had not, however, been ill-treated by any of the officers at the police station. He did not know the identity of those who had ill-treated him but would be able to identify them. The investigator then posed three questions: (a) whether the applicant had participated in any demonstrations held after the presidential election of 19 February 2008 and what his role had been in those demonstrations; (b) which of the demonstrators had had weapons and ammunition, the types of such weapons and the place where they had been hidden; and (c) who were the persons who had ordered the demonstrators, on 1 March 2008 at 7 a.m., to resist the police. The applicant admitted his participation in the demonstrations and marches, but added that he had stayed at Freedom Square around the clock only on 29 February. He had been up on the podium on multiple occasions, but the podium had been accessible to anyone. He had never seen the demonstrators with any weapons or ammunition. The demonstrations had been peaceful and accompanied with song and dance. Nobody had given any orders to resist the police. That would have been pointless anyway, since the police had entered the square covertly and started assaulting the demonstrators with rubber batons.

38. On the same day, the investigator ordered a forensic medical examination of the applicant within the scope of criminal case no. 62202508. The investigator's decision stated that, during the events of 1 March 2008, a number of persons had been injured, including the

applicant. It was therefore necessary to clarify the location, nature, sequence of infliction, age and severity of any injuries on the applicant's body and the method of their infliction. The decision was transmitted to a forensic medical expert on 6 March 2008.

39. Between 7.30 and 9.30 p.m. the investigator questioned in turn police officers E.R., H.S. and A.A. in connection with the early morning events of 1 March 2008. Their statements, including the questions and answers, were verbatim reproductions with the following content:

> "Certain police officers, over a loudspeaker, ordered those who had gathered at Freedom Square to terminate the unlawful and unauthorised demonstration and to leave. However, not only did they not leave but some of them incited disobedience to the orders of the police officers and to continue the demonstration. Since the event in question was unlawful and the police officers' orders to end it were not obeyed, the demonstrators, who were disobeying the police officers, assaulting them and making calls, were being brought in to police stations by [various police officers]. A number of demonstrators were assaulting us, police officers, with stones. In that crowd we were trying to calm the demonstrators who were showing overly active resistance and, besides assaulting [the police officers], were also inciting the crowd to continue their struggle against the police. While trying to restore order in the crowd, some of the police officers, including me, reached the area of Pushkin Street, because part of the aggressive crowd continued the above-mentioned violent actions against the police while running away. At that time, around 7 a.m., in the area of the intersection of Pushkin [Street] and Northern Avenue we noticed several persons who were demonstrating overly violent behaviour. I noticed that these persons were pulling, punching and kicking a group of outnumbered and, to me, unfamiliar police officers in police uniforms, as well as disobeying their lawful orders. Naturally we intervened and managed to transport three of the attackers to the police car, while the unfamiliar police officers continued to pursue other public-order offenders. When seated in the police car these three persons tried to free themselves again but ... eventually we managed ... to bring them in to Kentron Police Station, where they were identified as [D.A., M.A. and V.H.]. We filed relevant reports about what had happened, after which [the investigator] drew up records of bringing them in and subjecting them to personal search.
>
> I would like to add that, after the above-mentioned persons had been brought in, the street disorder was still continuing, so I went again to Freedom Square [together with my two colleagues] where we continued our lawful actions. Mass disorder was still continuing at Freedom Square and we were again pursuing the overly active demonstrators, who were running through Northern Avenue towards the [Yerevan] Press Building. While pursuing them, having reached Yerevan circus, I noticed one person who was showing resistance to police officers, punching and kicking them, after which he tried to sit in a random taxi car... However, we managed to capture him, during which a knife, two mobile telephones and a bunch of keys fell from his pockets. We picked up those objects and, together with the above-mentioned police officers, brought that person in to Kentron Police Station, where he was identified as [the applicant].
>
> Question: Did you sustain any injuries and, if yes, in which circumstances?
>
> Answer: I did not sustain any injuries. While being brought in to the police station, they just pulled on [our uniforms], trying to free themselves.

Question: Are you familiar with the police officers who were assaulted by the persons whom you brought in to the police station?

Answer: I was not familiar with them. They were wearing police uniforms. I cannot provide further information about them.

Question: Did you notice any weapons or other objects on the persons whom you brought in to the police station when they assaulted you and other police officers?

Answer: I did not notice them having any such objects."

40. On an unspecified date two more police officers, A.P. and M.G., were questioned. Police officer A.P. submitted that on 1 March 2008 he had been at Kentron Police Station when the applicant was brought in and a clasp knife found in his possession was presented. The applicant had not claimed that the knife did not belong to him. Police officer M.G., who was the driver of the police car that took the applicant to the police station, submitted that a knife had been discovered in the applicant's possession when he was being brought in.

2. The charges against the applicant, his detention and further investigative measures

41. On 3 March 2008 the applicant was formally charged under Articles 225.1 § 2 and 316 § 2, as well as Articles 301 and 318 § 1 of the CC (see paragraphs 91, 94, 93 and 95 below), within the scope of criminal case no. 62202608, as follows:

"...from 20 February 2008 onwards [the applicant], together with Mr Ter-Petrosyan and others, organised and conducted unlawful public events, mass demonstrations, 24-hour long rallies, assemblies, pickets and sit-ins disrupting the normal life, traffic, functioning of public and private institutions and peace and quiet of the population in Yerevan and involving calls for a violent overthrow of the government and public insults addressed at public officials connected with the performance of their official duties.

Thereafter, on 1 March 2008 at around 6 a.m., when [the police officers] demanded the participants in the demonstration at Freedom Square to give a possibility to verify the veracity of the information that they possessed arms and ammunition, and once again warned them to end the unlawful event, he and other demonstrators, disobeying the police officers' lawful orders, committed life- and health-threatening assault on [them]."

42. On 4 March 2008 the applicant's lawyer filed a complaint with the Chief of the Special Investigative Service, alleging that the applicant had been unjustifiably taken to Kentron Police Station under the so-called procedure of "bringing-in", subjected to ill-treatment and then unlawfully kept there the whole day on 1 March 2008. The record of his "bringing-in" had never been presented to him. His 72-hour arrest permitted by law had already expired, in violation of Article 5 § 1 (c) of the Convention, and it was still unclear on what evidence the charge against him was based. The lawyer also relied on Articles 3, 10 and 11 of the Convention.

43. On the same day at 7 p.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.

44. The applicant submitted before the court that he had been brutally beaten and humiliated in the street and had sustained numerous injuries. No police officer had approached him to ask about weapons or to say that the demonstration was unlawful and that the demonstrators were to disperse. The applicant submitted that he was not a member of any political party and had not organised any demonstrations, and the charges against him were politically motivated and lacked *corpus delicti*. As regards the charge of assault under Article 316 § 2 of the CC, a group of 20-25 persons, without presenting themselves as police officers or asking him to follow them to a police station, preemptively attacked him and beat him up in the street and, by doing so, created an appearance of resistance. Moreover, no actual police officer to whom he had put up the alleged resistance had been identified. Furthermore, his rights guaranteed by Article 10 of the Convention had been violated because he was prosecuted for simply being one of the demonstrators. As regards the charge under Article 301 of the CC, this was not based on any evidence and it was not even stated what calls for a violent overthrow of the government he had allegedly made.

45. The District Court decided to allow the investigator's application and order the applicant's detention for a period of two months. It first recapitulated the circumstances of the case as outlined in the charge against the applicant (see paragraph 41 above) and concluded that the application was substantiated, taking into account that there was sufficient evidence in the case to impose a preventive measure, and in view of the nature and dangerousness of the imputed offence and the fact that, if he remained at large, the applicant could abscond, obstruct the proceedings, continue his criminal activities and evade criminal responsibility.

46. On 5 March 2008 the applicant was transferred to Vardashen Remand Prison. At the time of admission a "record of physical injuries" was drawn up, signed by the applicant, which indicated the following injuries on his body:

> "...a bruise on the lower left eye socket, scratch wounds on the shins, a bruise measuring 10 x 12 cm on the external surface of the right shoulder blade and a scabbed wound measuring 2 x 3 cm on the rear part of the left temple. The indicated injuries, according to [the applicant], are four days old."

47. The applicant alleged that this medical examination had not been carried out properly and not all the injuries had been recorded.

48. On 10 March 2008 the forensic medical expert examined the applicant at the remand prison as ordered by the investigator's decision of 2 March 2008. The applicant reiterated before the expert the circumstances of his alleged ill-treatment (see paragraph 37 above). The relevant expert

conclusion, which was produced on 3 April 2008, contained the following findings:

> "A wound measuring 0.9 x 0.2 cm, covered with a grey crust and mobile when palpated, is detected on the left part of the back of the head; the surrounding skin, in the area measuring 2.3 x 1.7 cm, has changed colour to pale pink. There is a bruise on the left side of the outer part of the upper and lower eyelids and the cheek area of a non-dense nature and pale yellow-greenish colour. Both parts of the chest are symmetrical and are equally involved in the respiration process. There is a bruise measuring 6.3 x 2.8 cm of unclear contour, non-dense nature and pale greenish-yellow colour on the right part of the chest on the same line as the rear of the armpit and at the level of the third and fourth ribs, which has also partly spread to the rear area of the shoulder line. It is not painful when palpated. There is a bruise measuring 1.8 x 1.5 cm on the front surface of the upper third part of the right leg of a pale greenish-blue colour. There are small scratches covered with grey scabs on the inner surface of the joint between the leg and the foot, which are raised compared to the surrounding unharmed skin.
>
> ...
>
> Conclusions. The injuries sustained by [the applicant, as described above,] were caused by blunt objects, possibly within the period indicated in the circumstances of the case, which both jointly and separately do not qualify as mild bodily injuries. Since the injuries were inflicted within a short period, it is impossible to determine the sequence of [their] infliction."

49. The applicant alleged that the expert had not been impartial and independent and had not fully recorded all of his injuries.

50. On the same date the applicant lodged an appeal against his detention order. He argued, *inter alia*, that the charge against him was unsubstantiated, lacked certainty and clarity, and was not based on sufficient evidence or any witness testimony. In violation of the guarantees of Article 5 § 1 (c) of the Convention, an artificial ground had been created to justify his detention, that is resisting a public official, which had never happened. Furthermore, there were not sufficient grounds justifying his detention: he was known to be of good character, had a permanent place of residence, did not try to hide from the investigation or refuse to appear before the investigating authority. No real evidence of any attempt to obstruct the proceedings had been presented. If he were to remain at large, he could not engage in similar activities, given the state of emergency declared in the country.

51. On 21 March 2008 the Criminal Court of Appeal dismissed the appeal, finding that the applicant's detention was based on a reasonable suspicion and the grounds relied on by the District Court in justification of detention were sufficient.

52. On 28 March 2008 confrontations were held between the applicant and police officers E.R., H.S. and A.P. who reiterated their earlier statements (see paragraphs 39 and 40 above). The applicant refused to have a confrontation with police officer A.A., alleging that E.R., H.S. and A.A. were not the police officers who had apprehended him.

53. On 25 April and 26 June 2008 the Kentron and Nork-Marash District Court of Yerevan extended the applicant's detention, each time by two months, finding that it was still necessary to carry out a number of investigative measures and that, if he remained at large, the applicant could abscond, obstruct the proceedings, commit another offence and evade criminal responsibility. The applicant's request for bail was refused.

54. In the meantime, on 2 May 2008, the applicant's lawyer wrote to the Chief of Kentron Police Station, enquiring about the circumstances in which the applicant had sustained his injuries; whether they had been inflicted at the police station or prior to his arrival there and, if it was the latter, whether any record had been made in the police registers.

55. On 3 June 2008 the applicant applied to the General Prosecutor requesting that criminal proceedings be instituted and an investigation be carried out into the fact of his ill-treatment. He submitted that the circumstances of his arrest involved an offence against him since he had been beaten and tortured. No assessment, however, had been given to that circumstance in the context of the criminal case against him.

56. It appears that no reply was provided to the lawyer's above-mentioned enquiry and no decision taken on the applicant's above-mentioned application.

57. On 18 June 2008 seven members of the Armenian parliament filed a request with the General Prosecutor, seeking to have the applicant's detention replaced with another preventive measure, namely their personal guarantee. They submitted at the outset that the detention of several hundred persons, including the applicant, following the presidential election was a disproportionate measure and was not based on reasonable suspicions. They further submitted that they personally knew the applicant and guaranteed that, if he remained at large, he would not abscond, obstruct the proceedings, commit another offence or evade his penalty, if any. The outcome of this request is unclear.

58. On 28 June 2008 the applicant lodged an appeal against the extension order of 26 June 2008, arguing that his continued detention was not based on a reasonable suspicion and that he was being persecuted for his political views. The courts provided no evidential or factual basis in support of the charges against him. The case against him was trumped up, with police officers being the only witnesses and with the identities of the allegedly injured police officers not being known, and the courts had extended his detention in order for the investigating authority to have sufficient time to fabricate charges. Moreover, the courts provided abstract and stereotyped reasons when extending his detention.

59. On 15 July 2008 the Criminal Court of Appeal dismissed the applicant's appeal on the same grounds as previously.

3. The applicant's complaint against the police actions of 1 March 2008

60. On 12 June 2008 the applicant lodged a complaint with the Kentron and Nork-Marash District Court of Yerevan under Article 290 of the Code of Criminal Procedure ("CCP"). He sought to have the relevant police order, which served as a basis for the police operation of 1 March 2008, declared unlawful and unfounded and the ensuing police actions declared unlawful. He submitted that he had participated in the demonstrations held from 20 February 2008 onwards. The demonstrations had been held in compliance with the Constitution and Article 11 of the Convention and involved no criminal behaviour. In the morning of 1 March 2008 armed police forces had suddenly invaded Freedom Square and started beating peaceful demonstrators. The police attack had been unjustified and failed to meet the requirements of paragraph 2 of Article 11 of the Convention. The true purpose of the police operation, which was justified as an attempt to restore public order, was to launch political persecution of the supporters of Mr Ter-Petrosyan, including himself, by provoking the demonstrators to engage in clashes, creating artificial charges of resistance to police and punishing them for exercising their right to freedom of assembly and for their political opinion. Thus, the exercise of his right to freedom of expression and freedom of peaceful assembly had been criminalised and he was facing unfounded and trumped-up charges as a result of unlawful police actions. Such interference was unlawful, did not pursue a legitimate aim and was not necessary in a democratic society. The applicant requested that the decisions to institute criminal proceedings and to bring charges against him be quashed and the proceedings be discontinued.

61. On 8 July 2008 the Kentron and Nork-Marash District Court of Yerevan dismissed the complaint, finding that the relevant police order was not a decision or action prescribed by the CCP and therefore could not be contested under Article 290. As regards the applicant's request to quash the decisions in question and to discontinue the criminal proceedings, the District Court found that such requests could be lodged with a court only after they had been raised before a prosecutor, which the applicant had failed to do.

62. On 21 July 2008 the applicant lodged an appeal in which he argued, *inter alia*, that the District Court had incorrectly interpreted Article 290 of the CCP. It had failed to make any assessment of the police actions and its conclusion that the police order did not fall within the scope of criminal procedure law had not been based on the circumstances of the case. The police actions had been unlawful and disproportionate and the force used against peaceful demonstrators had been excessive, while the decision to institute criminal proceedings was artificial by its nature. Thus, the police actions and the decision in question should have been found incompatible with the requirements of the CCP.

63. On 19 August 2008 the Criminal Court of Appeal upheld the decision of the District Court and dismissed the appeal. The Court of Appeal found, relying on Article 290 of the CCP, that the contested police order, the decision to institute criminal proceedings, as well as ordering the investigating authority to discontinue the criminal proceedings, were beyond the scope of judicial control over the investigation. Besides, Article 290 presupposed judicial control over pre-trial proceedings and therefore applied only to the period after a decision to institute such proceedings was taken.

64. On 3 November 2008 the applicant lodged an appeal on points of law.

65. On 21 November 2008 the Court of Cassation refused to examine the appeal on the grounds that it had been lodged out of time and that no proof was attached to the appeal certifying that its copy had been served on the respondent party.

4. The modified charges against the applicant

66. On 28 July 2008 about twenty-five police officers, including police officers A.Arsh. and A.Aru., who had allegedly been assaulted during the events of 1-2 March 2008 and had provided a description of the alleged perpetrators, were invited to Vardashen Remand Prison to identify the applicant. It appears that the applicant refused to take part in the identification parade, stating that that investigative measure had no probative value. As a result, the parade did not take place and instead a photo identification of the applicant was carried out. It further appears that police officer A.Arsh. identified the applicant, from among the photographs shown to him, as the person who had assaulted him at Freedom Square on 1 March 2008 at around 7 a.m. by hitting him twice with a stick. Police officer A.Arsh. stated that he recognised the applicant by the general structure of his face, his wide forehead and his haircut and style. Police officer A.Aru. identified the applicant, through the same procedure, as the person who had assaulted police officer A.Arsh. at Freedom Square on 1 March 2008 at around 7 a.m. with a stick and later assaulted him on Arshakunyats Street. Police officer A.Aru. stated that he recognised the applicant by his facial features, the structure of his forehead and his hair.

67. On 5 August 2008 the investigator decided to drop the charges against the applicant under Article 225.1 § 2, Article 301 and Article 318 § 1 of the CC (see paragraphs 91, 93 and 95 below). The investigator found that the charge under Article 225.1 § 2 of the CC had to be dropped since it had been established by the investigation that the order issued by the police officers to the demonstrators on 1 March 2008 at around 7 a.m. at Freedom Square was not to disperse but to allow them to inspect the area. Thus, the applicant's actions did not contain elements of a crime prescribed by that Article. As regards the charge under Article 301 of the CC, it had to be

dropped on the ground of insufficient evidence since the applicant's involvement in an attempt to seize State power could not be established. As regards the charge under Article 318 § 1 of the CC, it had to be dropped since that Article had been repealed in the meantime.

68. The investigator further decided to supplement the charge under Article 316 § 2 of the CC with new charges under Article 235 § 4 and Article 316 § 1 of the CC (see paragraphs 92 and 94 below). It was stated that the applicant, having regularly participated in the unauthorised demonstrations held following the presidential election, had been present at Freedom Square on 1 March 2008 at around 7 a.m., when some of the demonstrators, using makeshift clubs, rods and other dangerous objects, had assaulted the police officers after the latter had demanded to be allowed to verify the information concerning the possession of arms and ammunition by the demonstrators. The applicant had refused to comply with the lawful orders of the police officers, assaulted police officer A.Arsh., twice hitting him on the head with a stick and causing light damage to his health, after which he had disappeared in the crowd. Police officer A.Aru. had witnessed the act committed by the applicant but failed to bring him in. Thereafter, police officer A.Aru. had continued to perform his duties near the Yerevan Press Building situated on Arshakunyats Street, where he had once again noticed the applicant. He had tried to bring the applicant in but the applicant had resisted, pushed, pulled and kicked police officer A.Aru., thereby assaulting him in a way which did not pose a threat to his health, and tried to escape in a random taxi. Police officers E.R., H.S. and A.A., who were on duty in the same area, had witnessed all this and brought the applicant in to Kentron Police Station, at which time a weapon, namely a knife, was found in his possession.

69. On the same date the investigator invited the applicant for questioning and a confrontation with police officer A.Arsh. The applicant refused to testify or to take part in the confrontation, stating that he did not trust the investigator and the investigative measures in question. His lawyer further stated that a confrontation with a police officer so many months after the event did not appear credible and was simply another attempt to create evidence against the applicant.

70. On 6 August 2008 the applicant's case was disjoined from criminal case no. 62202608 into a separate criminal case, no. 62215008.

71. On the same date the knife in question was examined by the investigator and its description was recorded.

72. On 13 August 2008 the General Prosecutor approved the bill of indictment under Articles 235 § 4 and 316 §§ 1 and 2 of the CC. It contained an identical statement of facts to that in the charge against the applicant (see paragraph 68 above) and relied on the following evidence:

(a) the statements of police officers A.Arsh. and A.Aru. made in their capacity as victims (see paragraphs 19 and 20 above);

(b) the records of the applicant's photo identification by police officers A.Arsh. and A.Aru. (see paragraph 66 above);

(c) the statements of police officers H.S., E.R., A.A., A.P. and M.G. made in their capacity as witnesses (see paragraphs 39 and 40 above);

(d) the submissions of the police officers made during the confrontations with the applicant (see paragraph 52 above);

(e) two expert conclusions: one regarding the injury sustained by police officer A.Arsh. and the other classifying the knife in question as a "bladed weapon"; as well as the record of inspection of the knife (see paragraphs 18, 31 and 71 above);

(f) the letter of 27 March 2008 of the Deputy Chief of the Armenian Police (see paragraph 22 above);

(g) the records of inspection of the scene and the relevant expert conclusions (see paragraph 14 above).

73. It was lastly stated in the indictment that injuries had been discovered on the applicant, which did not qualify even as light injuries and which had been caused during the clash between the police officers and "the persons assaulting them". It was stated that the investigation in that respect was still pending.

5. The court proceedings

74. On 13 August 2008 the applicant's case was sent to the Yerevan Criminal Court for trial. In the course of the proceedings, the Criminal Court summoned and heard police officers A.Arsh., A.Aru., H.S., E.R., A.A., A.P. and M.G.

75. Police officer A.Arsh. submitted that on 1 March 2008, when the police asked the demonstrators gathered at Freedom Square to allow them to carry out an inspection for weapons, the demonstrators had reacted violently. They had tried to calm them down but the applicant had attacked him and hit him twice on the head with a stick, after which he had fled.

76. Police officer A.Aru. submitted that he had seen one of the demonstrators, namely the applicant, attack police officer A.Arsh. and hit him on the head with a stick. He had thereafter continued to perform his duty in the area of Arshakunyats Street, where he had noticed the applicant. He had asked the applicant to go with him to a police station, but the applicant had hit him several times on the chest, kicked his shield and fled.

77. Police officer H.S. submitted that in the morning of 1 March 2008 the applicant had assaulted police officers on Arshakunyats Street near the Yerevan Press Building, by hitting and pulling them. He and police officers E.R. and A.A. had brought the applicant in in a patrol car, and a knife, mobile telephones and a bunch of keys had fallen from his pockets.

78. Police officer E.R. submitted that, when performing his duty on Arshakunyats street in the morning of 1 March 2008, he had seen an individual punching and kicking police officers. That person had tried to

flee but he and police officers H.S. and A.A. had brought him in, whereupon he had been identified as the applicant. A knife, a mobile telephone and a bunch of keys had been found in his possession.

79. Police officer A.A. made similar submissions but stated that two mobile telephones had fallen from the applicant's pockets. He also specified that this had happened at 7.30 a.m.

80. Police officers A.P. and M.G. reiterated their earlier statements (see paragraph 40 above).

81. The applicant denied his guilt and submitted, *inter alia*, that, even if he had participated in the demonstrations held from 20 February 2008, he had done nothing illegal. He and his co-thinkers who were at Freedom Square on 1 March 2008 had found out about the forthcoming arrival of the police several hours in advance. After the police had arrived, he had not hit anyone and had tried to escape. Having reached Arshakunyats Street, he had been brutally beaten by police officers and transported to Kentron Police Station where he had also been beaten. He had never carried a knife, therefore, no such object had ever been found in his possession. The applicant further contested the allegation that he had assaulted police officers A.Arsh. and A.Aru. He claimed that this could not have happened at around 7.15 a.m. and 7.30 a.m. as alleged by the prosecution, because the police operation had happened at around 6 a.m. as opposed to 7 a.m.. At 6.30 a.m. he had been at the police station already and by 6.45 a.m. there had been nobody at Freedom Square apart from the police. Besides, according to the relevant medical expert conclusion, police officer A.Arsh. had sustained his injury at some point between 1 and 3 March 2008. This cast doubts on the claim that the injury in question had been sustained specifically on the morning of 1 March 2008, especially in view of the fact that police officer A.Arsh. had participated in clashes on both 1 and 2 March 2008.

82. To clarify the above circumstances, the applicant lodged requests with the court, seeking to have a number of persons called and examined as witnesses, including A.M., D.A., M.A., V.H., H.B., N.T., S.M., S.A. and H.T. He argued that the testimony of A.M., D.A., M.A., V.H. and H.B., who were also active demonstrators, would support his allegation that the actions of the police had been unlawful from the very outset, that on 1 March 2008 at around 6 a.m. he and they had been attacked by the police and other forces without prior warning and had been forcibly brought in, and that at 7 a.m. he had already been at the police station and could therefore not have been at Freedom Square. These demonstrators had similarly been brought to Kentron Police Station at around 6.30-7.00 a.m. and they were also able to confirm that he had continued to be ill-treated there upon his arrival. The applicant further argued that N.T. and S.M., who were also opposition activists, had been by his side at Freedom Square when the demonstrators had been attacked by the police and their testimony would clarify a number

of circumstances related to the charge against him, including his allegation that as early as at 6.45 a.m. there had been nobody at Freedom Square apart from the police, and that the imputed offence could not have happened in the alleged circumstances. The applicant lastly argued that testimony from S.A. and H.T., who were high-ranking police officials and had apparently given orders for the police operation, was important in order to assess the police actions of the morning of 1 March 2008. The prosecuting authority had failed to investigate the lawfulness of the police actions, including the excessive force used by the police that morning. However, only if these circumstances were investigated would it be possible to assess the charge against him. In this connection, it was also necessary to call and examine other PGS officers who had taken part in the police operation of the morning of 1 March 2008. They would also be able to clarify whether police officer A.Arsh., whose involvement in that operation was debatable, had actually participated in it.

83. The Yerevan Criminal Court decided to dismiss the applicant's requests. It found that N.T. had already been questioned by the investigator during the investigation and it was sufficient to read out his statement in court. S.M., who was separately also standing trial, had in general refused to give testimony during the investigation. As regards V.H., D.A. and M.A., the argument that they were able to confirm the fact that at 6.30 a.m. the applicant had already been at the police station, was not a sufficient reason to call and examine them in court. Lastly, as regards S.A., H.T. and the unnamed PGS officers, it had been explained to the defence that the police actions could be contested before the courts through a different procedure. In such circumstances, the necessity of calling and examining those police officers was not well-founded.

84. On 23 October 2008 the Yerevan Criminal Court found the applicant guilty under Article 235 § 4 and Article 316 §§ 1 and 2 of the CC. The court sentenced him under Article 235 § 4 to a fine in the amount of 400,000 Armenian drams (AMD), under Article 316 § 1 to a fine in the amount of AMD 500,000 and under Article 316 § 2 to five years' imprisonment. In doing so, the Criminal Court found it to be established that:

> "In the period preceding 1 March 2008 intelligence information was received by the Armenian Police and the National Security Service that the demonstrators gathered at Yerevan's Freedom Square had in their possession firearms, ammunition, clubs, rods and other objects for the purpose of causing physical injuries and violence. On 1 March 2008 at around 7 a.m. police officers demanded the persons gathered at Yerevan's Freedom Square to allow them to verify the above information by inspecting the area. The mentioned lawful demand of the police was announced out loud several times. Some of the people gathered at Freedom Square, including [the applicant], had already been informed several hours in advance about the planned police operation. The police officers of the Patrol Guard Service brigade of the Armenian Police, with the aim of preserving public order in that area, approached Freedom Square where [the applicant], in front of the statue of Hovhannes Tumanyan,

hit the victim, [police officer A.Arsh.], twice on the head with a stick, causing light damage to his health accompanied by a brief deterioration of health, after which he disappeared in the crowd. [Police officer A.Aru., the second victim,] saw the act committed by [the applicant]. [Police officer A.Aru.] continued his duty in the area near the [Yerevan Press Building] situated at Arshakunyats Street, where he once again noticed [the applicant] and tried to bring him in. [The applicant], disobeying [police officer A.Aru.'s] lawful order to appear at the police station, assaulted [him] in a non-health-threatening way by pushing, pulling and kicking [him], and tried to escape in a random taxi. [Police officers A.A., E.R. and H.S.], who were on duty at that time in the same area, noticed the incident and brought [the applicant] in to Kentron Police Station, during which a bladed weapon – a knife – fell from [the applicant's] pocket, as well as two mobile telephones and a bunch of keys.

On 1 March 2008 at 9 p.m. [the applicant] was arrested and on 4 March 2008 he was detained."

85. In establishing the above findings, the Yerevan Criminal Court relied on the same evidence on which the indictment was based, plus the statements of the police officers made in court (see paragraphs 72 and 75-80 above). It found the applicant's submissions to be unreliable and an attempt to avoid criminal responsibility.

86. On 10 November 2008 the applicant lodged an appeal in which he argued, *inter alia*, that the charge against him was trumped-up and politically motivated; that he had been ill-treated both at the time of his apprehension and at the police station and that no investigation had been carried out into his allegations of ill-treatment; that the interference with his freedom of peaceful assembly had been unlawful, unjustified and accompanied with use of excessive force by the police; that the only witnesses in the case were police officers who, being interested in the outcome of the case because of the brutal and unlawful force used against the demonstrators, including his ill-treatment, were not impartial and trustworthy witnesses and had made contradictory statements which were then coordinated towards the end of the investigation and which constituted the sole basis for his conviction; and that the principle of equality of arms had not been respected since his request to call and examine witnesses on his behalf had been groundlessly dismissed. Thus, the entire case was based on police testimony, while he was not allowed to defend himself effectively and to summon any impartial witnesses, including those who were by his side on the morning of 1 March 2008. The applicant contested the reliability of the evidence provided by police officers H.S., E.R. and A.A., pointing, *inter alia*, to the fact that their statements made in court differed, while those made during the investigation had been identical in wording. Moreover, it appeared from their statements that they had been arresting different demonstrators from different locations, all at the same time, which cast doubt on the veracity of their statements. As regards the statements of police officers A.Arsh. and A.Aru., they concerned events which had taken place in a chaotic situation early in the morning when it was still dark,

which cast doubt on the reliability of that evidence. The police officers had effectively refused to answer any questions in court, limiting their answers to either "I do not remember" or "I do not know". The trial court had failed to make any assessment of the police actions at Freedom Square, including their lawfulness and proportionality, without which the charge against him could not receive a fair determination. What had happened in reality was that the police officers had initiated an unlawful clash with the demonstrators and then rounded up all the activists, many of whom had also been subjected to ill-treatment. The alleged inspection of the scene had been simply a pretext to conceal the police officers' real intention, which had been to disperse the peaceful demonstration. The applicant alleged that he had been known to the authorities and was persecuted for being a supporter of Mr Ter-Petrosyan and because of a critical speech he had made on the first day of the demonstrations. He had initially been charged with resisting unidentified police officers, until about five months later when a new charge had emerged of him assaulting another police officer in a different location, namely at Freedom Square. Moreover, there were multiple contradictions regarding the time of his apprehension, which in later police statements was alleged to have happened at around 7.30-8 a.m. This was, however, an attempt by the prosecution to link him to the assault on police officer A.Arsh. which, according to the final official version, had taken place at around 7.15 a.m. However, it was a well-established fact that the police operation of 1 March 2008 had taken place at around 6 a.m. and, moreover, according to the relevant record, at around 6.30 a.m. he had already been at Kentron Police Station. The applicant also argued that, if he was suspected of assaulting police officer A.Arsh. on 1 March 2008, he should have been presented for identification as early as on 2 March 2008. Instead, photo identification was performed only about five months later. The evidence regarding the knife was not credible and he had never even been questioned in that connection. The applicant relied on, *inter alia*, Articles 3, 5, 6, 10 and 11 of the Convention.

87. On 10 December 2008 the Criminal Court of Appeal examined the applicant's appeal through an expedited procedure and decided on the same day to dismiss it, relying on the same evidence as the Yerevan Criminal Court. In doing so, the Court of Appeal dismissed the applicant's argument that his conviction was based solely on the statements of police officers who were not impartial witnesses, finding that the fact that the victims and witnesses in the case were police officers did not diminish the probative value of their statements and it was unacceptable to view this as a predetermining or prejudicial circumstance. Furthermore, the criminal case was based also on a number of expert conclusions, the records of inspection of the scene and the records of the applicant's photo identification. As regards the applicant's claim that his allegations of ill-treatment had not been investigated, the Court of Appeal stated that, according to a decision of

the investigating authority, it was still necessary to carry out a comprehensive investigation – within the scope of criminal case no. 62202608 – into the circumstances under which injuries had been sustained by persons, including the applicant, who had participated in the mass disorder of 1-2 March 2008. Since the investigation into the applicant's criminal case had been completed, his case was disjoined from criminal case no. 62202608, while the latter was still pending.

88. On 27 January 2009 the applicant lodged an appeal on points of law, raising similar arguments to those in his appeal of 10 November 2008 and relying on, *inter alia*, Articles 3, 5, 6, 10 and 11 of the Convention.

89. On 10 March 2009 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

90. At the end of November 2010 the applicant was released from prison after having served more than half of his sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code (2003)

1. Provisions related to the charges against the applicant

91. Article 225.1 § 2 provides that inciting disobedience (*չենթարկվելուն ուղղված կոչերը*) to an order to terminate a public event held in violation of the procedure prescribed by law is punishable by a fine of between 300 and 500 times the minimum wage or detention of up to three months.

92. Article 235 § 4 provides that illegal carrying of a gas, bladed or missile weapon is punishable by a fine of between 200 and 600 times the minimum wage or detention of between one and three months or imprisonment for a period not exceeding two years.

93. Article 301 provides that making public calls for a violent overthrow of the government and a violent change of the constitutional order of Armenia is punishable by a fine of between 300 and 500 times the minimum wage or by detention of between two and three months or by imprisonment for a period not exceeding three years.

94. Article 316 § 1 provides that non-life-threatening or non-health-threatening assault or threat of such assault on a public official or his or her next-of-kin, connected with the performance of his or her official duties, is punishable by a fine of between 300 and 500 times the minimum wage or detention of up to one month or imprisonment for a period not exceeding five years. Article 316 § 2 provides that a life-threatening or a health-threatening assault on persons mentioned in the first paragraph of this Article, connected with the performance of their duties, is punishable by imprisonment for a period from five to ten years.

95. Article 318 § 1 provides that publicly insulting a public official, in connection with the performance of his duties, is punishable by a fine of between 100 and 500 times the minimum wage or detention of up to one month.

2. Other relevant provisions

96. Article 225 § 3 prescribes a penalty for organising mass disorder involving violence, massacre (*ջարդեր*), arson, destruction of or damage to property, or armed resistance to public officials and murder.

97. Article 225.1 § 1 prescribes a penalty for organising and holding a public event in violation of the procedure prescribed by law.

98. Article 235 §§ 1 and 2 prescribes a penalty for illegal acquisition, sale, possession, trafficking or carrying of arms and ammunition by a group of people acting in collusion.

B. Code of Criminal Procedure (1999)

1. Ill-treatment and investigation

99. For a summary of the relevant provisions concerning ill-treatment and investigation see *Zalyan and Others v. Armenia* (nos. 36894/04 and 3521/07, §§ 148-154, 17 March 2016).

2. Deprivation of liberty

(a) Arrest

100. Article 34 § 1 provides that a body of inquiry, an investigator and a prosecutor may arrest and question a person suspected of having committed an offence, as well as impose measures of compulsion and bring charges against such a person, on the grounds and in accordance with the procedure prescribed by the Code.

101. Article 62 § 1, entitled "Suspect", provides that a suspect is the person (a) who has been arrested upon a suspicion of having committed an offence; or (b) in whose respect, prior to bringing a charge, a decision has been adopted to impose a preventive measure.

102. Article 63 enumerates the whole range of rights enjoyed by a suspect, including the right to be informed about the reasons for his arrest and his rights as a suspect, to have a lawyer and to be questioned in his or her presence, to remain silent and to inform his next-of-kin – immediately and, in any event, not later than 12 hours after being taken into custody – of the place where he is held in custody and the grounds for his custody.

103. Article 128, entitled "The Notion of Arrest", provides that arrest (*ձերբակալումը*) is the taking of a person into custody, bringing him before the body of inquiry or the authority conducting the criminal

proceedings, drawing up the relevant record and informing that person about it, for the purpose of preventing him or her from committing an offence or from fleeing after having committed an offence and with the aim of keeping that person in short-term custody in places and conditions defined by law. A person may be arrested (1) on an immediate suspicion of having committed an offence; or (2) on the basis of an arrest warrant issued by the prosecuting authority.

104. Article 129 § 1, entitled "Arrest on an Immediate Suspicion of Having Committed an Offence", provides that a person suspected of having committed an offence may be arrested if (a) he was caught while committing a criminal act or immediately thereafter; (b) an eyewitness directly points him out as the perpetrator of a criminal act; (c) obvious traces linking him to a criminal act have been discovered on him, his clothes or other objects used by him, or in his home or vehicle; or (d) there are other grounds to suspect a person, who has made an attempt to flee from the crime scene or from the authority conducting criminal proceedings or who has no permanent residence or resides elsewhere or whose identity is unknown, of having committed an offence. Article 129 § 2 provides that an arrest on immediate suspicion of having committed an offence may not exceed 72 hours from the moment of taking into custody.

105. Article 130, entitled "Arrest on the Basis of an Arrest Warrant Issued by the Prosecuting Authority", prescribes the possibility of arresting a person on a suspicion of having committed an offence on the basis of an arrest warrant issued by the prosecuting authority.

106. Article 131.1, entitled "The Procedure for a Suspect's Arrest", provides that a record of a suspect's arrest (*կասկածյալին ձերբակալելու մասին արձանագրություն*) must be drawn up within three hours of bringing him before the body of inquiry, the investigator or the prosecutor and a copy must be given to the arrested person upon his signature. The record must indicate the time when it was drawn up (date, hour and minute), the time, place, reason(s) and purpose of the arrest, the article of the CC under which a person is suspected of having committed an offence, the results of his personal search and other circumstances, including any declarations and requests by the arrested person.

107. Article 132 § 1 provides that an arrested person must be released upon a decision of the authority conducting the criminal proceedings if (1) the suspicion of having committed an offence has not been confirmed; (2) there is no need to keep the person in custody; or (3) the maximum time-limit for an arrest prescribed by the CCP has expired and the court has not adopted a decision to detain the accused.

(b) Detention on remand

108. For a summary of the relevant provisions concerning detention on remand see *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 30-37, 20 October 2016).

(c) Other provisions related to deprivation of liberty

109. Article 6, which provides an explanation of various notions used in the CCP, prescribes that "taking into custody" (*արգելանքի վերցնել*) is the act which starts from the moment of a person's *de facto* and forcible deprivation of liberty when being arrested or detained or when enforcing a custodial sentence.

110. Article 153, entitled "Bringing-In" (*բերման ենթարկելը*), provides that bringing a person in is when a suspect, accused, defendant, convicted person, witness or victim, who fails to appear before the investigating authority without valid reasons, is forcibly taken to the body conducting the criminal proceedings in order to carry out procedural measures with his participation as prescribed by the CCP, which may lead to the temporary restriction of rights and freedoms of the brought-in person. "Bringing-in" is carried out upon a reasoned decision of the body of inquiry, the investigator, the prosecutor or the court.

111. Article 180 § 1, entitled "Procedure for examination of crime reports", provides that crime reports, which include reports filed by private persons or legal entities or those published in the media, must be examined and decided upon immediately, while in cases where it is necessary to check whether there are lawful and sufficient grounds to institute a criminal case, within ten days following the receipt of such reports. Article 180 § 2 provides that, within that period, additional documents, statements or other materials may be obtained; the scene of the incident may be inspected; persons may be brought in (*կարող են բերման ենթարկվել*) and subjected to a personal search if there are sufficient grounds for a suspicion that they have committed an offence; samples may be taken for inspection; and examinations may be ordered.

3. Appeals against decisions and actions of the authority conducting the criminal proceedings

112. Article 103 provides that actions and decisions of the authority conducting the criminal proceedings may be appealed against by the participants in the proceedings, in accordance with a procedure prescribed by the Code. Appeal against actions and decisions of an investigator or an officer of a body of inquiry lies to the respective prosecutor, against actions and decisions of a prosecutor to a superior prosecutor, and against actions and decisions of a court to a superior court. In cases prescribed by the Code

an appeal against actions and decisions of the prosecuting authority may be lodged with a court.

113. Article 290 §§ 1, 4 and 5, entitled "Contesting before a court unlawful and unfounded decisions and actions of a body of inquiry, an investigator, a prosecutor or bodies carrying out operative and intelligence measures", unlawful and unfounded decisions and actions of a body of inquiry, an investigator, a prosecutor or bodies carrying out operative and intelligence measures may be contested before a court by the suspect, the accused, the defence lawyer, the victim, the participants in the criminal proceedings and other persons whose rights and lawful interests were violated by those decisions and actions, if their complaints had not been granted by a prosecutor. The complaint shall be examined by a single judge within ten days from its receipt. If the complaint is found to be substantiated, the court shall adopt a decision obliging the body conducting the criminal proceedings to put an end to the violation of a person's rights and freedoms.

4. Other relevant provisions

114. Article 86 provides that a witness is a person, summoned by the party or the authority conducting the criminal proceedings for the purpose of providing testimony, who may be aware of any circumstance investigated within the scope of a criminal case. A witness is obliged to appear upon the summons of the authority conducting the criminal proceedings in order to provide testimony or participate in investigative and other procedural measures.

115. Article 221 provides that a person undergoing identification is presented to the identifier together with at least three other persons of the same sex and as similar as possible in appearance and clothing to the person undergoing identification. If necessary, the identification may be performed using photos of different persons similar in appearance and clothing to the person undergoing identification.

116. Article 331 provides that a party lodging a request seeking to adduce and include in the case file additional evidence must demonstrate the circumstances which such evidence may be necessary to clarify. The court is obliged to examine any such request and to hear the parties' opinions. The court must allow the request if the circumstances which it seeks to clarify may be of importance to the case or the material whose probative value is being contested has been obtained in substantial violation of the law. The court must reason its decision to dismiss the request. The court is entitled to decide to call witnesses, order examinations or request other evidence of its own motion.

C. Assemblies, Rallies, Marches and Demonstrations Act (2004-2011)

117. Section 2 provides that the concept of a public event includes peaceful assemblies, rallies, marches (parades) and demonstrations (including sit-ins). Mass public events are those public events which have a hundred or more participants. Non-mass public events are those public events which have fewer than a hundred participants.

118. Section 7 §§ 1 and 4 provides that everyone has the right to participate in public events. Participants in a public event are not allowed to carry, use or apply weapons, ammunition, explosives, poisonous, inflammable or any other objects or substances which may harm the life, health or property of others.

119. Section 10 §§ 1, 2 and 4 provides that, except for cases when a non-mass public event spontaneously turns into a mass public event, mass public events may be held only after notifying the competent authority in writing. Everyone has the right to hold non-mass public events without notifying the competent authority and without violating public order. The organisers shall submit a written notification of the intention to hold a mass public event to the head of the local authority where the event is to be held or to the Mayor of Yerevan, if the public event is to be held in Yerevan, not later than five working days and not earlier than twenty days before the planned date of the event.

120. Section 12 § 8 provides that, should the competent authority not take a decision banning the mass public event, the organisers shall have the right to hold the mass public event on the terms and conditions set forth in the notification.

121. Section 14 provides that the police are entitled to decide to terminate a public event and to order the organisers to terminate the event, by allowing them a reasonable time-limit to do so, if, *inter alia*, the mass public event is being held without notification, except for the cases in which a non-mass public event spontaneously turns into a mass public event. The organiser, having received the above-mentioned order, is obliged to announce immediately the termination of the event and to take measures aimed at terminating the event within the time-limit fixed by the police. The police are entitled to terminate forcibly a public event only if (a) the order to terminate an event is not immediately announced to the participants by the organiser; or (b) the order to terminate the public event has not been complied with within the fixed time-limit and its continuation poses a real threat to the life and health of others, State and public security, public order or public or private property. The police, before forcibly terminating an event, are obliged to inform the participants at least twice over a loudspeaker about the order to terminate the public event and to fix a reasonable time-limit for its termination. If the public event is not terminated within such a time-limit, the police are entitled to terminate the

event forcibly, using lawful means. This procedure shall not be applied if an outbreak of mass disorder takes place in the location where the public event is held, requiring implementation of urgent measures.

D. Police Act (2001)

122. Section 29 provides that a police officer may use physical force, special means (*հատուկ միջոցներ*) and firearms as an exceptional measure in cases and according to a procedure prescribed by the Act. A police officer is obliged to report to his superior within the shortest possible time about the injuries sustained by a person as a result of the use of force. The police authority is obliged to inform the close relatives of the victim and the prosecutor about the incident within a short time-limit.

E. Decision of the Court of Cassation of 18 December 2009 (case no. EADD/0085/06/09)

123. On 18 December 2009 the Court of Cassation adopted a decision in an unrelated criminal case, examining questions concerning initial deprivation of liberty under the CCP. The Court of Cassation firstly pointed out that there were two procedures for depriving a person of his liberty on suspicion of having committed an offence, namely "arrest" (Articles 128-133 of the CCP) and "detention" (Articles 137-142 of the CCP). Nevertheless, taking into account the peculiarities of the arrest procedure, the procedure for depriving a person of his liberty on a reasonable suspicion of having committed an offence might include an initial stage of certain duration, during which a person might have no procedural status, due to the lack of certainty in the rules of criminal procedure. In particular, it followed from the wording of Article 128 of the CCP that the arrest procedure consisted of four consecutive actions: (a) the *de facto* deprivation of a person's liberty; (b) bringing him before the competent authority; (c) drawing up a record of his arrest; and (d) informing him about that record. Hence, a person could obtain the status of an "arrestee" only after the completion of the fourth and final action, namely after he was informed about the record of his arrest before the prosecuting authority. Prior to that moment, a person, while being *de facto* taken into custody and brought before the prosecuting authority, could not have the status of an "arrestee", even if brought before the relevant authority on a reasonable suspicion of his having committed an offence. If the relevant authority continued and completed the arrest procedure in respect of a person brought before it, then the start of the arrest period would be calculated from the moment that person had been taken into custody, albeit retroactively. Hence, a person taken into custody and brought before the relevant authority, prior to being informed about the record of his arrest,

could not be aware with sufficient certainty about his status. Moreover, while the record was not drawn up, he could be released without even obtaining the status of an "arrestee". The Court of Cassation therefore concluded that the procedures for depriving a person of liberty on a suspicion of having committed an offence were not limited to "arrest" and "detention" but also included the procedure of taking into custody and bringing before the relevant authority. Consequently, a person deprived of his liberty, along with the status of an "arrestee" and a "detainee", could also have an initial legal status which could be conditionally called the status of a "brought-in person". The fact that "bringing-in" was given, by the legislature, relative independence as a procedure was evidenced by Article 180 § 2 of the CCP which included, among the actions allowed, the possibility "to bring persons in on a suspicion of having committed an offence". The Court of Cassation went on to say that persons in such situations should enjoy the rights guaranteed by the Constitution and the Convention, including knowing the reasons for their deprivation of liberty, having access to a lawyer and maintaining silence.

F. Ad-Hoc Public Report of Armenia's Human Rights Defender (Ombudsman): On the 2008 February 19 Presidential Election and the Post-Electoral Developments

124. The Armenian Ombudsman carried out a comprehensive and in-depth analysis of the post-election events in Armenia. The relevant extracts from the Report provide as follows:

> "**3.2.1 The Freedom Square Operation (6.40 a.m. on 1 March 2008)**
>
> The 1 March events started with the forcible termination of the peaceful sit-in at Freedom Square. At 6.40 a.m., police officers wearing anti-riot gear and carrying shields and batons attacked the demonstrators who were at Freedom Square. ...
>
> **A. Lawfulness of the Demonstration (from 20 February to 1 March at Freedom Square)**
>
> ...From a formal point of view, the demonstration that lasted from 21 February to 1 March did not comply with the requirements of law, because the Mayor of Yerevan had neither been notified nor taken note of a demonstration to be held. At the same time thousands of persons spontaneously went to Freedom Square at varying hours to protest against the manner in which the election had been conducted and its official results, a matter that affects the interests of all Armenians and their collective right to form a government through expression of their free will. It is explicitly stated in the OSCE/ODIHR report: *"From 21 February to early morning on 1 March protesters held a peaceful, though not formally [authorised], assembly (and tent camp) in Freedom Square in Yerevan and conducted numerous peaceful processions. Speakers at the assembly announced that their aim was to annul and repeat the election. Until 1 March, the authorities overall tolerated the protests."*

The official results of the election were not received with unequivocal trust of the population... The movement led by [Mr Ter-Petrosyan] organised a protest campaign against vote fraud and violence, demanding a fair recount. From 20 February to 1 March 2008 a sizeable proportion of Armenia's population gathered at Freedom Square to peacefully protest against the conduct of the election and its official results... [President Robert Kocharyan] declared at one of his press conferences: *"The unauthorised demonstrations were not terminated by the police for nine consecutive days only for one reason: I prohibited them to do so. The reason was the post-election recount and the appeal process. I believed that a dispersal of demonstrations would be perceived as an attempt by the authorities to undermine the recount or the appeal process."*

B. Lawfulness of the 1 March Operation from the Perspective of Criminal Procedure

... the 1 March intervention was justified with the argument that on 29 February the police and the National Security Service had received intelligence information according to which arms were building up at Freedom Square. In order to render the situation harmless, in the morning of 1 March the police undertook an operation intended to seize those socially-dangerous materials.

The campaign headquarters of [Mr Ter-Petrosyan] and the opposition Heritage Party ... both insist that the objective of the measures of the morning of 1 March was, under the disguise of an inspection of the area, to terminate by force the peaceful demonstrations that had been ongoing for ten days, to remove the persons participating in the sit-in and to ban further demonstrations at Freedom Square.

A comprehensive and complete investigation will ultimately show which of these hypotheses is true. However, a number of issues may be raised at this point already:

- There are certain contradictions in the statements released by the Prosecutor General's Office. For instance, it was mentioned in the request lodged by the Prosecutor General on 4 March seeking approval to bring charges against four Members of Parliament and to remand them in custody: "the objective of the police was to carry out an operation aimed at seizing arms, which deteriorated into a clash", while something else was mentioned in the press release issued by the Prosecutor General's Office on 1 March: "the objective of the police was to terminate forcibly the assembly at around 6 a.m. on 1 March". Which is the truth?

...

- According to the official account of events, the attempt of the police officers performing their official duties to inspect the area was met by an aggressive attack by the participants of the sit-in. In view of such developments, an operative on-the-spot decision was made to take appropriate measures as prescribed by law. A logical question arises: how did it happen that at around 6.30 a.m., in a matter of just minutes, the police was able to mobilise numerous units, wearing anti-riot gear and carrying shields and batons, who attacked the demonstrators, if the only objective was to perform an inspection of the area?

- Given the highly politicised nature of the situation, one would expect the law-enforcement officers to videotape the operation, in particular, its launch, especially taking into account that they were accompanied by cameramen who later videotaped the arms seized. Therefore, the launch of the operation, as videotaped by them, must be rigorously analysed. There are concerns in this connection over the confiscation of the videotapes of [two media outlets] and the smashing of the ... camcorder [of a third media outlet], all of which were videotaping in that area in the

morning of 1 March. Moreover, freelance photographer of *Aravot* daily ... was beaten and the photos he had taken were taken away. What was the police hiding? If everything was done in accordance with the law, the police should have been the most interested in everything being videotaped and [shown in the media]..

...

- In the morning of 1 March, and later on the same day in the vicinity of the French Embassy, no shots were fired during the first half of the day. No firearms were used by the demonstrators. According to the 1 March press release of the Prosecutor General's Office..., grenades were found at Freedom Square in the morning, which raises a question: why were they not used? If the fleeing demonstrators indeed left pistols behind, as presented by public television channel, then how did it happen that during their dispersal, which included use of force and resistance, not a single shot was fired? Moreover, on the same day, in the vicinity of the French Embassy, the demonstrators were collecting stones and similar objects in order to "arm" themselves.

- On 29 February [the President of Armenia, Robert Kocharyan] stated ... that among available solutions was the "cleaning of the Square" by the police. ...In [Armenia] the police and the National Security Service are under the *de facto* control of [the President]. Moreover, the government-controlled media asserted for several days that it was necessary to clean Opera Square...

C. The Police Powers and the Proportionality of Police Actions

Any investigative or operative-intelligence measure of the police, as well as any force used to terminate forcibly a demonstration, must be necessary and proportionate to the imminent threat.

- According to mass media reports, the operation at Freedom Square started after [Mr Ter-Petrosyan] had finished his appeal to the demonstrators gathered at the square not to revolt, to remain calm and to see what the police wanted. Without any prior warning, the police officers started pouring water over the demonstrators, hitting them with electric shocks and then with batons. Numerous demonstrators were tortured. ...

- Reportedly, the police officers beat passers-by, including minors.

- [The relevant domestic provisions] require police officers and servicemen of the police troops to provide first aid to injured persons. According to numerous eyewitnesses, scores of injured persons were being arrested and taken to the police, without any first aid, including minors with bleeding wounds. Members of Parliament from the Heritage Party claimed to have personally witnessed similar incidents in front of Kentron Police Station in Yerevan at around 9 a.m. on 1 March.

...All of the above-mentioned alleged abuses by police officers and servicemen of the police troops must be thoroughly investigated by analysing the existing video recordings of the operation and testimony of eyewitnesses and victims. It is noteworthy that, to date, not a single criminal case has been initiated against any police officer, even for excessive use of physical force and of special means.

- There were two police cordons at Freedom Square: one right on the square and the other one along the four adjacent streets. The purpose of those cordons was to keep everyone out so that the demonstration ended...

- Not all the persons gathered at Freedom Square were purported criminals. Among them were many demonstrators; therefore, the police operation directly

resulted in the forcible termination of the demonstration... According to eyewitness accounts, the demonstrators were chased far beyond Freedom Square. Some eyewitnesses claim that at the beginning there was not even a single gap and the demonstrators could not escape the blockade. Such allegations must be investigated with a particular focus on analysing the existing videotapes and eyewitness accounts.

- ...While it is true that every day prior to 1 March the police announced over loudspeakers that the demonstration was unlawful and ordered the demonstrators to end it, no such order was made in the morning of 1 March. No time-limit was given to the demonstrators to end the demonstration [as required by section 14 of the Assemblies, Rallies, Marches and Demonstrations Act]...

- Regarding the events of the early morning of 1 March, it is still unknown what information had been received about the buildup of arms at Freedom Square. ...[All] the events held by [Mr Ter-Petrosyan] from 20 February had been entirely peaceful, which was even confirmed by senior officials of various international organisations..."

III. RELEVANT INTERNATIONAL MATERIALS

A. Council of Europe bodies

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

(a) Resolution 1609 (2008): The functioning of democratic institutions in Armenia, 17 April 2008

125. The relevant extract from the Resolution provides:

"1. On 19 February 2008, a presidential election took place in Armenia. Although the ad hoc committee which observed this election considered that it was "administered mostly in line with Council of Europe standards", it found a number of violations and shortcomings, the most important of which were: unequal campaign conditions for the candidates, the lack of transparency of the election administration and a complaints and appeals process that did not give complainants access to an effective legal remedy. In addition, a number of cases of electoral fraud were witnessed.

2. The Parliamentary Assembly regrets that the violations and shortcomings observed did nothing to restore the currently lacking public confidence in the electoral process and raised questions among a part of the Armenian public with regard to the credibility of the outcome of the election. This lack of public confidence was the basis for the peaceful protests – held without prior official notification – that ensued after the announcement of the preliminary results, and which were tolerated by the authorities for ten days.

3. The Assembly deplores the clashes between the police and the protesters and the escalation of violence on 1 March 2008 which resulted in 10 deaths and about 200 people being injured. The exact circumstances that led to the tragic events of 1 March, as well as the manner in which they were handled by the authorities, including the imposition of a state of emergency in Yerevan from 1 to 20 March 2008 and the alleged excessive use of force by the police, are issues of considerable controversy and should be the subject of a credible independent investigation.

4. The Assembly condemns the arrest and continuing detention of scores of persons, including more than 100 opposition supporters and three members of parliament, some of them on seemingly artificial and politically motivated charges. This constitutes a de facto crackdown on the opposition by the authorities.

...

6. While the outbreak of public resentment culminating in the tragic events of 1 March 2008 may have been unexpected, the Assembly believes that the underlying causes of the crisis are deeply rooted in the failure of the key institutions of the state to perform their functions in full compliance with democratic standards and the principles of the rule of law and the protection of human rights. More specifically

...

6.3. despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process; this explains the low number of election-related complaints filed with them. The same lack of judicial independence is also reflected in the fact that the courts do not appear to question the necessity of keeping people in detention pending trial and generally respond favourably to requests by the prosecutors without properly weighing up the grounds for this, as required by Article 5, paragraph 3, of the European Convention on Human Rights...;

6.4. in the absence of adequate judicial control, the arrest and continuing detention of persons on seemingly artificial charges, after contesting the fairness of the presidential election or their participation in the protest afterwards can only point to the political motivation of such acts. This is unacceptable in a Council of Europe member state and cannot be tolerated by the Assembly;

...

8. In view of the above, the Assembly ... once more urges the Armenian authorities to undertake the following reforms without further delay:

...

8.4 freedom of assembly must be guaranteed in both law and practice, in compliance with Article 11 of the European Convention on Human Rights; ...

8.5 the authorities should step up their efforts to establish a truly independent judiciary and enhance the public's trust in the courts;

8.6 arbitrary arrests and detentions, as well as the ill-treatment of detainees, in particular during police custody, should be stopped. An effective public control mechanism over the police must be guaranteed both in law and practice.

...

12. ...the Assembly considers that, for [an open and constructive dialogue between the political forces in Armenian society] to start and be successful, a number of conditions need to be met as a matter of priority, in order to build confidence vis-à-vis the opposition and provide proof that the ruling majority is seriously committed to pursuing further reforms:

12.1. an independent, transparent and credible inquiry into the events of 1 March and the circumstances that led to them, including the alleged excessive use of force by the police and violence by the protesters, should be carried out immediately. The international community should be ready to monitor and assist such an inquiry;

12.2. the persons detained on seemingly artificial and politically motivated charges or who did not personally commit any violent acts or serious offences in connection with them should be released as a matter of urgency...”

(b) Resolution 1620 (2008): Implementation by Armenia of Assembly Resolution 1609 (2008), 25 June 2008

126. The relevant extracts from the Resolution provide:

“4. As regards compliance by the authorities with the demands set out in its Resolution 1609, the Assembly ... welcomes the recent developments with regard to the release of persons seemingly detained on artificial and politically motivated charges, who did not personally commit any violent acts or serious offences. However, it considers that progress on this issue is not sufficient to ensure that the requirements of the Assembly are fully met. In addition, the Assembly considers that:

- the cases still under investigation should be closed or promptly brought before the courts to ensure the right to a fair trial within a reasonable time in compliance with the case law of the European Court of Human Rights (the Court);

- the cases under Articles 300 and 225 of the Criminal Code should be dropped unless there is strong evidence that the accused have personally committed acts of violence or ordered, abetted or assisted the committing of such acts;

- a verdict based solely on a single police testimony without corroborating evidence is not acceptable;

- the National Assembly should take into account the negative opinion of the Venice Commission on the proposed amendments to Articles 225, 225.1, 301 and 301.1 of the Criminal Code.

...

5. The detention and conviction of opposition supporters in relation to the events of 1 March 2008 is a point of contention that will continue to strain the relations between the opposition and the authorities and could hinder constructive dialogue on the reforms needed for Armenia. The Assembly urges the Armenian authorities to consider all legal means available to them, including amnesty, pardons and dismissal of charges with respect to all persons detained or sentenced by a court in relation to the events of 1 and 2 March 2008, with the exception of those who have personally committed acts of violence or ordered, abetted or assisted the committing of such acts or those who committed other serious criminal offences, as an expression of goodwill in order to foster confidence in Armenian society and dialogue between all political forces.”

(c) Resolution 1643 (2009): The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008), 27 January 2009

127. The relevant extracts from the Resolution provide:

“4. The Assembly regrets that, until the last moment, only limited progress was made by the Armenian authorities with regard to its earlier demands, as expressed in Resolutions 1609 (2008) and 1620 (2008), concerning the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008. It notes in particular that, contrary to Assembly demands:

4.1. a significant number of prosecution cases and convictions was based solely on police testimony, without substantial corroborating evidence;

4.2. a very limited number of charges under Articles 225 and 300 of the Criminal Code of Armenia has been dropped.

5. The Assembly notes that doubts have been voiced, including by the Council of Europe Commissioner for Human Rights, regarding the nature of the charges brought under Articles 225 and 300 of the Criminal Code, as well as with regard to the legal proceedings against those convicted in relation to the events of 1 and 2 March 2008. The Assembly therefore considers that, under such conditions, the charges against a significant number of persons, especially those charged under Articles 225, paragraph 3, and 300 of the Criminal Code and those based solely on police evidence, could have been politically motivated. The Assembly is seriously concerned about the implications of this situation if left unaddressed.

...

11. ...[The] Assembly remains dissatisfied with, and seriously concerned by, the situation of persons deprived of their liberty in relation to the events of 1 and 2 March 2008 and who may have been charged and imprisoned for political reasons. ..."

2. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Report to the Armenian Government on the visit to Armenia carried out by the CPT from 15 to 17 March 2008, CPT/Inf(2010)7

128. The relevant extracts from the Report provide:

"On the basis of [a full list of the persons detained in connection with the events of 1 March 2008] provided by the Armenian authorities ..., the delegation carried out individual interviews with most of the persons remanded in custody on charges related to the post-election events, who were being held at Nubarashen, Vardashen and Yerevan-Kentron prisons (some 70 people). It also interviewed several persons detained at the Temporary holding facility of the National Security Service and the Holding Centre of Yerevan City Police Station. ...

Practically all the persons who had been detained by law enforcement officers on 1 March 2008 alleged that they had been physically ill-treated at the time of their apprehension, even though they apparently had not offered resistance. The ill-treatment alleged consisted in the main of truncheon blows, kicks and punches to the body and head, and being pushed to the ground and dragged into a police vehicle. In some cases, the beating had apparently continued during transportation to police establishments and upon arrival there. According to several of the persons alleging ill-treatment, some of the law enforcement officials involved were wearing masks and did not have any form of identification on their clothing.

Further, the delegation received a few allegations of physical ill-treatment at the time of questioning by the police. The ill-treatment was described to have consisted essentially of slaps, punches, kicks and truncheon blows, and was apparently inflicted with the purpose of obtaining confessions (in particular, from persons suspected of having committed violence against law enforcement officials during the clashes on 1 March 2008) or information implicating other persons. ...

Certain of the persons who made allegations of ill-treatment were found on examination by a medical member of the delegation to display physical marks or conditions consistent with their allegations. The medical documentation consulted at the penitentiary establishments visited also contained descriptions of various injuries

observed by prison doctors during the initial examination of a number of persons admitted in the two weeks preceding the delegation's visit."

3. Council of Europe Commissioner for Human Rights

(a) Report by the Commissioner on his Special Mission to Armenia on 12-15 March 2008, CommDH(2008)11REV, 20 March 2008

129. The relevant extracts from the Report provide:

"The decision to visit Armenia was taken in light of the events which unfolded after the Presidential elections on 19 February. After nine days of peaceful demonstrations on the Opera square, the national police and security forces tried to disperse the protesters on 1 March. Clashes occurred between the police and security forces and the demonstrators in front of Myasnikyan's monument and the French Embassy, which resulted in the death of eight persons. That same night, the President declared State of Emergency in the capital Yerevan.

...

On 20 February, Mr. [Ter-Petrosyan] called on his supporter[s] to begin a peaceful demonstration in the centre of Yerevan. The protest manifestation started on 21 February in the Opera square...

On 1 March, the police decided to carry out a search operation among the demonstrators assembled on the Opera square. The Head of Police explained to the Commissioner that the police had received information that the demonstrators were arming themselves with weapons and ammunition, an allegation that is refuted by the demonstrators themselves. According to the Head of Police, the initial intent was also to move them to another location in the city in order to avoid problems of public transport and sanitation in the city.

The search operation reportedly started early Saturday morning at approximately 6.30, according to several interlocutors. During this operation tents were taken down and people were beaten and injured. Demonstrators started resisting and clashes broke out between the police and security forces and the demonstrators.

According to the both parties, a tentative agreement seems to have been reached later that same morning to relocate the demonstration and allow it to continue, either in front of the Myasnikyan's monument or close to the main train station. However, this agreement appears never to have been properly communicated to the demonstrators by their leaders, notably Mr. [Ter-Petrosyan], who at that stage was prevented from leaving his residence.

The demonstrators started to move in the direction of the French and Russian Embassies, apparently thinking that they might be safe to demonstrate there. In the adjacent small streets, heavy clashes broke out and eight people were killed. ...

Clashes between the police and security forces and agitated protesters seem to have occurred on at least three occasions during the course of 1 March. The Commissioner was shown several different pictures and videos from the events. From these it seems clear that excessive use of force was used by police and the security forces. This is also confirmed by the sheer number of injured persons and [passing] civilians, registered in the hospitals as well as found in places of detention, having beating marks, [concussion] and open scars [on] their [skulls]. According to representatives of non-governmental organizations, the official number of injured civilians may be

underreported, as several of those injured were turned away from hospitals and medical clinics on 1 March.

According to the Head of Police some protesters were armed with wooden sticks, iron sticks and "hedgehogs". He also stated that the protesters used fire arms – which was contested by the representatives of the opposition whom the Commissioner met.

It seems clear that some of the demonstrators did commit violent acts against the police and security forces, such as throwing stones, using improvised wooden or iron sticks to [fend] off the police. Some protesters also burnt cars and buses. The majority of the injured police officers and conscripts had scrape wounds from metal pieces on the lower part of their legs. The sources of these wounds were not clear, whether home made bombs, hand grenades or ammunition used for crowd control purposes by the security forces.

There are conflicting and contradictory versions of what in fact happened and how the situation evolved and eventually got out of hand. It is difficult to get a clear picture of the developments over the day.

The lack of trust in the information relayed by the official sources was compounded by the restrictions imposed on the media during the State of Emergency. This has heavily contributed to many rumours, which in turn has added to the already hostile environment and polarization. ...

On 13 March the Prosecutor General informed that over 95 persons had been arrested for having organized or participated in demonstrations and mass disturbances of public order. ... According to the detainees and defence lawyers, most of the arrested have been charged with disturbing public order, illegal possession of arms, incitement to violent acts, and resisting violently police arrest. ...

The Commissioner visited a number of detainees in Nubarashen Prison, the Temporary holding facility of the National Security Service and the Holding Centre of Yerevan City Police Station. They claimed that the police had used excessive of force in connection with arrest. [It] ... seems to the Commissioner that beating took place in a number of cases at the time of arrest and during transportation of the apprehended to the different precincts. A few of the detainees stated that they had been [subjected] to [abuse] during interrogation. Also national and international monitoring bodies which the Commissioner met reported that ill-treatment by the police had increased. ...

When meeting detainees and also defence lawyers, the Commissioner was informed that there had been delays in the registration of arrests. Access to defence lawyers had in some instances been delayed and family members or relatives had not been informed of the detainee's whereabouts. The Commissioner also received information that persons apprehended had not been promptly informed of the charges against them. ...

The prosecutors have consistently brought the same charges irrespective of the person's actual doing and involvement. A few articles in the Criminal Code are regularly invoked: [Article 225 § 3, Article 316 and Article 300]. ...

The Prosecutors have applied standardized language in the charges against ... [those] arrested. The judges seemed not to have entered into a serious test of the charges, the legality of the apprehension and the proportionality of deprivation of liberty *vis-à-vis* the gravity of the crime. The courts seem to have routinely granted pre-trial detention ... of two months to allow the prosecutor to investigate further and prepare the charges and the criminal case. Members of the Bar association informed the Commissioner

that they had decided to "boycott" proceedings before one judge, who just "rubberstamped" all requests by the Prosecutor."

(b) Summary of Findings by the Commissioner on his Special Mission to Armenia on 13-15 July 2008, CommDH(2008)29, 29 September 2008

130. The relevant extracts of the Summary provide:

"1. The situation with respect to the persons deprived of their liberty in connection with the 1-2 March events continues to be a source of serious concern. There is an urgent need to deploy the requisite political will to achieve a solution

2. The preliminary investigation phase of all criminal cases relating to the events of 1-2 March 2008 has now been completed. Most of the cases have been brought to court, and a large majority of the persons concerned – virtually all of them opposition supporters – have been found guilty and sentenced. ...

3. The Commissioner finds that serious questions persist as to the very nature of the criminal charges brought against the persons apprehended in connection with the events of 1-2 March. In particular, the letter by the Head of the Special Investigation Service issued in early March 2008 to some regional prosecutors, requesting them to collect information on participants in opposition rallies, rather than information on specific acts, raises questions about the nature and the intent of the investigation. ...

Prosecution cases against 19 persons were based solely on police testimony. Many of the Commissioner's interlocutors considered that the principle of equality of arms was not being applied in practice, and the resort to fast trial proceedings in a number of cases – certain of which had lasted less than 30 minutes – gave rise to questions. To date, no law enforcement officials have been charged in connection with the 1 March events.

The Commissioner wishes to underline that it is unacceptable to continue to hold in detention or to convict – even to non-custodial sentences – anyone solely because of their political beliefs or non-violent activities."

(c) Report by the Commissioner following his visit to Armenia from 18 to 21 January 2011: CommDH(2011)12, 9 May 2011

131. The relevant extracts from the Report provide:

"Over a hundred people were arrested in the context of the March 2008 events, virtually all of them opposition supporters, and many of them were subjected to criminal proceedings. As a result of the amendments to the Criminal Code of Armenia and the implementation of the amnesty decision adopted by the National Assembly of Armenia in June 2009, the majority of those deprived of their liberty in connection to the events of March 2008 were released. ... Several detainees and opposition figures were released in November and December 2010 after serving half of their sentence or because they were eligible to be released on parole, [including the applicant]..."

B. Other international bodies

1. European Parliament

132. The relevant extracts of its Resolution on the Situation in Armenia, passed on 13 March 2008, provide:

> "The European Parliament,
>
> ...
>
> E. whereas opposition supporters began peaceful rallies on 20 February 2008 in Yerevan to protest against the election result and demand a rerun, whereas on the evening of 1 March 2008, after eleven days of protest by opposition supporters, violence erupted when police moved into Freedom Square in central Yerevan to disperse the protesters camped out in tents, leaving eight people dead, including one police officer, and dozens injured; whereas a state of emergency was declared on 1 March 2008, which imposed restrictions on the freedom of the media, freedom of assembly and political parties,
>
> ...
>
> G. whereas many people have been arrested and a number of them charged with instigating and participating in mass disorder and attempting to seize power by force;
> ...
>
> 1. Expresses its concern at recent developments in Armenia, with the violent police crackdown on opposition demonstrations, leading to the death of eight citizens, including one police officer, with over a hundred injured, and calls on all parties to show openness and restraint, to tone down their statements and to engage in a constructive and fruitful dialogue aimed at supporting and consolidating the country's democratic institutions;
>
> 2. Calls for a prompt, thorough, transparent, independent and impartial investigation of the events of 1 March 2008, including an independent investigation of the police intervention during the dispersal of the demonstration, and for all those responsible to be brought to justice and punished for misconduct and criminal acts of violence..."

2. Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights

133. The relevant extracts from the Final Report on the Trial Monitoring Project in Armenia (April 2008-June 2009) provide:

> "Results of the ODIHR trial monitoring project ... in the aftermath of the 1-2 March 2008 post-election violence in Yerevan reveal shortcomings in the adjudication of related trials... The project was undertaken to systematically gather information about compliance of the monitored trials with relevant domestic and international fair trial standards, as well as to identify possible shortcomings in the criminal justice system. For this purpose, between April 2008 and July 2009, the project staff monitored 93 criminal cases involving a total of 109 defendants.
>
> Many of the monitored cases revealed shortcomings with regard to a genuine procedural equality between prosecution and defence, contrary to the fair trial guarantees contained in national and international standards. Judges at times tended to treat the parties unequally, displaying openly friendly attitudes towards the prosecution and openly hostile attitudes towards the defence. In numerous trials,

judges did not allow the defence to reasonably present their case and/or confront the prosecution witnesses. ... A related problematic issue encountered in a significant number of cases is the overreliance on incriminating police testimonies, which also casts doubts over the existence of equality of arms in the monitored cases. In several cases, statements of police witnesses were the primary basis for convictions, sometimes despite apparent procedural violations, contradictions and the lack of corroborating evidence. ...

Defence lawyers regularly motioned the courts to summon witnesses, order forensic expertise, and introduce other additional evidence. Courts were generally reluctant to grant motions, often without any reasoning, although national legislation obliges the courts to give reasoning for these rulings. Such unsubstantiated denials of motions put the defence at a serious legal disadvantage, depriving it of an opportunity to present their cases on equal footing with the prosecution. As a result, in at least 44 monitored first instance cases the witness testimonies heard by the courts supported only the prosecution's version of events. The defence was effectively prevented from access to potentially exonerating evidence and the opportunity to refute the testimony of prosecution witnesses. ...

The use of testimonies by police officers was a prominent feature of several observed trials. Of 234 witnesses called by the prosecution in the monitored cases, 125 witnesses were police officers. The monitors reported 19 separate cases where charges were based on incriminating statements given by police officers. ... In 17 cases the testimony of police witnesses was the only witness testimony given in court and became the primary basis for court decisions. Results of the monitoring of these cases give rise to several concerns. Of the 19 cases featuring police witnesses, 13 defendants were charged with resistance to the police [under Article 316 of the CC]. Some of the police officers giving witness testimony in these cases were also recognized as victims. At least six defendants made allegations of police misconduct or brutality against them at the time of apprehension. These allegations were not investigated and no tainted evidence was excluded by the judges. In these circumstances, national law and international fair trial standards would create an expectation for the courts to make every effort to obtain and examine all relevant evidence and give the accused an effective opportunity to challenge the prosecution's evidence. The courts, however, did not appear to make such an effort. Monitoring data indicates that judges readily accepted the testimonies of police witnesses and did not ask for corroborating evidence. In some cases, police testimonies were accepted by the judges even when there were significant contradictions between the pre-trial testimonies of these witnesses and their statements at trial, and when there were clear inconsistencies between the testimonies of different officers in the same case. At the same time, judges did not ask the prosecution to supply evidence corroborating the police testimonies and denied motions of the defence to summon witnesses... While some of these motions were denied without any reasoning, in other instances judges told the defence that there was no need to invite witnesses whose ... statements ... had no substantial significance for the case or that the suggested witnesses would not provide impartial testimony because of their links with the defendant."

C. Human Rights Watch Report: Democracy on Rocky [Ground], Armenia's Disputed 2008 Presidential Election, Post-Election Violence, and the One-Sided Pursuit of Accountability, February 2009

134. The relevant extracts from the Report provide:

"The [statements] Human Rights Watch took from demonstrators and bystanders suggest that the first police action, in the early morning of March 1 against the Freedom Square tent encampment, entailed excessive use of force, without warning and in the absence, at the start, of resistance. Although later [protesters] began throwing stones at police from side streets near Freedom Square, one participant described being beaten up by police who found him lying on the ground. ...

Early morning removal of [protesters] and protest camp at Freedom Square

On the night of February 29 to March 1, several hundred [protesters] were on Freedom Square, staying in some 25 to 30 tents. Police moved against the [protesters'] camp early on the morning of March 1.

According to first deputy police chief [A.M.], speaking to Human Rights Watch four weeks later, the police had arrived at the square on March 1 to conduct a search, acting on information that demonstrators had been arming themselves with metal rods, and possibly firearms, in preparation for committing acts of violent protest on March 1. [A.M.] said that initially a group of 25-30 police [officers], including experts and investigators, were sent to do the search of the protestors' camp. When the group tried to conduct the search, the [protesters] turned aggressive and resisted police with wooden sticks and iron bars, resulting in injuries to several policemen. At that stage more police had to be deployed and had to use force to disperse the crowd and support the group conducting the search. According to [A.M.], this operation lasted for about 30 minutes and 10 policemen sustained injuries as a result. Despite Human Rights Watch's request, [A.M.] did not provide any details about these injured police and the nature of the injuries sustained.

Several witnesses interviewed separately by Human Rights Watch consistently described a different sequence of events in front of the Opera House on the morning of March 1. According to them, some time shortly after 6 a.m., while it was still dark and as demonstrators started waking, news spread that police were arriving at Freedom Square. Hundreds of Special Forces police in riot [armour], with helmets, plastic shields, and rubber truncheons, started approaching the square, in four or five rows, from Tumanyan Street and Mashtots Avenue. Police surrounded the square and stood there for a few minutes.

[Levon Ter-Petrosyan], who had been sleeping in his car parked at the square, was woken up. According to the account he gave Human Rights Watch, he addressed the [protesters], some of whom by this time were out of their tents, asking them to step back from the police line, and then to stay where they were and wait for instructions from the police. He also warned the police that there were women and children among the demonstrators.

Even before [Ter-Petrosyan] finished his address, police advanced towards the demonstrators in several lines, beating their truncheons against their plastic shields. According to multiple witnesses, the police made no audible demand for anyone to disperse nor gave any indication of the purpose of their presence. They started pushing demonstrators from the square with their shields, causing some to panic and

scream and others to run. Some demonstrators appeared ready to fight the police, which was why, according to [Ter-Petrosyan], he urged the crowd not to resist the police. Others were still in their tents.

Immediately afterwards, without any warning, riot police attacked the demonstrators, using rubber truncheons, iron sticks, and electric shock batons. ... As a result of the early morning police actions on Freedom Square, 31 people were officially reported to be injured, including six policemen.

The police claimed that after the demonstrators were dispersed they found a stock of real and makeshift weapons, including "three guns, 15 grenades, two bullet cases and 138 bullets of various calibres, plastic explosives, [a] big number of makeshift weapons, syringes and drugs." All witnesses and victims interviewed by Human Rights Watch claimed that the alleged arms cache was planted after the demonstration was dispersed. The chairman of the ad hoc parliamentary commission established to investigate the March 1 events told Human Rights Watch in January 2009 that he had not seen any evidence linking the arms cache to the demonstration's participants or organizers."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

135. The applicant complained that he had been ill-treated at the time of his apprehension and at the police station and that the perpetrators had not been identified and punished. He relied on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

136. 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

1. The alleged ill-treatment

(a) The parties' submissions

137. The applicant submitted that he had been ill-treated and humiliated during his arrest in the street and at Kentron Police Station after he had been taken there on 1 March 2008. The violence he had faced was above the

required threshold to be qualified as torture under Article 3 of the Convention and was attributable to the police officers. Being in a very bad condition as a result of ill-treatment, he had not even been able to give testimony to the investigator who had come to question him. He had consistently raised the fact of his ill-treatment in all his submissions to the domestic authorities, including the courts and the prosecutor's office. The Government did not deny that the police officers had been responsible for his injuries but, relying on the statements of the alleged perpetrators, simply doubted that those injuries had been inflicted during his arrest.

138. The applicant further contested the Government's allegation that he had suffered those injuries during the dispersal of the demonstration on Freedom Square. If this had been the case, the police officers should have reported those injuries and the use of force against him as required under Section 29 of the Police Act. In any event, even assuming that the injuries in question had been inflicted during the dispersal of the peaceful demonstration, this would still mean that he had suffered them at the hands of the police. The violence and extreme brutality against the demonstrators had been widely reported by a number of international organisations, diplomatic services, the Armenian Ombudsman and various NGOs. The applicant, in support of his allegations, referred to, *inter alia*, the CPT report and the report by the Council of Europe Commissioner for Human Rights (see paragraphs 128 and 129 above).

139. The Government contested the applicant's allegation of ill-treatment. Relying on the findings of the investigation into the applicant's criminal case, including the statements of the police officers, they submitted that the applicant's injuries had already existed prior to his apprehension and must have been sustained in the morning of 1 March 2008 during the clashes at Freedom Square or in some other location. The applicant had accepted the fact that there had been a serious clash between the police and the demonstrators on 1 March 2008. It was a well-known fact that both sides, who had been present during those events, including the applicant, had received multiple injuries during the clashes. Thus, the applicant together with numerous other people, both demonstrators and police officers, could have been injured. The Government claimed that the applicant had been an active participant in the mass disorder of 1 March 2008, during which widespread clashes, violence, destruction, beatings and bodily injuries had been caused to demonstrators and police officers, and insisted that he had already sustained his injuries before being taken to the police station. He had received requisite medical aid and appropriate medical records had been drawn up by medical experts.

(b) The Court's assessment

140. The Court reiterates that Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms

torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). In respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 88 and 100, 28 September 2015).

141. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

142. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). Similarly, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010-...).

143. The Court notes that, in the present case, there is no dispute between the parties that the applicant was at Freedom Square, from where he fled and was soon thereafter arrested at a different location and taken to Kentron Police Station, all in the early morning of 1 March 2008. On 2 March 2008 he was transferred to police holding cells and various injuries were recorded at the time of admission (see paragraph 35 above). Another medical examination of the applicant was carried out on 5 March 2008, at the time of his admission to the remand prison, and again a number of injuries were recorded (see paragraph 46 above). Finally, on 10 March 2008 the applicant was examined by a forensic medical expert, as ordered by the investigator's decision of 2 March 2008, who also recorded various injuries to the applicant's head and body (see paragraph 48 above).

144. The applicant alleged that the above injuries had been sustained on 1 March 2008 during his arrest in the street and following his arrival at Kentron Police Station. He submitted that he had been brutally beaten by police officers on both occasions. The Government contested the applicant's allegations and claimed that he must have sustained his injuries during the clashes at Freedom Square or some other clash.

145. The Court notes that the parties agreed that there had been clashes between the police and the demonstrators during the police operation conducted at Freedom Square in the early morning of 1 March 2008. It is not clear, however, whether, by arguing that the applicant had been injured during those clashes or "some other clash", the Government implied that the injuries in question had been inflicted as a result of lawful and proportionate use of force by police officers. In any event, the Court does not find it necessary to go into that question because the Government's claim is purely speculative and not supported by any evidence. Without prejudice to its findings under the procedural limb of Article 3 of the Convention (see paragraphs 153-156 below), the Court notes that their claim is not based on results of any official investigation into the causes of the applicant's injuries, which might have made it possible to establish through an independent and impartial inquiry that the injuries suffered by the applicant had been sustained during the clashes at Freedom Square, or in some other circumstances, as a result of lawful and proportionate use of force by the police, as opposed to being the result of excessive use of force, ill-treatment or any other unlawful actions by police officers during his arrest or later at the police station.

146. The Government have therefore failed to discharge their burden of proof and to provide a satisfactory and convincing explanation for the applicant's injuries recorded following his transfer from Kentron Police Station. The applicant, on the other hand, has consistently and repeatedly raised his allegations of ill-treatment before various domestic authorities (see paragraphs 37, 44 48, 55, 81 and 86 above). In the absence of such explanation, either at the domestic investigation stage or before the Court, the Court concludes that the applicant has suffered treatment incompatible with the requirements of Article 3 of the Convention at the hands of the police.

147. The nature and severity of the applicant's injuries and the entirety of the materials before the Court, including the applicant's own description of the treatment to which he had been subjected, allows it to conclude that the applicant suffered inhuman and degrading treatment within the meaning of Article 3 of the Convention.

148. There has accordingly been a violation of Article 3 of the Convention under its substantive limb.

2. The alleged ineffectiveness of the investigation

149. The applicant submitted that he had testified before the investigator, the prosecutor and the courts on numerous occasions about his ill-treatment, but there had been absolutely no response and no one had been held accountable. In general, not a single police officer or member of the special forces had been held accountable for the widespread violence against demonstrators on 1-2 March 2008, including the deaths of civilians.

No decision had been taken to institute criminal proceedings on account of his ill-treatment and none of the courts had requested the investigating authority to institute such proceedings. Despite having multiple visible injuries, the questions which he had been asked during the investigation had been entirely about his political activity and participation in the demonstrations as a member of the opposition. This clearly showed that the investigation into the events of 1 March 2008 within the scope of the instituted criminal case had had a different purpose to that required by Article 3 of the Convention and had not been in any way linked to his allegations of ill-treatment. Furthermore, the forensic medical expert had carried out a delayed medical examination of his injuries, which could not be considered independent and impartial. In sum, there had been no effective investigation into his allegations of ill-treatment.

150. The Government submitted that the applicant's allegations of ill-treatment had undergone a complete, objective and comprehensive official investigation within the scope of his criminal case. The investigation had been carried out by the Special Investigative Service – a separate and independent authority neither within the police nor subordinate to it. The investigating authority had questioned the victim, police officer A.Arsh., and a number of other witnesses, all of whom denied that any ill-treatment had been inflicted on the applicant. It had further ordered a number of medical examinations. The applicant, on the other hand, had refused to take part in a confrontation with police officer A.Arsh on 5 August 2008. Nor did he or his lawyer lodge any requests seeking to have additional investigative measures carried out. Furthermore, the applicant's allegations of ill-treatment had been thoroughly examined during his trial. Both the Yerevan Criminal Court and the Criminal Court of Appeal had examined the relevant circumstances and the applicant's complaints. The Yerevan Criminal Court also questioned witnesses and examined other existing evidence. It had been established at the trial that the applicant's injuries had been sustained before his arrest. The investigation into this fact was still ongoing within the scope of criminal case no. 62202608.

151. The Court reiterates that where an individual raises an arguable claim that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and, if appropriate, punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with

virtual impunity (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012).

152. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible (see *Virabyan v. Armenia*, no. 40094/05, § 162, 2 October 2012). Thus, the investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what has happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *El-Masri*, cited above, § 183). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating use of lethal force or allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 323, ECHR 2014 (extracts)).

153. In the present case, the Court notes that, as already indicated above, the applicant has repeatedly raised allegations of ill-treatment before the domestic authorities, with the first such allegation made on the second day of his arrest (see paragraph 37 above). However, contrary to the Government's claim, neither the applicant nor any police officers or other witnesses or suspects were ever questioned in connection with those allegations, whether within the scope of criminal case no. 62202608 or otherwise. Moreover, the factual basis of that criminal case focused exclusively on the acts allegedly committed by the leaders and the supporters of the opposition, including the applicant, as opposed to any alleged unlawful behaviour on the part of the police officers. The only investigative measure taken, which may be regarded as being linked to the applicant's allegations of ill-treatment, was the applicant's forensic medical examination of 10 March 2008. However, given that it was ordered as early as on 2 March 2008, even that measure was not carried out with sufficient urgency and may have resulted in loss of evidence or led to inaccurate conclusions (see paragraphs 38 and 48 above). In any event, it appears that no assessment was ever made of the findings of that examination at any

stage of the proceedings. Furthermore, the statement made in the indictment, according to which the applicant's injuries had been sustained during a clash as opposed to some other circumstances, including possible ill-treatment, lacked any factual foundation and did not appear to have been made as a result of examination and assessment of any evidence or investigation into that fact (see paragraph 73 above).

154. It further appears that the courts also failed to carry out any examination of the applicant's allegations of ill-treatment and to make any assessment of them. The Yerevan Criminal Court did not touch upon this issue at all, while the Court of Appeal appears to have taken the same position as in the indictment, implicitly suggesting that the injuries in question had been sustained by the applicant as a result of clashes rather than any form of ill-treatment and were therefore not to be examined within the scope of the applicant's criminal case (see paragraph 86 above). The Court notes, however, that neither the prosecuting authorities nor the courts provided any explanation as to why they considered the testimony of the police officers credible and that of the applicant unreliable. The version of events provided by the police officers, including the alleged perpetrators, was readily accepted and never seriously questioned by the authorities, including the courts, whereas the applicant's request to call witnesses who were allegedly capable of supporting his account of events was rejected (see paragraphs 82 and 83 above).

155. In view of the foregoing, the Court concludes that the sole purpose of the investigation referred to by the Government appears to have been to prosecute, among others, the applicant and to collect evidence in support of that prosecution, whereas no official investigation was carried out specifically into the applicant's allegations of ill-treatment.

156. Accordingly, there has been a procedural violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

157. The applicant alleged, firstly, that (a) his deprivation of liberty before 10.30 p.m. on 1 March 2008 had been arbitrary and unlawful and (b) his arrest had lasted longer than the 72-hour maximum time-limit permitted by domestic law. Secondly, he alleged that his arrest and continued detention had not been based on a reasonable suspicion.

> "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[.]"

A. Admissibility

158. The Government submitted that the applicant had failed to exhaust the domestic remedies in respect of his first complaint under Article 5 § 1. From the moment he and his lawyer were informed of the grounds for his arrest they had a possibility to challenge the lawfulness of his arrest before the courts under Articles 103 and 290 of the CCP (see paragraphs 112 and 113 above). The applicant's allegation that he could not do so was groundless, since on 1 March 2008 his son had been informed of his arrest and his lawyer had also participated in his questioning as a suspect. However, from the moment the arrest record was drawn up until the moment when on 4 March 2008 the applicant was brought before the Kentron and Nork-Marash District Court of Yerevan, the applicant did not avail himself of the procedure prescribed by Articles 103 and 290 of the CCP. Furthermore, he did not raise this issue at the hearing before the District Court, nor in his appeal to the Court of Appeal against the District Court's detention order of 4 March 2008.

159. The applicant submitted that there was a lack of legal certainty in domestic law concerning the concepts of "bringing-in" and "arrest" which was of a structural nature and was a problem of law. The Government, while raising their objection of non-exhaustion, had failed to indicate the concrete measure or remedy to which he could have resorted in 2008, given that the clarification of the above-mentioned concepts was provided only in 2009 by the Court of Cassation in its decision of 18 December 2009 (see paragraph 123 above).

160. The Court considers that this question is closely linked to the substance of the applicant's complaint and must therefore be joined to the merits.

161. The Court further 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. Circumstances surrounding the applicant's arrest prior to the Kentron and Nork-Marash District Court's detention order of 4 March 2008

162. The applicant submitted that he had been held at the police station between around 6.30 a.m. and 10.30 p.m. on 1 March 2008 unlawfully and

without any status. His so-called "bringing-in" (*բերման ենթարկելը*), including the record drawn up in that respect, had been unlawful. Moreover, during that period he was questioned as a witness in the absence of a lawyer. The legal provisions regulating and defining the procedures of "bringing-in" and "arrest", relied on by the Government, failed to meet the requirements of certainty and foreseeability. In particular, in accordance with Article 128 of the CCP, as interpreted by the Court of Cassation in its decision of 18 December 2009 (see paragraph 123 above), the procedural status of a suspect was effective only from the moment when the record of his arrest was drawn up. Thus, the procedure of "bringing-in", which was an initial stage of deprivation of liberty of a suspect largely practised in Armenia, lacked legal certainty. Article 153 of the CCP, which defined the concept of "bringing-in", was not applicable in his case, while the only other Article of the CCP which mentioned that procedure was Article 180 § 2. As a result, after having been "brought-in" at 6.30 a.m. on 1 March 2008, he was kept in a state of uncertainty as a non-suspect in a police cell until, at 10.30 p.m., the record of his arrest was drawn up. The lack of legal certainty had also been acknowledged by the Court of Cassation in its above-mentioned decision, whereby it attempted to add some certainty to the status of those who, like the applicant, were brought in but no record of arrest was drawn up to enable them to obtain the status of a suspect. The applicant lastly submitted that he had been taken into custody at around 6.30 a.m. on 1 March 2008 but taken before a judge only at 7 p.m. on 4 March 2008. Thus, he had been kept at the police station for an extra twelve and a half hours, in excess of the maximum 72-hour period for arrest allowed by Article 129 of the CCP. In sum, his arrest had violated the requirements of Article 5 § 1 of the Convention.

163. The Government submitted that the applicant's arrest had been effected in accordance with Articles 128 and 129 of the CCP. However, in accordance with Articles 62 § 1 and 180 § 2 of the CCP, even if the applicant had been taken to a police station on a reasonable suspicion of having committed an offence, he was considered arrested and consequently obtained the status of a suspect only from the moment when the record of his arrest was drawn up and presented to him. Until then he had the procedural status of a "brought-in person" (*բերվածի կարգավիճակ*). During that period the applicant, as a "brought-in person", could be questioned about the circumstances of his bringing-in and those giving rise to the reasonable suspicion. As a "brought-in person", he had the right to remain silent and to be questioned in the presence of his lawyer. Furthermore, according to Article 86 § 5, a witness had the right not to testify against himself. The record of the applicant's questioning of 1 March 2008 showed that he had been informed of his rights as a witness, including the right not to testify, and that he had availed himself of that right.

164. 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. That is not, however, sufficient; Article 5 § 1 of the Convention also requires that domestic law itself be compatible with the rule of law. This in particular means that a law which permits deprivation of liberty must be sufficiently accessible, precise and foreseeable in its application. It also means that an arrest or detention must be compatible with the aim of Article 5 § 1, which is to prevent arbitrary deprivation of liberty (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 186, ECHR 2017 (extracts)). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-...).

165. The Court further reiterates that unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision (see *El-Masri*, cited above, § 233). The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible, *inter alia*, with the very purpose of Article 5 of the Convention (see *Kurt v. Turkey*, 25 May 1998, § 125, *Reports of Judgments and Decisions* 1998-III).

166. In the present case, the Court considers it first necessary to determine the time when the applicant was taken to a police station. It notes that, while the record drafted in that connection indicated 6.30 a.m. as the relevant time (see paragraph 24 above), some other documents, including the circumstances of the criminal case against the applicant, suggest that this may have happened around one hour later (see, for example, paragraphs 27, 68 and 84 above). The Court notes, however, that the Government did not contest the applicant's submission that he had been taken to the police station at around 6.30 a.m. on 1 March 2008 and, as already indicated, since there is evidence in the case file which supports this account of events, it has no reasons not to accept 6.30 a.m. as the time when the applicant was taken to Kentron Police Station.

167. The Court notes, however, that, according to the record of his arrest, the applicant was arrested only at 10.30 p.m. on that day (see paragraph 34 above). A question therefore arises as to whether the applicant was deprived of his liberty during that period and, if so, whether his deprivation of liberty complied with the requirement of "lawfulness" within

the meaning of Article 5 § 1 of the Convention. Furthermore, in so far as the applicant complained, among other things, that he had been brought before a judge after the expiry of the maximum 72-hour time-limit permitted by domestic law and had not been released on the expiry of that period as required by domestic law, the Court notes that this complaint does not, as such, raise the question of whether the applicant was "brought promptly before a judge" within the meaning of Article 5 § 3 of the Convention. Rather, the primary question raised is whether the applicant's deprivation of liberty during the period before the court's detention order was in compliance with the specific requirements of domestic law applicable to that period of deprivation of liberty. Therefore, in so far as the complaint concerns the "lawfulness" of the applicant's deprivation of liberty during that period, it similarly falls to be examined under Article 5 § 1 of the Convention (see, *mutatis mutandis*, *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 154, 9 November 2010).

168. The Court notes that the applicant was taken to the police station by force and nothing suggests that he was free to leave. Moreover, it appears that he was locked up in a cell during all or part of that period. The Government did not deny either that the applicant had been deprived of his liberty during that period. The Court therefore has no reasons to doubt that between 6.30 a.m. and 10.30 p.m. on 1 March 2008 the applicant was deprived of his liberty within the meaning of Article 5 § 1 of the Convention. Furthermore, based on the entirety of the materials before it, the Court accepts that this deprivation of liberty was effected for the purpose of sub-paragraph (c) of Article 5 § 1 of the Convention.

169. The parties agreed that the procedure for deprivation of liberty of a suspect was regulated by Article 128 of the CCP, which defined the notion of "arrest" (see paragraph 103 above). Furthermore, the Government admitted that the applicant's "arrest" had been effected on an immediate suspicion of his having committed an offence, as provided by Article 129 of the CCP (see paragraph 104 above). The Government argued, however, that the applicant's "arrest" within the meaning of those provisions was effective only from 10.30 p.m. on 1 March 2008, that is the moment when the record of his arrest was presented to him. Until then he was formally neither "arrested" nor a "suspect" within the meaning of domestic law but had the status of a "brought-in person", having been apparently put through a pre-arrest procedure called "bringing-in".

170. The Court notes, however, that none of the Articles of the CCP cited by the Government – or indeed any other Article of the CCP – contains any rules concerning the alleged status of a "brought-in person", including an explanation of such a notion and of any rights and obligations arising from that status. The only formal status – recognised by the CCP – of a person arrested on suspicion of having committed an offence was that of a suspect under Article 62 of the CCP (see paragraph 101 above). The

Court further notes that the only Article of the CCP that prescribed a procedure called "bringing-in" was Article 153 which, however, did not apply to a person taken into custody on suspicion of having committed an offence and concerned a different type of situation, that is when a person was taken forcibly before the investigating authority because of a failure to appear upon the latter's summons (see paragraph 110 above). Nothing suggests that that Article was applicable to the applicant's case and this has not been suggested by the parties either.

171. It is true that Article 180 § 2 of the CCP, relied on by the Government, also mentioned the possibility of "bringing a person in" on suspicion of their having committed an offence (see paragraph 111 above). However, firstly, that Article concerned specifically cases in which authorities were called upon to investigate crime reports, as opposed to a situation like the applicant's, in which a person was taken into custody on an immediate suspicion of having committed an offence. It is therefore questionable that that provision, which moreover was never cited in any of the documents related to the applicant's deprivation of liberty, was applicable in his case. Secondly, even assuming that this provision was applicable, it is doubtful that it satisfied the principle of legal certainty. In particular, it is not clear what was meant by the phrase "persons may be brought in" on a suspicion of having committed an offence and what procedure this implied, given that the only procedure for short-term deprivation of liberty of a person on suspicion of their having committed an offence was defined under the CCP as "arrest". In that sense, the wording of Article 180 § 2 appears to be in conflict with other relevant provisions of the CCP, including Articles 6, 34, 62, 128 and 129 (see paragraphs 109, 100, 101, 103 and 104 above).

172. The Court also notes that the concept of a "brought-in person" appears to have been developed for the first time by the Court of Cassation in its decision of 18 December 2009 (see paragraph 123 above), taken after the circumstances of the present case. Nothing suggests that, prior to that decision, the relevant provisions of the CCP, including Articles 128 and 180, had been interpreted – whether separately or in combination with each other – by the domestic courts in such a manner as to provide for a pre-arrest procedure called "bringing-in". Nor do the particular circumstances of the applicant's case suggest that his deprivation of liberty before 10.30 p.m. on 1 March 2008 was pursuant to such a procedure. In particular, the only document which mentioned that the applicant was "brought in" was a record entitled "record of bringing-in", a handwritten document drawn up at some point after the applicant had been taken to the police station (see paragraph 24 above). However, according to Article 131.1 of the CCP, the only record which was to be drawn up in such cases was the record of a suspect's arrest and there was no mention in the CCP of a "record of bringing-in" (see paragraph 106 above). Thus, the

record in question lacked any basis in domestic law. Furthermore, during that period the applicant was questioned as a witness (see paragraph 32 above). No explanation has been provided by the Government as to why the applicant was formally treated as a witness, assuming that he allegedly had the status of a so-called "brought-in person" during that period.

173. In view of the foregoing, the Court considers that there is nothing in law or the particular circumstances of the applicant's case to support the Government's explanation regarding the initial hours of the applicant's deprivation of liberty. Having regard to those circumstances, the Court notes that, although the applicant was *de facto* deprived of his liberty and taken to the police station at around 6.30 a.m. on 1 March 2008, a formal record of his arrest was not drawn up until 10.30 p.m. on the same day. During that entire period the applicant was not treated formally as an arrested person and the domestic provisions applicable to arrested persons were not applied to him. He was questioned as a witness and his status was formalised and he was considered to be "arrested" and consequently a "suspect" only sixteen hours after his forced appearance at the police station. Not only was this in breach of the requirement under Article 131.1 of the CCP that a record of a suspect's arrest be drawn up within three hours after bringing him before the relevant authority (see paragraph 106 above), but it also left the applicant without any sense of certainty as to his personal liberty and security and deprived him of all the rights enjoyed by an arrested suspect under the CCP, including the right to have a lawyer and to inform his family immediately (see paragraph 102 above). Moreover, the record of the applicant's arrest, once drawn up, indicated 10.30 p.m. as the starting point of his arrest, as opposed to the time when the applicant had been *de facto* deprived of his liberty, thereby effectively leaving the initial sixteen hours of the applicant's deprivation of liberty formally unacknowledged. Even accepting that a short period may elapse between a person's *de facto* arrest and the formalising of that person's status as an arrested person (see *Farhad Aliyev*, cited above, § 165), the Court draws a distinction between the starting point of an arrest with the meaning of Article 5 of the Convention and the formalities that are to be followed in order to formalise that procedure. It would be unacceptable to link the starting point of a person's arrest to the implementation and completion of such formalities rather than the moment from which a person is *de facto* deprived of his liberty. Such excessive formalism cannot be compatible with the letter and spirit of Article 5 of the Convention and is bound to lead to arbitrary deprivation of liberty.

174. The Court further notes that, where there was a suspicion that a person had committed an offence, domestic law authorised the law-enforcement authorities to arrest and keep in custody the suspected or accused person with the purpose of initiating or furthering an investigation and bringing him before a judge authorised to rule on his continued detention. Article 129 § 2 of the CCP stated that a person's arrest might not

exceed 72 hours from the moment of being taken into custody (see paragraph 104 above). Furthermore, Article 132 § 1 (3) of the CCP unequivocally required an arrested person's release, if no court order to detain him or her was issued within those 72 hours (see paragraph 107 above). Accordingly, beyond the initial 72-hour period, an arrested person could be detained only on the basis of a court order remanding him or her in custody. In the present case, the applicant was taken into custody within the meaning of Article 129 of the CCP at around 6.30 a.m. on 1 March 2008, whereas the court hearing concerning his detention took place at 7 p.m. on 4 March 2008 (see paragraph 43 above). Accordingly, prior to being brought before a judge, the applicant remained in police custody for at least 84 hours, that is about twelve and a half hours in excess of the maximum period permitted by domestic law. Such a continued arrest without a judicial order for the time exceeding the 72-hour period prescribed by Article 129 § 2 of the CCP was incompatible with the domestic law and, therefore, unlawful within the meaning of Article 5 § 1 of the Convention (see, *mutatis mutandis*, *Farhad Aliyev*, cited above, § 168).

175. Having reached these conclusions, the Court considers it necessary to address the Government's objection of non-exhaustion. The Court notes that the applicant's complaints relate to the lawfulness of two short periods of his arrest, the one preceding the drawing up of the record of his arrest and the one following the expiry of the initial 72 hours of his arrest until he was brought before a court. These periods lasted about 16 hours and 12 hours respectively. The Government suggested that, prior to being brought before a judge on 4 March 2008, the applicant should have raised these complaints before the courts, resorting to the procedures prescribed by Articles 103 and 290 of the CCP.

176. The Court notes, however, that under Article 103 the actions of the police or the investigator could be contested only before a prosecutor and not the courts, as suggested by the Government. As regards Article 290, the Government did not provide any details of the redress which the applicant would be able to obtain by resorting to this procedure. In any event, from their observations it follows that the applicant was supposed to resort to this procedure while still in police custody. The same can be assumed from the wording of that provision, which spoke about the possibility of "[putting] an end to a violation of a person's rights and freedoms" and therefore applied to situations in which an alleged violation was still ongoing. Having regard to the overall circumstances of the applicant's arrest and in the absence of any concrete examples and explanations by the Government, the Court does not consider that the Government demonstrated convincingly that this was an effective and accessible remedy capable of providing redress and offering reasonable prospects of success in the circumstances of the case.

177. Furthermore, it is notable in this connection that the Government did not point to any procedure capable of providing redress *post factum*, that

is after the expiry of the applicant's short-term arrest, such as an acknowledgement of a violation of the applicant's rights and, if necessary, payment of compensation. They did argue that the applicant should have raised his complaints before the courts examining the investigator's application seeking to have him detained. However, the courts in question were not called upon to decide on the particular aspects of the lawfulness of the applicant's short-term arrest, but rather to examine the investigator's application and to rule on the question of whether there were sufficient grounds to detain the applicant. Hence, this was not a procedure capable of providing redress of a *post hoc* nature in respect of the applicant's particular complaints.

178. In view of the above, the Court rejects the Government's objection of non-exhaustion.

179. Accordingly, there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's arrest.

2. The alleged lack of a reasonable suspicion for the applicant's arrest and continued detention

180. The applicant alleged that his arrest and detention were not based on a reasonable suspicion of his having committed an offence, arguing that the charges against him had not been substantiated with any facts or evidence and that the police had initiated a clash with peaceful demonstrators, as a result of which activists like himself were taken to police stations, criminal cases were trumped up against them and the courts ruled unjustly on their detention.

181. The Government contested that argument and submitted that the materials of the case, including the record of the applicant's questioning on 2 March 2008, demonstrated that the applicant had been at Freedom Square in the early morning of 1 March 2008, resisted police officers, refused to obey their lawful orders and escaped.

182. The Court notes that the issues raised under this Article are similar to those raised and examined below under Article 11 of the Convention (see paragraphs 249-253 below). Having regard to its finding under that Article (see paragraph 255 below), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 5 § 1 (c) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

183. The applicant alleged that he had not been informed promptly of the reasons for his arrest. He relied on Article 5 § 2 of the Convention, which reads as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

184. The Government contested that argument.

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

186. Having regard to its finding under Article 5 § 1 of the Convention (see paragraphs 173-174 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of 5 § 2 of the Convention.

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

187. The applicant complained that the courts had failed to provide relevant and sufficient reasons for his detention. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

188. 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

189. The applicant submitted that the domestic courts had failed to provide relevant and sufficient reasons when ordering and extending his detention in violation of Article 5 § 3 of the Convention.

190. The Government contested the applicant's claim.

191. The Court notes that this complaint concerns a repetitive situation which has already been examined in a number of cases against Armenia, in which a violation of Article 5 § 3 of the Convention was found (see *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; *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 54-59, 20 October 2016; and *Arzumanyan v. Armenia*, no. 25935/08, §§, 36-37, 11 January 2018). The Court has no reasons to reach a different finding in the present case and considers that the domestic

courts failed to provide relevant and sufficient reasons for the applicant's detention.

192. There has accordingly been a violation of Article 5 § 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

193. The applicant complained that the criminal case against him had been based exclusively on police testimony, the principle of equality of arms had not been respected and he had not been able to obtain the attendance of witnesses on his behalf on equal conditions. He relied on Article 6 §§ 1 and 3 (d) of the Convention, which reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by ... [a] tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

195. The applicant submitted that the criminal case against him had been trumped up, politically motivated and based solely on the testimony of police officers which, moreover, lacked any detail and contained contradictory statements. The police officers had not been trustworthy and impartial witnesses because their own actions had been unlawful, including the brutal attack on the demonstrators and his subsequent ill-treatment. Thus, the alleged resistance to police had happened in circumstances where he himself had been subjected to ill-treatment. The police at various levels of command had been heavily involved in the pre- and post-election events, either unlawfully or within their official capacity, and the letter of 27 March

2008 of the Deputy Chief of the Armenian Police had served as a sort of instruction on how to testify in trials against the demonstrators. Since these trials concerned the standoff between the authorities and the opposition, no police officer could have been unbiased and impartial when testifying before the courts and actually all those who had testified against members of the opposition like himself had been promoted in office shortly thereafter. There had been instances of police officers making openly false statements, however, none of them had been held responsible. In support of the latter allegation the applicant submitted a copy of a judgment in another demonstrator's case, in which police officers had testified that the demonstrator in question had resisted them at the time of arrest, until a video recording emerged showing that the police officers in question had not even been there at the time of that demonstrator's arrest.

196. The applicant further submitted that the principle of equality of arms and his right to call witnesses had been violated because the prosecution had been able to build their case on the witness statements of the police officers, while he had not been allowed to call any witnesses on his behalf and was thereby placed at a significant disadvantage vis-à-vis the prosecution. The Yerevan Criminal Court summoned and heard the police officers in question, whereas all his requests filed during the proceedings, including those substantiating the need to call and examine A.M., D.A., M.A., V.H., H.B., N.T., S.M., S.A. and H.T. as witnesses, had been summarily rejected and his submissions had been found unreliable without any reasoning. Those witnesses would have been able to substantiate that he had not assaulted a police officer and that it was the actions of the police officers which had been unlawful from the outset. These witnesses would also have been able to confirm that it was he who had been subjected to unlawful treatment by the police officers both at Freedom Square and Arshakunyats Street and that the beating had continued at the police station.

197. The applicant lastly submitted that all the evidence and submissions of the defence had been ignored by the courts. There had been no mention of them in the statement of facts in the courts' judgments, nor any reference to them whatsoever in those judicial acts. He alleged that his situation was not unique as far as the prosecutions related to the events of 1 March 2008 were concerned. The overall conduct of the judiciary in such trials and their failure to live up to international fair trial standards regarding, *inter alia*, such questions as equality of arms, reliance on police evidence and refusal to call witnesses had been highlighted in the relevant PACE resolutions and the OSCE Trial Monitoring Report (see paragraphs 125-127 and 133 above).

(b) The Government

198. The Government submitted that the applicant had fully availed himself of his rights as an accused. In particular, he had had access to all the

materials of the case and had been able to examine and contest evidence against him. The Government denied that the applicant's trial had been based solely on police evidence, alleging that the applicant had been able to submit certain written evidence in his defence. The fact that no reference had been made to this evidence in the Yerevan Criminal Court's judgment did not suggest that the court had not considered the evidence in question.

199. Nevertheless, even assuming that the trial had been based solely on police evidence, there had been no violation of Article 6 since the applicant and his lawyer had been able to question the police officers concerned, including those who had acted as witnesses and victims. They had also been provided with a possibility to produce evidence contesting the police officers' testimony. In particular, as regards the applicant's request to call witness N.T., this request had been dismissed since the court had chosen to read out the statement made by that witness during the investigation. As regards the request to call D.A., M.A. and V.H., the court had found that the information which these persons could allegedly give did not provide sufficient basis to call them. Lastly, the request to call and question the police officers indicated by the applicant had been dismissed as the need to call those officers had not been sufficiently substantiated. Thus, the court provided proper reasons when dismissing the applicant's requests to call and examine witnesses.

2. The Court's assessment

200. The Court notes that the applicant alleged a violation of Article 6 because of the generally unfair manner in which the domestic courts had established the relevant facts underlying the charges against him. In particular, he claimed that his prosecution and conviction had been based entirely on the version of events put forward by the police officers, who were not impartial witnesses, whereas all his submissions had been ignored and he was not given a fair opportunity to challenge that evidence, including by calling witnesses on his behalf.

201. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Lhermitte v. Belgium* [GC], no. 34238/09, § 83, ECHR 2016).

202. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence may be admissible or, indeed, whether the applicant was guilty or not. The Court's task is to ascertain whether the proceedings as a whole, including the way in which evidence was obtained, were fair. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the

defence have been respected and whether the applicant was given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Bykov v. Russia* [GC], no. 4378/02, §§ 89-90, 10 March 2009, and *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, §§ 199-200, 26 July 2011).

203. As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system. In the context of taking evidence, the Court has paid particular attention to compliance with the principle of equality of arms, which is one of the fundamental aspects of a fair hearing and which implies that the applicant must be "afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent" (see *Kasparov and Others v. Russia*, no. 21613/07, §§ 57-58, 3 October 2013).

204. Therefore, even though it is normally for the national courts to decide whether it is necessary or advisable to call a witness, there might be exceptional circumstances which could prompt the Court to conclude that the failure do so was incompatible with Article 6 (see *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158; *Popov v. Russia*, no. 26853/04, § 188, 13 July 2006; and *Dorokhov v. Russia*, no. 66802/01, § 65, 14 February 2008). The Court has previously held that in circumstances where the applicant's conviction was based primarily on the assumption of his being in a particular place at a particular time, the principle of equality of arms and, more generally, the right to a fair trial, imply that the applicant should be afforded a reasonable opportunity to challenge the assumption effectively (see *Popov*, cited above, § 183, and *Polyakov v. Russia*, no. 77018/01, § 36, 29 January 2009). When a request by a defendant to examine witnesses is not vexatious, is sufficiently reasoned, is relevant to the subject matter of the accusation and could arguably have strengthened the position of the defence or even led to his acquittal, the domestic authorities must provide relevant reasons for dismissing such a request (see *Topić v. Croatia*, no. 51355/10, § 42, 10 October 2013, and *Polyakov*, cited above, § 34-35).

205. Lastly, the Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately addressed. Article 6 § 1 obliges courts to give reasons for their decisions, although this cannot be understood as requiring a detailed answer to every argument (see *Huseyn and Others*, cited above, § 203).

206. In the present case, the Court notes at the outset that the Government disputed the applicant's claim that his conviction was based solely on police testimony. The Court notes in this connection that the applicant was convicted on three counts: (a) assault on police officer A.Arsh. at Freedom Square; (b) assault on police officer A.Aru. shortly thereafter at Arshakunyats Street; and (c) illegally carrying a bladed weapon, namely a knife. While the domestic courts, in convicting the applicant, referred to some evidence other than the statements of the police officers, the only evidence which directly implicated the applicant in the commission of such acts and provided their details was the statements in question, including those of police officers A.Arsh., A.Aru., H.S., E.R., and A.A. All other evidence referred to by the courts was circumstantial and cannot be said to have directly linked the applicant to the imputed acts.

207. The Court notes that it has already examined a number of cases in which prosecution and conviction of individuals for their conduct at a public event was based exclusively on the submissions of police officers who had been actively involved in the contested events. It found that, in those proceedings, the courts had accepted the submissions of the police readily and unequivocally and had denied the applicants any opportunity to adduce any proof to the contrary. It held that in the dispute over the key facts underlying the charges where the only witnesses for the prosecution were the police officers who had played an active role in the contested events, it was indispensable for the courts to use every reasonable opportunity to check their incriminating statements (see *Kasparov and Others*, cited above, § 64; *Navalnyy and Yashin v. Russia*, no. 76204/11, § 83, 4 December 2014; and *Frumkin v. Russia*, no. 74568/12, § 165, ECHR 2016 (extracts)). The Court also found that by dismissing all evidence in the defendant's favour without justification, the domestic courts had placed an extreme and unattainable burden of proof on the applicant, contrary to the basic requirement that the prosecution has to prove its case and to one of the fundamental principles of criminal law, namely *in dubio pro reo* (see *Nemtsov v. Russia*, no. 1774/11, § 92, 31 July 2014).

208. It appears that the criminal proceedings against the applicant were conducted in a similar manner. The circumstances underlying the charges against the applicant, including those surrounding the police operation at Freedom Square and his alleged assaults on the two police officers, were disputed by the parties. However, the domestic courts, presented with two irreconcilable versions of events, failed to check the factual allegations made by the police officers and decided to base their judgments exclusively on the version put forward by them, accepting their submissions readily and unequivocally, while denying the applicant the possibility of adducing any proof to the contrary. The applicant's requests to have a number of witnesses called and examined in court, which were sufficiently substantiated and of direct relevance to the charges against him, were all

dismissed with either no or very brief and unconvincing reasoning. The Court finds this particularly problematic, taking into account the existence of a number of significant ambiguities, inconsistencies and contradictions in the materials of the criminal case, including in the witness testimony, regarding such important issues as the time, purpose and conduct of the police operation and the time and circumstances of the applicant's arrest, as well as the fact that the evidence on which the charges of assaults were mainly based had come to light as a result of the applicant's identification by the two police officers in question more than five months after the alleged incidents, which significantly diminished the reliability of that evidence. This is even more so in view of the fact that the disputed incidents appear to have taken place rather early in the day when it was not quite light, and – at least the one at Freedom Square – in very chaotic circumstances involving hundreds of demonstrators and police officers. Even if the persons whom the applicant sought to call as witnesses could have shed light primarily on the events at Freedom Square, the Court considers that such evidence could, nevertheless, have allowed the applicant to challenge all the charges against him, in view of the close link, both temporal and consequential, between the various acts imputed to him.

209. All of the applicant's arguments and submissions remained practically unaddressed by the domestic courts, regardless of their strength and relevance, including those pointing out the above-mentioned inconsistencies in the materials of the criminal case and casting doubt on the quality of certain evidence. This includes the fairly strong and substantiated argument which the applicant raised regarding the pre-trial statements of police officers E.R., H.S. and A.A. being identical word for word, as well as in conflict with the statements made by those witnesses in court. The domestic courts did not address this argument and did not take it into account when relying on that witness testimony as a basis for the applicant's conviction despite the reliability, credibility and personal integrity of those witnesses being seriously in doubt. Had the applicant's argument been successful, it would have been capable of influencing a fair tribunal's overall assessment of whether there had been sufficiently strong evidence to prove the applicant's guilt (see, *mutatis mutandis*, *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 205, 26 July 2011). It is noteworthy that the testimony of the police officers in question was the sole evidence on which the applicant's conviction for illegally carrying a bladed weapon was based, as well as forming a decisive part of the evidence relied on in convicting the applicant of assaulting police officer A.Aru. at Arshakunyats Street. The Court has previously held that inconsistencies between a witness's own statements given at various times, as well as serious inconsistencies between different types of evidence produced by the prosecution, give rise to a serious ground for challenging the credibility of the witness and the probative value of his or her testimony; as such, this

type of challenge constitutes an objection capable of influencing the assessment of the factual circumstances of the case based on that evidence and, ultimately, the outcome of the trial (see ibid., § 206). However, as already noted above, all of the applicant's relevant arguments were rejected as unreliable without any analysis whatsoever, while the police officers were presumed to be parties with no vested interest (see paragraphs 85 and 87 above).

210. In sum, the Court considers that the domestic courts, in a dispute over the key facts underlying the charges which, moreover, were based on conflicting evidence, failed to use every reasonable opportunity to verify the incriminating statements of the police officers who were the only witnesses for the prosecution and had played an active role in the contested events. Their unreserved endorsement of the police version of events, failure to address properly any of the applicant's submissions and refusal to examine the defence witnesses without proper regard to the relevance of their statements can be said to have led to a limitation of the defence rights incompatible with the guarantees of a fair hearing (see, *mutatis mutandis*, *Kasparov and Others*, cited above, § 66).

211. The foregoing considerations are sufficient for the Court to conclude that the criminal proceedings against the applicant, taken as a whole, were conducted in violation of his right to a fair hearing under Article 6 § 1 of the Convention.

212. Having reached this conclusion, the Court does not consider it necessary to examine separately whether there has also been a violation of Article 6 § 3 (d) of the Convention in respect of the same facts.

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

213. The applicant complained that the dispersal of the demonstration in the early morning of 1 March 2008 and his subsequent prosecution and conviction had violated his rights guaranteed by Articles 10 and 11 of the Convention which read as follows:

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. Admissibility

214. The Government claimed that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 10 of the Convention concerning an interference with his right to freedom of expression. The Court notes, however, that the Government did not provide any arguments whatsoever in support of their claim. Nor did they indicate any remedies which could have been used by the applicant. There are therefore no grounds to allow the Government's claim and it must be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

216. The applicant submitted that the demonstration, which had been called by the opposition on 20 February 2008 after the announcement of the preliminary results of the presidential election, became a permanent sit-in on Freedom Square and continued without interruption until the morning of 1 March 2008. Thus, the demonstrations, having been held continuously, fell within the scope – and were lawful within the meaning – of the Assemblies, Rallies, Marches and Demonstrations Act. During that period Freedom Square had become an important arena for public debates about the results of the election and other issues of public concern, while a number of political activists and critics of the government were unlawfully detained during the same period. The demonstrations had been peaceful, which was extensively evidenced by reports of international organisations, diplomats accredited to Armenia and the Armenian Ombudsman. Later, when the authorities advanced the story of weapons and other dangerous objects being carried by the demonstrators at Freedom Square, the source of that information was never revealed and no one was ever charged with

possessing a gun or any other prohibited object during the demonstrations. The real purpose of the police operation was to break up the demonstration and the alleged inspection for weapons was just a way of masking that. None of the concerns raised in that connection by the Ombudsman in his report were addressed by the investigating authorities (see paragraph 124 above).

217. The applicant argued that there had been an interference with his right to freedom of expression and freedom of assembly as a result of both the dispersal of the peaceful demonstration in the morning of 1 March 2008 and the criminal case against him. The charges against him under Articles 225.1 § 2, 301 and 318 § 1 of the CC for inciting disobedience and making calls for a violent overthrow of the government and for insulting public officials also pointed to the existence of an interference with his freedom of expression because he was basically prosecuted for publicly voicing his opinions at the rallies. Even if those charges were later dropped, they had nevertheless been the basis for his being kept in detention.

218. The applicant claimed that he was a political prisoner since the criminal case against him had been trumped up and politically motivated in retaliation for his participation in the post-election protests and his being an opposition activist. He had been known to the authorities, since he had been an active participant in the rallies and had even on one occasion given a speech, thereby attracting their attention. When arresting him, the police officers had sworn at him, calling him by his name, which had made him realise that he had been pursued by them. The nature of the questions posed to him by the investigator regarding his role in the political processes in Armenia also served as proof of the political motivation of his prosecution. He had been accused of resisting unidentified police officers and several months later, in order to justify the proceedings against him, a false hypothesis had been advanced, according to which after fleeing from Freedom Square, about 30 minutes later he had been in an area a few kilometres away, near the Yerevan Press Building, where he had resisted the same police officer whom he had encountered at Freedom Square and had been arrested. No explanation had ever been provided for the presence of the police officers in that area.

219. There was a clear understanding among the international community, as reflected in a number of reports produced by various international organisations, that the prosecution of participants in the post-election demonstrations had amounted, as the Council of Europe Commissioner put it in one of his press briefings, to a "political vendetta against the opposition". An army of thousands of police officers had launched an unlawful and unjustified attack on peaceful demonstrators, accompanied with use of excessive force, thereby artificially provoking a clash with opposition supporters in order to initiate criminal cases against them and carry out State-sponsored persecution. In all the cases concerning

the events of 1 March 2008 only members of the opposition and those supporting them were arrested and later sentenced, while no police officer or any public official had ever been charged and held accountable despite the use of excessive force which had resulted in eight deaths and more than 150 injured.

220. The applicant argued that, since the criminal proceedings against him had been politically motivated, such interference could not be considered as prescribed by law. As regards the dispersal of the demonstration, none of the concerns raised in the Armenian Ombudsman's report regarding the lawfulness of the police operation had been addressed either during the investigation or in the Government's observations. All the evidence provided by the police had been considered reliable and their actions, without a proper examination and assessment, had been considered lawful by the courts, which had failed to carry out an objective and thorough establishment of the facts. Neither the interference with the expression of his political opinions, nor the dispersal of the demonstration were necessary in a democratic society. As regards the latter, a number of questions remained unanswered. In particular, the disproportionate manner in which the demonstration had been dispersed, resulting in more than one hundred persons injured; the failure of the police to communicate with the opposition leader when the latter proposed to listen to their demands; the reasons for choosing such an early hour to carry out such a large-scale police operation, moreover, assuming that it had been a search and seizure operation, it being prohibited under the rules of criminal procedure; the failure to video record a police operation involving such a large number of police officers, while hindering and restricting journalists from video recording those events; the reasons why all the participants in the sit-in had been dispersed, as well as why Freedom Square had remained closed for any gatherings by the opposition for the following 38 months, if the purpose of the police operation had only been to carry out a search and seizure of illegal weapons.

(b) The Government

221. The Government submitted that after the presidential election, between 20 and 29 February 2008, the presidential candidate Mr Ter-Petrosyan and a group of his supporters had held continuous, unauthorised public events, including demonstrations, thereby disturbing the public order, the normal life of the capital, the peace of its residents, the traffic, and the functioning of public and academic institutions and private enterprises. Notwithstanding this fact, the authorities did not make any attempts to interfere with the conduct of the demonstrations. The organisers and the participants in the demonstrations, however, were repeatedly informed, including in writing, about the unlawful nature of the rallies.

222. Relying on their account of the events of 1 March 2008 and the evidence submitted in support (see paragraphs 13 and 14 above), the

Government argued that the demonstration of 1 March 2008 had not been peaceful within the meaning of Article 11 since its organisers and participants had had violent intentions. The non-peaceful nature of the demonstration and of the intentions of its participants was also mentioned in the testimony of suspect V.N., according to which, upon the order of the participants and the organisers of the assembly, he had ordered and handed them metal objects having sharp ends, which were later found by experts to be bladed weapons. In any event, the authorities had tolerated for long enough the symbolic and testimonial value of the applicant's presence at the demonstration and the alleged interference, after such a lengthy period, did not therefore appear unreasonable, argued the Government referring to the case of *Cisse v. France* (no. 51346/99, § 52, ECHR 2002-III). In sum, the police operation, the applicant's prosecution and subsequent conviction had been lawful and therefore the alleged interference with his rights guaranteed by Article 11 had been in compliance with the requirements of that Article. It had been prescribed by law, pursued a legitimate aim for the prevention of disorder and crime and had been proportionate.

223. As regards the applicant's complaint under Article 10 of the Convention, there had been no interference with his rights guaranteed by that Article since police actions in response to the violence and armed resistance by demonstrators could not in any way be considered as an interference with the applicant's right to freedom of expression.

2. The Court's assessment

(a) The scope of the applicant's complaints

224. The Court notes that in the circumstances of the case, 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).

225. On the other hand, notwithstanding its autonomous role and 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; *Hakobyan and Others*, cited above, § 86; and *Kudrevičius and Others*, cited above, § 86).

(b) Whether there has been an interference with the exercise of the right to freedom of peaceful assembly

226. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of

expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively. As such, this right covers both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III; *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004; and *Kudrevičius and Others*, cited above, § 91).

227. Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (ibid., § 92).

228. The Court further reiterates that the interference 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 *Kasparov and Others*, cited above, § 84; *Navalnyy and Yashin*, cited above, § 51; and *Kudrevičius and Others*, cited above, § 100).

229. The Court notes at the outset that the present case concerns primarily the events culminating in the police operation of the early morning of 1 March 2008, since the applicant was arrested shortly thereafter and did not take part in the events which unfolded in Yerevan later that day, including the subsequent rallies and the alleged clashes between protesters and the police. Furthermore, while technically it was the camp which was broken up as a result of the police operation in question, the camp was part of a much bigger assembly which had been going on at Freedom Square since 20 February 2008, attracting thousands of people, and which is at the heart of the present case. The Government argued that the assembly in question was not peaceful, alleging that the authorities had obtained evidence that weapons and ammunition were to be distributed to the demonstrators on 1 March 2008 in order to instigate mass disorder and that the demonstrators had been the first to attack the police at Freedom Square.

230. The Court reiterates that the burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010). It notes at the outset that there is no evidence to suggest that the demonstrations held at Freedom Square from 20 February 2008, in protest against the conduct of the presidential election which many opposition supporters believed to have been flawed, involved incitement to violence or any acts of violence prior to the police operation conducted in

the early morning of 1 March 2008. As to the Government's allegation that the authorities had obtained evidence suggesting that the demonstrators had been planning to arm themselves in order to instigate mass disorder, the Court notes that the Government have failed to produce the evidence in question or even to provide any relevant details or explanations. The courts examining the applicant's criminal case did not scrutinise any such evidence either and simply relied on the letter of 27 March 2008 of the Deputy Chief of the Armenian Police which in its turn referred, in very broad terms, to "intelligence information received" (see paragraph 22 above). The nature and source of the alleged intelligence information, however, are unclear and appear never to have been revealed or examined at any stage of the proceedings. The Court further notes that no evidence has been produced by the Government linking the weapons allegedly found at Freedom Square, including pistols, grenades and "hedgehog-like" sharp objects, to any of the demonstrators (see paragraph 14 above). Nor is there any evidence to suggest that any firearms, explosives or bladed weapons were used by the demonstrators during the police operation at Freedom Square, which is somewhat surprising given the allegation that they were armed with such weapons and intended to start an armed riot.

231. The Court notes, at the same time, that the applicant did not deny that there had been scuffles between the demonstrators and the police during the police operation at Freedom Square. However, the mere fact that acts of violence occur in the course of a gathering cannot, of itself, be sufficient to find that its organisers had violent intentions (see *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, § 202, 6 October 2015). The Court has previously examined a number of cases where the demonstrators had engaged in acts of violence and found that the demonstrations in question had been within the scope of Article 11 of the Convention on the basis that the organisers of these assemblies had not expressed violent intentions and there were no grounds to believe that the assemblies were not meant to be peaceful (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 45, 18 December 2007; *Protopapa v. Turkey*, no. 16084/90, § 104, 24 February 2009; *Uzunget and Others v. Turkey*, no. 21831/03, § 52, 13 October 2009; *Asproftas v. Turkey*, no. 16079/90, § 106, 27 May 2010; *Gün and Others v. Turkey*, no. 8029/07, § 50, 18 June 2013; *Gülcü v. Turkey*, no. 17526/10, §§ 91-97, 19 January 2016; *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, §§ 169-172, 4 October 2016). Furthermore, where both sides – demonstrators and police – were involved in violent acts, it is sometimes necessary to examine who started the violence and whether the applicant personally was among those responsible for the initial acts of aggression which contributed to the deterioration of the assembly's initial peaceful character (see *Primov and Others v. Russia*, no. 17391/06, § 157, 12 June 2014).

232. The Government alleged in the present case that the demonstrators had been the first to attack the police, which proved that they had had violent intentions. The applicant, however, contested such an account of events, both before this Court and the domestic courts (see, by contrast, *Primov and Others*, cited above, § 158) and claimed that, in fact, the exact opposite had happened and the police had been the first to attack the peaceful demonstrators camping at Freedom Square, brutally dispersing the assembly and intentionally provoking clashes. The Court notes that the Government's allegation appears to be based on the official account of events as provided in the above-mentioned letter of the Deputy Chief of the Armenian Police (see paragraph 22 above). Those findings, however, do not appear to have been reached as a result of any impartial and independent investigation and seem to be based entirely on the testimony of the police officers who had played an active role in the events of 1-2 March 2008, including the confrontation at Freedom Square, and were, moreover, alleged to have used excessive force against the demonstrators. The findings in question are not backed by any objective evidence and, moreover, appear to contradict a number of other materials of the criminal case, including the decision to institute criminal case no. 62202508 and several other documents, from which it appears that the clash at Freedom Square between the demonstrators and the police may in fact have been the consequence of certain unspecified measures taken by the police, aimed at forcibly terminating the demonstration, as opposed to it being a preemptive attack by the demonstrators as alleged by the Government (see paragraphs 15, 28, 29, 30 and 39 above). It is noteworthy that the courts examining the applicant's criminal case did not in any way address the circumstances of the clash, including the question of who initiated it, omitting from their judgments any relevant details. Even the applicant's disputed assault on police officer A.Arsh. was presented as a sporadic act, without any assessment of whether the violence was premeditated or a spontaneous development (see paragraph 84 above). It is true that the applicant was also found to have carried a clasp knife, which may suggest that he had had violent intentions. However, taking into account the manner in which that finding was reached and the evidence on which it was based (see paragraphs 208-210 above), as well as the absence of any evidence or even a suggestion that the applicant ever tried to put the alleged knife to use, the Court does not consider this, in the particular circumstances of the case, to be a sufficient and reliable element to deprive him of the protection of Article 11 of the Convention. The Court lastly notes that there are a number of credible reports produced by various international and domestic bodies regarding the events of 1 March 2008 which allege that the demonstrations at Freedom Square were peaceful and cast doubt on the official account of events, including the circumstances of the clash between the demonstrators and the police (see paragraphs 124, 125, 129, 131, 132 and 134 above). Lastly, the

Government, while referring to the testimony of a person called V.N., did not, however, provide any details or explanation regarding the identity of that person, his alleged involvement in the events of 1-2 March 2008 or the relevance of his testimony to the applicant's particular case.

233. In sum, there is not sufficient and convincing evidence to conclude that the organisers and the participants of the assembly at Freedom Square, including the applicant, had violent intentions and that the assembly in question was not peaceful.

234. The Court further notes that the Government did not dispute the existence of an interference, other than arguing that the assembly had not been peaceful. It also notes that the police operation in question effectively resulted in a dispersal of the assembly at Freedom Square and therefore interfered with the applicant's right to freedom of assembly. Furthermore, the punitive measures taken afterwards included the applicant's prosecution and detention for a number of acts allegedly committed during the assembly at Freedom Square, including publicly inciting a violent overthrow of the government, publicly insulting public officials, inciting disobedience of the police officers' orders to end the assembly and assaulting a police officer, the latter being the only charge that resulted in the applicant's conviction (for similar instances of interferences see, for example, *Balçık and Others v. Turkey*, no. 25/02, §§ 41-42, 29 November 2007; *Nurettin Aldemir and Others*, cited above, §§ 34-35; *Protopapa*, cited above, § 104; *Gafgaz Mammadov v. Azerbaijan*, no. 60259/11, §§ 52-53, 15 October 2015; and *Yaroslav Belousov*, cited above, §§ 171-172). It is true that the applicant was also convicted of two other acts, namely assaulting another police officer on Arshakunyats Street and carrying a knife, which *per se* do not appear to be directly related to the exercise of his right to freedom of assembly. The Court notes, however, that those acts also were found to have been committed in the context of the applicant's participation in the same assembly and the confrontation between the demonstrators and the police that ensued. The Court therefore finds it hard, in the light of the case as a whole, to dissociate those events from the rest of the applicant's case under Article 11 of the Convention and is 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.

235. The Court concludes that there has been an interference with the applicant's right to freedom of peaceful assembly on account of both the dispersal of the demonstration and the applicant's prosecution, detention and conviction.

(c) Whether the interference was justified

(i) Prescribed by law and legitimate aim

236. 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 *Galstyan v. Armenia*, no. 26986/03, § 103, 15 November 2007).

237. The applicant submitted that, since the proceedings against him had been fabricated, they could not have been lawful, while the Government did not make any particular submissions regarding the lawfulness of the interference and submitted that it pursued the legitimate aim of preventing disorder and crime. The Court, however, does not consider it necessary to decide these issues having regard to its conclusions set out below, regarding the necessity of the interference (see, *mutatis mutandis*, *Christian Democratic People's Party v. Moldova*, no. 28793/02, §§ 49-54, ECHR 2006-II).

(ii) Necessary in a democratic society

238. The Court reiterates that the right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, cited above, § 142).

239. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (ibid., § 143).

240. The Court notes at the outset that the parties' diverging views on the necessity of the interference in the present case are rooted in their

conflicting accounts of the factual circumstances of the case. The Government alleged that the police had had no intention of dispersing the assembly at Freedom Square and had been there simply to carry out an inspection when the demonstrators, including the applicant, had reacted aggressively and assaulted them. The applicant contested that account of events and claimed that the purpose of the police operation had been to terminate the assembly. He disputed the factual basis for his prosecution and conviction and alleged that he had not done anything illegal either during the assembly or its dispersal and the criminal case against him had been politically motivated and fabricated in order to punish him for being an opposition supporter and taking an active part in the demonstrations.

241. 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). The Court has previously applied this reasoning in the context of Article 11 of the Convention, including in a case against Armenia (see *Hakobyan and Others v. Armenia*, no. 34320/04, §§ 90-99, 10 April 2012; as well as *Nemtsov*, cited above, §§ 66-71; *Karpyuk and Others*, cited above, §§ 194-206; and *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, §§ 87-97, 11 February 2016).

242. In the case of *Hakobyan and Others*, 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).

243. The Court notes several similarities between the present case and the case of *Hakobyan and Others*. Firstly, it similarly concerns a period of increased political sensitivity in Armenia involving opposition rallies held in protest against an allegedly unfair presidential election result (compare with *Hakobyan and Others*, cited above, § 90). The response of the authorities that followed, including the arrests and detention of scores of opposition supporters, was condemned by the PACE and was described as a "*de facto* crackdown on the opposition". The charges brought against many of them were suspected to have been "artificial and politically motivated", especially those based solely on police evidence (see paragraphs 125 and 127 above). It appears also from one of the reports by the Council of Europe Commissioner for Human Rights that the authorities may have been collecting information on the participants in the opposition rallies (see paragraph 130 above). Moreover, the applicant's name specifically appeared in one of the Commissioner's reports regarding the events in question (see paragraph 131 above). Secondly, the proceedings against the applicant were conducted in a very similar manner. The entire case against him was similarly based exclusively on police testimony and the findings of fact made by the domestic courts similarly appear to have been a mere and unquestioned recapitulation of the circumstances as presented in that testimony, lacked details and were strikingly succinct (see paragraphs 208-210 above and paragraph 249 below and compare with *Hakobyan and Others*, cited above, § 98). Such similarities, including the above-mentioned reports by various Council of Europe bodies, are a 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.

244. The Court notes that following the presidential election of 19 February 2008 large crowds, including opposition leaders and supporters, gathered from 20 February 2008 at Freedom Square on a daily basis to take part in a political debate on a matter of serious public concern, namely the conduct and the result of the presidential election which many believed to have been flawed. There is no dispute between the parties that the assembly was conducted without prior notification as required under domestic law (see paragraph 119 above). The Court reiterates in this connection that, although it is not *a priori* contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to authorisation, an unlawful situation, such as the staging of a demonstration without prior authorisation, does not justify an infringement of freedom of assembly. While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise disruption to traffic and take other safety measures, their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence the Court

has required that public authorities show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see, among other authorities, *Oya Ataman v. Turkey*, no. 74552/01, §§ 39 and 42, ECHR 2006-XIV, and *Kasparov and Others*, cited above, § 91). The appropriate "degree of tolerance" cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly the extent of the "disruption of ordinary life" (see *Primov and Others*, cited above, § 145).

245. The Court has already held that the assembly at Freedom Square was peaceful and nothing suggests that it was not intended to be so (see paragraph 233 above). Indeed, it appears that the authorities allowed the assembly, including a camp which the demonstrators had set up, to proceed and did not make any attempts to break it up for nine days, until it was terminated as a result of the police operation conducted in the early morning of 1 March 2008. As already indicated above, the circumstances of the police operation in question, including its purpose and conduct, are disputed by the parties. The Court is, however, mindful of its finding that the Government have failed to produce any convincing evidence in support of their version of events to suggest that arms were to be distributed to the demonstrators on 1 March 2008. Furthermore, the Government have not provided any evidence or details regarding the planning, organisation and command of the operation in question, including who ordered and oversaw it, the specific police units and the number of police officers involved and the specific measures taken. At the same time, it appears that this was a very large-scale operation involving several hundred police officers and different police forces, including riot police. An operation of such magnitude would have undoubtedly required a certain amount of time to plan and organise and it is unclear how this was done in less than 24 hours, if it is to be believed that the alleged intelligence information was received by the police on the day preceding the operation, namely 29 February 2008. Lastly, as already indicated above, it appears from the decision to institute criminal case no. 62202508 and several other documents, including testimony of police officers who had allegedly participated in the police operation, that the sole purpose of the operation was to disperse the assembly at Freedom Square and that the measures taken by the police that morning were aimed at achieving that objective (see 15, 28, 29, 30 and 39). This version of events, however, was – at first partly and later completely – abandoned by the investigation and an inspection for weapons was presented as the sole purpose of the police operation (see the decisions to bring charges against the applicant of 3 March and 5 August 2008 in paragraphs 41 and 68 above). No explanation has been provided by the authorities or the Government for such striking contradictions. The Court, however, finds it hard to believe that this could have been a simple omission and, in fact, it

gives an impression of a deliberate attempt to cover up, or at the very least not to reveal, the main, if not the only, purpose of the police operation. In sum, the Court does not find the official explanation of the purpose of the police operation of 1 March 2008 to be sufficiently credible and, having regard to all the materials in its possession, has no reason to doubt that the objective of the police intervention in the early morning of 1 March 2008 was to disperse the camp and those present at Freedom Square and to prevent the further conduct of the assembly.

246. The Government argued that the dispersal had been justified because the authorities had tolerated the assembly long enough and therefore it had not been unreasonable to disperse it. It is true that the assembly had lasted nine days, apparently without any significant interruption or intervention by the authorities. This reason alone, however, was not sufficient, in the Court's opinion, to break up the assembly without any specific evidence that it posed a real danger to public order or constituted an intentional serious disruption by the demonstrators to ordinary life and to the activities lawfully carried out by others to a more significant extent than that caused by the normal exercise of the right of peaceful assembly (see, by contrast, *Kudrevičius and Others*, cited above, § 173, and the cases cited therein). It does not appear that the assembly caused any intentional or even unintentional obstruction of traffic. Nor was its purpose to obstruct the lawful exercise of an activity by others but to have a debate and to create a platform for expression on a public matter of major political importance which was directly related to the functioning of a democracy and was of serious concern to large segments of the Armenian society. Therefore, a greater degree of tolerance should have been demonstrated in the present case than that shown by the authorities. The Court does not find the Government's reference to the case of *Cisse v. France* to be relevant since, in contrast to that case, no justification for the dispersal of the assembly has been put forward by the Government in the present case other than its duration (see *Cisse*, cited above, §§ 51-52).

247. The Court cannot overlook either the manner in which the assembly was dispersed. It points out the existence of a number of credible reports from which it appears that the police used unjustified and excessive force against the demonstrators (see paragraphs 124, 129, 132 and 134 above). Some of those reports allege also that no prior order was given by the police for the demonstrators to disperse (see paragraphs 124 and 134 above). It is noteworthy that the actions of the police do not appear ever to have been the subject of an independent and impartial investigation. Lastly, the Court notes all the controversy and lack of transparency regarding the police operation, including the constantly changing narrative about the purpose of that operation.

248. The Court therefore concludes that the dispersal of the assembly at Freedom Square without sufficient justification and apparently without

warnings to disperse and with unjustified and excessive use of force, was a disproportionate measure which went beyond what it was reasonable to expect from the authorities when curtailing freedom of assembly.

249. As regards the punitive measures taken against the applicant, the Court notes that the applicant was arrested – apparently shortly after the dispersal of the assembly – at a location about 2 km away from Freedom Square, namely at Grigor Lusavorich Street near the Yerevan circus, where he had fled after the assembly had been dispersed. It was alleged by the arresting officers that they had witnessed the applicant resist and disobey some unidentified police officers near the circus and this was indicated as one of the reasons for taking him into custody. More importantly, however, as the second reason the officers noted that the applicant had organised unauthorised demonstrations at Freedom Square in support of Mr Ter-Petrosyan (see paragraphs 24, 27 and 28 above). It is unclear, however, on what grounds the arresting officers, who had apprehended the applicant at a considerable distance from Freedom Square, assumed that he had participated in and, moreover, organised the opposition demonstrations. This suggests that the officers either knew the applicant as an active demonstrator or at the very least had followed him from Freedom Square. Later that day the investigator indicated Articles 225.1 § 2 and 316 § 2 of the CC as the grounds for the applicant's arrest, which prescribed penalties for somewhat different acts, namely inciting disobedience of an order to end an unlawful assembly and assaulting a public official in a life- and health-threatening way. While the record of the applicant's arrest contained no factual information whatsoever to back those suspicions, it can, nevertheless, be inferred from the charges later brought against the applicant that those suspicions concerned the assembly at Freedom Square and acts which the applicant was believed to have committed during its dispersal (see paragraphs 34 and 41 above). Again, it is not clear on what grounds the applicant was presumed to have participated in the assembly at Freedom Square and, moreover, committed certain unlawful acts in that context, especially since at that point he had not yet even been questioned in connection with those events.

250. The Court further notes that the applicant was subsequently charged and detained under the above-mentioned Articles 225.1 § 2 and 316 § 2, as well as Articles 301 and 318 § 1 of the CC which prescribed penalties for making calls for a violent overthrow of the government and publicly insulting public officials (see paragraph 41 above). The Court notes, however, that no specific evidence or factual background was provided for any of those charges, presumably committed by the applicant during the assembly and its dispersal. While the decision to bring charges and the applicant's detention order did mention that he had organised and conducted demonstrations which involved calls for a violent overthrow of the government and insults addressed at public officials and that he had later

disobeyed and assaulted police officers (see paragraphs 41 and 45 above), none of those documents referred to any evidence or contained any relevant factual details. It was not specified whether the applicant himself made any calls and insults and, if he did, the nature of such calls and insults. Nor were the nature and method of infliction of the alleged assaults mentioned, or the identity of any alleged victims of such assaults. The same applies to the alleged incitement to disobedience. In sum, the facts on which the charges were based were not backed by any evidence, were drafted in very general and abstract terms, without any specific details of the acts allegedly committed by the applicant, and appeared to amount to a mere citation of the relevant Articles of the CC. It therefore appears that the applicant was prosecuted and detained for simply having actively participated in, and possibly organised, the assembly at Freedom Square as opposed to having committed any specific reprehensible act in its course. Moreover, it appears from the circumstances of the applicant's arrest, as described above, that he may have been known to the authorities as an active demonstrator. The same appears from the memorandum of the Chief of Kentron Police Station which stated that the applicant had been taken into custody for being an "activist" of the assembly at Freedom Square (see paragraph 30 above). The Court considers that the dispersal of the peaceful assembly and subsequent rounding-up and detention of its activists or other peaceful participants without any evidence that they had personally committed any reprehensible acts, as happened in the applicant's case, cannot be regarded as a measure "necessary in a democratic society".

251. The Court notes that the applicant was prosecuted and detained on such grounds for at least five months until most of the charges against him were dropped, mostly for lack of evidence (see paragraphs 67 above). Practically at the same time, new evidence and charges emerged and the applicant was accused of two assaults on police officers and illegally carrying a knife. The applicant alleged that those charges had been artificial and fabricated in order to convict him at all cost for being an opposition activist. The Court notes that the applicant's allegations do not appear to be without merit and points out the following. Firstly, the manner in which the criminal case against the applicant was initially conducted and the fact that, as already indicated above, he was prosecuted and detained for almost five months for basically taking an active part in the demonstrations in itself raises questions regarding the motives of the applicant's prosecution. Secondly, it is unclear why no charges were brought against the applicant for such a long period of time if a knife had indeed been found in his possession on the very first day of his arrest. The same applies to the applicant's alleged assault on a police officer at Arshakunyats Street (which was earlier described as "resistance and disobedience to police officers"). While this allegation was raised already at the time of his arrest, no investigative measures were taken during that entire period to obtain any

evidence in that connection, including establishing the identity of any victims. Nor were there any attempts made to obtain evidence in support of the charge of assault at Freedom Square; all this despite the fact that police officers A.Arsh. and A.Aru. appear to have given their testimony as early as on 2 and 11 March 2008 respectively (see paragraphs 19 and 20 above). Thirdly, as already noted above, according to the relevant PACE reports, charges against opposition supporters based solely on police evidence could have been "artificial and politically motivated" (see paragraphs 125 and 127 above).

252. While all of the above-mentioned is a cause for grave concern, the Court, nevertheless, is not in a position, nor is it its duty, to determine whether the charges against the applicant were substantiated and it was the duty of the domestic courts to check the veracity of the underlying facts. The Court reiterates in this connection that the obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing against the decision, and also serves to justify the reasons for a judicial decision to the public. This general rule, moreover, translates into specific obligations under Articles 10 and 11 of the Convention, by requiring domestic courts to provide "relevant" and "sufficient" reasons for an interference. This obligation enables individuals, amongst other things, to learn about and contest the reasons behind a court decision that limits their freedom of expression or freedom of assembly, and thus offers an important procedural safeguard against arbitrary interference with the rights protected under Articles 10 and 11 of the Convention (see *Gülcü*, cited above, § 114).

253. The Court finds that the domestic courts did not properly fulfil this obligation in the present case when convicting the applicant of certain violent acts and illegally carrying a knife. It is mindful of its findings above regarding the manner in which the applicant's trial was conducted and the facts underlying the charges against him were established (see paragraphs 208-210 above). It notes that the resulting judgments were a mere recapitulation of the indictment against the applicant, which in its turn was based entirely on the testimony of the police officers concerned. Moreover, the facts, as established by the domestic courts, lacked detail and were full of ambiguities. Such important facts as the circumstances of the clashes between the demonstrators and the police at Freedom Square were completely ignored and not even mentioned, even though those circumstances, including an assessment of the police actions, were of direct relevance for the charges against the applicant. Some crucial contradictions remained unaddressed and unexplained, including the fact as to how it was possible for the applicant to commit the imputed acts at a time when, according to the relevant record, he was already in police custody. The domestic courts, therefore, failed to carry out a thorough and objective

establishment of the facts underlying the charges against the applicant and to demonstrate the rigour and scrutiny which, in the particular circumstances of the case and given the overall context, were required of them in order to ensure an effective implementation of the right to freedom of peaceful assembly guaranteed by Article 11. In such circumstances, it cannot be said that the reasons adduced by the domestic courts to justify the interference were genuinely "relevant and sufficient", which stripped the applicant of the procedural protection that he enjoyed by virtue of his rights under Article 11 (see, *mutatis mutandis*, *Gülcü*, cited above, § 114). Nor can it be said that the courts based their decisions on an acceptable assessment of the relevant facts.

254. In sum, even assuming that the dispersal of the assembly and the applicant's prosecution, detention and conviction complied with domestic law and pursued one of the legitimate aims enumerated in Article 11 § 2 of the Convention – presumably, prevention of disorder and crime – the measures in question were not necessary in a democratic society. Furthermore, the dispersal of the assembly and the punitive measures taken against the applicant could not but have the effect of discouraging him from participating in political rallies. Undoubtedly, those measures also had a serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate (see, *mutatis mutandis*, *Gafgaz Mammadov*, cited above, § 67).

255. Accordingly, there has been a violation of Article 11 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

256. Lastly, the applicant raised a number of other complaints under Articles 5 § 3, 6 and 13 of the Convention.

257. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

258. 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

259. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage.

260. The Government submitted that there had been no violation of the Convention and therefore no damages should be paid to the applicant. In any event, he failed to demonstrate that he had suffered any non-pecuniary damage or that there was a causal link between the alleged violations and the damage claimed.

261. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violations found and awards the applicant EUR 15,600 in respect of non-pecuniary damage.

B. Costs and expenses

262. The applicant also claimed a total of AMD 2,640,000 for the legal costs incurred before the Court. Of this amount, the applicant had already paid his lawyer AMD 275,000 and was under a contractual obligation to pay the remainder after the delivery of the Court's judgment.

263. The Government submitted that the applicant had paid only part of the amount claimed and therefore the remainder of the alleged costs had not been actually incurred. Furthermore, the hourly rate claimed was exaggerated and unreasonable. Lastly, the claim was also unjustified because the contract between the applicant and his lawyer was concluded only in May 2010 and the lawyer had not worked on the applicant's initial application.

264. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 for the proceedings before the Court.

C. Default interest

265. 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 to the merits the Government's objection of the alleged non-exhaustion of domestic remedies and *rejects* it;

2. *Declares* admissible the complaints concerning the applicant's alleged ill-treatment, the failure to carry out an effective investigation, the alleged unlawfulness of his arrest, the failure to inform him promptly of the reasons for his arrest, the lack of a reasonable suspicion and the failure to provide relevant and sufficient reasons for his arrest and detention, the alleged unfairness of his trial, the alleged breach of his right to call witnesses and his right to freedom of expression and freedom of assembly, and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of the substantive limb of Article 3 of the Convention;

4. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention;

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

6. *Holds* that there is no need to examine the complaint under Article 5 § 1 (c) of the Convention as regards the lack of a reasonable suspicion for the applicant's arrest and detention;

7. *Holds* that there is no need to examine the complaint under Article 5 § 2 of the Convention;

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

9. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the fairness of the applicant's trial;

10. *Holds* that there is no need to examine the complaint under Article 6 § 3 (d) of the Convention;

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

12. *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 15,600 (fifteen thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five 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;

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

Done in English, and notified in writing on 20 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President