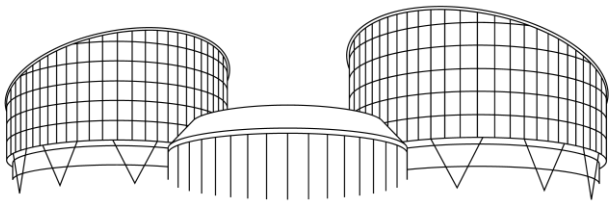

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Applications nos. 44841/08 and 63701/09
Gagik JHANGIRYAN against Armenia

The European Court of Human Rights (Third Section), sitting on 11 December 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above applications lodged on 16 July 2008 and 17 November 2009 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the two cases, Mr Gagik Jhangiryan, is an Armenian national who was born in 1955 and lives in Yerevan. He is represented before the Court by Ms L. Sahakyan and Mr E. Varosyan, lawyers practising in Yerevan, and Mr A. Ghazaryan, a non-practising lawyer.

A. The circumstances of the case

1. Background to the case

2. On 19 February 2008 a presidential election was held in Armenia. The main contenders were the then Prime Minister, Serzh Sargsyan, and the main opposition candidate, Levon Ter-Petrosyan.

3. It appears that immediately after the election Levon Ter-Petrosyan announced that the election had not been free and fair. From 20 February 2008 onwards daily protest rallies and demonstrations were held by thousands of Levon Ter-Petrosyan's supporters, the main assembly place for them being Freedom Square in the centre of Yerevan.

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

2. Criminal proceedings against the applicant

5. On 22 February 2008 the applicant made a speech at an opposition rally held on Freedom Square in which he expressed his support to Levon Ter-Petrosyan and criticized the conduct of the recent presidential election.

6. On the same date, the General Prosecutor submitted a motion to the President of Armenia seeking to have the applicant dismissed on the ground that he had participated in a rally and made a political speech.

7. On 23 February 2008 the President of Armenia issued two decrees dismissing the applicant from the post of Deputy General Prosecutor and depriving him of his rank. The applicant alleges that the decrees were not duly served on him and therefore, in accordance with the Law on Legal Acts, cannot be considered as having entered into force.

(a) The applicant's arrest and his alleged ill-treatment

8. As it appears from a record of bringing a person to the police, on 23 February 2008 at 11.30 p.m. police officers G.G., A.M. and R.M. of the General Police Department for the Fight against Organised Crime (hereafter, the Police Department) brought the applicant to the Police Department for illegal possession, carrying and transportation of arms and weaponry, and for showing resistance to police officers. The applicant refused to sign the record.

9. On the same day the police announced on their website that, in accordance with operative information received by the Police Department, persons driving a BMW X5 car (with indication of the car number-plate)

and a VAZ 21010 car (with indication of the car number-plate) were armed and intended to destabilise the situation in the Republic. At 11.00 p.m. on 23 February 2008 police officers stopped the above-mentioned cars at the Argavand intersection in order to conduct an inspection (hereafter the police operation). During the inspection, the persons sitting in the cars put up resistance during which police officer R.M. accidentally fired shots from his service gun inflicting light injuries on two police officers and [the applicant's brother] V.J., who had put up resistance. Persons who were in those cars, namely the applicant, V.J., K.H. and L.P. were brought to the Police Department. A CZ-75 pistol with cartridges was found in the applicant's possession; a PSM-type pistol with cartridges was found in V.J.'s possession, and a Makarov-type pistol with cartridges was found in K.H.'s possession. As a result of the inspection of the cars, a hunting rifle and a Browning-type pistol with cartridges were discovered, as well as a dagger, handcuffs and a bullet-proof vest.

10. It appears that there were two more persons in the car accompanying the applicant, namely A.S. and S.H., who were not taken to the Police Department.

11. On the same day police officer G.G. submitted a report to the chief of the Police Department which stated that during the above police operation and the applicant's arrest, police officers M.G. and R.M. submitted to him a CZ 75 B-type pistol, which had a number and was issued on 30 July 2003 to the applicant for an indefinite period of time.

12. The applicant alleges that in reality on 23 February 2008, at around 10 p.m., V.J. and he stopped their car, driven by V.J., at the Argavand intersection, on the way to Yerevan, when they were attacked by a group of masked and armed persons. Those persons crashed their unmarked vehicle, a Ford van, into the front of their car, came out of it and, firing shots from their guns, surrounded the car. They also surrounded the car of the persons accompanying the applicant. He left the car, announced who he was and asked those persons what they wanted. He was then taken to the Ford car. Then those persons tried to take V.J., who suffered from spinal tuberculosis and had mobility problems, out of the car. The attackers started to break the car window and, as V.J. opened the door, hit him in the face with a gun butt, pulled him out of the car and threw him on the ground, ignoring his warnings about V.J.'s spine disease. The attackers continued shooting and injured V.J. Two other police officers were also injured. The shooting continued also near the Ford van. According to the police, police officer R.M fired the shots. He was later diagnosed with astheno-neurotic syndrome. The operation was planned and the police were positioned there waiting for the applicant. All the police officers testified during the court proceedings that the applicant had not assaulted any of them and did not resist but calmly, accompanied by them, approached and sat in their Ford van. K.B., the police officer in charge of the police operation, testified that

the applicant had warned them about his brother's health problem. All the police officers admitted that there had been no need to use force or fire shots. Then all four of them, he, V.J., the driver of the other car L.P. and the assistant K.H., were brought to the Police Department. According to the materials, the operation took place at 11.30 p.m., while in reality it took place at 10 p.m. on 23 February 2008. This is confirmed by the fact that Regnum and A1+ news agencies issued press releases at 10.44 p.m. and 11.19 p.m. which stated that the applicant and his brother had been abducted at the Argavand intersection at around 10 p.m. by unknown masked persons. In the lobby of the Police Department V.J. and he were ill-treated by three police officers. The police officers threw them on the ground and started kicking and punching them. When he pleaded with them not to hit V.J. because of the spine disease, they started hitting V.J. more vigorously, aiming at his spine. L.P. and K.H. witnessed the beatings and testified to that effect. As a result of the ill-treatment, he and his brother sustained numerous bodily injuries. No medical assistance was provided to his brother until 4 hours after receiving the firearm injury. As to himself, no medical assistance was provided to him whatsoever. He was kept in uncertainty in one of the offices of the Police Department until 10 p.m. on 24 February 2008; there was no bedding and he slept sitting on a chair.

13. At an unspecified time on 24 February 2008, criminal proceedings were instituted for V.J.'s use of violence against the police officers during the police operation. In the decision to institute the criminal proceedings it was stated that V.J. had disobeyed the requests of the police officers, tried to take a pistol from his pocket and hit police officer R.M. in the face.

14. On 24 February 2008, at 1.10 a.m., an investigator from the Police Department, within the framework of the instituted criminal case, drew up a record of the applicant's arrest in which it was stated that the applicant was arrested on suspicion of illegal acquisition, possession and carrying of arms and ammunition, as provided for by Article 235 § 1 of the Criminal Code. The record indicated that on 23 February 2008 a CZ-75-B-type pistol was found in the applicant's possession together with 14 cartridges. At the end of the record the investigator added that the applicant refused to make any statement in relation to his arrest or to have a defence lawyer.

15. On 27 February 2008, during the examination by the Kentron and Nork-Marash District Court of Yerevan of the investigator's motion seeking to detain the applicant on remand, the applicant, who already had a defence lawyer, H.G., alleged, *inter alia*, that he and V.J. had been ill-treated in the lobby of the Police Department and that there were still traces of beatings on his body. It appears that his allegation remained unaddressed.

16. The applicant alleges that on the same day Z.P., a member of Parliament, and public observers A.I., A.Sak. and A.D. visited the applicant and witnessed his bodily injuries. His defence lawyer also witnessed his bodily injuries.

17. On 27 February 2008 V.J. underwent a forensic medical examination during which numerous medium-gravity injuries, including those caused by a firearm were recorded. As it appears from the forensic report, V.J. stated that he had received those injuries during the police operation at the Argavand intersection.

The applicant's attempts to be recognised a victim and to institute criminal proceedings against the police officers for his alleged ill-treatment

18. On 13 June 2008 the applicant, together with V.J., lodged a motion with the investigation body claiming that they had been ill-treated in the lobby of the administrative building of the Police Department and seeking to be recognised as victims. In substantiation of the motion, the applicant and V.J. referred to the results of V.J.'s forensic medical examination and the fact that on 27 February 2008 he alleged before the Kentron and Nork-Marash District Court of Yerevan that V.J. and he had been beaten in the lobby of the Police Department.

19. On 16 June 2008 investigator H. informed the applicant in a letter that the investigation into his allegation of ill-treatment in the lobby of the Police Department was still ongoing and that a corresponding decision would be taken after the clarification of circumstances essential for determining the case and the motion.

20. On 4 July 2008 the applicant and V.J. complained to the General Prosecutor's Office seeking to oblige investigator H. to examine the motion of 13 June 2008 and to be recognised as victims.

21. On 16 July 2008 the General Prosecutor's Office informed the applicant and V.J. in a letter that their motion seeking to be recognised as victims was not based on the requirements of the Code of Criminal Procedure since they already had the status of accused persons in the criminal proceedings. It was also indicated that the investigation into the allegation of ill-treatment of the applicant and V.J. was still ongoing.

22. On 12 August 2008 the applicant and V.J. lodged a complaint with the Kentron and Nork-Marash District Court of Yerevan seeking to oblige investigator H. to recognise them as victims, which was dismissed by the District Court on 26 August 2008 for the same reasons as those indicated in the letter of the General Prosecutor's Office of 16 July 2008.

23. In the meantime, on 13 August 2008 investigator H. decided not to carry out criminal prosecution in relation to the applicant's and V.J.'s allegation of ill-treatment in the Police Department. In particular, in the decision it was stated that, despite the fact that on 27 February 2008 the applicant alleged before the court that he and V.J. had been ill-treated in the Police Department, he had refused to testify in that respect in the later stages of the criminal proceedings. During V.J.'s trial L.P. and K.H. stated that they had witnessed the applicant and V.J. being beaten at the Police Department on 23 February 2008. However, neither L.P. nor K.H. had

mentioned it during the investigation and failed to give a valid reason for not doing so. As to V.J., no allegation of his and his brother's ill-treatment had been made by him during his questioning as a suspect on 24 February 2008. Furthermore, after making such an allegation before the trial court on 6 August 2008, V.J. refused either to answer any questions posed to him by the prosecutor or to make any statements after being summoned to the investigating authority to testify in relation to his allegation of ill-treatment.

24. The investigator's decision also mentioned the names of twenty police officers of the Police Department, who were questioned and denied the allegation of ill-treatment. The police officers also stated that L.P. and K.H. had been brought separately to the Police Department and could not have seen the applicant and V.J. in the lobby of the police building.

25. On 23 August 2008 the applicant and V.J. lodged a complaint with the General Prosecutor's Office seeking to cancel the decision of 13 August 2008, which was dismissed on 27 August 2008.

26. The applicant and V.J. lodged a court complaint seeking to oblige the investigating authority to cancel the decision of 13 August 2008, to institute criminal proceedings in relation to their alleged ill-treatment and to be recognised as victims.

27. On 21 October 2008 the Kentron and Nork-Marash District Court of Yerevan dismissed the complaint. The applicant and V.J. lodged an appeal.

28. On 3 December 2008 the Criminal Court of Appeal dismissed the appeal as unsubstantiated and left the decision of the District Court in force. Besides referring to the findings as contained in the investigator's decision of 13 August 2008, the Court of Appeal also indicated that on 27 February 2008, on the same day as the applicant declared before the court that he had been ill-treated in the Police Department, a record was drawn up, according to which no bodily injuries were discovered on him during his physical examination. The record was signed both by the officers of the Vardashen remand centre and the applicant, who indicated that he agreed with the results of the examination. As to the V.J.'s injuries recorded by the forensic medical examination of 29 February 2008, those were received during the police operation at the Argavand intersection on 23 February 2008, as a result of a shooting by police officer R.M.

29. On 27 December 2008 the applicant and V.J. lodged an appeal on points of law against the decision of the Court of Appeal.

30. On 22 January 2009 the Court of Cassation declared the appeal inadmissible for lack of merit. In its part concerning the circumstances of the criminal case against the applicant, the Court of Cassation indicated that the applicant had used violence against the police officers in the yard of the Police Department.

(b) Charges against the applicant and his detention

31. On 26 February 2008 the applicant was formally charged under Articles 235 § 1 and 316 § 2 of the Criminal Code. The investigator's decision to bring the charges stated that the applicant had illegally acquired a firearm, namely a Browning-type pistol, and ammunition, namely cartridges in the pistol's magazine, which he illegally kept in the car accompanying him on 23 February 2008 and where it was later found during the examination. In addition, on the same day at 11.30 p.m., when the applicant had been brought on suspicion of illegal arms carrying to the Police Department, in the yard of the administrative building, he had disobeyed police officer A.H., who was carrying out his duties, and used violence, not dangerous to life or limb, against the latter by hitting him in the shoulder, as a result of which the police officer had fallen down. Then the applicant had pulled and torn the uniform of police officer T.A. and, refusing to enter the building, threatened to use violence against the above two police officers.

32. It appears that the applicant and his defence lawyer were presented with that decision at 1.40 a.m. on 27 February 2008. The applicant made an annotation at the end of the decision saying that no case materials had been provided to him and that his 72-hour arrest period had expired half an hour before so he was no longer subject to being kept in custody.

33. At 3.30 a.m. on 27 February 2008 the applicant was brought before the Kentron and Nork-Marash District Court of Yerevan which examined the investigator's motion seeking to have the applicant detained for a period of two months on the ground that, taking into account that the applicant was accused of a crime punishable by more than one year's imprisonment, the applicant, if he remained at large, could commit a new offence, abscond or obstruct the investigation.

34. During the court examination the applicant reiterated that the 72-hour arrest period had expired and sought to be released. Besides, the charges against him were unsubstantiated. In particular, the Browning pistol was a registered and licensed gun and therefore was lawfully possessed by him. In any event, there was no reason to consider that he, a former Deputy Prosecutor General, would obstruct the investigation or abscond, while the gravity of charges alone could not justify his detention.

35. At 4.20 a.m. the Kentron and Nork-Marash District Court decided to grant the investigator's motion and ordered the applicant's detention for two months, until 24 April 2008, finding that, taking into account the gravity of the imputed offence, the applicant, if he remained at large, could commit a new offence, abscond or obstruct the investigation. The application of bail in respect of the applicant had to be refused since the applicant could abscond.

36. On 3 March 2008 the applicant lodged an appeal against that decision arguing, *inter alia*, that his detention was not based on a reasonable

suspicion and that the District Court's decision was unreasoned since the risks of his absconding or obstructing the investigation were unsubstantiated. Furthermore, the District Court failed to release him on bail.

37. On 7 March 2008 the Criminal Court of Appeal dismissed the appeal finding that there was a reasonable suspicion that the applicant had committed the imputed offences and that the District Court's decision to detain the applicant and not to apply bail was well-reasoned.

38. On 17 April 2008 the applicant lodged an appeal on points of law which was left unexamined by the Court of Cassation for missing the prescribed one-month time-limit for lodging such appeal.

(c) The institution of criminal proceedings concerning the events of 1 March 2008 and joining of the applicant's case to those proceedings

39. It appears that in the early morning of 1 March 2008 clashes took place between the police and the demonstrators on Freedom Square.

40. On the same date criminal proceedings no. 62202508 were instituted under Article 225.1 §§ 1 and 2, Article 235 §§ 1 and 2 and Article 316 § 2 of the Criminal Code. That decision stated:

> "After the announcement of the preliminary results of the presidential election of 19 February 2008, the presidential candidate, Levon Ter-Petrosyan, members of parliament, [K.S. and S.M.], the chief editor of *Haykakan Zhamanak* daily, [N.P.], and others organised and held mass public events on Yerevan's Freedom Square in violation of the procedure prescribed by law and made calls inciting to disobey the decisions ordering an end to the events held in violation of the procedure prescribed by law, while a number of participants in the mass events illegally possessed and carried illegally obtained weapons and ammunition.
>
> On 1 March 2008 at around 6 a.m., when the police took measures aimed at forcibly ending the public events held in violation of the procedure prescribed by law, in compliance with the requirements of Section 14 of the Assemblies, Rallies, Marches and Demonstrations Act, the organisers and participants of the events, disobeying the lawful orders of public officials performing their duties, namely the police, inflicted violence on the latter dangerous for their life and health with pre-arranged clubs, metal rods and other adapted tools, causing [them] injuries of various gravity."

41. It further appears that later in the evening further clashes took place between the law enforcement officials and the demonstrators in the centre of Yerevan. The clashes continued until late at night resulting in ten deaths and numerous injured and a state of emergency being declared by the incumbent President, which, *inter alia*, prohibited all rallies and other mass public events for a period of twenty days.

42. On 2 March 2008 another set of criminal proceedings was instituted, no. 62202608, under Article 225 § 3 and Article 235 § 2 of the CC. This decision stated:

> "The self-nominated presidential candidate at the presidential election of 19 February 2008, Levon Ter-Petrosyan, and his followers and supporters, members

> of parliament [K.S. and S.M.], the chief editor of *Haykakan Zhamanak* daily, [N.P.], and others, not willing to concede defeat at the election, with the aim of casting doubt on the election, instilling distrust towards the results among large segments of the population, creating illusions of public discontent and revolt and discrediting the election and the authorities, from 1 March 2008 in the area of the Yerevan Mayor's Office and central streets organised mass riots which involved murders, violence, pogroms, arson, destruction of property and armed resistance to public officials, effected with the use of firearms, explosives and other adapted objects."

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

44. It appears that on 7 March 2008 the applicant's criminal case was joined to case no. 62202608.

(d) Extension of the applicant's detention and modification of the charge against him

45. On 18 April 2008 the District Court, upon a corresponding motion by the investigator, extended the applicant's detention by two months, until 24 June 2008. The District Court found that, taking into account the gravity of the imputed offence, the applicant, if he remained at large, could abscond or obstruct the criminal proceedings or exert unlawful pressure on the persons involved in the case. The application for bail was refused on the same grounds.

46. On 23 April 2008 the applicant lodged an appeal arguing, *inter alia*, that his detention was not based on a reasonable suspicion since no such suspicion could be drawn from the materials submitted by the investigator. Besides, the District Court's decision was unreasoned and the risks of his absconding or obstructing the proceedings were unsubstantiated. Furthermore, the District Court failed to release him on bail.

47. On 8 May 2008 the Criminal Court of Appeal dismissed the appeal, finding that a reasonable suspicion that the applicant had committed an offence was based on the submitted case materials. Besides, the District Court's decision contained proper reasons for the extension of the applicant's detention. There was also no ground for the applicant's release on bail.

48. On 30 May 2008 the applicant lodged an appeal on points of law against the decision of the Criminal Court of Appeal which was declared inadmissible by the Court of Cassation for lack of merit on 2 July 2008.

(e) Modification of the charge against the applicant and further extension of his detention

49. On 13 June 2008 the charge of illegal arms possession in respect of the applicant was dropped. Instead, a charge under Article 300 § 1 of the Criminal Code (usurpation of power) was added. The investigator's decision stated that the applicant, following the 19 February 2008 presidential election, had joined L. Ter-Petrosyan and his followers in

masterminding and taking actions seeking to usurp power. In particular, the applicant, by abusing the authority of the post of Deputy General Prosecutor, had taken part in organising and conducting unlawful mass events seeking to escalate the political situation in the country and to sow distrust in the election results among the general public; planned and taken actions seeking to isolate lawful representatives of the authorities and forcing them to resign, and made public speeches and calls of a provocative nature aimed at usurping state power.

50. On 19 June 2008 the Kentron and Nork-Marash District Court of Yerevan, based on an investigator's motion, extended the applicant's detention by two months, until 24 August 2008, on the ground that the applicant, if he remained at large, might abscond, obstruct the proceedings by exerting pressure on the persons involved in the case and, by his actions, hinder the further disclosure of the circumstances of the case. For the same reasons, no bail was to be applied in respect of the applicant.

51. On 23 June 2008 the applicant lodged an appeal on points of law arguing, *inter alia*, that his detention was not based on a reasonable suspicion and that the District Court had failed to invoke proper reasons for considering that he might abscond or obstruct the proceedings. Furthermore, the District Court had failed to release him on bail.

52. On 2 July 2008 the Criminal Court of Appeal dismissed the applicant's appeal finding that there was a reasonable suspicion in the submitted case materials that the applicant had committed an offence. Besides, the District Court's decision contained proper reasons for extending the applicant's detention. There was also no ground for releasing the applicant on bail.

53. On 28 August 2008 the Court of Cassation left the applicant's appeal unexamined on the ground that the applicant had failed to send a copy of the appeal to the prosecutor.

54. In the meantime, on 13 August 2008 the charge of usurpation of power against the applicant was dropped and the only remaining charge against him was that of using violence against two police officers.

55. It appears that on the same day the applicant's criminal case was disjoined from that instituted in relation to the events of 1 March and continued as a separate case.

(f) The court proceedings

56. It appears that on 22 August 2008 the applicant's criminal case, together with the indictment, was referred to the Kentron and Nork-Marash District Court of Yerevan for trial.

57. On 22 August 2008 Judge V. of the Kentron and Nork-Marash District Court took two decisions on the applicant's case, namely to admit the case to his proceedings and to set the case down for trial, assigning 1 September 2008 as the date of the first court hearing. Together with the

latter decision, Judge V. also ruled to leave the applicant's measure of restraint, namely detention, unchanged.

58. On 27 August 2008 the applicant lodged an appeal against the latter decision claiming that the District Court was not entitled to take it on the same day as it admitted the case to its proceedings, and that no reasons were indicated for deciding to leave his detention unchanged.

59. On 1 September 2008 the Criminal Court of Appeal left the appeal unexamined on the ground that the District Court's decision to set the case down for trial was not subject to appeal under the Code of Criminal Procedure (hereafter the CCP).

60. On 30 September 2008 the applicant lodged an appeal on points of law against the Court of Appeal's decision which was declared inadmissible by the Court of Cassation for lack of merit on 3 November 2008.

61. In the meantime, on 26 August 2008 the applicant lodged a motion with the District Court alleging that on 24 August 2008 his detention period had expired and seeking to be released. On the same day, Judge V. replied that on 22 August 2008, together with the decision setting the case down for trial, he had already decided to leave the applicant's detention unchanged and the applicant could lodge further motions at the upcoming trial.

62. On 1 September 2008 the applicant's trial started. The public and mass media representatives were allowed to be present and to make audio-recordings and take notes. It appears, however, that Judge V. permitted video recording and photography only for a short period of time during each hearing finding that, otherwise, the normal course of the proceedings would be impeded.

(i) The applicant's attempts to be released from detention pending trial

63. On 2 September 2008 the applicant, who was represented at the trial by three defence lawyers, lodged a motion seeking to be released from detention arguing, *inter alia*, that his prolonged detention was unreasoned and unjustified and that starting from 24 August 2008 his detention was not based on a court order. On the same day the trial court decided to dismiss the motion as unsubstantiated, finding that in its decision of 22 August 2008 it had already ruled on the issue of the applicant's detention pending trial by leaving his measure of restraint unchanged.

64. The applicant lodged an appeal against that decision which was left unexamined by the Court of Appeal on 11 September 2008 on the ground that a court decision on a chosen measure of restriction taken during court proceedings was not subject to appeal.

65. On 11 February 2009 the trial court examined another motion for release lodged by the applicant and decided to dismiss it, finding that it was still necessary to keep the applicant in detention. The applicant claims that on 24 February 2009 he lodged another motion seeking to be released,

which was left unexamined on the same day by the trial court on the ground that such motion had already been examined by it.

(ii) The applicant's trial

66. During the trial the applicant pleaded not guilty and submitted that his prosecution was unlawful as he was still to be considered Deputy General Prosecutor. In particular, the President's two decrees dismissing him from the post of Deputy Prosecutor General and depriving him of his rank had not yet entered into force since those decisions had not been duly served upon him, as required by Article 60 § 1 of the Law on Legal Acts. Concerning the circumstances of his arrest, the applicant claimed that he had put up no resistance during the police operation. Having arrived at the yard of the Police Department, he saw around 200 to 300 people gathered there. He had then got out of the car and, together with the persons who had arrived with him, entered the lobby of the Police Department. Following his arrival, V.J., L.P. and K.H. had also been brought there. In the lobby of the building, upon a command from a person whom he could not see, the police officers had forced him and V.J. to the floor and started beating them. After some time the same person had ordered the police officers to stop the beatings, and he was then taken upstairs to the offices.

67. Police officer A.H. testified that on 23 February 2008, at about 11.30 p.m. he was in his office when he had received an instruction to accompany an arrested person to the lobby of the Police Department and to hand him over to the police officers of the criminal search unit. The same instruction had been given to his colleague T.A. As they approached the Ford van, the police officers had got out of the vehicle and entered the administrative building, with one of them holding a pistol in his hands. They had then opened the door and requested the applicant to get out of the vehicle. The applicant had disobeyed and, as they tried to take him out, he had resisted by trying to kick them. Then they had managed to take him out forcibly and, holding him by the arms, walked quickly towards the administrative building. At that moment the applicant had managed to free his right hand and punched him in the shoulder, as a result of which he lost his balance and fell down. As T.A. intervened, the applicant had started to make threats and insults addressed at them and their family members and pulled and tore a pocket of T.A.'s uniform. Then they had forcibly twisted the applicant's arms, taken him inside the building and handed him over to the police officers. As they took the applicant inside, he saw V.J. who was also there. He had then drawn up a report concerning the incident and submitted it to his superiors.

68. Police officer T.A. gave testimony similar to that given by police officer A.H. and stated that about 15 minutes after the incident he had submitted a corresponding report to his senior colleagues.

69. Police officer K.B. testified about the circumstances of the applicant's arrest stating, in particular, that the information that the applicant and the persons accompanying him were armed had been received by a police informer and that during the operation the only person who showed resistance was V.J., as a result of which police officer used his weapon, injuring the latter and two other police officers. Before the operation started he was informed by radio that one of the persons in the car was the Deputy General Prosecutor.

70. Police officers G.V. and A.E., who were on duty in the building of the Police Department that day, testified that at 11.30 p.m. the applicant and V.J., several minutes apart, were brought to the Police Department, and that the applicant had made threats to the police officers and disobeyed their requests. Police officer A.E. also stated that before the applicant and his brother were brought to the Police Department, L.P. and K.H. had already been brought there and taken upstairs to the office. Several other police officers, who either participated in the operation or were in the Police Department when the applicant was brought there, were also questioned before the trial court and gave testimony similar to that given by the above police officers.

71. Upon a motion lodged by the applicant, K.H., L.P., A.S. and S.H. were summoned to the trial and gave testimony during which K.H. and L.P. stated that they had witnessed the beatings of the applicant and J.V. in the yard and the lobby of the Police Department.

72. It appears that during the trial the applicant lodged a number of different motions which can be classified as follows:

(a) motions seeking that judge V. withdraw from the examination of the case for lack of impartiality. In particular, the applicant alleged that the judge was conducting the trial in violation of procedural law. Besides, Judge V. was not impartial since his son, who worked as an investigator, was a member of the investigating group which carried out the investigation of his case. The motions were dismissed as unsubstantiated. Concerning the latter allegation, Judge V. found that he could still conduct an impartial investigation because, though his son was included in the investigating group, he had not taken part in any investigative actions carried out during the criminal proceedings;

(b) a motion seeking to terminate the case against him on the ground that he had been unlawfully brought to the Police Department. The motion was not granted;

(c) motions seeking to summon as witnesses Z.P. A.I., A.Sak. and A.D as well as opposition supporters S.A., V.K. and A.Sis. In respect of the first four persons, the applicant claimed that they had visited him in the remand centre on 27 February 2008 and witnessed his bodily injuries. As to the last three, the applicant argued that on 24 February 2008 they had been brought and kept in the Police Department and possessed certain information on

what had happened there the day before. The motions were dismissed. The applicant then took written statements from Z.P., A.I., A.Sak., A.D. and his defence lawyer H.G. in which they claimed that they had witnessed bodily injuries on the applicant on 27 February 2008, and sought to have those statements recognised as evidence. Written statements were also taken from S.A., V.K. and A.Sis. who stated that the police officers of the Police Department had told them on 24 February 2008 that the previous day the applicant and his brother had been beaten and that the police officers were discussing what case was going to be "trumped up" against the applicant. The trial court attached all the statements to the criminal case but refused to recognise them as evidence;

(d) motions to be recognised as a victim based on the allegation that he had been beaten by the police officers on 23 February 2008. The motions were dismissed; and

(e) motions seeking to declare as inadmissible material evidence the uniform jacket of the victim, police officer T.A. on the ground that the investigator did not draw up the record of confiscating the said jacket in accordance with the prescribed rules; and to be presented with the clothes of the officers who received firearm injuries during the police operation of 23 February 2008. The motions were not granted.

73. On 23 March 2009 the Kentron and Nork-Marash District Court of Yerevan delivered its verdict finding the applicant guilty as charged and sentencing him to three years' imprisonment. In doing so, the trial court indicated that the applicant's submissions and arguments in his defence were unsubstantiated as not deriving from the circumstances of the case, and were aimed at evading criminal liability and punishment. As to the testimony of K.H. and L.P., this was unreliable since it had been established that both of them were brought to the Police Department at different times and in different cars to the applicant and his brother, and therefore they could not have seen the applicant in the yard and the lobby of the Police Department. The trial court also found unsubstantiated the applicant's allegation that the President's two decrees dismissing him from the post of Deputy Prosecutor General and depriving him of his rank had not yet entered into force. In this respect, the trial court indicated that on 23 February 2008 the applicant was already aware of the fact that he had been dismissed. In particular, that was mentioned in the testimony of the applicant's driver L.P. who, on the same day, submitted to the General Prosecutor's Office his service gun and the applicant's work car. Besides, the applicant had already challenged those decrees in the Administrative Court which, by a final judgment, dismissed his challenge finding that the applicant had been duly notified about the decrees. In particular, the decrees were delivered to the General Prosecutor's Office, while the information on the dismissal had been disseminated in the mass media and was posted on the website of the President of Armenia.

74. On 16 April 2009 the applicant lodged an appeal against the verdict arguing, *inter alia*, that the District Court had failed to assess properly the evidence, ignored his submissions and dismissed his motions seeking to prove his innocence and based its findings solely on the testimony of police officers. He also alleged that the true reason for his prosecution and conviction was to punish him for the speech he had made at the opposition rally on 22 February 2008. He thus alleged that he was discriminated against on the basis of his political views.

75. On 20 May 2009 the Court of Appeal decided to uphold the verdict of the District Court and dismissed the applicant's appeal finding that the arguments contained therein were unsubstantiated.

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

77. On 14 July 2009 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit. It appears that, in the meantime, on 22 June 2009 the applicant was released under amnesty.

3. Alleged prosecution of the applicant's relatives

78. According to the applicant, after he had made the speech at the opposition rally on 22 February 2008, the authorities started to persecute his relatives. In particular, besides V.J., his sister's son T.K. was dismissed from the post of Erebuni District Prosecutor of Yerevan and criminal proceedings were instituted against him for military draft evasion. Criminal proceedings were also instituted on account of tax evasion by two companies which his son, Vr.J., founded and co-owned.

B. Relevant domestic law

1. Prosecutor's Office Act

79. Section 44 § 4 of the Act provides that it shall be prohibited to arrest a prosecutor without the consent of the Prosecutor General, with the exception of cases of arrest on the basis of a court decision.

2. Law on Legal Acts

80. Section 4 § 1 provides that decrees and orders of the President are considered as legal acts.

81. Section 60 § 1, as in force at the material time, provides that individual legal acts of the President shall enter into force on the next day starting from the date on which they were adopted unless the law or a higher legal act, or the individual legal act in question stipulates a later date. If such individual legal acts establish a duty (including instructions) or contain a norm "worsening a legal situation" of the public authorities, national and local institutions or individuals, they shall enter into force on the next day

starting from the date on which they were delivered to the respective authorities or organisations, or were handed over or sent to the address of the domicile of the official or individual concerned, or on the next day starting from the date on which the official or individual concerned was otherwise duly notified.

82. Individual legal acts of the President establishing a liability shall enter into force starting from the moment on which they were delivered to the respective authorities or organisations, were handed over or sent to the address of the domicile of the official or person concerned, or starting from the moment when the official or person concerned was otherwise duly notified, unless the law or a higher legal act or the individual legal act in question stipulates a later date.

3. Code of Criminal Procedure

83. According to Article 293 § 2, a court decision setting a case down for trial shall contain, *inter alia*, a decision to cancel, modify or choose a measure of restraint.

84. Article 376 of the Code provides that a decision of the first instance court to cancel, modify or choose a measure of restraint shall be subject to appeal.

C. Relevant international document

U.S. Department of State 2008 Country Reports on Human Rights Practices

85. In its part related to Armenia, the report indicates, *inter alia*, as follows:

> "On February 22, while the result and outcome of the presidential election were in dispute, [the applicant], then a deputy prosecutor general, publicly stated his support for opposition candidate Levon Ter-Petrossian. On February 23, [the applicant] was relieved of his duties by then-president ..., and he and his brother were stopped in their vehicle and arrested later that night. Some observers and opposition supporters contended that the arrests were politically motivated in retaliation for [the applicant's] support of [Levon] Ter-Petrossian. [The applicant] was initially charged with treason, illegal weapons possession and felony assault against police officials. The first two charges were eventually dropped."

For other relevant domestic provisions, international and domestic documents see the Statement of Facts in the case of Saghatelyan v. Armenia, no. 23086/08, communicated on 30 November 2010.

COMPLAINTS

A. Complaints lodged in application no. 44841/08

86. The applicant complains under Article 3 of the Convention that the police used excessive force during his arrest; he was ill-treated at the Police Department; he suffered because of witnessing his brother's ill-treatment, harassment and persecution of his close relatives and because of his dismissal and deprivation of his rank; and that no effective investigation was conducted into his allegation of ill-treatment.

87. The applicant complains under Article 5 § 1 of the Convention that his deprivation of liberty was unlawful since at the moment of his arrest he still held the post of Deputy General Prosecutor, while there was no authorisation of the General Prosecutor to arrest him, as required by law; there was no legal basis for bringing him to the police station on 23 February 2008 and keeping him there; the arresting police officers were not in uniform but in black clothes, and their cars had no special police plates; he was kept in custody for more than the statutory 72 hours; from the moment of his arrest until 3.15 p.m. on 25 February 2008 he was kept incommunicado and his advocate was not allowed to see him; during his arrest he was not provided with any materials of the case in order to prepare his defence; the Kentron and Nork-Marash District Court of Yerevan, in its decision of 22 August 2008, left his detention unchanged without providing reasons or indicating a time-limit; from 24 August 2008 his detention was not based on a court decision; there was no reasonable suspicion for his arrest and detention.

88. The applicant complains under Article 5 § 3 of the Convention that he was not brought promptly before a judge after his arrest; and that his detention was unreasoned and unjustified.

89. The applicant complains under Article 5 § 4 of the Convention that neither the Criminal Court of Appeal nor the Court of Cassation conducted a proper examination of the applicant's appeals against his detention orders; the trial court did not discontinue the case upon its admission to its proceedings and therefore pre-judged his guilt; he was unable to appeal against the trial court's decisions of 22 August and 2 September 2008 as well as 11 and 24 February 2009 on the lawfulness of his detention; he was unable to lodge requests and motions before the start of the trial since the

trial courts adopted two decisions, namely to admit the case to its proceedings and to set the case down for trial on the same day; the two-month detention periods ordered three times in his respect cannot be considered as a reasonable interval for the review of the lawfulness of his detention within the meaning of this paragraph.

90. The applicant complains under Article 13 of the Convention, in conjunction with Article 3 of the Convention, about the refusal of the authorities to recognise him as a victim and to institute criminal proceedings on account of his alleged ill-treatment.

91. The applicant complains under Articles 10, 11 and 14 of the Convention that the true reason for his and his family's alleged persecution was the fact that he gave a speech at the opposition rally on Freedom Square on 22 February 2008 which also amounted to discrimination on the basis of political opinion.

92. The applicant complains under Article 18 of the Convention that he was deprived of liberty for a purpose other than that indicated in Article 5 § 1 (c), namely for making a speech at an opposition rally.

B. Complaints lodged in application 63701/09

93. The applicant complains under Article 6 §§ 1 and 3 (d) that:

(a) his conviction was based solely on the testimony of police officers, while his motions seeking to prove his innocence, such as to call witnesses, were dismissed, which resulted in a violation of the principles of the equality of arms and adversarial proceedings;

(b) the police evidence was contradictory and illegally obtained;

(c) he was denied the right to an impartial tribunal because Judge V. dismissed all his motions; Judge V.'s son was a member of the investigators' group formed to investigate the applicant's case; the courts by authorising his pre-trial detention and not terminating the case in essence pre-judged his guilt; the Court of Cassation was not an impartial tribunal because, when declaring inadmissible his appeals on points of law, it stated that he had committed a crime; the same judge examined the applicant's motions seeking the judge's withdrawal from the case for lack of impartiality; the trial judge conducted the trial in multiple violation of the procedure, favoured the prosecution and applied double standards; and the appeal courts did not redress the violations of impartiality as mentioned in his appeals;

(d) the domestic courts were not independent as they were under pressure from the executive authorities;

(e) he was denied the right the right to a public hearing since the journalists were allowed to take photographs and make video recordings only for several minutes at the beginning of each hearing and because the trial judge spoke in a low, inaudible voice;

(f) the court judgments were unreasoned and his arguments were not properly addressed.

94. The applicant complains under Article 6 § 3 (b) of the Convention that:

(a) the trial court failed to explain what particular duties police officers A.H. and T.A. were carrying out when he allegedly used violence against them;

(b) he and his defence lawyers had no time to prepare properly for questioning the witnesses during the trial since they did not appear according to the call list but at random, depending on who was present.

(c) when kept in the Police Department he was kept incommunicado, not allowed to have a defence lawyer and to give testimony; and

(d) Judge V. took two decisions, namely to admit the case to the court's proceedings and to set the case down for trial on the same day thus depriving him of a possibility to lodge motions and requests before the trial.

95. The applicant complains under Article 6 § 2 that the principle of the presumption of innocence was violated since the Court of Cassation, in its decision of 22 January 2009 indicated that the applicant had committed the imputed offence.

THE LAW

A. Alleged unlawfulness of the applicant's arrest, lack of reasonable suspicion for his arrest and lack of proper reasons justifying his detention

96. The applicant complains that he was kept under arrest for more than statutory 72 hours; that there was no reasonable suspicion for his arrest; and that the domestic authorities failed to bring proper reasons justifying his pre-trial detention. He invokes Article 5 §§ 1 and 3 of the Convention, which, in so far as relevant, 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:
>
> ...
>
> (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".

97. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

B. Alleged impartiality of the tribunal

98. The applicant complains that the son of Judge V. who presided over the trial court was a member of the investigating group established to investigate his case. He invokes Article 6 § 1 of the Convention which, in so far as relevant, provides:

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

99. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

C. Alleged violation of the applicant's rights to freedom of expression and to freedom of peaceful assembly and the alleged discrimination on the basis of political opinion.

100. The applicant complains that the true reason for his prosecution was the fact that he gave a speech at the opposition rally which amounted to a violation of his rights to freedom of expression, freedom of peaceful assembly, and also constituted discrimination on the basis of political opinion. He invokes Articles 10, 11 and 14 of the Convention which, in so far as relevant, provide:

Article 10

> "1. Everyone has the right to freedom of expression. This right shall included 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... political ... opinion..."

101. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

D. Other complaints

102. The applicant also raised a number of other complaints under Articles 3, 5 §§ 1, 3 and 4, 6 §§ 1, 2 and 3 (b) and (d), 13 and 18 of the Convention (see paragraphs 86-95 above).

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

For these reasons, the Court unanimously

Decides to adjourn the examination of the complaints concerning the alleged unlawfulness of the applicant's arrest; the alleged lack of a reasonable suspicion for the applicant's arrest; the alleged lack of proper reasons justifying the applicant's pre-trial detention; the alleged lack of impartiality of the tribunal; the alleged violation of the applicant's rights to freedom of expression and to freedom of peaceful assembly and the alleged discrimination on the basis of political opinion;

Declares the remainder of the applications inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President