CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF GALSTYAN v. ARMENIA

(Application no. 26986/03)

JUDGMENT

STRASBOURG

15 November 2007

FINAL

15/02/2008

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

In the case of Galstyan v. Armenia,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 18 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 26986/03) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Arsham Galstyan ("the applicant"), on 1 August 2003.

2. The applicant was represented by Mr N. Yeghiazaryan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 5 April 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Yerevan.

5. In 2003 a presidential election was held in Armenia with its first round taking place on 19 February. The applicant acted as an authorised election assistant (*վստահված անձ*) for the main opposition candidate in the election. At the second round of the election, which took place on

5 March, the applicant was a member of one of the district election commissions. Following the election, the applicant participated in a series of rallies of protest organised in Yerevan by the opposition parties.

6. The applicant alleged, and the Government did not dispute, that at the beginning of April police officers of the Central District Police Station of Yerevan (*ՀՀ ոստիկանության Երևան քաղաքի կենտրոնական բաժին*) came to the applicant's home while he was absent. Having found out about this, the applicant went to the police station to inquire about the reasons for their visit. At the Police Station, the Deputy Head ordered the applicant to stop participating in the demonstrations.

7. On 7 April 2003 at 17h00 a demonstration was held in the centre of Yerevan on the occasion of Mother's Day. The demonstration took place on the Mashtots Avenue next to the Research Institute of Ancient Manuscripts (*Մատենադարան*). It appears that the demonstration was of a political nature and criticism of the Government and of the conduct of the presidential election was voiced.

8. The applicant alleged, and the Government did not dispute, that the demonstration was organised by women and was attended by about 30,000 people, the majority of whom were female. Traffic was suspended by the traffic police on the relevant stretch of the Avenue prior to the commencement of the demonstration. The applicant did not as such participate in the demonstration since most men, including himself, were observing it from a distance, standing on both sides of the Avenue. Their task was to encourage the women and to prevent possible provocations.

9. According to the applicant, at around 17h30 he went home. On his way home, about 100-150 metres away from the site of the demonstration, he was approached by two persons in civilian clothes, who showed police identity papers and took him to the Central District Police Station.

10. At the Police Station, the arresting police officers drew up a record of the applicant's arrest (*արձանագրության բերման ենթարկելու մասին*) in which it was stated that the applicant had been "arrested at around 17h30 on the Mashtots Avenue for obstructing traffic and behaving in an anti-social way at a demonstration".

11. One of the arresting police officers reported to the Head of the Police Station (*ՀՀ ոստիկանության Երևան քաղաքի կենտրոնական բաժնի պետ*) that:

> "... on 7 April 2003 we were on duty at the Mashtots Avenue, where a demonstration was being held and a great number of people were gathered. While on duty, we noticed one person who was obstructing traffic, behaving in an anti-social way and inciting others to follow his example. This person was brought to the Police Station..."

12. The applicant was subjected to a search during which no illegal items were found. A relevant record was drawn up.

13. The police officers questioned the applicant. The applicant made a written statement (*արձանագրություն բացատրություն վերցնելու մասին*) in which he submitted that he had participated in a demonstration three days before. Having found out about the demonstration of 7 April 2003, he had also gone there. He further submitted that he was aware of a demonstration to be held in two days and that he would participate in it. The applicant added that he had not violated, and would not violate, any laws during these demonstrations. This statement was torn up by the police officers, who said that there was a pencil mark and asked the applicant to write a new one. When he wrote the new statement with a similar content, the police officers stopped him at the point when he was about to write about not having committed any offences during the demonstrations and said that what he had written was enough.

14. The police officers drew up a record of an administrative offence (*վարչական իրավախախտման արձանագրություն*) in which it was stated that the applicant had "participated in a demonstration, during which he violated public order". The applicant's actions were qualified under Article 172 of the Code of Administrative Offences (CAO) (*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք*) as minor hooliganism. This record was signed by the applicant. He also put his signature in the section certifying that he was made aware of his rights under Article 267 of the CAO and in the section marked as "other information relevant for the determination of the case", where he also added "I do not wish to have a lawyer".

15. The applicant alleged that he had initially refused to sign this record and requested a lawyer. This became the reason why he was kept in the Police Station for the following five and a half hours. During this period, the police officers were persistently trying to convince him to sign the record and to refuse a lawyer. They told him that it was unnecessary to have a lawyer and spend money for such a minor case. They further said that the case had been already pre-decided by their superiors, so a lawyer would only harm rather than help, as he may end up spending quite some time in the Police Station because of that. On the other hand, if he signed the record and refused a lawyer, he would be immediately taken to a court, where at worst a small fine would be imposed and he would be released. The applicant finally succumbed and agreed to sign the record and to refuse a lawyer. The same day at 23h00 he was taken to judge M. of the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*), who examined the case.

16. The Government contested this allegation. According to them, the applicant was kept at the Police Station for two hours and taken to judge M. at 19h30. During this period, the police officers explained to the applicant

his right to have a lawyer and advised him to avail himself of this right, which he did not wish to do. The record of an administrative offence was signed by the applicant voluntarily and without any objections. Furthermore, the applicant failed to initiate any actions aimed at the defence of his rights, such as lodging motions or availing himself of other procedural rights guaranteed by Article 267 of the CAO, despite having been made aware of them.

17. The materials of the applicant's administrative case, which were transmitted by the police to judge M. for examination, contained the following documents: (1) the record of an administrative offence; (2) the police report; (3) the record of the applicant's arrest; (4) the record of the applicant's search; and (5) the applicant's written statement. All these documents were signed by the applicant except the police report.

18. Judge M., after a brief hearing, sentenced the applicant under Article 172 of the CAO to three days of administrative detention. The judge's entire finding amounted to the following sentence:

> "On 7 April 2003 at around 17h00 ... on the Mashtots Avenue [the applicant], together with a group of people, obstructed street traffic, violated public order by making a loud noise, and incited other participants of the demonstration to do the same..."

19. The decision stated that it was subject to review by the Chairman of the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարանի նախագահ*).

20. According to the record of the court hearing – drawn up in a calligraphic handwriting – the hearing was held in public with the participation of the judge, a clerk and the applicant. The judge explained the applicant's rights to him and informed him of the possibility to challenge the judge and the clerk. The applicant did not wish to lodge any challenges. He stated that he was aware of his rights and did not wish to have a lawyer. The judge read out the motion submitted by the police, seeking to impose administrative liability on the applicant. The applicant stated that he, together with a group of unknown people, had blocked the traffic on the Mashtots Avenue. He said that he did this because it was a demonstration and everybody else was doing the same. He made noise since everybody else was making noise, but he did not push anybody. No questions were put to the applicant. Thereafter, the judge read out and examined the materials prepared by the police. Having familiarised himself with these materials, the applicant accepted that he had signed the record of an administrative offence but objected to being subjected to administrative liability since the incriminated acts had been committed also by others. The judge departed to the deliberation room, after which he returned and announced the decision. The time of the hearing was not recorded.

21. The applicant alleged, and the Government did not explicitly dispute, that the above record was a fake and was drafted at some point after

the hearing in order to create an appearance of lawfulness. In reality there was no clerk and the hearing was not being recorded. The hearing lasted only about five minutes and was conducted in judge M.'s office. The applicant further alleged that, contrary to what the record stated, only the judge, the applicant and the accompanying police officer were present at the hearing. The latter did not as such participate in the hearing and his functions were limited only to bringing the applicant before the judge. The judge listed the materials prepared by the police and asked the applicant "what do you want?". "Justice and lawfulness" replied the applicant. The judge continued reading through the materials and said "since you have three children and have not been guilt-stained in the past, I will impose a mild sentence of three days of detention". The applicant in reply tried to present the circumstances of the case, petitioned the judge to summon some witnesses and requested a lawyer. The judge listened silently to the applicant, signed some papers and let the applicant go, after which he was taken to a detention centre where he served his sentence.

22. On 14 April 2003 the applicant applied to a local human rights NGO, "February 22nd" (*«Փետրվարի 22» իրավապաշտպան կազմակերպություն*), complaining in detail about the above-mentioned events and seeking its assistance. He submitted, *inter alia*, that the police officers had prompted him to sign a document refusing a lawyer, persuading him that a lawyer was not necessary in his case.

23. On 28 April 2003 the NGO complained to the General Prosecutor (*ՀՀ գլխավոր դատախազ*) on behalf of the applicant, seeking to institute criminal proceedings against the police officers and judge M.

24. By a letter of 27 May 2003 the Kentron and Nork-Marash District Prosecutor (*Կենտրոն և Նորք-Մարաշ համայնքների դատախազ*) informed the NGO that the decision of 7 April 2003 had been well-founded and there were no grounds for lodging a protest.

II. RELEVANT DOMESTIC LAW

A. The Constitution of Armenia of 1995 (prior to the amendments introduced in 2005)

25. The relevant provisions of the Constitution read as follows:

Article 24

"Everyone has the right to express his opinion. It is prohibited to force anyone to give up or change his opinion. Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas through any information medium regardless of frontiers."

Article 26

"Citizens have the right to hold peaceful assemblies, rallies, processions and demonstrations without carrying arms."

Article 39

"Everyone has the right to have his violated rights restored, as well as, in the determination of a charge against him, the right to a fair and public hearing by an independent and impartial tribunal with a respect for equality of arms."

Article 40

"Everyone has the right to legal assistance. In cases prescribed by law legal assistance is provided free of charge.

Everyone has the right to have a defence counsel from the moment of his arrest, detention or accusation."

Article 44

"No restrictions may be placed on the exercise of the rights and freedoms guaranteed under Articles 23-27 of the Constitution other than such as are prescribed by law and are necessary in the interests of national security or public safety, for the protection of public order, health or morals, or for the protection of the rights, freedoms, honour and reputation of others."

Article 94

"The guarantor of independence of the judicial authorities is the President of [Armenia]. He presides over the Council of Justice."

[**Article 94 and 94.1 following the amendments of 2005**

"The independence of the courts is guaranteed by the Constitution and by law...

The Council of Justice is composed of nine judges, elected in accordance with a procedure prescribed by law for a period of five years by secret ballot at the general meeting of judges of Armenia, and of four legal scholars, two of which are appointed by the President of [Armenia] and the other two by the National Assembly. The meetings of the Council of Justice are presided over by the President of the Court of Cassation who does not have the right to vote."]

Article 95

"The Council of Justice ..., upon the proposal of the Minister of Justice, shall prepare and submit for the President's approval the annual lists of professional fitness and career development of judges on the basis of which appointments are made..."

Article 96

"A judge [is] irremovable. He shall stay in his post until the age of 65."

Article 97

"In administering justice, a judge ... [is] independent and obey[s] only the law."

B. The Code of Administrative Offences of 1985

26. The relevant provisions of the Code, as in force at the material time, read as follows:

Article 9: The notion of an administrative offence

"A person shall be liable to an administrative penalty for offences envisaged by this Code, if these offences by their nature do not attract a criminal penalty in accordance with the law."

Article 22: The aims of an administrative penalty

"An administrative penalty is a form of liability which is imposed in order to educate the person, who has committed an administrative offence, to uphold the Soviet laws and to respect the rules of socialist way of life, as well as to deter the offender and others from committing new offences."

Article 23: The types of administrative penalties [the provisions concerning "correctional labour" and "administrative detention" are no longer in force as of 16 December 2005]

"The following administrative penalties may be [*inter alia*] imposed for committing an administrative offence: ... (2) a fine; ... (6) correctional labour; (7) administrative detention."

Article 31: Administrative detention [no longer in force as of 16 December 2005]

"Administrative detention is prescribed and imposed only in exceptional cases for certain types of administrative offences for a period not exceeding fifteen days. Administrative detention is imposed by a court (a judge)."

Article 172: Minor hooliganism [no longer in force as of 16 December 2005]

"Minor hooliganism, i.e. obscene swearing at a person or an offensive annoyance of a person in a public place and other similar actions which disturb public order and peace of citizens, leads to an imposition of a fine in the amount between 150% and triple of the fixed minimum wage, or of correctional labour between one and two months with deduction of 20% of the earnings, or, in cases where, in the circumstances of the case, taking into account the offenders personality, the

application of these measures would be deemed insufficient, of administrative detention not exceeding 15 days."

Article 223: Judges of first instance courts

"Judges of first instance courts examine cases concerning administrative offences envisaged by ... [*inter alia*] Article 172 ... of this Code."

Article 249: Public examination of the case on an administrative offence

"Cases on administrative offences are examined in public."

Article 250: Monitoring by the prosecutor of the enforcement of laws in the context of proceedings on administrative cases

"The public prosecutor, who ... monitors the enforcement of laws in the context of proceedings on administrative cases, is entitled to institute the administrative proceedings; to familiarise himself with the materials of the case; to scrutinise the lawfulness of actions of the authorities (public officials) in the course of the administrative proceedings; to participate in the examination of the case; to lodge motions and make conclusions in respect of questions arising during the examination of the case..."

Article 251: Evidence

"Any facts, on the basis of which the authorities (public officials) establish the existence or absence of an administrative offence and the guilt of a particular person, as well as other circumstances decisive for the proper outcome of the case, constitute evidence in an administrative case.

Such facts are established by the record of an administrative offence, the statement of the person against whom administrative proceedings are brought, testimonies of the victim and witnesses, expert opinions, exhibits, the record of seizure of objects and documents, as well as by other documents."

Article 254: The record of an administrative offence

"The record of an administrative offence shall be drawn up by an authorised official..."

Article 255: The content of the record of an administrative offence

"The record of an administrative offence shall contain: the date and the location when and where it was drafted; the post and name of the person drafting it; information concerning the offender; the location, time and essence of the administrative offence; the legal act prescribing a penalty for the offence committed; names and addresses of witnesses and victims, if any; the explanation of the offender; other information necessary for the determination of the case.

The record shall be signed by the person drafting it and the offender...

If the offender refuses to sign the record, a relevant entry is made in the record. The offender is entitled to make explanations and comments concerning the content of the record, which are to be attached to it, and also to indicate the reasons for refusing to sign it.

When drafting the record, the offender must be made aware of his rights and obligations under Article 267 of this Code and a relevant entry must be made in the record."

Article 256: Transmittal of the record

"The record [of an administrative offence] shall be transmitted to the authority (public official) authorised to examine the administrative case."

Article 259: Measures aimed at ensuring the proper conduct of the proceedings in cases concerning administrative offences

"... in order to prevent administrative offences, if other measures of compulsion have been exhausted, and to ensure the timely and accurate examination of cases and the enforcement of decisions in cases on administrative offences, a person may be subjected to an administrative arrest, search, inspection of belongings and confiscation of belongings and documents, for the purpose of verifying his identity and drawing up a record of an administrative offence, if this record cannot be drawn up on the spot and if such a record is required to be drawn up."

Article 260: Administrative arrest

"An administrative arrest must be recorded[. The record] must indicate the date and place, the post and the name of the person drawing up the record; information about the arrestee; the time, place and grounds of the arrest."

Article 261: Authorities (officials) authorised to impose an administrative arrest

"Only authorities (officials) authorised by the laws of the USSR and Armenia can impose an administrative arrest on a person who has committed an administrative offence[. These include, *inter alia*,] the internal affairs authorities in cases of minor hooliganism..."

Article 267: The rights and obligations of the person against whom administrative proceedings are brought

"The person against whom administrative proceedings are brought has the right to familiarise himself with the materials of the case, to make statements, to submit evidence, to lodge motions, and to have legal assistance during the examination of the case."

Article 271: The witness

"Any person, who may be aware of any circumstance connected to the case which needs to be clarified, may be called as a witness in an administrative case."

Article 277: Time-limits for the examination of an administrative case

"Cases concerning administrative offences envisaged under ... [*inter alia*] Article 172 ... of this Code shall be examined within one day..."

Article 278: The procedure for the examination of an administrative case

"At the hearing, [the examining authority] announces the case that is to be examined and the person against whom administrative proceedings are brought, explains to the persons participating in the case their rights and obligations, and reads out the record of an administrative offence. [The examining authority] hears the persons participating in the case, examines the evidence and rules on motions. If a public prosecutor participates in the case, [the examining authority] hears his opinion."

Article 279: Circumstances to be clarified during the examination of an administrative case

"In examining the administrative case, the authority (public official) must clarify whether an administrative offence has been committed; whether the person in question is guilty of committing it; whether an administrative penalty should be imposed; whether there are mitigating and aggravating circumstances; whether pecuniary damage has been caused..."

Article 286: The right to lodge an appeal [(*գանգատ*)] against the decision taken on an administrative case

"The court's (the judge's) decision to impose an administrative penalty is final and not subject to appeal in administrative proceedings, except for the cases prescribed by law."

Article 289: Lodging a protest [(*բողոք*)] against the decision taken on an administrative case

"The prosecutor can lodge a protest against the decision taken on an administrative case."

Article 294: The powers of a judge ... [and] of the chairman of the superior court ... in reviewing the case

"The judge's decision to impose an administrative penalty for an offence envisaged under ... [*inter alia*] Article 172 ... can be quashed or modified by the judge himself upon a protest of the prosecutor and, whether or not such a protest is lodged, by the chairman of the superior court."

C. The Law on the Status of a Judge (*Դատավորի կարգավիճակի մասին ՀՀ օրենք*)

Article 5: Independence of a judge

"In administering justice, a judge is independent and obeys only the law. In administering justice, a judge is not accountable to any public authority or a public official."

Article 6: Impermissible nature of interference with a judge's performance of his functions

"Any interference by public authorities, bodies of local self-government and their officials, political parties, non-governmental associations and media with a judge's performance of his functions of administering justice is impermissible and leads to accountability prescribed by law.

A judge is not obliged to give explanations concerning a case or the substance of materials under his consideration or to grant access to them other than in cases and according to a procedure prescribed by law."

D. The Ministry of Justice Regulations (*ՀՀ արդարադատության նախարարության կանոնակարգ*) adopted on 28 November 2002

27. Chapter 9 of these Regulations prescribes the rules for organising and holding the proficiency test on the basis of which the annual lists of professional fitness and career development of judges are prepared by the Ministry of Justice.

III. RELEVANT DOMESTIC DECISIONS

28. On 16 April 2003 the Constitutional Court adopted a decision on the basis of an application lodged by the main opposition candidate in the presidential election challenging the conduct and results of the election (*ՀՀ սահմանադրական դատարանի որոշումը ՀՀ նախագահի 2003 թ. մարտի 5-ի ընտրության արդյունքները վիճարկելու վերաբերյալ գործով*). The Constitutional Court noted, *inter alia*, that a number of authorised election assistants had been subjected to administrative detention in the second round of the election and had thus been deprived of the possibility of actively pursuing their duties any further. The Court further stated that subjecting to administrative detention for having participated in unauthorised demonstrations and marches constituted an interference with the right to freedom of peaceful assembly guaranteed by Article 11 of the

Convention. First of all, such application of this procedure was in contradiction with European "rule of law" standards, and secondly, all such decisions made by the courts were to be a topic for discussion in the Council of Court Chairmen and the Council of Justice in terms of both their form and substance.

IV. RELEVANT RESOLUTIONS AND REPORTS ON THE APPLICATION OF THE PROCEDURE OF ADMINISTRATIVE DETENTION BEFORE, DURING AND IMMEDIATELY AFTER THE PRESIDENTIAL ELECTION OF FEBRUARY-MARCH 2003

A. Resolution 1304 (2002) of the Parliamentary Assembly of the Council of Europe (PACE): Honouring of obligations and commitments by Armenia

29. The relevant extract from the Resolution provides:

"9. The Assembly further invites the authorities to revise the Administrative Code without delay. It urges them to abolish the provisions concerning the administrative detention and to refrain from applying them in the interim. It warns the authorities of the abuses their application leads to, which are seriously at variance with the principles of the Organisation."

B. Report by the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Doc. 10027, 12 January 2004

30. The relevant extracts from the Report provide:

"32. The day after the first round of the presidential election held on 9 February 2003, several demonstrations and protest meetings took place in Yerevan and several towns at the prompting of opposition political parties.

33. Between the two rounds of the elections, and as from 22 February, more than 200 people were arrested by the police at the behest of the authorities – among them some members of the political parties in opposition or of their campaign staff, and agents of these parties. Despite the Parliamentary Assembly's stipulation that the authorities must no longer avail themselves of the arbitrary procedure of administrative detention prescribed by the Administrative Code, these persons were arrested, taken into custody without notification of their families then brought before the courts and sentenced to a fortnight's administrative internment in over 80 cases, or to fines in 65 other cases. The persons concerned were tried in camera and with few exceptions did not receive the assistance of a lawyer. Many were unable to participate in the second round of the election.

34. Further arrests were made after the second round of the election. The Ministry of Justice has acknowledged that 132 people were arrested between 17 and 25 March,

69 of them being sentenced to an "administrative" custodial penalty and 63 to a fine. According to the OSCE, 77 is the number sentenced to a term of imprisonment over that period.

35. In our previous report we commented on the outrageousness and arbitrariness of this summary procedure prescribed by the Administrative Code. An authentic remnant of the Communist style of justice inherited from the Soviet era, this procedure denies the person charged the right to inform his/her family or to request the immediate assistance of a lawyer, and enables a judge, under an arrangement for immediate trial in camera, to have him/her held for a fortnight maximum. This procedure is simply disgraceful...

37. During our August 2003 visit, the authorities justified their decision to arrest and convict these demonstrators by invoking the need to shield law and order from their misdeeds. They claim that the demonstrators were just thugs, "antisocial elements", alcoholics or drug addicts. This sort of talk has a ring to it that is like a revival of the evidently not so distant Soviet past.

38. We expect the authorities to do their utmost in the future to reconcile the freedom to demonstrate and the freedom to come and go with respect for law and order. This right must be secured to all and sundry, especially at election time. Preservation of law and order must not serve to condone wrongful deprivation or restriction of freedom to form assemblies and to demonstrate."

C. Resolution 1361 (2004) of the PACE: Honouring of obligations and commitments by Armenia

31. The relevant extracts from the Resolution provide:

"14. The Assembly is shocked by the scandalous use that continues to be made of the arbitrary procedures concerning administrative detention provided for in the Administrative Code, which is totally incompatible with its strongly-worded statement in Resolution 1304 of September 2002 that the Armenian authorities should no longer make use of these procedures. It firmly condemns the arrest and conviction of over 270 people – members of the opposition parties, sympathisers and office-holders – between the two rounds of the presidential election and at the end of the second round. It expects the Armenian authorities to discuss by February 2004 the issue of administrative detention provided for in the Administrative Code in co-operation with Council of Europe experts and to send the draft amendments for the Council of Europe's expertise by April 2004.

15. The Assembly asks the Armenian authorities to immediately begin examining, in co-operation with the Council of Europe, the question of the balance to be struck between freedom of assembly and demonstration and respect for public order, and to adopt a law on demonstrations and public meetings in full compliance with Council of Europe principles and standards."

D. Human Rights Watch Briefing Paper, 23 May 2003, An Imitation of Law: the Use of Administrative Detention in the 2003 Armenian Presidential Election

32. The relevant extracts of the Briefing Paper provide:

"**The opposition demonstrations of February to April 2003**

In the period between the [19 February 2003] round and [5 March 2003] runoff of the presidential election, the [main opposition candidate] campaign staged several rallies in the center of Yerevan, each of which attracted tens of thousands of supporters...

After the [5 March 2003] runoff the [main opposition candidate] campaign continued to stage rallies in the center of Yerevan at intervals of several days or a week, to protest alleged election fraud...

Rendering opposition rallies illegal

Although ... rallies and protest demonstrations [in support of the main opposition candidate] were largely peaceful, the governing authorities portrayed them as a threat to public order and political stability, and used this as grounds for arrests...

The campaign of arrests

[21-27 February 2003]: the first wave of arrests

In a first wave of arrests, roughly 160 chiefs and staff of regional and district [main opposition candidate] campaign headquarters, [authorised election assistants], and even drivers were taken to their local police stations...

Dozens of activists were arrested at their homes in different regions of the country the morning after police supposedly picked them out, among several tens of thousands, at an 'unauthorised' rally in Yerevan in the late afternoon of [21 February 2003].

When police officers took opposition activists from their homes it was invariably on the pretext that the local police chief wanted to talk to them. Some activists accompanied the officers willingly, and some initially refused, but met threats in response...

In some cases where the police did not initially find the activist at home, they resorted to violent or extra-legal tactics. There were instances of the police taking family members as hostages, to compel activists to give themselves up...

[1-17 March 2003]: conditional releases, continuing pressure

Following international pressure ... about seventy-five of the eighty-six men serving election rally-related administrative detention sentences were released during the weekend of [1-2 March]...

[18-22 March 2003]: the second wave of arrests

During this five-day period, as post-election protest rallies continued, the police arrested approximately ninety ... activists [supporting the main opposition candidate] in Yerevan, Abovian, Artashat district, Talin, and other areas. Most were taken from their homes – some for the second time. Dozens received administrative detention sentences.

[7-9 April 2003]: around the presidential inauguration

Several men and women were arrested after [a 7 April 2003] demonstration in central Yerevan, and given administrative fines or terms of detention...

Due process violations in administrative offences proceedings

Incommunicado preliminary detention

On bringing opposition activists to the police station, officers kept them in incommunicado detention, depriving them of counsel. This allowed police wide scope to pressure the activists to admit guilt.

In many cases, the police refused to inform or acknowledge to relatives and lawyers of people who had gone missing that they were in police custody. A lawyer who took on the cases of more than thirty activists taken in the first wave of arrests said that simply finding the people he had been tasked to represent was his primary task, and providing legal assistance came a distant second. The wife of an activist arrested in Armavir said: 'For five days they gave no information. We did not know whether he was alive or dead.'

When lawyers, relatives, or human rights groups tried to find detainees in custody, police did not cooperate. Lawyer [T. T.-Y.] said: 'When we go to police departments, we are told the detainee is in court. When we go to the court, they say he or she is in one of the police departments. Before the confusion is resolved, a court verdict for fifteen days of administrative detention has already been issued.'

In Armenia, there is no system of obligatory, transparent registration of all detainees at police stations. [T.-Y.] noted: 'Wherever we went, they said, 'No, he's not here.' The lack of any documentation of detentions makes it difficult for us to dispute. They can claim afterward that the detainee was not there at the exact time we came and asked.' In two cases Human Rights Watch documented, police pretended detainees were not at a particular police station when they patently were.

The police kept detainees for as long as they considered necessary, with little apparent reference to procedural rights guarantees...

Since most were brought in on the pretext of 'a chat' with the police chief, the legal basis of their detention was not immediately clear – whether or not they were arrested, and if so, whether under the administrative or criminal code. With some detained activists the police were initially at a loss as to what to charge them with. With others, the police manipulated the ambiguity, threatening both criminal and administrative charges. At Echmiadzin police station, officers threatened to press criminal charges against [one defendant] if he refused to confess that he resisted and swore at the

policemen who had just taken him from his home. He recalled: 'I signed on the strength of their promise that I would only get two days of administrative detention.'

From mid-March onward, the police extracted either written confessions or undertakings to take no further part in rallies from a number of activists by threatening to beat them. [One defendant], detained at the Yerevan City Police Department, stated that her three interrogators pointed out the lockup in the courtyard, said it was full of women, and that they would all be truncheoned that night: 'Then they showed me black spots on the carpet and said it was blood. Through this kind of pressure they forced me to write that I took part in a rally and obstructed traffic.' In several cases, police did use violence: [one defendant] alleged she was hit on the head with a plastic bottle of water; [another defendant] recounted being hit with a pistol butt, then punched and kicked.

Flawed court hearings

In almost all cases, administrative court hearings against opposition activists were closed and cursory. Courts considered only police evidence, and did not give the defendant the opportunity to summon defence counsel or defence witnesses.

Several factors indicate that the judges acted under the influence of political authorities. In many cases, judges issued the harshest administrative sentence possible – fifteen days detention – to opposition activists. Some judges at [the Kentron and Nork-Marash District of Yerevan] were frank with defendants about their one-sentence-fits-all-policy. A judge told [one defendant]: 'Those who took part in the rally – we are giving them all fifteen days.' When [another defendant] asked a judge to consider handing him a shorter sentence, the latter replied that: 'his instructions were to put us all away for fifteen days – no less.' Judges' questioning of several defendants was blatantly political, such as: 'Why do you play at opposition?' and, 'Why do you bad-mouth the government?' They warned some not to participate in opposition rallies again.

The police appeared to exercise control over the courts when they were in administrative session. During the week of [22-28 February 2003], when [the Kentron and Nork-Marash District Court of Yerevan] tried nearly one hundred [main opposition candidate] supporters, 'Red Berets' – police commandos – sealed off the building to the public. The chairman of the court acknowledged that their deployment was an initiative of the police leadership on which the court was not consulted...

Some defendants demanded lawyers, but court officials and police told them that they were either 'not necessary' or 'not allowed' in administrative cases. Although he had a contract with [a defendant], lawyer [N.B.] was barred from entering [on 22 February 2003 the Kentron and Nork-Marash District Court of Yerevan] to defend him.

In the absence of public scrutiny or defence counsel, judges applied sloppy or arbitrary reasoning in their examination of cases, or none whatsoever.

In most cases, hearings lasted from a few seconds to a few minutes, and the written judgments were pre-prepared. The judge started [one defendant's] hearing by reading out his sentence – fifteen days detention for having participated in an unauthorised march. When [the defendant] objected that he had not participated in the march, he related, 'The judge just said, 'It is proven' and called a policeman to take me away.'

While some judges alluded to the existence of proof without feeling it necessary to present it, others floated hypotheses, such as: 'You took part in an unauthorised rally, and you committed acts of hooliganism on Mashtots Avenue. You shouted or broke something, is that right?' In other hearings, judges did not advance any arguments. Two [opposition] party activists from the Shengavit district of Yerevan were each given three days' detention without learning what they were charged with, while a judge quelled [another defendant's] objection to the absence of stated information or grounds for his fifteen-day sentence with the comment: 'Just say thank you that we didn't press a criminal charge.'

The lack of outside scrutiny also enabled several cases of demonstrably gross arbitrariness by the courts. On [22 February] 2003 the Kentron and Nork-Marash District Court of Yerevan] handed out some administrative detention sentences without conducting hearings in the presence of defendants. At least one police van with several detained activists inside was seen to drive up to the court, where a court official emerged and reportedly handed prepared judgments to the escorting police officers. The van then drove away without the defendants having set foot in court...”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

1. The parties' submissions

(a) The Government

33. The Government claimed that the applicant had failed to exhaust the domestic remedies in respect of the decision of 7 April 2003, as required by Article 35 § 1 of the Convention. According to Article 286 of the CAO, the court's decision to impose an administrative penalty was final and not subject to appeal *except for the cases prescribed by law*. Such an exception in respect of cases concerning offences under Article 172 of the CAO was provided by Article 294 of the CAO. This Article prescribed two possibilities to have the court's decision quashed, either by requesting the prosecutor to lodge a protest or by lodging an appeal directly with the chairman of a superior court. Thus, if a party had applied to a prosecutor but the latter refused to lodge a protest, then this party was entitled to appeal to the chairman of a superior court. Moreover, a party was entitled to appeal immediately to the chairman of a superior court without having first applied to a prosecutor. The applicant was informed about this possibility, since the decision of 7 April 2003 stated that “it was subject to review by the Chairman of the Criminal and Military Court of Appeal”. However, he used only the first of these two possibilities and did not apply to the Chairman.

(b) The applicant

34. The applicant did not accept the Government's objection. First, he argued that it was not clear from the wording of Article 294 of the CAO to the chairman of which "superior" court he should, according to the Government, have applied, since the division of courts into superior and inferior was an inherent element of the Soviet court system and no longer existed in Armenia. Even assuming that the phrase "superior court" implied the Criminal and Military Court of Appeal, neither Article 294 nor any other article of the CAO prescribed *a right* of the convicted person to lodge an appeal against the court's decision imposing administrative detention. From the wording of Article 294 it might as well be inferred that the chairman of the superior court could review such decisions of his own motion, a procedure which was not uncommon to the Soviet court system. Had this Article afforded a right to appeal as opposed to a power of review, then such an appeal would have lain with the panel of three judges of a court of appeal rather than its chairman, if this procedure was to comply with the general procedural rules applied in Armenia in the context of both criminal and civil proceedings.

35. Second, the applicant contended that Article 294 prescribed a review of a final decision either by the judge himself upon the prosecutor's protest or, whether or not such a protest was lodged, by the chairman of the superior court. These were two equal avenues of judicial protection and the aggrieved individual had the right to choose one of them and was not obliged to pursue both of them simultaneously or one after another. In any event, he was not obliged to exhaust remedies which were not effective and adequate according to the generally recognised rules of international law. An application to the chairman of the superior court under Article 294 would have not been such a remedy, since many similar applications lodged by other individuals who had been subjected to administrative penalties for participation in the rallies of protest in the period following the presidential election proved to be unsuccessful.

36. The applicant provided copies of similar court decisions imposing administrative penalties on other individuals, dating from April-May 2002, which stated that they were final, were not subject to appeal and could be protested against by the prosecutor.

2. The Court's assessment

37. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal

systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Assenov and Others v. Bulgaria* no. 24760/94, § 85, ECHR 1999-VIII).

38. Furthermore, under Article 35 the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, e.g., *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, p. 19, § 39; and *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 68).

39. The Court further recalls its extensive case-law to the effect that an application for retrial or similar extraordinary remedies cannot, as a general rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see, e.g., *R. v. Denmark*, no. 10326/83, Commission decision of 6 September 1983, Decisions and Reports (DR) 35, p. 218; *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002; and *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Furthermore, remedies the use of which depend on the discretionary powers of public officials cannot be considered as effective remedies within the meaning of Article 35 § 1 of the Convention (see *Tumilovich v. Russia* (dec.), no. 47033/99, 2 June 1999; *Gurepka v. Ukraine*, no. 61406/00, § 60, 6 September 2005). Nor can remedies which have no precise time-limits, thus creating uncertainty and rendering nugatory the six-month rule contained in Article 35 § 1 of the Convention which is closely interrelated with the requirement to exhaust domestic remedies (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004; *Denisov*, cited above).

40. Turning to the circumstances of the present case, the Court notes that Article 286 of the CAO explicitly states that the court's (judge's) decision to impose an administrative penalty is “final and not subject to appeal”. Article 294 of the CAO further provides that it “can be quashed or modified by the judge himself upon a protest of the prosecutor and, whether or not such a protest is lodged, by the chairman of the superior court”. The Court considers first of all that, as regards the possibility of applying to a prosecutor with a request to lodge a protest, this is clearly not an effective remedy for the purposes of Article 35 § 1 of the Convention since it is not directly accessible to a party and depends on the discretionary powers of a prosecutor.

41. As regards the review carried out by the chairman of the superior court, the parties disagreed as to whether this review was carried out upon an appeal of an interested party or of the chairman's own motion. The Court notes from the outset that no further details of this procedure are provided by the CAO. It is true that Article 286 allows for exceptions. However, contrary to what the Government claim, nothing suggests that Article 294 can be considered as such exception. Indeed, the wording used in this Article, namely "can be quashed or modified by the chairman", as opposed to "an appeal can be lodged against", which is the wording used in Armenia in the context of both criminal and civil procedure, suggests that this Article provides for a power of review rather than a right to appeal. The Court further notes that the application of this procedure in practice also appears to be inconsistent: while the decision of 7 April 2003 states that "it is subject to review by the Chairman", many other similar court decisions – copies of which were submitted by the applicant – state that they "are final and not subject to appeal" or "can be protested against by the prosecutor". The Government, in their turn, failed to submit any evidence in support of their interpretation of Article 294. In such circumstances, the Court does not find the Government's interpretation to be convincing and considers that Article 294 of the CAO provided for a power of review by the chairman rather than a right of a party to appeal. Even assuming that a party – just as in the case of applying to a prosecutor – could solicit such a review, nothing suggests that the chairman was obliged to act upon the party's relevant request. Moreover, neither the CAO nor the decision of 7 April 2003 itself prescribed any time-limits for this review.

42. In the light of the above, the Court concludes that the review possibility provided by Article 294 of the CAO resembles more an extraordinary remedy than a regular appeal procedure and cannot be taken into account for the purposes of Article 35 § 1 of the Convention. Therefore, the Government's preliminary objection must be rejected.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

43. The applicant complained that Article 5 § 1 of the Convention did not envisage, as one of the grounds for deprivation of liberty, the detention of a person as an administrative sanction. He further complained under Article 5 § 4 of the Convention that he was not entitled to contest the lawfulness of the detention imposed on him by the decision of 7 April 2003.

The relevant part of Article 5 provides:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Admissibility

1. The parties' submissions

44. The Government submitted that the applicant's "administrative detention" was permissible under Article 5 § 1 (a) of the Convention, since he was convicted by a court of committing an administrative offence. Article 5 § 1 (a) permits the detention of a person, if he or she is found guilty of committing an offence, whether criminal, disciplinary or, as in the present case, administrative. As to Article 5 § 4 of the Convention, the Government claimed that the applicant was entitled to contest the lawfulness of his detention under Article 294 of the CAO.

45. The applicant submitted that administrative detention, as a form of penalty, cannot be included among the grounds for detention permissible under Article 5 § 1 of the Convention, because the application of this procedure was condemned by Resolution 1304 (2002) of the Parliamentary Assembly of the Council of Europe. Furthermore, even though the lawfulness of detention within the meaning of Article 5 of the Convention did not depend on the lawfulness of the conviction, nevertheless, had his case been examined in compliance with the guarantees of Article 6 of the Convention, he would not have been deprived of his liberty. As to

Article 5 § 4 of the Convention, the applicant claimed, in addition to the reasons contained in his arguments concerning the issue of alleged non-exhaustion (see paragraphs 34-36 above), that he was not able to contest the decision of 7 April 2003 because a copy of this decision was given to him only at a later date, following his release from detention.

2. The Court's assessment

(a) Article 5 § 1 of the Convention

46. The Court recalls that Article 5 § 1 (a) permits the "lawful detention of a person after conviction by a competent court". This provision makes no distinction based on the legal character of the offence of which a person has been found guilty. It applies to any "conviction" occasioning deprivation of liberty pronounced by a "court" irrespective of its classification by the internal law of the State in question (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, pp. 27-28, § 68; *Gurepka*, cited above, § 39).

47. In the present case, the applicant was subjected to administrative detention following his conviction under Article 172 of the CAO for minor hooliganism by the Kentron and Nork-Marash District Court of Yerevan. Even though called "administrative detention", this term in fact was used to denominate a short-term sentence imposed by a court for committing an offence classified in the domestic law as administrative and being usually of a minor character. The Court therefore concludes that the applicant was deprived of his liberty after a "conviction" within the meaning of Article 5 § 1 (a) of the Convention.

48. It remains to ascertain whether this conviction was imposed by a "competent court". According to Article 223 of the CAO, administrative cases concerning offences envisaged by Article 172 are examined by judges of first instance courts. In the present case, the applicant's administrative case was examined by judge M. of the Kentron and Nork-Marash District Court of Yerevan, which was the court with territorial jurisdiction to examine the offence in question. It follows that the applicant's conviction was imposed by a "competent court" as required by Article 5 § 1 (a) of the Convention.

49. Finally, as regards the lawfulness of the decision taken by the court, the Court recalls that Article 5 § 1 (a) is an autonomous provision whose requirements are not always co-extensive with those of Article 6 of the Convention (see *Engel and Others*, cited above, pp. 27-28, § 68). Having regard to the particular circumstances of the case, the Court, without prejudging the merits of the complaints under Article 6, considers that the deprivation of liberty applied to the applicant for minor hooliganism was provided by the Armenian law and was imposed in accordance with a

procedure prescribed by law (see, *mutatis mutandis*, *ibid.*; and *Gurepka*, cited above, § 39).

50. In the light of the above, the Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) Article 5 § 4 of the Convention

51. The Court recalls that, while Article 5 § 4 obliges the Contracting States to make available a right of recourse to a court when the decision depriving a person of his liberty is one taken by an administrative body, there is nothing to indicate that the same applies when the decision is made by a court at the close of judicial proceedings. Where a sentence of imprisonment is pronounced after a "conviction by a competent court", the supervision required by Article 5 § 4 is incorporated in the decision (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, pp. 40-41, § 76; *Engel and Others*, cited above, p. 32, § 77; and *Menesheva v. Russia*, no. 59261/00, § 103, ECHR 2006-...).

52. In view of the above, the fact that in the present case no ordinary appeal procedure was available against the decision of the Kentron and Nork-Marash District Court of Yerevan (see paragraphs 40-42 above) does not raise a problem under Article 5 § 4.

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

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

54. The applicant made several complaints under Article 6 §§ 1 and 3 (b) and (c) of the Convention. In particular, he submitted that (1) the tribunal examining his case was not independent, since there were no independent courts in Armenia because judges were appointed by the Council of Justice presided over by the President of Armenia and the Minister of Justice; (2) the trial was not fair and the tribunal was not impartial: there was basically no examination of the case and the entire trial lasted about five minutes, and the judge ignored all his arguments without even trying to rebut them and based his decision solely on the record of an administrative offence, a document fabricated by the police; (3) the trial was not public in view of the fact that it was held in camera in the judge's office at 23h00; (4) he was not given sufficient time and facilities to prepare his defence; and (5) he was tricked into refusing a lawyer.

The relevant part of Article 6 of the Convention provides:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing...;"

A. Admissibility

1. Applicability of Article 6

55. Although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue of its own motion. For the reasons set out below it considers that these proceedings involved the determination of a criminal charge against the applicant.

56. The Court observes that in order to determine whether an offence qualifies as "criminal" for the purposes of the Convention, it is first necessary to ascertain whether or not the provision defining the offence belongs, in the legal system of the respondent State, to criminal law; next the "very nature of the offence" and the degree of severity of the penalty risked must be considered (see, among many other authorities, *Engel and Others*, cited above, pp. 34-35, § 82; *Öztürk v.Germany*, judgment of 21 February 1984, Series A no. 73, p. 18, § 50; *Demicoli v. Malta*, judgment of 27 August 1991, Series A no. 210, pp. 15-17, §§ 31-34).

57. As to the domestic classification, the Court has previously examined the sphere defined in certain legal systems as "administrative" and found that it embraces some offences that are criminal in nature but too trivial to be governed by criminal law and procedure (see *Palaoro v. Austria*, judgment of 23 October 1995, Series A no. 329-B, p. 38, §§ 33-35). In the Armenian system that also appears to be the case.

58. In any event, the indication afforded by national law is not decisive for the purpose of Article 6 and the very nature of the offence in question is a factor of a greater importance (see *Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80, p. 36, § 71; *Weber v. Switzerland*, judgment of 22 May 1990, Series A no. 177, p. 18, § 32). The Court notes that Article 172 of the CAO applies to the entire population. Furthermore, the purpose of the sanction imposed on the applicant was purely punitive and deterrent.

59. Finally, as regards the severity of the penalty, the Court observes that loss of liberty imposed as punishment for an offence belongs in general

to the criminal sphere, unless by its nature, duration or manner of execution it is not appreciably detrimental (see *Engel and Others*, cited above, pp. 34-35, §§ 82; *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 69-130, ECHR 2003-X). In the present case, the applicant was deprived of his liberty for three days and was locked up in the detention centre during the term of his sentence. Moreover, the maximum sentence which could be imposed was 15 days of detention.

60. These considerations are sufficient to establish that the offence of which the applicant was accused can be classified as "criminal" for the purposes of the Convention (see, *mutatis mutandis*, *Menesheva*, cited above, §§ 94-98). It follows that Article 6 applies.

2. Independence of the tribunal

61. The Court recalls that, in determining whether a body can be considered to be "independent" – notably of the executive and of the parties to the case – it is necessary to have regard to the manner of appointment of its members and the duration of their terms of office, the existence of guarantees against outside pressure and the question whether the body presents an appearance of independence (see *Campbell and Fell*, cited above, pp. 39-40, § 78).

62. The Court notes from the outset that the applicant failed to substantiate any further, except by expressing general dissatisfaction with the system of appointment of judges, how this system jeopardized the independence of the tribunal examining his particular case. As far as this system is concerned, the Court notes that, according to the Constitution at the material time, the authority responsible for the appointment of judges, namely the Council of Justice, was presided over by the President of Armenia. However, the fact that members of a tribunal are appointed by the executive does not in itself call into question its independence (*ibid.*, p. 40, § 79). The Court notes that judges were appointed to their posts on the basis of a special proficiency test. Furthermore, safeguards of the independence of judges, such as security of judge's tenure, their irremovability and freedom from outside instructions or pressure, were guaranteed by the Constitution and the implementing legislation. In the Court's opinion, these safeguards were sufficient to exclude the applicant's misgivings about the independence of the tribunal in his case.

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

3. Other fair trial guarantees

64. The Government, referring to the admissibility decision in the case of *Murphy v. the United Kingdom* (no. 4681/70, Commission decision of

3 October 1972, Collection 43, p. 1), submitted that, in respect of his complaint about the lack of sufficient time and facilities to prepare his defence, the applicant had failed to exhaust the domestic remedies since he had not lodged a motion with the court seeking to adjourn the hearing. If the applicant considered that he did not have sufficient time to prepare his defence, it was open to him to request such an adjournment or to express disagreement with the actions of the authorities.

65. The applicant did not comment on this point.

66. The Court considers that the Government's objection is closely linked to the substance of the applicant's complaints under Article 6, and should be joined to the merits.

67. As to the remainder of the complaints under this Article, the Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 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 Government

68. The Government argued that the applicant had sufficient time to prepare his defence. Referring to the case of *Albert and Le Compte v. Belgium* (judgment of 10 February 1983, Series A no. 58, pp. 20-21, § 41), they argued that "sufficient time" was to be assessed in view of the circumstances of the case, including the complexity of the case and the stage of the trial. The applicant was brought to the police station at 17h30, while the court hearing took place at 19h30. During this time he failed to avail himself of his procedural rights, despite all the efforts of the police officers. The applicant was familiarised with the materials of the case against him and informed about his right to lodge motions and challenges, which he failed to do. The applicant signed the record of an administrative offence voluntarily and, by doing so, he agreed with its content and in essence admitted his guilt. Taking into account that the applicant signed the record, refused to have a lawyer, did not lodge any motions and did not avail himself of other procedural rights, the police officers considered two hours to be sufficient for the preparation of the applicant's defence. Furthermore, the applicant had the right to request an adjournment of the examination of his case, which he also failed to do. By failing to request such an adjournment, the applicant admitted that he had had ample time to prepare his defence. Finally, by immediately presenting the case to the

court, the police officers ensured that the trial took place within a reasonable time.

69. The Government further argued that the applicant's case was examined publicly. According to Article 8 of the Code of Civil Procedure, for a case to be examined *in camera* the court has to take a specific decision on that. No such decision was taken in the applicant's case, which indicates that the hearing was public.

70. The Government finally submitted that the applicant himself did not wish to have a lawyer, despite the fact that the police officers explained to him his right to have a lawyer and advised him to avail himself of this right. Moreover, the applicant did not wish to have a lawyer during the entire procedure, including the court hearing, which he indicated in the record of an administrative offence. In sum, the applicant's trial as a whole complied with the guarantees of Article 6 of the Convention.

(b) The applicant

71. The applicant submitted that the trial was not fair. A fair trial presupposes an impartial, objective and thorough examination of the circumstances of a case, whereas all the materials indicate that there was no such examination in his case. He further submitted that, in the period following the 2003 presidential election, both the police and the courts were doing all that was possible to punish the opposition activists in conditions lacking transparency. The police as a rule were looking for their "victims" not at the demonstration but at a later hour and at a different location. Often the public and close relatives became aware of the conviction only after the court decision had been taken and the convicted person had already been placed in the detention facility. In order to conceal the fact that these cases were fabricated, the authorities were not allowing lawyers to participate and were holding hearings at late hours, thus effectively excluding the possibility for them to be public.

72. The applicant further referred to his previous submissions, according to which, the court hearing, contrary to what the Government claim, took place at 23h00 and no one else was present besides the judge and the accompanying police officer who did not, in any event, participate in the hearing. The judge based his decision solely on the record of an administrative offence and ignored all the applicant's arguments without even asking questions. The whole trial lasted about five minutes and there was no examination as such. The applicant never refused to have a lawyer either before or during the court hearing.

73. The applicant further submitted that the Government's assertions as to the circumstances of the case were nothing but assumptions which were based on the mere fact that he had signed the record of an administrative offence. This record, however, was a fake and so was the resulting court decision which contained nothing but a standard text. Even assuming that

this record could be regarded as a confession, in the absence of any other evidence it could not have served as a sufficient basis to convict him.

74. As regards the publicity of the hearing, the applicant argued that it was the *de facto*, rather than the *de jure*, aspect of this phenomenon which should be taken into account. A hearing held at 23h00 in a judge's office could not be considered as "public".

2. The Court's assessment

75. In order to ascertain whether the proceedings against the applicant complied with the requirements of Article 6, the Court will address the complaints raised in that respect individually (see *Borisova v. Bulgaria*, no. 56891/00, § 40, 21 December 2006).

(a) Article 6 § 1: Fair and public hearing by an impartial tribunal

76. The Court notes at the outset that the applicant contested the circumstances of his trial, as presented in the record of the court hearing, claiming that there was basically no examination of the case, that there was no clerk and the hearing was not being recorded, and that the above record was a fake. Despite the fact that the Government did not explicitly dispute this submission, the Court considers that compelling evidence would be required to convince it that a certain official document is a fake. It is true that the record was drawn up in a calligraphic handwriting, which prompts the Court to believe that it was possibly drafted – or at least re-drafted – at some point after the hearing. While this may raise some doubts as to the accuracy of the record, it is nevertheless not sufficient for the Court to conclude that the record is a fake. The Court will therefore proceed on the assumption that the trial was conducted in the manner described in this record, from which it appears that there was a court examination, even if a very brief one.

77. The applicant claimed that the court had based its decision on the materials prepared by the police, namely the record of an administrative offence, and ignored all his arguments. The Court recalls, however, that it is not within its province to substitute its own assessment of the facts and the evidence for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see, among many other authorities, *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34; *Bernard v. France*, judgment of 23 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 879, § 37). Furthermore, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law. 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 question which must be answered is whether the

proceedings as a whole, including the way in which the 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. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubts on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-...).

78. The Court notes that the charge against the applicant and the ensuing conviction were based on evidence given by the arresting police officers as reflected in the record of an administrative offence and other materials prepared by the police. In the Court's opinion, the fact that the only evidence in criminal proceedings is the witness testimony of an arresting police officer is not in itself contrary to Article 6 of the Convention, as long as the accused has the opportunity to test this evidence in adversarial proceedings. In the present case, the applicant – even if at a very brief hearing – was able to make submissions in defence of his position. On the other hand, none of the arresting police officers was called and examined in court. In this connection, the Court recalls, however, that the right to examine a witness can only be exercised if the accused has expressed his wish to do so (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, pp. 18-19, §§ 35-36), something which the applicant failed to do.

79. The applicant further claimed that the tribunal was not impartial. The Court recalls that the requirement of "impartiality" enshrined in Article 6 § 1 of the Convention has two aspects. Firstly, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see *Gautrin and Others v. France*, judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1030-31, § 58; *Morris v. the United Kingdom*, no. 38784/97, § 58, ECHR 2002-I). As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, judgment of 24 May 1989, Series A no. 154, p. 21, § 47; *Daktaras v. Lithuania*, no. 42095/98, § 30, ECHR 2000-X). In the present case, the applicant alleged that the judge was biased for political reasons. In this respect, the Court considers that – while some of the materials in the case, such as the PACE documents and the Human Rights Watch Briefing Paper, suggest that the period surrounding the presidential election of 2003 was a period of increased political sensitivity – it is,

nevertheless, not sufficient to conclude that the judge examining the applicant's particular case was personally biased for political grounds. The Court further notes that the applicant did not raise any other argument capable of casting doubt on the subjective or objective impartiality of judge M. who had examined his case.

80. The applicant finally claimed that the hearing was not public since it was allegedly held in a judge's office at 23h00. The Court reiterates that the public character of court hearings constitutes a fundamental principle enshrined in Article 6 § 1 (see, among other authorities, *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58). The accused's right to a public hearing is not only an additional guarantee that an endeavour will be made to establish the truth but also helps to ensure that he is satisfied that his case is being determined by a tribunal whose independence and impartiality he may verify. The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret without public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Fejde v. Sweden*, judgment of 29 October 1991, Series A no. 212-C, pp. 67-68, § 28; *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94 and 24972/94, § 92, ECHR 2000-IX).

81. In the present case, the Court notes at the outset that the hearing in question was formally public. Nevertheless, it must be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among many other authorities, *Sukhorubchenko v. Russia*, no. 69315/01, § 43, 10 February 2005). The Court considers that the right to a public hearing would be illusory if a Contracting State's domestic legal system allowed courts to hold hearings which were public in form but would not be in reality accessible to the public, including because of the time and location of the hearing (see, *mutatis mutandis*, *Riepan v. Austria*, no. 35115/97, § 29-31, ECHR 2000-XII). The Court notes, however, that it is not evident from the record of the court hearing at what time the applicant's trial was conducted. Nor did the applicant produce any other evidence which could support his allegation that this hearing took place at 23h00. It is therefore objectively impossible to establish the time of the court hearing and whether this precluded the hearing from being public. As regards the place of the hearing, it is true that the Government did not explicitly contest the applicant's allegation that the hearing in question took place in judge M.'s office as opposed to a courtroom (see paragraph 21 above). However, it follows from the record of the court hearing that the judge at a certain moment departed to a

deliberation room, which suggests that the hearing was most likely held in a courtroom rather than an office. Furthermore, the fact that no members of the public were present at the hearing does not automatically render it not public. The Court finally notes that the applicant did not submit any arguments other than solely relying on the alleged time and location of the hearing in support of his allegation that it was not public. In such circumstances, the Court considers that there is no sufficient evidence to conclude that the hearing in question was not public.

82. In the light of all the above factors, the Court concludes that there has been no violation of Article 6 § 1 of the Convention as far as the applicant's right to a fair and public hearing by an impartial tribunal is concerned.

(b) Article 6 § 3 taken together with Article 6 § 1

83. The Court reiterates that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1. The Court will therefore examine the relevant complaints under both provisions taken together (see, among many other authorities, *F.C.B. v. Italy*, judgment of 28 August 1991, Series A no. 208-B, p. 20, § 29; *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, p. 13, § 29).

(i) The right to have adequate time and facilities for the preparation of his defence

84. The Court recalls that Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Can v. Austria*, no. 9300/81, Commission's report of 12 July 1984, Series A no. 96, § 53; *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996; *Mayzit v. Russia*, no. 63378/00, § 78, 20 January 2005). Furthermore, the facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see *C.G.P. v. the Netherlands*, (dec.), no. 29835/96, 15 January 1997; *Foucher v. France*, judgment of 18 March 1997, *Reports* 1997-II, §§ 26-38). The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.

85. In the present case, the Court notes that the applicant's case was examined in an expedited procedure under the CAO: according to

Article 277 of the CAO, cases concerning offences of minor hooliganism were to be examined within one day. The Court recalls, however, that the existence and utilisation of expeditious proceedings in criminal matters is not in itself contrary to Article 6 of the Convention as long as they provide the necessary safeguards and guarantees contained therein (see *Borisova*, cited above). The Government claimed that it was open to the applicant to seek an adjournment of his case, if he considered the time afforded to him for the preparation of his defence to be insufficient, which he failed to do. The Court notes, however, that the CAO does not prescribe any exceptions to the rule contained in the above Article 277. Nor is the right to seek adjournment explicitly listed among the rights enjoyed by an accused in administrative proceedings (Article 267 of the CAO). The Government also failed to invoke any legal basis for such a right. Furthermore, neither the materials of the applicant's administrative case, nor the Government themselves, suggest that the applicant was made aware of the existence of such a possibility by the police officers or the court. In such circumstances, the Court considers that the Government have failed to demonstrate convincingly that the applicant unequivocally enjoyed, both in law and in practice, the right to have the examination of his case adjourned in order to prepare his defence and that such an adjournment would have possibly been granted, had the applicant made a relevant request (see, *a contrario*, *Murphy*, cited above).

86. The Court notes that, according to the Government, the entire pre-trial procedure lasted two hours from 17h30 to 19h30. The Government claimed that, since the applicant's case was not a complex one, two hours had been sufficient, taking into account that he had refused to have a lawyer, had not availed himself of his right to lodge motions and challenges, and had voluntarily signed the record of an administrative offence. The Court considers, however, that the mere fact that the applicant signed a paper in which he stated that he did not wish to have a lawyer and chose to defend himself in person does not mean that he did not need to be afforded adequate time and facilities to prepare himself effectively for trial. Nor does the fact that the applicant did not lodge any specific motions during the short pre-trial period necessarily imply that no further time was needed for him to be able – in adequate conditions – to properly assess the charge against him and to consider various avenues to defend himself effectively. Finally, the Court agrees that the applicant had the choice of refusing to sign the record of an administrative offence. However, contrary to what the Government claim, nothing in law or in the materials of the applicant's administrative case suggests that the applicant's signing of the record pursued any other purpose than confirming the fact of him having been familiarised with it and made aware of his rights and the charge against him.

87. The Court notes that the record of an administrative offence, which contained the charge and was the main evidence against the applicant, does

not indicate precisely at what time he was presented with this document and how much time he was given to review it. Nor can this be established in respect of the police report and other materials prepared by the police. The parties disagreed as regards the exact length of the pre-trial period but, in any event, it is evident that this period was not longer than a few hours. The Court further notes that during this time the applicant was either in transit to the court or was being kept in the police station without any contact with the outside world. Furthermore, during this short stay at the police station, the applicant was subjected to a number of investigative activities, including questioning and a search. Even if it is accepted that the applicant's case was not a complex one, the Court doubts that the circumstances in which the applicant's trial was conducted – from the moment of his arrest up until his conviction – were such as to enable him to familiarise himself properly with and to assess adequately the charge and evidence against him, and to develop a viable legal strategy for his defence.

88. The Court concludes that the applicant was not afforded adequate time and facilities for the preparation of his defence. There has accordingly been a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention.

(ii) The right to defend himself in person or through legal assistance of his own choosing

89. The Court reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). Furthermore, Article 6 may also be relevant before a case is sent for trial and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with it (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36; *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-...). The manner in which Article 6 §§ 1 and 3 (c) are applied during the investigation depends on the special features of the proceedings and the facts of the case. Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation (see *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, pp. 54-55, § 63; *Öcalan*, cited above, § 131). The Court further recalls that the right of an accused to participate effectively in a criminal trial includes, in general, not only the right to be present, but also the right to receive legal assistance, if necessary (see *Lagerblom v. Sweden*, no. 26891/95, 14 January 2003, § 49).

90. In the present case, the Court notes, however, that the applicant himself did not wish to have a lawyer both during the pre-trial stage and the court proceedings. In this connection, the Court recalls that the waiver of a

right guaranteed by the Convention – insofar as it is permissible – must be established in an unequivocal manner and must be attended by minimum safeguards commensurate with its importance (see *Colozza v. Italy*, judgment of 12 February 1985, Series A no. 89, p. 14, § 28; *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, p. 23, § 51; and *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-...). The Court considers that the requirements established by these principles were fulfilled in the present case in view of the following.

91. The Court notes that all the materials before it indicate that the applicant expressly waived his right to be represented by a lawyer both before and during the court hearing (see paragraphs 14 and 20 above). While the nature of some of the rights safeguarded by the Convention is such as to exclude a waiver of the entitlement to exercise them (see *De Wilde, Ooms and Versyp*, cited above, p. 36, § 65), the same cannot be said of certain other rights (see *Albert and Le Compte*, cited above, p. 19, § 35). It is clear from the text of Article 6 § 3 (c) that an accused has the choice of defending himself either "in person or through legal assistance". Thus, it will normally not be contrary to the requirements of this Article if an accused is self-represented in accordance with his own will, unless the interests of justice require otherwise. In the present case, there is no evidence that the applicant's choice to be self-represented was the result of any threats or physical violence. Furthermore, there is no evidence to support the applicant's allegation that he was "tricked" into refusing a lawyer. Even though the PACE and Human Rights Watch reports referred to in paragraph 79 above contain relevant information, these materials are, nevertheless, not sufficient for the Court to conclude that actions, similar to the ones described in these reports, happened in the applicant's particular case. Finally, noting that the applicant was accused of a minor offence and the maximum possible sentence could not exceed 15 days of detention, the Court does not discern in the present case any interests of justice which would have required a mandatory legal representation.

92. Having concluded that it was the applicant's own choice not to have a lawyer, the Court considers that the authorities cannot be held responsible for the fact that he was not legally represented in the course of the administrative proceedings against him. There has accordingly been no violation of Article 6 §§ 1 and 3 (c) of the Convention taken together.

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

93. The applicant complained that the sanction imposed on him by the decision of 7 April 2003 unlawfully interfered with his rights to freedom of expression and freedom of peaceful assembly guaranteed by Articles 10 and 11 of the Convention respectively, 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

94. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 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 scope of the applicant's complaints

95. 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, a *lex specialis*. It is therefore unnecessary to take the complaint under Article 10 into consideration separately (see *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, p. 20, § 35).

96. 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 (*ibid.*, § 37).

2. Whether there was an interference with the exercise of the freedom of peaceful assembly

97. The Government submitted that there was no interference with the applicant's right to freedom of peaceful assembly guaranteed by Article 11 since he, as he claimed himself, did not participate in the demonstration in question. According to the Government, the applicant was far away from the demonstration and, simply for hooligan reasons, blocked a street that had nothing to do with it. Such actions, however, cannot be considered as necessary for the exercise of one's right to freedom of peaceful assembly.

98. The Government further submitted that, being far away from the demonstration and not participating in it, the applicant could only exercise the right to freedom of expression and, more specifically, the right to receive information guaranteed by Article 10. However, there was no interference with this Article either, since the applicant exercised his right to receive information without any obstacles. In any event, the penalty imposed on the applicant was not connected with the exercise of his rights under Article 10, since he was convicted of minor hooliganism under Article 172 of the CAO.

99. The applicant submitted that the Government's assertion that he did not participate in the demonstration, so that there was no interference with his right to freedom of peaceful assembly, contradicted the findings of the domestic court, according to which he had allegedly behaved in an anti-social way during the demonstration of 7 April 2003. If he had blocked a street which had nothing to do with the demonstration, as the Government claimed, this fact would have been disclosed by the investigating authority and without any doubt would have been used in the administrative case against him.

100. The Court notes that it is apparent from the police materials and the court decision that the applicant was arrested and convicted for violating public order during a demonstration and, more specifically, the demonstration of 7 April 2003 held on the Mashtots Avenue. The actions which led to a penalty being imposed on the applicant, according to the judge's findings, were the “obstruction of street traffic” and the “loud noise” he made during this demonstration which, in the Court's opinion, were the direct result of his participation in it. Thus, the Government's assertion that the applicant did not participate in the demonstration and blocked a street which had nothing to do with it has no basis in the findings of the domestic authorities. It follows that the applicant was convicted for his behaviour at the demonstration.

101. The Court further notes that nothing suggests that this demonstration was not intended to be peaceful. Furthermore, none of the materials in the case suggest that it was prohibited or not authorised (see, *a contrario*, *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004), or that the authorities attempted to disperse it or to order its participants,

including the applicant, to leave on account of it being illegal or unauthorised or obstructing traffic (see, *a contrario*, *G. v. Germany*, no. 13079/87, Commission decision of 6 March 1989, DR 60, p. 256; *Steel and Others v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2725, § 7; *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003). The Government did not make such suggestions either. The Court therefore concludes that the demonstration was not prohibited. By joining it, the applicant availed himself of his right to freedom of peaceful assembly and the conviction that followed amounted to an interference with that right.

102. The Court accordingly concludes that the applicant's conviction for his participation at a lawful demonstration amounted to an interference with his right to freedom of peaceful assembly.

3. Whether the interference was justified

103. 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.

(a) "Prescribed by law"

104. The Government submitted that, if the Court were to conclude that there had been an interference with the applicant's right to freedom of peaceful assembly, this interference was prescribed by law. The applicant blocked Mashtots Avenue with a group of people and, by doing so, violated public order, which was qualified as minor hooliganism and fell within the ambit of Article 172 of the CAO.

105. The applicant submitted that these actions could not be considered as falling within the ambit of Article 172 of the CAO. According to this Article, minor hooliganism meant obscene swearing or an offensive annoyance of a person in public, as well as other *similar* actions disturbing public order. However, obstruction of a street could not be considered as an action similar to the ones mentioned above.

106. The Court recalls that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, among other

authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

107. In the present case, the applicant was convicted under Article 172 of the CAO which prescribes a penalty for, *inter alia*, actions which disturb public order and peace of citizens. Taking into account the diversity inherent in public order offences, the Court considers that this norm is formulated with sufficient precision to satisfy the requirements of Article 11. It follows that the interference was prescribed by law.

(b) Legitimate aim

108. The Government submitted that the interference was necessary for the prevention of disorder and for the protection of the rights of others, since the applicant was personally involved in committing unlawful actions during the demonstration.

109. The applicant denied having blocked a street during the demonstration. He further submitted that, even assuming that he had done so, this action, by its essence, degree of danger to society and possible consequences, could not be considered as posing a threat to the values protected by Article 11 of the Convention and thus requiring a sanction.

110. The Court notes that it is apparent that the applicant incurred the sanction for actions which were qualified by the authorities as violating public order. The interference was therefore in pursuit of a legitimate aim, i.e. the "prevention of disorder".

(c) "Necessary in a democratic society"

111. The Government submitted that the interference was proportionate since it was aimed at preventing the applicant's unlawful actions and avoiding social disorder. The Contracting Parties enjoyed a margin of appreciation as far as the necessity of an interference was concerned and the reasons given by the domestic authorities were sufficient.

112. The applicant submitted that he had not committed any unlawful actions during the demonstration of 7 April 2003, and his arrest and conviction were mainly aimed at preventing his participation in future demonstrations, since he was an opposition activist. This is supported by the fact that several days before the demonstration the Deputy Head of the Police Station demanded that he give up participating in demonstrations.

113. The applicant further referred to his previous submissions, according to which he could not have obstructed street traffic because the relevant stretch of the Mashtots Avenue was packed with about 30,000 people and the traffic had been already suspended by the traffic police prior to the commencement of the demonstration. Furthermore, the demonstration continued until 19h00 and was followed by a street procession, in which he did not take part. Otherwise, the authorities failed to specify what anti-social acts had been committed by him. Being loud at the demonstration by

shouting slogans, in a situation where thousands of people were doing the same and no obscenity was involved, could not be regarded as anti-social.

114. The Court observes at the outset that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society (see *G. v. the Federal Republic of Germany*, cited above; *Rai, Allmond and "Negotiate Now" v. the United Kingdom*, no. 25522/94, Commission decision of 6 April 1995, DR 81-A, p. 146). This right, of which the protection of personal opinion is one of the objectives, 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 European 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 *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001).

115. The Court recalls that a conviction for actions inciting to violence at a demonstration can be deemed as an acceptable measure in certain circumstances (*ibid.*). Furthermore, the imposition of a sanction for participation in an unauthorised demonstration is similarly considered to be compatible with the guarantees of Article 11 (see *Ziliberberg*, cited above). On the other hand, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin*, cited above, p. 23, § 53).

116. The Court notes that, unlike in the *Ezelin* case, the applicant in the present case was subjected to a much more severe penalty, i.e. three days of deprivation of liberty, for committing the following actions at the demonstration in question, "obstruction of street traffic" and "making a loud noise", as indicated in the decision of the Kentron and Nork-Marash District Court of Yerevan of 7 April 2003. Neither this decision, nor the materials prepared by the police, provide any further details as to the circumstances under which these actions were committed. On the other hand, it is apparent from the police report that the street where the demonstration took place, namely the Mashtots Avenue, was packed with a great number of people (see paragraph 11 above), and the Government did not dispute that the street traffic had been suspended by the traffic police prior to the commencement of the demonstration (see paragraph 8 above). Furthermore, as already indicated above, the authorities did not make any attempts to disperse the participants in the demonstration on account of unlawful obstruction of

traffic (see paragraph 101 above). It follows that the "obstruction of street traffic", which the applicant was found guilty of, amounted to his physical presence at a demonstration held on a street where traffic had already been suspended beforehand by the authorities with the apparent intention of facilitating the conduct of a lawful demonstration. As to the loud noise made by the applicant, there is no suggestion that this noise involved any obscenity or incitement to violence. The Court, however, finds it hard to imagine a huge political demonstration, at which people express their opinion, not generating a certain amount of noise.

117. In the light of the above, the Court concludes that the applicant was sanctioned for the mere fact of being present and proactive at the demonstration in question, rather than for committing anything illegal, violent or obscene in the course of it. In this respect, the Court considers that the very essence of the right to freedom of peaceful assembly would be impaired, if the State was not to prohibit a demonstration but was then to impose sanctions, especially such severe ones, on its participants for the mere fact of attending it, without committing anything reprehensible, as happened in the applicant's case. The Court therefore concludes that the interference with the applicant's right to freedom of peaceful assembly was not "necessary in a democratic society".

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

V. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7

119. Lastly, the applicant complained that he had no right to contest the decision of 7 April 2003. The Court decides to examine this complaint under Article 2 of Protocol No. 7 which reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
>
> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law..."

A. Admissibility

120. The Court recalls that, where an offence is found to be of a criminal character attracting the full guarantees of Article 6 of the Convention, it consequently attracts also those of Article 2 of Protocol No. 7 (see *Gurepka*, cited above, § 55). In the present case, Article 6 of the Convention was found to be applicable to the proceedings in question (see paragraph 60 above). Consequently, Article 2 of Protocol No. 7 is similarly applicable in this case.

121. The Court therefore declares this complaint admissible.

B. Merits

122. The Government repeated their arguments raised in their preliminary objection and submitted that the applicant had the right to have his conviction reviewed under Article 294 of the CAO.

123. The applicant similarly repeated his arguments made in reply to the Government's preliminary objection and submitted that the decision of 7 April 2003 could be contested only by the prosecutor.

124. The Court first notes that the applicant was convicted under the CAO, which prescribes penalties for offences that do not fall within the criminal sphere in the domestic law. This may raise a question as to whether or not the offence of which the applicant was convicted was of a minor character within the meaning of Article 2 § 2 of Protocol No. 7 and the exception contained in that provision should apply. The Court recalls that the Commission has previously found an offence, such as an "offence against the order in court", for which a maximum penalty of 10,000 Austrian shillings or, if indispensable for maintaining the order, imprisonment for a period not exceeding eight days was prescribed by the Austrian Code of Criminal Procedure, to be of a "minor character" (see *Putz v. Austria*, no. 18892/91, Commission decision of 3 December 1993, DR 76-A, p. 51). In the present case, the applicant was sentenced to three days of detention. However, Article 172 of the CAO, under which this sentence was imposed, prescribed up to 15 days of detention as a maximum penalty. The Court considers that a penalty of 15 days of imprisonment is sufficiently severe not to be regarded as being of a "minor character" within the meaning of Article 2 § 2 of Protocol No. 7.

125. The Court recalls that Contracting States enjoy in principle a wide margin of appreciation in determining how the right secured by Article 2 of Protocol No. 7 to the Convention is to be exercised. In certain countries, a defendant wishing to appeal may sometimes be required to seek permission to do so. However, any restrictions contained in domestic legislation on that right of review must, by analogy with the right of access to a court embodied in Article 6 § 1 of the Convention, pursue a legitimate aim and not infringe the very essence of that right (see *Krombach*, cited above, § 96; *Gurepka*, cited above, § 59).

126. The Court is mindful of its finding above that the review procedure prescribed by Article 294 of the CAO does not provide an individual with a clear and accessible right to appeal (see paragraphs 40-42 above). This Article prescribes a power of review by the chairman of a superior court – whether or not upon the individual's request – which, moreover, lacks any clearly defined procedure or time-limits and consistent application in practice. In the Court's opinion, such a review possibility cannot be

compatible with Article 2 of Protocol No. 7. It follows that the applicant did not have at his disposal an appeal procedure which would satisfy the requirements of this Article.

127. Accordingly, there has been a violation of this provision.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The applicant claimed a total of 2,250,000 Armenian drams (AMD) (approx. EUR 3,570 at the material time) in respect of pecuniary damage. In particular, he submitted that he had signed a contract with a construction company to work as an electrician from 12 February to 12 May 2003 with the daily remuneration of AMD 5,000 (approx. EUR 8). Due to the police harassment which started in the beginning of April, his detention and the resulting depression, he was unable to attend and lost his job, incurring losses in the amount of AMD 250,000 (approx. EUR 396). Furthermore, during the last two and a half years he had been unable to find a job due to being an opposition activist, incurring losses in the amount of AMD 2,000,000 (approx. EUR 3,174). The applicant also claimed compensation for non-pecuniary damage, leaving the determination of the amount to the Court.

130. The Government contested his claims. As to the pecuniary damage, they submitted that there was no causal link between the violation alleged and the amounts claimed. The applicant has been unemployed since 24 January 2003, the date when he registered himself with the employment service, and his detention had no impact whatsoever on his unemployment. As to the alleged contractual obligations with the construction company, the applicant failed to submit any documents substantiating the existence of such obligations and of the alleged remuneration. As to the non-pecuniary damage, the Government submitted that a finding of a violation must be sufficient, considering that the applicant had failed to specify what moral damage he had suffered and to calculate a corresponding compensation.

131. The Court notes that the applicant has failed to provide any documentary proof demonstrating that he was unable to perform any contractual obligations and incurred losses due to his conviction, such as a copy of the alleged work contract. As to the remainder of the pecuniary

damage claimed, the Court agrees with the Government that there is no causal link between the violation found and the amount claimed; it therefore rejects this claim. On the other hand, the Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of being sanctioned for his participation in a demonstration through unfair proceedings and having no appeal possibility against this sanction, which resulted in his detention for a period of three days. The Court, therefore, ruling on an equitable basis, awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

132. The applicant made no claim under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously admissible the complaints concerning the lack of a fair and public hearing by an impartial tribunal, the violation of the rights of the defence, the interference with the right to freedom of expression and freedom of peaceful assembly, and the lack of possibility to appeal against the decision imposing administrative detention, under Article 6 §§ 1 and 3 (b) and (c) and Articles 10 and 11 of the Convention, and Article 2 of Protocol No. 7, and inadmissible the remainder of the application;

2. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention as far as the applicant's right to a fair and public hearing by an impartial tribunal is concerned;

3. *Holds* unanimously that there has been a violation of Article 6 § 1, taken together with Article 6 § 3 (b) of the Convention;

4. *Holds* by five votes to two that there has been no violation of Article 6 § 1, taken together with Article 6 § 3 (c) of the Convention;

5. *Holds* unanimously that there is no need to examine the complaint under Article 10 of the Convention;

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

7. *Holds* unanimously that there has been a violation of Article 2 of Protocol No. 7;

8. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs E. Fura-Sandström, joined by Mr B.M. Zupančič is annexed to this judgment.

B.M.Z.
S.Q.

PARTLY DISSENTING OPINION OF JUDGE FURA-SANDSTRÖM JOINED BY JUDGE ZUPANČIČ

1. Disagreeing with the majority, I consider that there has been a violation of Article 6 § 1, taken together with Article 6 § 3 (c) of the Convention, since the applicant had to defend himself without the assistance of a lawyer after having participated in a demonstration in Yerevan on the occasion of Mother's Day.

2. It is not in dispute that the applicant waived his right to have a lawyer by signing the record of an administrative offence, a fact which he later confirmed before the court. The applicant put his signature in the section certifying that he had been made aware of his rights under Article 267 of the Code of Administrative Offences and added "I do not wish to have a lawyer". Also, according to the record of the court hearing, the judge explained the applicant's rights to him. The applicant stated that he was aware of his rights and did not wish to have a lawyer (see paragraphs 14 and 20 of the judgment).

3. I note, together with the majority in paragraph 90 of the judgment, that such a waiver must be established in an unequivocal manner and must be attended by minimum safeguards commensurate with its importance. But I would also point out that in examining the validity of a waiver, the Court has previously attached weight to such factors as, *inter alia*, the choice made by an applicant being free, unambiguous and not affected by any external circumstances (see *Thompson v. the United Kingdom*, no. 36256/97, § 44, 15 June 2004) and the awareness of an applicant of the consequences of his actions (see *Bonev v. Bulgaria*, no. 60018/00, § 41, 8 June 2006).

4. I further note that, despite the fact that the applicant expressly waived his right to have a lawyer, the circumstances which led to this waiver remain unclear and are at the core of the dispute between the parties. The fact that the applicant refused to have a lawyer – even if the refusal was given expressly in writing – does not necessarily imply that his refusal was not given as a result of some sort of pressure or deception on the part of the police officers. While there is no objective evidence to support the Government's position, I would point to the existence of such objective data as the Human Rights Watch Briefing Paper, which contains a detailed description of the wide-scale abuse of the administrative procedure by the authorities – and notably the police – during the period surrounding the presidential election (see paragraph 32 of the judgment).

5. The right to be assisted by a lawyer is part of the privilege against self-incrimination referred to in American doctrine as the "Miranda law". It has been described as the "bright line" rule (beyond which nobody should cross) intended to forever extinguish the use of coercion but allowing pressure. The purpose of the rule is to neutralise the distinct psychological

disadvantage that suspects are under while dealing with the police. The case before us illustrates why it is so important to uphold.

6. I would like to draw attention to the relevant chapters of the Briefing Paper describing the methods used and the obstacles created by the police in order to deprive opposition activists of legal assistance, which support the applicant's account of events. Similar information is contained in the relevant report of the Council of Europe's Parliamentary Assembly (see paragraphs 29-31 of the judgment).

7. Furthermore it is to be noted that the applicant has been consistent in his account of events, making similar submissions in his complaint lodged with a local human rights NGO several days after his conviction (see paragraph 22 of the judgment).

8. Finally I am mindful of the finding of the Court that the applicant was not afforded sufficient time to adequately assess the charge against him, which, in my opinion, also includes the assessment of the need to have legal assistance.

9. All the above factors, while not sufficient for the Court to conclude that the applicant, as he claims, was “tricked” into refusing a lawyer, nevertheless prompt me to seriously doubt whether the applicant's waiver was truly voluntary and whether he was fully aware of the legal consequences of such a waiver.

10. I cannot therefore consider this waiver to be valid from the point of view of the Convention. Having come to this conclusion, and on the basis of the same factors, I consider that the applicant was not given a real opportunity – prior to the start of the hearing, which itself lasted about five minutes – to decide whether it was necessary to engage a lawyer and, if so, to choose and appoint one.

11. Considering the above and the fact that the applicant's complaint under Article 6 § 3 (c) of the Convention is closely connected to and partly results from his complaint under Article 6 § 3 (b) (see paragraphs 84-88 of the judgment), I consider that his right to be defended through legal assistance was infringed.