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

THIRD SECTION

CASE OF ASHUGHYAN v. ARMENIA

(Application no. 33268/03)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

01/12/2008

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

In the case of Ashughyan v. Armenia,

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

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 33268/03) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mrs Gayane Ashughyan ("the applicant"), on 26 September 2003.

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

3. On 20 May 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in Yerevan. She works as a cook.

5. In February-March 2003 a presidential election took place in Armenia. Following the election, the applicant participated in a series of rallies of protest organised in Yerevan by the opposition parties.

A. The demonstration of 7 April 2003

6. On 7 April 2003 at 5 p.m. a demonstration was held in the centre of Yerevan on the occasion of Mother's Day. The demonstration took place on the Mashtots Avenue next to the Research Institute of Ancient Manuscripts (*Մատենադարան*). It appears that the demonstration was of a political nature and criticism of the Government and of the conduct of the presidential election was voiced.

7. The applicant alleged, and the Government did not dispute, that traffic was suspended by the traffic police on the relevant stretch of the Avenue prior to the commencement of the demonstration in order to facilitate its conduct. The applicant took part in the demonstration and the following march.

8. According to the applicant, at around 6 p.m. she went to work. After work at around 9 p.m. the applicant went home. On her way home, she was approached by three men in civilian clothes who, without presenting themselves, started dragging her to a nearby car. The applicant screamed and tried to resist. The men twisted her arms, punched her and pushed her into the car. The applicant was taken to the Central District Police Station of Yerevan (*ՀՀ ոստիկանության Երևան քաղաքի կենտրոնական բաժին*), where she found out that she had been arrested for having participated in the demonstration.

9. At the Police Station, the arresting police officers drew up a record of the applicant's arrest (*արձանագրություն բերման ենթարկելու մասին*) in which it was stated that the applicant had been "arrested at 7.30 p.m. at 12 Khorhurdneri Street for violating public order". The applicant alleged that the time of her apprehension was not correctly recorded. In reality she was arrested at 9 p.m.

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

> "... [the applicant] was brought to the Central Police Station for having participated on 7 April 2003 in an unauthorised march headed from the [Research Institute] to the Constitutional Court and violated public order..."

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

12. The police officers questioned the applicant. She made a written statement (*արձանագրություն բացատրություն վերցնելու մասին*) in which she gave details of her participation in the demonstration and the following march. She stated, *inter alia*, that the street traffic was obstructed when the march headed towards the building of the Constitutional Court. She was in the front line holding the Armenian flag and screaming "justice". The applicant alleged that this statement was made under pressure and was

dictated to her by the police officers. While most of this statement was true, its part concerning the obstruction of traffic did not correspond to the reality since the traffic had been beforehand suspended by the traffic police.

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

14. The applicant alleged that she was forced to sign this and other documents prepared by the police officers under threat of violence. Furthermore, they persuaded her to refuse a lawyer by insisting that a lawyer's involvement would not help and would only be detrimental to her case. The same day at around 12 midnight she was taken to Judge M. of the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*), who examined the case.

15. The Government contested this allegation. According to them, the applicant was kept at the Police Station for two hours and taken to Judge M. at 9.30 p.m. During this period, the police officers explained to the applicant her right to have a lawyer and advised her to avail herself of this right, which she did not wish to do. The record of an administrative offence was signed by the applicant voluntarily and without any objections. Furthermore, the applicant failed to initiate any actions aimed at the defence of her rights, such as lodging motions or availing herself of other procedural rights guaranteed by Article 267 of the CAO, despite having been made aware of them.

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

17. Judge M., after a brief hearing, sentenced the applicant under Article 172 of the CAO to an administrative fine of 1500 Armenian drams (approximately EUR 2.4 at the material time). The judge's entire finding amounted to the following sentence:

> "On 7 April 2003 between 4 p.m. and 6 p.m. ... on the Mashtots Avenue [the applicant], together with a group of people, obstructed street traffic, violated public order by making a loud noise, and incited other participants of the demonstration to do the same..."

18. According to the record of the court hearing – drawn up in a calligraphic handwriting – the hearing was held in public with the participation of the judge, a clerk and the applicant. The judge explained the applicant's rights to her and informed her of the possibility to challenge the judge and the clerk. The applicant did not wish to lodge any challenges. She stated that she was aware of her rights and did not wish to have a lawyer. The judge read out the motion submitted by the police, seeking to impose administrative liability on the applicant. The applicant submitted that at 4.30 p.m. she had participated in a march which had taken place in the Central District of Yerevan, during which they had obstructed the traffic and invited other people to join them. No questions were put to the applicant. Thereafter, the judge read out and examined the materials prepared by the police. Having familiarised herself with these materials, the applicant accepted that she had signed the record of an administrative offence. The judge departed to the deliberation room, after which he returned and announced the decision.

19. The applicant alleged, and the Government did not explicitly dispute, that the above record was a fake and was drafted at some point after the hearing in order to create an appearance of lawfulness. In reality there was no clerk and the hearing was not being recorded. The hearing lasted not more than five minutes and was conducted in Judge M.'s office. The applicant further alleged that, contrary to what the record stated, only the judge, the applicant and the accompanying police officer were present at the hearing. The latter did not as such participate in the hearing and his functions were limited only to bringing the applicant before the judge. The judge neither explained her rights, nor asked whether she wanted to have a lawyer. The materials of the case file were not read out and she was not allowed to make any oral submissions. No evidence was taken or examined. The judge simply prepared the above decision, solely on the basis of the materials prepared by the police, and only in the end broke the silence to threaten the applicant with imminent detention if she did not refrain from further participation in demonstrations.

20. On 8 April 2003 the applicant complained to the Kentron and Nork-Marash District Prosecutor (*Կենտրոն և Նորք-Մարաշ համայնքների դատախազ*) about the above-mentioned events. In particular, she submitted that she had been arrested on false accusations. The police officers had drafted a document and forced her to sign it without reading it. At about 12.30 a.m. she had been brought before a judge who had sentenced her to a fine without any examination of the case. She further submitted that she had sustained an injury to her wrist in the course of the arrest. She

sought to undergo an official medical examination and to have criminal proceedings instituted against the police officers.

21. The applicant alleged that in reply she was asked to appear in two days. It appears that she did not pursue her application any further.

B. The demonstration of 9 April 2003

22. On 9 April 2003 at 12 noon another demonstration was organised in the same area by the opposition parties. The demonstration was followed by a march towards the Government building where the inauguration ceremony of the elected President was taking place. The applicant was in the front line of the march, holding the Armenian flag.

23. According to the applicant, the march was blocked at the very beginning of the Mashtots Avenue by special forces. Since the demonstrators insisted on continuing their march, the special forces started to disperse the demonstration with rubber clubs. She submits that she was ordered by a police officer to hand over the flag. She refused to do so, after which she was beaten and taken to a police car.

24. At around 2.30 p.m. the applicant was brought to the Central Police Station. The arresting police officers drew up a record of her arrest in which it was stated that she had been "arrested for having violated public order during the march of 9 April 2003".

25. One of the arresting police officers reported to the Head of the Police Station that:

> "... during the march which took place on 9 April 2003 after the demonstration next to the [Research Institute] I noticed one citizen who was violating public order: waving a flag while walking on the driveway, obstructing the regular traffic of public transport, creating an emergency situation, randomly hitting passers-by who were not taking part in the demonstration with the long flagpole, and inciting others to follow her example..."

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

27. The police officers questioned the applicant. A statement was taken from her, although this time it was not written by the applicant herself. According to the statement, when the special forces blocked the march, the applicant who was in the frontline started to demand to pass through. They ignored her demands and ordered her to leave. The applicant started to shout and hit the people standing behind her with the flagpole so that they would pay attention and also start to demand to pass through, after which she got arrested. She also admitted in the statement that the Mashtots Avenue was blocked because of the march.

28. The police officers drew up a record of an administrative offence in which it was stated that the applicant had "made a loud noise with a group of people, and randomly insulted and hit passers-by in the Central District".

Her actions were qualified under Article 172 of the CAO as minor hooliganism.

29. All the above documents, including the record of an administrative offence, were signed by the applicant with the exception of the police report. She also put her signature in the section of the record certifying that she had been made aware of her rights under Article 267 of the CAO. In the section marked as "other information relevant for the determination of the case", the applicant also added "I do not wish to have a lawyer in administrative proceedings".

30. The applicant initially submitted that she had refused to sign any documents during her arrest of 9 April 2003. In a later submission, she claimed that due to the injuries and stress suffered during the apprehension she could hardly stand and was in a difficult physical and psychological condition. As a result, she signed the record of an administrative offence unconsciously and without first familiarising herself with it. Later she did not even remember that she had signed any documents. She refused a lawyer for the same reasons as on 7 April 2003. At 11 p.m. she was taken to the same Judge M. of the Kentron and Nork-Marash District Court of Yerevan, who examined the case.

31. The Government contested this allegation. According to them, the applicant was kept at the Police Station for two hours and taken to Judge M. at around 5 p.m. The circumstances of her stay at the police station were similar to the ones of 7 April 2003 (see paragraph 15 above).

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

33. Judge M. sentenced the applicant under Article 172 of the CAO to five days of administrative detention. The judge's entire finding amounted to the following:

> "On 9 April 2003 between 11 a.m. and 1 p.m. in the Central District of Yerevan [the applicant], swearing loudly and hitting passers-by, obstructed street traffic and violated public order.
>
> In deciding on the administrative penalty, [the court] takes into account as an aggravating circumstance the repetition of the anti-social behaviour of 7 April 2003, i.e. re-commission of a similar offence within one year, and the offence being committed by a group of people."

34. This decision also indicated that the applicant had no dependants.

35. The record of this hearing is almost identical in wording to the record of the hearing of 7 April 2003 (see paragraph 18 above), with the exception that the applicant added in her submissions that she and other

demonstrators had incited passers-by to participate in the demonstration. They had arguments with a few of them and there were also some swear words used, since some of the passers-by tried to mock her. She touched the passers-by with the flagpole accidentally.

36. The applicant alleged, and the Government did not explicitly dispute, that this hearing was in reality conducted in the same manner as the one of 7 April 2003. In addition, the judge asked the applicant "if you promise in writing that from now on you will not participate in demonstrations and marches any more, I will fine you and let you go home, otherwise I will detain you". The applicant replied that she had participated and would continue to participate, because she had not violated any laws and nobody had the right to prohibit her from enjoying her constitutional rights. The judge pronounced the sentence, after which she was taken to a detention centre where she served her sentence.

37. On 15 April 2003 the applicant applied to a local human rights NGO February 22nd (*«Փետրվարի 22» իրավապաշտպան կազմակերպություն*), complaining about the events of 7 and 9 April 2003 and seeking its assistance. She submitted, *inter alia*, that on 7 April 2003 the police officers had prepared some documents and forced her to sign them without even familiarising herself with them first.

38. On 18 April 2003 the NGO complained to the Kentron and Nork-Marash District Prosecutor (*Կենտրոն և Նորք-Մարաշ համայնքների դատախազ*) on behalf of the applicant.

39. By a letter of 12 May 2003 the Kentron and Nork-Marash District Prosecutor (*Կենտրոն և Նորք-Մարաշ համայնքների դատախազ*) informed the NGO that the decisions of 7 and 9 April 2003 had been well-founded and there were no grounds for appeal.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

40. For a summary of the relevant domestic provisions and international documents and reports see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, §§ 25-32, 15 November 2007).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

41. The Government claimed that the applicant had failed to exhaust the domestic remedies in respect of the decisions of 7 and 9 April 2003, by not lodging appeals under Article 294 of the CAO with the Chairman of the Criminal and Military Court of Appeal.

42. The applicant contested the Government's objection, arguing that the wording of Article 294 was unclear and allowed multiple interpretations. It did not prescribe *a right* of the convicted person to lodge an appeal against the court's decision imposing an administrative penalty, but rather conferred powers on the chairman of the superior court to review such decisions of his own motion.

43. The Court notes that it has already examined this issue and found that the review possibility provided by Article 294 of the CAO was not an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Galstyan v. Armenia*, no. 26986/03, § 42, 15 November 2007). The Government's preliminary objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ADMINISTRATIVE DETENTION

44. The applicant complained that Article 5 § 1 did not envisage, as one of the grounds for deprivation of liberty, the detention of a person as an administrative penalty. She further complained under Article 5 § 4 of the Convention that she was not entitled to contest the lawfulness of the detention imposed on her by the decision of 9 April 2003. The relevant provisions of Article 5 read 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

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

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

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

...

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

Admissibility

45. The Government submitted that the applicant's "administrative detention" was permissible under Article 5 § 1 (a), since she was convicted by a competent court of committing an administrative offence. As to Article 5 § 4, the Government claimed that the applicant was entitled to contest the lawfulness of her detention under Article 294 of the CAO.

46. The applicant submitted that administrative detention, as a form of penalty, could not be included among the grounds for detention permissible under Article 5 § 1. As to Article 5 § 4, the applicant claimed, in addition to the reasons contained in her arguments concerning the issue of the alleged non-exhaustion (see paragraph 42 above), that she was unable to contest the decision of 9 April 2003 because a copy of this decision was given to her only at a later date, following her release from detention.

47. The Court recalls that identical complaints were raised by the applicant in the above-mentioned case of *Galstyan* and were found to be manifestly ill-founded (see *Galstyan*, cited above, §§ 43-53). It sees no reasons to be depart from those findings in the present case.

48. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

49. The applicant made several complaints under Article 6 §§ 1 and 3 (b) and (c) of the Convention. In particular, she submitted that (1) the tribunal examining her cases was not independent, since there were no independent courts in Armenia because judges were appointed by the Council of Justice presided over by the President of Armenia and the

Minister of Justice; (2) the trials were not fair and the tribunal was not impartial: there was basically no examination of the cases and both trials lasted about five minutes; the judge ignored all her arguments without even trying to rebut them and based his decision solely on the record of an administrative offence, a document fabricated by the police; (3) the trials were not public since they were held in camera in the judge's office at 12 midnight and 11 p.m. respectively; (4) she was not made aware of her rights and was therefore not able to prepare her defence and to engage a lawyer; and (5) the decisions taken as a result of this procedure contained distorted and false facts.

The relevant part of Article 6 of the Convention provides:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing..."

A. Admissibility

1. Applicability of Article 6

50. Although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue of its own motion.

51. The Court notes that the applicant was convicted on both occasions of an offence envisaged under the same article of the CAO as in the above-mentioned case of *Galstyan*, where Article 6 of the Convention was found to be applicable under its criminal limb (ibid., §§ 55-60). The Court therefore considers Article 6 also to be applicable to both sets of proceedings examined in the present case.

2. Independence of the tribunal

52. The applicant complained about the independence of the tribunal, expressing a general dissatisfaction with the system of appointment of judges in Armenia. The Court recalls that an identical complaint was examined in the case of *Galstyan* and found to be manifestly ill-founded

(ibid., §§ 61-63). It sees no reasons to be depart from that finding in the present case.

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

3. Other fair trial guarantees

54. The Government submitted that, in respect of her complaints about the lack of sufficient time and facilities to prepare her defence, the applicant had failed to exhaust the domestic remedies since in both sets of proceedings she had not requested the court to adjourn the examination of the case.

55. The applicant did not comment on this point.

56. The Court notes that a similar objection has been already examined in the case of *Galstyan* where the Court concluded that the applicant did not unequivocally enjoy, both in law and in practice, the right to have the examination of his case adjourned (ibid., § 85). The Court notes that the circumstances of the present case are practically identical to those examined in the case of *Galstyan*. There is therefore nothing in the materials of the present case that would prompt the Court to depart from that finding.

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

B. Merits

1. The parties' submissions

(a) The Government

58. The Government argued that the applicant had had sufficient time to prepare her defence. Referring to the case of *Albert and Le Compte v. Belgium* (judgment of 10 February 1983, Series A no. 58, pp. 20-21, § 41), they argued that "sufficient time" was to be assessed in view of the circumstances of the case, including the complexity of the case and the stage of the trial. On 7 April 2003 the applicant was brought to the police station at 7.30 p.m., while the court hearing took place at about 9.30 p.m. On 9 April 2003 the respective hours were 2.30 p.m. and 5 p.m. During both periods she failed to avail herself of her procedural rights, despite all the efforts of the police officers. The applicant was familiarised with the materials of the cases against her and informed about her right to lodge motions and challenges, which she failed to do. On both occasions the

applicant signed the record of an administrative offence voluntarily and, by doing so, she agreed with its content and in essence admitted her guilt. Taking into account that the applicant signed the records, refused to have a lawyer, did not lodge any motions and did not avail herself of other procedural rights, the police officers considered these periods to be sufficient for the preparation of the applicant's defence. Furthermore, the applicant had the right to request an adjournment of the examination of her cases, which she also failed to do. By failing to request such an adjournment, the applicant admitted that she had had ample time to prepare her defence. Finally, by immediately presenting the cases to the court, the police officers ensured that the trials took place within a reasonable time.

59. The Government further argued that the applicant's cases were examined publicly. According to Article 8 of the Code of Civil Procedure, for a case to be examined *in camera* the court has to take a specific decision on that. No such decisions were taken in the applicant's cases, which indicates that the hearings were public. Nor did the records of the court hearings indicate that they were not public. The presiding judge did not take any actions preventing the public from being present at these hearings.

60. The Government finally submitted that on both occasions the applicant herself did not wish to have a lawyer, despite the fact that the police officers explained to her her right to have a lawyer and advised her to avail herself of this right. Moreover, the applicant did not wish to have a lawyer during the entire procedure, including the court hearings. In sum, the applicant's trials as a whole complied with the guarantees of Article 6 of the Convention.

(b) The applicant

61. The applicant submitted that the trials were not fair. A fair trial presupposed an impartial, objective and thorough examination of the circumstances of a case, whereas all the materials indicated that there was no such examination in her case. She further submitted that, in the period following the 2003 presidential election, both the police and the courts were acting upon the instructions of the authorities and doing all that was possible to punish the opposition activists in conditions lacking transparency. The police as a rule were looking for their "victims" not at a demonstration but at a later hour and at a different location. Often the public and close relatives became aware of the conviction only after the court decision had been taken and the convicted person had already been placed in the detention facility. The accused were normally not ill-treated at police stations but were, nevertheless, subjected to various methods of psychological pressure aimed at forcing them to sign documents containing false accusations. In order to conceal the fact that these cases were fabricated, the authorities were not allowing lawyers to participate and were

holding hearings at late hours, thus effectively excluding the possibility for them to be public.

62. The applicant further referred to her previous submissions, according to which the court hearings, contrary to what the Government claim, took place at 12 midnight and 11 p.m. respectively and no one else was present besides the judge and the accompanying police officer. Both trials lasted about five minutes and there were no examinations as such. She was not made aware of her rights and was not asked whether she wanted to have a lawyer. The materials of the cases were not read out and she was not allowed to make any submissions. No evidence was taken or examined and the resulting court decisions were based solely on the records of an administrative offence, which were fabricated by the police.

63. The applicant further submitted that she did not have sufficient time and facilities to prepare her defence. The Government's assertions as to the circumstances of the case were nothing but assumptions which were based on the mere fact that she had signed the records of an administrative offence. These records were a fake and so were the resulting court decisions which contained nothing but a standard text. Even assuming that these records could be regarded as a confession, in the absence of any other evidence they could not have served as a sufficient basis for her convictions.

64. As regards the publicity of the hearings, the applicant argued that it was the *de facto*, rather than the *de jure*, aspect of this phenomenon which should be taken into account. Hearings held at 12 midnight and 11 p.m. in a judge's office could not be considered as "public".

2. The Court's assessment

65. Since both sets of administrative proceedings against the applicant have practically identical circumstances, the Court considers it possible to examine them together.

66. The Court notes from the outset that similar facts and complaints have already been examined in the above-mentioned case of *Galstyan* in which the Court found a violation of Article 6 § 3 (b) taken together with Article 6 § 1 (see *Galstyan*, cited above, §§ 86-88). The circumstances of the present case are practically identical. Both administrative cases against the applicant were examined in an expedited procedure under Article 277 of the CAO. On both occasions the applicant was similarly taken to and kept in a police station – without any contact with the outside world – where she was presented with a charge and in a matter of hours taken to a court and convicted. The Court therefore does not see any reasons to reach a different finding in the present case and concludes that in the proceedings of both 7 and 9 April 2003 the applicant did not have a fair hearing, in particular on account of not being afforded adequate time and facilities for the preparation of her defence.

67. There has accordingly been a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention.

68. In view of the finding made in the preceding paragraph, the Court does not consider it necessary to examine also the other alleged violations of Article 6.

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

69. The applicant complained that the sanction imposed on her by the decisions of 7 and 9 April 2003 unlawfully interfered with her rights to freedom of expression and freedom of peaceful assembly guaranteed by Articles 10 and 11 respectively, which read as follows:

Article 10

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

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

Article 11

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

2. No restrictions shall be placed on the exercise of [this right] 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

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

B. Merits

1. The scope of the applicant's complaints

71. The Court notes that, in the circumstances of the case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis*. It is therefore unnecessary to take the complaints under Article 10 into consideration separately (see *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, § 35; and *Galstyan*, cited above, § 95).

72. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (see *Ezelin*, cited above, § 37, and *Galstyan*, cited above, § 96).

2. The demonstration of 7 April 2003

(a) Whether there was an interference with the exercise of the freedom of peaceful assembly

73. The Government claimed that there was no interference with the applicant's right to freedom of peaceful assembly guaranteed by Article 11 as far as the decision of 7 April 2003 was concerned. The applicant was convicted of a public order offence and therefore the penalty imposed was not connected with the exercise by the applicant of her right to freedom of peaceful assembly. According to the Government, the applicant was far away from the demonstration and, simply for hooligan reasons, blocked a street that had nothing to do with it. Such actions, however, cannot be considered as necessary for the exercise of one's right to freedom of peaceful assembly.

74. The applicant submitted that the Government's assertions did not correspond to the reality. She was brought to the police station because of her active participation in the demonstration. This was done despite the fact that she had not committed anything illegal in the course of the demonstration. By making such assertions, the Government were trying to present the applicant as an ordinary hooligan as opposed to an active participant in a demonstration.

75. The Court notes that it is apparent from the court decision that the applicant was convicted for violating public order during a demonstration and, more specifically, the demonstration of 7 April 2003 held on the Mashtots Avenue. The actions which led to a penalty being imposed on the applicant, according to the judge's findings, were the "obstruction of street traffic" and the "loud noise" she made during this demonstration which, in the Court's opinion, were the direct result of her participation in it. Thus,

the Government's assertion that the applicant blocked a street which had nothing to do with the demonstration has no basis in the findings of the domestic court. It follows that the applicant was convicted for her behaviour at the demonstration.

76. The Court further notes that the demonstration in question is the same demonstration in which the applicant in the above-mentioned case of *Galstyan* participated. In that case, the Court established that the demonstration in question was neither intended to be not peaceful nor was it prohibited. Furthermore, the authorities never attempted to disperse the demonstration or to order its participants, including the applicant, to leave on account of it being illegal or unauthorised or obstructing traffic (ibid., § 101). It is true that, in the present case, the police report stated that the applicant had participated in an unauthorised march heading from the Research Institute towards the Constitutional Court (see paragraph 10 above). However, first of all, this allegation was not confirmed in the course of the court proceedings since the applicant was not convicted for her participation in an allegedly unauthorised march, but for certain actions committed at the demonstration on the Mashtots Avenue located in front of the Research Institute (see paragraph 17 above). Secondly, it is not clear on what grounds such an allegation was made by the reporting police officer taking into account that at the material time there was no legal act applicable in Armenia containing rules for organising and holding rallies and street marches, including the rules for authorising such events (see *Mkrtchyan v. Armenia*, no. 6562/03, § 43, 11 January 2007). The Court further notes that the Government did not allege that the demonstration was unauthorised or unlawful either. There is therefore nothing in the materials of the present case that would prompt the Court to depart from the findings made in the case of *Galstyan*. Thus, by joining the demonstration, the applicant availed herself of her right to freedom of peaceful assembly and the sanction that followed amounted to an interference with that right.

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

(b) Whether the interference was justified

78. An interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of those aims.

(i) "Prescribed by law"

79. The Government submitted that, if the Court were to conclude that there had been an interference with the applicant's right to freedom of peaceful assembly, this interference was prescribed by law. The applicant

blocked Mashtots Avenue with a group of people and, by doing so, violated public order, which was qualified as minor hooliganism and fell within the ambit of Article 172 of the CAO.

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

81. The Court notes that the applicant was convicted for an offence envisaged by Article 172 of the CAO. It further reiterates that this norm was formulated with sufficient precision to satisfy the requirements of Article 11 (see *Galstyan*, cited above, § 107).

82. It follows that the interference was prescribed by law.

(ii) Legitimate aim

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

84. The applicant did not specifically address this issue.

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

(iii) "Necessary in a democratic society"

86. The Government submitted that the interference was necessary in a democratic society and proportionate to the aim pursued. It was aimed at preventing the applicant's unlawful actions and avoiding social disorder. The sanction imposed was at the lower end of the scale of penalties prescribed for the offence committed by the applicant. The Contracting Parties enjoyed a margin of appreciation as far as the necessity of an interference was concerned and the reasons given by the domestic authorities were relevant and sufficient.

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

88. The applicant further submitted that she had not committed any unlawful acts during the demonstration of 7 April 2003, and her arrest and conviction were mainly aimed at preventing her active participation in future demonstrations. She finally referred to her earlier submissions,

according to which she could not have obstructed street traffic because the traffic on the relevant stretch of the Mashtots Avenue had been suspended by the traffic police prior to the commencement of the demonstration.

89. The Court observes that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society (see *G. v. the Federal Republic of Germany*, cited above, and *Rai, Allmond and "Negotiate Now" v. the United Kingdom*, no. 25522/94, Commission decision of 6 April 1995, DR 81-A, p. 146). This right, of which the protection of personal opinion is one of the objectives, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the European Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001).

90. The Court further reiterates that the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin*, cited above, p. 23, § 53). Furthermore, any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 38-42, ECHR 2006-...).

91. The Court notes from the outset that the judgment of 7 April 2003 convicting the applicant in the present case is identical in wording to the one convicting the applicant in the case of *Galstyan*, with a small exception as regards the time (see *Galstyan*, cited above, § 18). Furthermore, the applicant in the present case was convicted for her participation in the same demonstration of 7 April 2003, by the same judge and on the same date. The actions which led to a sanction being imposed were similarly "obstruction of street traffic" and "making a loud noise".

92. The Court has already established in the case of *Galstyan* that the street where the demonstration of 7 April 2003 took place, namely Mashtots Avenue, was packed with a huge crowd, the number of people reaching up to 30,000. It has been further established that the street traffic was

suspended beforehand by the traffic police with the intention of facilitating the conduct of the demonstration and the authorities did not make any attempts at any point to disperse the demonstration on account of unlawful obstruction of traffic (ibid., § 116). The Court notes that there is nothing in the materials of the present case that would prompt it to depart from these findings. It follows that the "obstruction of street traffic", which the applicant was found guilty of, similarly amounted to her physical presence at the demonstration. As to the loud noise made by the applicant, there is similarly no suggestion that this noise involved any obscenity or incitement to violence. The Court therefore concludes that the applicant in the present case was similarly sanctioned for the mere fact of being present and proactive at the demonstration in question, rather than for committing anything illegal, violent or obscene in the course of it.

93. The Court reiterates that the very essence of the right to freedom of peaceful assembly would be impaired, if the State was not to prohibit a demonstration but was then to impose sanctions on its participants, even one at the lower end of the scale of penalties, for the mere fact of attending it, without committing anything reprehensible, as happened in the applicant's case (ibid., § 117). The Court therefore concludes that the interference with the applicant's right to freedom of peaceful assembly was not "necessary in a democratic society".

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

3. The demonstration of 9 April 2003

(a) The parties' submissions

95. The Government made submissions similar to the ones related to the demonstration of 7 April 2003, claiming that the interference with the applicant's freedom of expression and freedom of peaceful assembly was prescribed by law, pursued a legitimate aim and was necessary in a democratic society (see paragraphs 79, 83 and 86 above).

96. The applicant also repeated her submissions. She further contested the findings of fact made by the domestic courts, claiming that she had not used any swear words or hit anybody during the demonstration. These lies were invented by the authorities to justify the imposition of administrative detention. The only "offence" committed by her was that she refused to hand over the flag to the police officers when they started dispersing the demonstration. In support of her arguments, the applicant pointed out the fact that the domestic court stated in its decision that she had no dependants despite the fact that she had three children.

(b) The Court's assessment

97. The Court notes that it was not in dispute between the parties that there had been an interference with the applicant's freedom of peaceful assembly. It considers that the applicant's conviction of 9 April 2003 undoubtedly amounted to an interference with her freedom of peaceful assembly. Furthermore, the Court notes that the applicant was convicted under the same Article of the CAO as on 7 April 2003. Therefore the interference was prescribed by law (see paragraph 82 above). The Court further considers that the interference pursued the legitimate aims of "the prevention of disorder" and "the protection of the rights and freedoms of others".

98. As regards the necessity of the interference, the Court once again reiterates its case-law to the effect that a person cannot be subjected to a sanction for participation in a demonstration which has not been prohibited so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin*, cited above, p. 23, § 53). It follows that the imposition of a sanction for committing such acts, including violence and obscenities, may be a justified interference. In assessing whether a particular interference was justified, the Court must ascertain that it was prompted by a pressing social need and that the reasons given by the national authorities were relevant and sufficient.

99. In the present case, the Court notes that the applicant was found guilty of certain acts which may be considered reprehensible. It is, however, mindful of the striking paucity of the findings of fact made by the domestic court in penalising the applicant. These virtually amounted to the following phrase: "[the applicant], swearing loudly and hitting passers-by, obstructed street traffic and violated public order". No further details of these allegations were provided, such as the actual obscenities involved, who they were addressed at and in which circumstances, the manner in which the applicant had allegedly used any violence and whether anybody had been injured. No evidence was taken from any victims or witnesses, other than the arresting police officers, and these findings were made following a trial which lasted not more than five minutes. The Court further notes that the materials of the applicant's administrative case contain no further factual details either. The charge against her simply stated that she had "made a loud noise with a group of people, and randomly insulted and hit passers-by" and even the police report did not provide any substantial details of the applicant's allegedly reprehensible behaviour. In spite of this, these materials were relied upon by the domestic court when convicting the applicant, while her submissions made in court in her defence did not find any reflection in the court's findings. In view of the above, the Court concludes that the domestic court failed to make a thorough and objective assessment of the circumstances surrounding the applicant's behaviour at

the demonstration of 9 April 2003, including the alleged commission by her of any violent and offensive acts.

100. As to the "obstruction of street traffic" of which the applicant was also found guilty, the Court notes that there is no evidence to suggest that this went beyond the level of disruption to ordinary life inherent in any peaceful assembly and permissible under Article 11 of the Convention if the freedom of peaceful assembly guaranteed by that Article is not to be deprived of all substance (see, *mutatis mutandis*, *Oya Ataman*, cited above, §§ 38-42).

101. In the light of the above, the Court concludes that the reasons adduced by the domestic court were not sufficient to justify the interference with the applicant's freedom of peaceful assembly, especially in the form of such a harsh penalty as five days of detention. The Court notes that in imposing this penalty the domestic court took into account as an aggravating factor the applicant's repetition of behaviour at the earlier demonstration of 7 April 2003 which it interpreted as "anti-social". However, there is nothing to indicate that the applicant's behaviour had involved anything reprehensible within the meaning of Article 11 (see paragraph 93 above).

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

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

103. The applicant complained that she had no right to contest the decision of 9 April 2003. The same issue was also raised *ex officio* in respect of the decision of 7 April 2003. The Court considers it necessary to examine these issues under Article 2 of Protocol No. 7 which reads as follows:

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

A. Admissibility

104. The Court recalls that, where an offence is found to be of a criminal character attracting the full guarantees of Article 6 of the Convention, it consequently attracts also those of Article 2 of Protocol No. 7 (see *Gurepka v. Ukraine*, no. 61406/00, § 55, 6 September 2005; and *Galstyan*, cited above, § 120). In the present case, Article 6 of the Convention was found to be applicable to both sets of proceedings in question (see paragraph 51

above). Consequently, Article 2 of Protocol No. 7 is similarly applicable in this case.

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

B. Merits

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

107. The applicant similarly repeated her arguments made in reply to the Government's preliminary objection and submitted that the decisions of 7 and 9 April 2003 could be contested only by the prosecutor.

108. The Court notes that an identical complaint was examined in the above-mentioned case of *Galstyan*. In that case, the Court first considered that the offence of which the applicant was convicted was not of a "minor character" within the meaning of Article 2 § 2 of Protocol No. 7, since Article 172 of the CAO prescribed up to 15 days of detention as a maximum penalty. The Court went on to conclude that the applicant did not have at his disposal an appeal procedure which would satisfy the requirements of Article 2 of Protocol No. 7 (see *Galstyan*, cited above, §§ 124-127).

109. In the present case, as already indicated above, the applicant on both occasions was convicted of the same offence and under the same procedure as in the *Galstyan* case. The Court therefore does not see any reasons to depart from its finding in that case.

110. Accordingly, there has been a violation of this provision in respect of the decisions of 7 and 9 April 2003.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

111. The applicant finally complained that both her apprehensions were accompanied by physical abuse by the police officers. She invoked Article 3 of the Convention, which provides:

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

Admissibility

112. The Court observes that there is no evidence in the case file, including any medical proof, to suggest that the applicant was subjected to treatment incompatible with the requirements of Article 3.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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."

115. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) of the Convention in that the applicant did not have a fair hearing, in particular on account of the fact that she was not afforded adequate time and facilities for the preparation of her defence in the proceedings of both 7 and 9 April 2003;

3. *Holds* that there is no need to examine the other complaints under Article 6 of the Convention;

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

5. *Holds* that there has been a violation of Article 11 of the Convention as regards the applicant's right to freedom of peaceful assembly in respect of the demonstrations of both 7 and 9 April 2003;

6. *Holds* that there has been a violation of Article 2 of Protocol No. 7 in respect of the decisions of both 7 and 9 April 2003.

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Fura-Sandström is annexed to this judgment.

J.C.M.
S.H.N.

CONCURRING OPINION OF JUDGE FURA-SANDSTRÖM

The Court found a violation of Article 6 paragraph 3 taken together with Article 6 paragraph 1 of the Convention in respect of the proceedings of both 7 and 9 April 2003, since the applicant did not have a fair hearing, in particular on account of not being afforded adequate time and facilities for the preparation of her defence (paragraph 66). While accepting this approach, I would have preferred to examine the complaints relating to the lack of legal assistance separately. The applicant was allegedly not asked whether she wanted to have a lawyer (paragraph 62). For the same reasons as expressed in my partly dissenting opinion in *Galstyan v Armenia*, to which I refer, I find that there has been a violation of Article 6 paragraph 1 taken together with Article 6 paragraph 3 (c) in this respect.