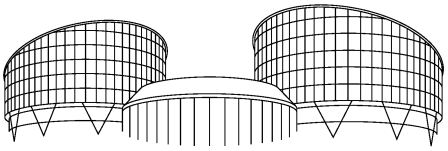

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PASHINYAN v. ARMENIA

(Applications nos. 22665/10 and 2305/11)

JUDGMENT

STRASBOURG

18 January 2022

This judgment is final but it may be subject to editorial revision.

In the case of Pashinyan v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 22665/10 and 2305/11) 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 Nikol Pashinyan ("the applicant"), on 1 April 2010 and 9 September 2010 respectively;

the decision to give notice to the Armenian Government ("the Government") of the complaints concerning the alleged unlawfulness of the applicant's detention between 12 October 2009 and 19 January 2010 and the interference with the applicant's right to freedom of expression and freedom of peaceful assembly and to declare inadmissible the remainder of the applications;

the applicant's observations;

Having deliberated in private on 14 December 2021,

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

INTRODUCTION

1. The case concerns the applicant's conviction for his involvement in the protest movement that followed the disputed presidential election of 19 February 2008 and raises issues under Articles 5, 10 and 11 of the Convention.

THE FACTS

2. The applicant was born in 1975 and lives in Yerevan. The applicant was represented by Mr L. Gevorgyan, a lawyer practising in Yerevan, who later withdrew from the case.

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

4. The facts of the case, as submitted by the applicant, and not contested by the Government, may be summarised as follows.

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

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

6. The applicant was at the material time the editor-in-chief of *Haykakan Zhamanak* ("Armenian Times"), a daily opposition newspaper. He was an active supporter and a member of the pre-election campaign of Mr Levon Ter-Petrosyan.

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

8. A more detailed description of the demonstrations at Freedom Square, including the police intervention breaking up the camp and sealing off the square in the early morning of 1 March 2008; the later gathering of several thousand people in the area of the French Embassy, the Yerevan Mayor's Office and the Myasnikyan monument; the escalation of tensions between the protesters and the law-enforcement authorities in the course of the day and the resulting violence; the declaration of a state of emergency; and the institution of criminal cases against opposition leaders and activists on 1 and 2 March 2008, can be found in *Mushegh Saghatelyan v. Armenia*, (no. 23086/08, §§ 7-17, 20 September 2018), *Myasnik Malkhasyan v. Armenia* (no. 49020/08, §§ 5-15, 15 October 2020) and *Dareskizb Ltd v. Armenia* (no. 61737/08, §§ 5-12, 21 September 2021).

9. The applicant alleged that he had actively participated in the demonstrations at Freedom Square, attending them on a daily basis and regularly giving speeches. The demonstrations had been peaceful and had aimed at annulling the results of the rigged election and holding a new election. The authorities had responded by carrying out unlawful persecution and harassment of opposition supporters and those who had given speeches at Freedom Square. On 23 and 24 February 2008 a number of high-ranking officials who had supported or had been suspected of supporting the opposition had been dismissed from office, and a number of opposition leaders and activists had been arrested.

10. The applicant further alleged that the police had attacked and brutally beaten the demonstrators camping at Freedom Square in the early morning of

1 March 2008. After the demonstrators had fled to the area of the French Embassy and had been joined by thousands of others, the police and military forces and equipment had started to encircle that area. Then another brutal attack had been launched on the demonstrators, who had had to defend themselves with random objects. The demonstrators had barricaded the area with public and private vehicles and continued the demonstration peacefully. He, together with a number of other opposition leaders, had called on the public to stay calm and tried to prevent new clashes by creating a human chain between the police forces and the demonstrators. The demonstrators had been waiting for Mr Ter-Petrosyan's arrival but the latter had been, in the meantime, placed under house arrest. Later several more attacks had been launched on the demonstrators, using not only crowd control weapons but also live ammunition, snipers and military equipment, resulting in up to ten deaths and numerous injured.

11. It appears that, around the same period when the above-mentioned criminal cases were instituted, the applicant went into hiding.

II. THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. The charges against the applicant and his pre-trial detention

12. On 4 March 2008 the applicant was formally charged under, *inter alia*, Article 225 (organising mass disorder) and Article 300 (usurpation of State power) of the CC. This decision stated:

> "[the applicant] conspired with the presidential candidate Levon Ter-Petrosyan and a number of his supporters, if Levon Ter-Petrosyan were to suffer a defeat at the presidential election, to unbridle a whole set of actions aimed at unconstitutionally usurping State power by destabilising the internal political situation in the country, deteriorating the State system through various types of pressure and even inciting to mass violence[. B]eing determined, in view of the role assigned to him in that project, to assist to the utmost in the implementation of [their] criminal intention, [the applicant], together with Levon Ter-Petrosyan and a number of his other supporters, starting from the very day after the election, organised and held in Yerevan, in violation of the procedure prescribed by law, continuous mass public events, marches and round-the-clock demonstrations and sit-ins, disturbing the life of the capital, the traffic, the normal functioning of public institutions and the peace and quiet of the population, and pursuing the aim of casting doubt on the legitimacy of the election in the eyes of the international community, instilling distrust towards the election results among large segments of the population and creating illusions of public discontent and revolt[. During these events] he publicly gave incendiary speeches and made public calls inciting to civil disobedience, disobedience against lawful orders of the law-enforcement authorities and assistance in disintegration of the State system and overthrow of the current government, thereby enflaming populistic passions and readiness to resort to mass disruptiveness among the demonstrators[. Thereafter], on 1 March, addressing the crowd gathered at the area adjacent to the Yerevan Mayor's Office as an official election assistant of Levon Ter-Petrosyan, he instigated and organised mass disorder which involved mass violence, widespread massacre, arson, destruction and damage of public and private property, overt looting, armed resistance

against public officials, mass assaults on public officials with the use of firearms and explosives, and murders."

13. On 24 March 2009 the charge under Article 300 of the CC was dropped, since that provision had been amended and as a result was no longer applicable.

14. On 1 July 2009 the applicant voluntarily turned himself in to the authorities.

15. On 3 July 2009 the applicant was brought before the Kentron and Nork-Marash District Court of Yerevan (hereafter, the District Court) which decided to detain him for a period of two months on the ground that he was a flight risk and could obstruct the proceedings, taking into account the fact that a search had been launched in his respect.

16. On 16 July 2009 the Criminal Court of Appeal upheld this decision, stating that a search for him had been launched and he had appeared before the investigating authority only one year and four months later.

17. On 27 August 2009 the District Court extended the applicant's detention by two months on the same grounds. This decision was upheld upon the applicant's appeal by the Criminal Court of Appeal on 11 September 2009.

B. The applicant's trial

18. On 12 October 2009, following the completion of the investigation, the District Court took a decision setting the case down for trial, in which it also ruled on the applicant's detention as follows:

> "As regards the question of preventive measure, the court finds that the preventive measure, namely detention, applied in respect of the accused ... must remain unchanged with the following reasoning: [the applicant] has been accused of, among others, a serious crime, for which a penalty of from four to ten years' imprisonment is prescribed. Taking into account the nature and the dangerousness of the crimes imputed to [the applicant], as well as the fact that he has been in hiding and a search has been initiated in his respect, the court considers that, if [the applicant] remains at large, the probability of his absconding is high."

19. On 19 January 2010 the District Court found the applicant guilty under Article 225 § 1 of the CC, sentencing him to seven years' imprisonment. The District Court found it to be established as follows:

> "Serzh Sargsyan won the presidential election held on 19 February 2008. After the preliminary results of the election were made public, [the applicant], together with [A.A., S.S., H.H., M.M. and S.M., who have already been convicted under Article 225 § 1 of the CC in a separate set of proceedings], as well as a number of other persons, starting from 20 February 2008 carried out organisational activities for the purpose of creating discontent in the society towards the conduct and the results of the election and preparing the crowd gathered at the assembly held at Yerevan's Freedom Square for use of violence and disobedience. This included spreading false information about the assembly being authorised by the authorities, about around 500,000 people attending it, about the election result being rigged and about presidential candidate

Levon-Ter-Petrosyan winning about 60% of the votes cast, and, in order to ensure the constant presence of people at the assembly, have provided them with household items and money. Rods, clubs, armature, petrol bombs, metal constructions used as missile weapons, firearms and ammunition were distributed to a group of participants of the assembly at Freedom Square.

With the intention of inciting and carrying out mass disorder in Yerevan on 1 March 2008, the members of the group, both personally and with the help of others, formed groups of people ready to use violence on a mass scale and organised distribution among those persons of illegally obtained firearms, ammunition, explosive substances, explosive devices, bladed weapons and various objects adapted to inflict violence."

20. The District Court held, as regards the applicant, that, having found out about the imminent arrival of the police forces in the early morning of 1 March 2008, he – together with his co-thinkers – woke up those camping at Freedom Square and called on them to arm themselves and to give a "proper welcome" to the police. As a result, the crowd attacked the police officers who had approached and asked to carry out an inspection for weapons. The police operation eventually led to the discovery of various weapons and ammunition, which had been brought to the Square to be used during the planned mass disorder.

21. The District Court continued as follows:

"Thereafter, the participants of the assembly, led by [the applicant, A.A.] and others, moved to and gathered in the area adjacent to the Myasnikyan monument, which is an important intersection of several streets in Yerevan situated in the vicinity of specially guarded buildings such as the French, Italian and Russian embassies. At around 11 a.m. the participants of the mass disorder blocked Grigor Lusavorich Street by placing trolleybuses across the driveway, after which they attacked the police officers who were preserving public order. [The applicant], together with [A.A., S.M.] and others, in order to bring their intention of instigating mass disorder to completion, rejected the offer made by the authorities to move the assembly to another location for the purpose of preserving public order and ensuring the safety of participants of the assembly. Moreover, with their speeches and orders they organised and oversaw keeping the gathered crowd in the same location for as long as possible and derailing its relocation, as well as the process of arming themselves with objects adapted to inflict injuries and other objects at hand, assaulting the police officers and showing active disobedience to their lawful orders. As organised and directly instructed by [the applicant, S.S. and others], barricades were created by damaging transportation means and other property and by putting them out of order. [The applicant] gave instructions [to the demonstrators] to arm themselves and to be ready to resist, as well as to recruit new people at any cost."

22. The District Court went on to describe certain acts allegedly committed by the protesters and found that the applicant, together with a number of others, structured and oversaw the activities of the organisers and participants in the mass disorder.

"[The applicant] continuously circulated among the participants in the mass disorder and organised the formation and dislocation of their groups.

In order to ensure unreserved compliance with orders given for the purpose of organising mass disorder, he gave concrete instructions: to split into groups, build barricades, arm themselves with stones, sticks and other objects in order to injure the police officers, grab batons and shields from the police officers, and exhorted to obey him and the other organisers of the mass disorder.

[The applicant] publicly encouraged the participants in the mass disorder to grab shields and batons from the police officers, saying *'...guys, you wouldn't believe how good I felt...'*.

In order to instil hatred towards the authorities and to create readiness for disobedience and violence, he called on the soldiers and the police officers, who were involved in maintaining public order, not to carry out their duties, to join the participants in the mass disorder and to turn their weapons towards the authorities.

Furthermore, he gave concrete instructions on how to reinforce the positions and to prepare for new acts of violence.

Continuing to lead and organise the ongoing mass disorder, he made public declarations about areas captured by the participants in the disorder and declared that all the soldiers had fled and the entire process was under their control, in order to keep the participants in the mass disorder around and to inspire them.

In order to organise the process of mass disorder and to coordinate the activities of its participants, [the applicant] regularly invited other organisers of the mass disorder for consultations, thereby systematising their activities.

Being in the epicentre of the mass disorder, [the applicant] regularly exchanged information with [A.A. and S.S.] about the massacre, arson, intentional destruction, damage and looting of property taking place on Grigor Lusavorich, Mashtots, Leo and Paronyan streets of Yerevan under their supervision."

23. The District Court concluded that the events in question amounted to "mass disorder" within the meaning of Article 225 § 1 of the CC and that the applicant's actions fell within the scope of that provision.

24. On 19 February 2010 the applicant lodged an appeal in which he argued, *inter alia*, that his conviction had violated the guarantees of Articles 10 and 11 of the Convention. He alleged that the authorities had embarked on a campaign of political repression against the supporters of Mr Ter-Petrosyan before and during the peaceful demonstrations held at Freedom Square, including by initiating unlawful criminal prosecution of such persons following the dispersal of the assembly on 1 March 2008. The speeches made at Freedom Square involved neither incitement to violence nor a violent overthrow of the government. To the contrary, Freedom Square had become an important platform for public debate on a topic of significant public concern and the leaders of the opposition regularly stressed in their speeches the importance of adhering to the rule of law. The applicant denied that he had guided the demonstrators to the area of the Yerevan Mayor's Office and the Myasnikyan monument and submitted that the demonstrators had fled to that area on escaping from the police and being pursued by them after their brutal dispersal from Freedom Square. He further contested that the actions of the demonstrators could be characterised as "mass disorder"

and, even assuming that they could, the District Court had failed to indicate any concrete actions taken by him towards the organisation of such mass disorder. There had been no preliminary agreement between the so-called organisers of the alleged mass disorder and some of them had not even been familiar with each other before meeting for the first time in court. He had never incited to violence or any other actions which could be characterised as "mass disorder". When he arrived at the vicinity of the Mayor's Office, the demonstrators had already barricaded themselves and detached various objects from a nearby construction site for self-defence.

25. On 9 March 2010 the Criminal Court of Appeal dismissed the applicant's appeal and upheld his conviction. It held, in particular, that the applicant had participated in the assembly held from 20 February to 1 March 2008, during which he had availed himself of his freedom of expression by freely imparting information and ideas without any interference by the authorities. However, during the demonstrations held in various parts of Yerevan he had committed a criminal office, namely organising mass disorder. The rights guaranteed under Article 11 were subject to limitations. Thus, he had been prosecuted for criminal conduct during the demonstrations, rather than for his participation in the demonstrations and expressing his opinion. There had therefore not been an interference with the applicant's right to freedom of peaceful assembly. Furthermore, taking into account the weapons and ammunition found at Freedom Square, the assembly at Freedom Square had not been peaceful, and nor had the assembly in the area adjacent to the Yerevan Mayor's Office.

26. On 10 April 2010 the applicant lodged an appeal on points of law.

27. On 30 April 2010 the Court of Cassation declared his appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

A. Criminal Code (2003)

28. For a summary of the relevant provisions of the Criminal Code, see *Mushegh Saghatelyan* (cited above, §§ 94, 96 and 97), and *Myasnik Malkhasyan* (cited above, §§ 44-47).

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

29. For the relevant extracts of the Armenian Ombudsman's report regarding the presidential election and the post-election events, see *Mushegh*

Saghatelyan (cited above, § 124) and *Myasnik Malkhasyan* (cited above, § 49).

II. RELEVANT INTERNATIONAL MATERIALS

30. In its Resolutions regarding the 19 February 2008 presidential election and the events that followed, the Parliamentary Assembly of the Council of Europe (PACE) condemned the arrest and continuing detention of scores of persons, including more than 100 opposition supporters and three members of parliament, some of them on seemingly artificial and politically motivated charges, especially those under Articles 225 and 300 of the CC (for the relevant extracts, as well as a number of other relevant international materials, see *Mushegh Saghatelyan*, cited above, §§ 125-34, and *Myasnik Malkhasyan*, cited above, §§ 50-57).

THE LAW

I. JOINDER OF THE APPLICATIONS

31. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

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

32. The applicant complained about his prosecution and conviction, relying on Articles 10 and 11 of the Convention, which read as follows:

Article 10

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

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

Article 11

"1. Everyone has the right to freedom of peaceful assembly...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national

security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...”

A. Admissibility

33. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The applicant submitted that his prosecution and conviction were heavily based on the speeches and statements he had made during the peaceful demonstrations held between 20 February and 2 March 2008. His prosecution had been politically motivated and was aimed at preventing his opposition activities and punishing him for his opposition views and activities. This was also confirmed by various international monitors, including Council of Europe bodies and officials. The demonstrations held at Freedom Square and the one which later swelled in the area of the French Embassy and the Myasnikyan monument had been peaceful. Although at the end of the day and in the early morning of 2 March 2008 the situation had got out of control, resulting also in violent acts committed by some protesters, this by no means was proof of the violent intentions of the organisers, including that of the applicant. Moreover, even if there had been some pockets of violence, they were committed not in the vicinity of the French Embassy. The persons who had attacked the police and looted shops were provocateurs and not from among the peaceful demonstrators. None of the participants in the demonstration near the French Embassy had been charged with carrying or using firearms or other weapons. The investigation into those events and the prosecution had failed to establish what had really happened in the area of the French Embassy, while there was preponderance of evidence suggesting that there was no threat emanating from the protesters. Despite provocations by the authorities, he and other organisers of the protest had kept on addressing the protesters form the platform at the Myasnikyan monument, asking them to stay peaceful and not to get provoked and later, by the morning of 2 March 2008, to stop the protests altogether and to leave the streets. Thus, the criminal charges against the applicant had been based on falsified and distorted evidence. There was no evidence to substantiate the claim that the applicant had the intention of “inciting and carrying out mass disorder”. To the contrary, during the entire process of demonstrations the applicant had attempted to calm the situation and called on the protesters not to respond to provocations. This had been confirmed also by a number of witnesses in his

case, who later retracted their earlier statements incriminating him in incitement to violence.

35. The Government did not comment on the applicant's submissions.

2. The Court's assessment

36. The Court finds, at the outset, that the applicant's complaints under Articles 10 and 11 fall to be examined under Article 11 alone, which will be, however, considered in the light of Article 10 (see *Ezelin v. France*, 26 April 1991, §§ 35 and 37, Series A no. 202, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 85-86, ECHR 2015).

37. The Court refers to its relevant case-law principles under Article 11 (see *Mushegh Saghatelyan*, cited above, §§ 226-28, 236 and 238-39) and notes that the applicant's conviction for "organising mass disorder" was, to a large extent, based on his involvement in the post-election protest movement, including his participation and speeches made at the assembly at Freedom Square (see paragraphs 19-23 above) which the Court has already found to have been peaceful without any incitement to violence or acts of violence (see *Mushegh Saghatelyan*, cited above, § 245, and *Myasnik Malkhasyan*, cited above, § 72). It therefore amounted to an interference with his right to freedom of peaceful assembly.

38. The Court, in the present case, does not consider it necessary to decide whether the interference was prescribed by law and pursued a legitimate aim having regard to its conclusions set out below, regarding the necessity of the interference (see, *mutatis mutandis*, *Christian Democratic People's Party v. Moldova*, no. 28793/02, §§ 49-54, ECHR 2006-II, and *Mushegh Saghatelyan*, cited above, § 237).

39. The Court reiterates that a criminal conviction for actions inciting to violence at a demonstration can be deemed to be an acceptable measure in certain circumstances (see *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X). However, peaceful participants may not be held responsible for reprehensible acts committed by others. The freedom to take part in a peaceful assembly is of such importance that a person cannot be subject 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 that person does not himself commit any reprehensible act (see *Ezelin*, cited above, § 53, and *Galstyan v. Armenia*, no. 26986/03, § 115, 15 November 2007). Similarly, the organisers of the event should not be held responsible for the conduct of its participants as long as they themselves do not commit, incite or condone any reprehensible acts (see *Mesut Yıldız and Others v. Turkey*, no. 8157/10, § 34, 18 July 2017). This is true even when the demonstration results in damage or other disorder (see *Taranenko v. Russia*, no. 19554/05, § 88, 15 May 2014).

40. In the present case, the Court notes at the outset that the applicant contested the factual basis for his conviction, alleging that the criminal case against him and other leaders and supporters of the opposition had been politically motivated. The Court, however, has emphasised on many occasions that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them, although there may be circumstances in which the Court will depart from the findings of fact reached by the domestic courts, including in cases concerning Article 10 and 11 rights (see, for example, *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, §§ 114 and 123, 8 October 2020, and *Smbat Ayvazyan v. Armenia*, no. 49021/08, §§ 119 and 129, 8 October 2020, both of which concerned the same protest movement as in the present case).

41. The Court considers it necessary first to have regard to the general context of this particular case. It notes that the applicant was an active member of the opposition and a high profile member of Mr Ter-Petrosyan's pre-election campaign who took part in the rallies in the Armenian capital following the allegedly unfair presidential election of 19 February 2008 and culminated in the events of 1 and 2 March 2008 (see *Mushegh Saghatelyan*, cited above, §§ 226-55; *Ter-Petrosyan v. Armenia*, no. 36469/08, §§ 61-65, 25 April 2019; *Myasnik Malkhasyan*, cited above, §§ 70-82; *Jhangiryan*, cited above, §§ 112-28; and *Smbat Ayvazyan*, cited above, §§ 117-34). The response of the authorities that followed, including the arrests and detention of scores of opposition leaders and supporters, was condemned by the PACE as a "*de facto* crackdown on the opposition", while the charges brought against many of them, especially those under Articles 225 and 300 of the CC, were suspected to have been "artificial and politically motivated". Repeated concerns were expressed by both the PACE and the Council of Europe Commissioner for Human Rights about the nature of the charges under those Articles (see paragraph 30 above). While the Court is not called upon to give a judicial assessment of the general context, it nevertheless considers that this background information is extremely relevant to the present case and calls for particularly close scrutiny of the facts giving rise to the applicant's conviction (ibid., § 70). Furthermore, as noted above, the Court has already examined a number of applications alleging violations of Articles 10 and 11 of the Convention and politically motivated prosecutions in connection with the post-election protests in Armenia in February-March 2008. The applicant's case appears to follow a pattern of criminal prosecutions of opposition supporters, which the Court finds alarming. Nevertheless, as stated in the case of *Mushegh Saghatelyan*, the Court is not in a position, nor is it its duty, to

determine whether the charges against the applicant were substantiated and it was the duty of the domestic courts to check the veracity of the underlying facts (see *Mushegh Saghatelyan*, cited above, § 252). The Court reiterates in this connection the obligation of the domestic courts to provide reasons for their decisions which, in the context of the present case, translates into specific obligations under Articles 10 and 11 by requiring the courts to provide "relevant" and "sufficient" reasons for an interference (ibid.).

42. The Court notes in this connection that the applicant was found guilty under Article 225 § 1 of the CC, as one of the active members of the opposition and the post-election protest movement, of organising mass disorder. This charge was largely based on the applicant's involvement in the post-election protests which had taken place in Yerevan from 20 February 2008 onwards, including apparently the speeches he had made at the assembly at Freedom Square and the information he had disseminated about those demonstrations (see paragraph 19 above). However, as already noted above, the demonstrations held at Freedom Square were found by the Court to constitute a peaceful assembly and, in fact, a platform for expression on a matter of major political importance directly related to the functioning of a democracy and of serious concern to large segments of the Armenian society (see *Mushegh Saghatelyan*, cited above, §§ 230-33 and 246, and *Myasnik Malkhasyan*, cited above, § 72). While stating that the applicant had prepared the crowd gathered at Freedom Square for use of violence and disobedience, the domestic courts failed to provide concrete examples of such behaviour which, in the Court's opinion, could be characterised as incitement to violence (see paragraph 19 above). In fact, the only acts which the applicant was found to have committed in pursuit of that plan are not sufficient for the Court to conclude that they were anything but examples of legitimate exercise by the applicant of his right to freedom of peaceful assembly and expression of opinions in the context of the public debate surrounding the conduct of the presidential election, including the criticism voiced in that respect (compare *Myasnik Malkhasyan*, cited above, § 73).

43. As regards the alleged build-up of arms at Freedom Square for the purpose of instigating mass disorder, there was no concrete indication in the domestic judgments of the applicant's involvement in these alleged acts which were, moreover, presented in a very general manner lacking any detail (see paragraph 19 above). Furthermore, as noted in the case of *Myasnik Malkhasyan*, serious doubts have been voiced by the PACE Monitoring Committee regarding the version, according to which the events of 1 and 2 March 2008 had been part of a planned and organised attempt by the leaders of the opposition to seize State power violently or, in other words, to carry out a coup, and in fact such prosecutions were deemed highly likely to be politically motivated (see *Myasnik Malkhasyan*, cited above, § 80). The Court has previously concluded that there was no convincing evidence to suggest that there had been a build-up of arms at Freedom Square for the purpose of

instigating mass disorder (see *Mushegh Saghatelyan*, cited above, §§ 230 and 245, and *Myasnik Malkhasyan*, cited above, § 80). It has rejected the allegations that the police were deployed at Freedom Square in order to carry out an inspection for weapons and that armed demonstrators were first to attack, and has found that the main, if not only, purpose of the police operation in the early morning of 1 March 2008 was to disperse the assembly at Freedom Square and that any clashes that happened there must likely have been caused by the measures taken by the police to end the assembly, including the alleged excessive use of force, as opposed to being premeditated acts (see *Mushegh Saghatelyan*, cited above, §§ 232, 245 and 247, and *Myasnik Malkhasyan*, cited above, § 80). There is no evidence in the present case which would prompt the Court to doubt the above reports or its findings reached in the above cases.

44. It is true that, after nine days of peaceful protests, violence erupted in Yerevan on 1 and 2 March 2008 after the demonstrators had been ejected from Freedom Square and a large crowd had gathered in the area of the Myasnikyan monument and a number of adjacent streets where it appears that clashes between some protesters and law enforcement officers took place, resulting in injury and deaths and damage of public and private property. However, an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see *Primov and Others v. Russia*, no. 17391/06, § 155, 12 June 2014, and *Frumkin v. Russia*, no. 74568/12, § 99, 5 January 2016). Furthermore, where both sides – demonstrators and police – were involved in violent acts, it is sometimes necessary to examine who started the violence and whether the applicant personally was among those responsible for the initial acts of aggression which contributed to the deterioration of the assembly's initial peaceful character (see *Primov and Others*, cited above, § 157, and *Mushegh Saghatelyan*, cited above, § 231).

45. The Court notes, firstly, that it does not have at its disposal sufficient material to establish how the situation evolved and eventually got out of hand so as to lead to an armed confrontation, damage of property and deaths (compare *Dareskizb Ltd.*, cited above, § 61). It is, however, mindful of its earlier findings that the gathering of people in the area of the Myasnikyan monument, including their later being armed, were spontaneous and unorganised developments and that, in fact, the heavy-handed dispersal of demonstrators from Freedom Square in the early morning of 1 March 2008, as well as a number of other similar or uncontrollable events which happened later that day, may have played a role in the eventual escalation of violence, as opposed to it being a planned and organised disorder or an attempt of coup by the opposition (see *Myasnik Malkhasyan*, cited above, § 80). It has further held that the large crowd of several thousand people gathered at the

Myasnikyan monument appears to have remained peaceful throughout that period, while the violence was committed by small groups of protesters in a number of adjacent streets (see *Dareskizb Ltd.*, cited above, § 61).

46. Secondly, as regards specifically the applicant's own behaviour during those later hours of 1 March 2008 and his alleged responsibility for the violence in question, the Court notes that the findings of the domestic courts were largely drafted in rather general terms, without sufficiently specific factual details which would allow to establish convincingly any wrongdoing by the applicant. While stating that the applicant, with his orders, speeches and instructions, had organised and oversaw the process of arming of the protesters and their assaults on the police, no details were provided regarding the alleged orders and instructions, including the circumstances in which such orders and instructions were made, or any citations of the alleged speeches (see paragraph 21 above). The same concerns the findings that the applicant gave instructions to prepare for new acts of violence or made declarations about areas captured by the rioters (see paragraph 22 above). While some of the acts allegedly committed by the applicant, such as inciting protesters to build barricades, arm themselves with stones and other dangerous objects or grab police batons and shields, appear more concrete, even these circumstances were presented in a very summary fashion (see paragraph 22 above).

47. In sum, the domestic courts have failed to provide sufficiently specific examples of reprehensible acts attributable to the applicant, including incitement or instigation of violence, in the course of his involvement in the protest movement and the rallies which gripped Armenia in the aftermath of the presidential election (compare *Mushegh Saghatelyan*, cited above, §§ 249-53, and *Myasnik Malkhasyan*, cited above, §§ 71-79; for an application of the relevant case-law principles to similar factual circumstances see, *Arzumanyan v. Armenia*, [Committee], no. 63845/09, §§ 51-59, 31 August 2021, and *Mikayelyan v. Armenia*, [Committee], no. 1879/10, §§ 57-65, 31 August 2021). As such, the applicant appears to have been sanctioned for being an active member of the opposition and for having availed himself of his right to freedom of peaceful assembly rather than committing any specific reprehensible acts (compare *Mushegh Saghatelyan*, cited above, § 250).

48. In the light of the above, the Court concludes that the domestic courts failed in their duty to provide reasons for their decisions and that the reasons adduced to justify the interference with the applicant's right to freedom of peaceful assembly were not "relevant and sufficient".

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

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

50. The applicant complained that his detention during trial had been unlawful. He relied on Article 5 § 1 of the Convention, which reads as follows:

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

A. Admissibility

51. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

52. The applicant submitted that his detention, as authorised by the District Court's decision of 12 October 2009 setting the case down for trial (see paragraph 18 above), had failed to satisfy the requirement of lawfulness because it had been authorised for an indefinite period of time, moreover, without any reasoning.

53. The Government did not comment on the applicant's submissions.

54. The Court refers to its relevant case-law principles under Article 5 § 1 of the Convention and notes that it has recently examined a similar complaint, finding a violation of that provision with regard to the applicant's detention during trial (see *Vardan Martirosyan v. Armenia*, no. 13610/12, §§ 45-50, 15 June 2021). In the present case, while the District Court provided very brief reasoning in its ruling regarding the applicant's continued detention in its decision of 12 October 2009 setting the case down for trial (see paragraph 18 above), nevertheless, no time-limit was set and the applicant was left in a state of uncertainty as to the duration of his detention after that date. In such circumstances, the Court considers that the District Court's decision of 12 October 2009 did not afford the applicant an adequate protection from arbitrariness which is an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention, and that, therefore, the applicant's detention from 12 October 2009 to 19 January 2010 failed to comply with the requirements of Article 5 § 1 of the Convention.

55. There has accordingly been a violation of Article 5 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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."

57. The applicant did not submit a claim for just satisfaction. The Court therefore makes no award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

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

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

Done in English, and notified in writing on 18 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President