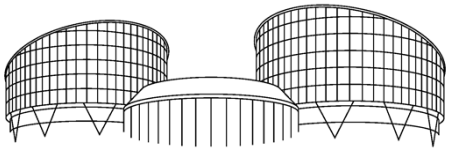

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MATEVOSYAN v. ARMENIA

(Application no. 61730/08)

JUDGMENT

STRASBOURG

10 October 2019

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

In the case of Matevosyan v. Armenia,

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

Tim Eicke, *President,*
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 17 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 61730/08) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Davit Matevosyan ("the applicant"), on 1 December 2008.

2. The applicant was represented by Mr Shushanyan and Mr Grigoryan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

3. On 12 February 2013 notice of the complaints concerning the alleged lack of a fair trial and the applicant's prosecution and conviction being in breach of his freedom of expression, freedom of assembly and freedom from discrimination was given to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in Yerevan.

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

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

5. On 19 February 2008 a presidential election was held in Armenia. The main contenders were the then Prime Minister, Mr Sargsyan, representing the ruling party, and the main opposition candidate, Mr Ter-Petrosyan. During the election campaign the applicant acted as an authorised election assistant for Mr Ter-Petrosyan and a member of his central election headquarters.

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

2. The early morning police operation on 1 March 2008 and institution of criminal proceedings

7. On 1 March 2008, apparently at some point between 6 and 7 a.m., police forces arrived on Freedom Square.

8. The Government alleged that the purpose of the police operation had been the verification of information obtained by the police a day earlier, according to which the demonstrators possessed arms and ammunition. For that purpose, members of the relevant police force, who were not equipped with any protective gear, had arrived at Freedom Square where hundreds of demonstrators armed with metal rods and wooden clubs had gathered, waiting for them. The demonstrators had attacked the police officers, hitting them and throwing stones, pointed metal objects and Molotov cocktails at them, as a result of which numerous police officers had been injured.

9. The applicant, who was present at Freedom Square when the police operation was conducted, contested the Government's allegations and submitted that the assembly had been peaceful and none of the demonstrators had been armed. It was the police who had attacked the peaceful demonstrators, using excessive force, in order to terminate the assembly.

10. It appears that, as a result of the police operation, all the demonstrators present at Freedom Square, including the applicant, fled from the square.

11. On the same day a criminal case was instituted in connection with the events at Freedom Square, which was later examined under no. 62202608. The decision stated that Mr Ter-Petrosyan and a number of other opposition leaders and activists had organised and held unlawful demonstrations at Freedom Square and incited disobedience of the orders to end the unauthorised demonstrations, while a number of demonstrators had illegally carried arms and ammunition and committed life and health-threatening assault on the police officers.

B. The criminal proceedings against the applicant

1. The applicant's arrest and prosecution

12. According to "the record of the applicant's bringing-in" drafted by the arresting police officers H.K. and E.K., the applicant was "brought in" to Kanaker-Zeytun Police Station (hereafter "the police station") from Freedom Square at 8.50 a.m. on 1 March 2008 "on suspicion of having put up resistance to a police officer".

13. Police officers H.K. and E.K. each reported to the chief of the police station in writing that the applicant had been "brought in" from Freedom Square for having put up resistance by disobeying their lawful orders, refusing to be taken to the police station, pushing them and trying to flee.

14. The applicant was questioned as a witness. He stated that he had continuously participated in the demonstrations at Freedom Square. On 1 March 2008, early in the morning, police forces had arrived at the square and started violently dispersing the demonstrators gathered there. He had tried to persuade the police officers not to apply force, but had been attacked with tear gas and batons and had been pushed to the ground. After getting to his feet, he had walked towards Northern Avenue. Two other demonstrators, H.M. and A.O., whom he knew personally, had walked along with him. As they reached the intersection of Northern Avenue and Abovyan Street, police officers had approached them, taken them by the arms and ordered to follow them to a nearby location. They had then been handcuffed and taken by car to the police station.

15. According to the materials of the case, besides the applicant several other opposition supporters were taken that morning from Freedom Square to the police station, including H.M. and A.O.

16. On 2 March 2008 the investigator drew up a record of the applicant's arrest, indicating that the applicant was suspected of having committed offences under Articles 225.1 § 2 (inciting disobedience to an order to

terminate an unlawful assembly) and 316 § 2 (life or health-threatening assault on a public official) of the Criminal Code (CC).

17. Police officers H.K. and E.K. were questioned and stated that they had participated in the police operation at Freedom Square in the early morning of 1 March 2008. The demonstrators had gathered there, when ordered to terminate the assembly, had put up resistance, assaulted the police officers and fled. Police officer H.K. submitted that, having been given the task of pursuing and finding those persons, he had stopped one man, who was walking with a few others, for an identity check at the intersection of Northern Avenue and Abovyan Street. The man had been calm at first but, after he had asked him to follow him to a police station in order to check whether he had been involved in the unlawful events at Freedom Square, the man had pushed him and tried to flee. At that moment police officer E.K. had approached, whom the man had pushed as well, but then the man had surrendered to the officers and had been taken to the police station where he had been identified as the applicant. Police officer H.K. added that the two persons walking with the applicant had been taken away by other police officers before he had stopped the applicant. Police officer E.K. made similar submissions.

18. On 4 March 2008 the applicant was formally charged under Articles 225.1 § 2 and 316 § 2 of the CC within the scope of criminal case no. 62202608. The decision stated that the applicant, having participated from 20 February in the unlawful assembly organised by Mr Ter-Petrosyan and his co-thinkers, incited to disobey the orders to end the assembly, accompanied with public insults addressed at public officials. Thereafter, on 1 March 2008 at around 6 a.m., when the police officers demanded the participants in the demonstration at Freedom Square to allow them to verify the veracity of the information that they possessed arms and ammunition, and once again warned them to end the unlawful event, the applicant and other demonstrators, disobeying the police officers' lawful orders, committed life- and health-threatening assault on them, causing injuries of various nature and degree.

19. The applicant was questioned and denied having incited disobedience or inflicted any violence on the police officers.

20. On the same date the applicant was remanded in custody.

21. On 27 March 2008 the investigator dropped the charges under Articles 225.1 § 2 and 316 § 2 of the CC for lack of evidence, but brought a new charge against the applicant under Article 316 § 1 of the CC (non-life or health-threatening assault on a public official) in respect of the same facts as in the initial charge.

22. On the same day the applicant was questioned. He once again denied having done anything illegal at Freedom Square but stated that, when he had been approached in the street later by the two police officers, he had been agitated because of the effect of the tear gas and had behaved in a way

which was later assessed as unlawful. He stated that he admitted his guilt for having assaulted the two police officers in a non-life and health-threatening way.

23. On 3 April 2008 the bill of indictment was approved under Article 316 § 1 of the CC and the applicant's case was referred to a court.

2. The court proceedings

24. On 28 April 2008 the applicant's trial commenced in the Kentron and Nork-Marash District Court of Yerevan. During the trial the applicant retracted the admission of guilt he had made during the investigation and pleaded not guilty, stating that he had not assaulted the two police officers who, he alleged, had made false statements. Police officers H.K. and E.K. were questioned as witnesses before the District Court and maintained their statements against the applicant. According to the applicant, he had been unable to question properly the police officers in court as the trial judge disallowed some of the questions, namely those related to the lawfulness of the police actions at Freedom Square in the morning of 1 March 2008, as not related to the circumstances of the case under examination.

25. The applicant also requested the District Court to call H.M. and A.O. as witnesses, stating that they had been with him at the time of the alleged incident. They had witnessed that he had not assaulted the two police officers and could therefore provide exculpatory evidence. In support of this request, the applicant submitted written statements by H.M. and A.O. in which they corroborated his account of events. The District Court adjourned the examination of the applicant's request until the other evidence in the case file had been examined.

26. On 15 May 2008 the applicant repeated his request to call H.M. and A.O. as witnesses. He argued that the case against him, based solely on the statements of police officers H.K. and E.K., was trumped up and he was basically prosecuted for having exercised his freedom of expression.

27. On 2 June 2008 the District Court examined and dismissed the applicant's request, holding that it was unnecessary to call H.M. and A.O. on the ground that there was sufficient evidence in the case file.

28. On 16 June 2008 the District Court found the applicant guilty under Article 316 § 1 of the CC, sentencing him to three years' imprisonment. In doing so, the District Court found it to be established:

> "[The applicant], having participated on a daily basis in mass public events, marches, around-the-clock demonstrations and sit-ins held continuously from 20 February 2008 in violation of the procedure prescribed by law and disrupting the capital's life, traffic, normal functioning of public institutions and peace and calm of the population, on 1 March 2008 at around 7 a.m., when the police officers demanded the demonstrators gathered at Freedom Square to give them a possibility to verify the veracity of the information that the demonstrators possessed arms and ammunition and once again warned them to end the unlawful event, disobeying the lawful orders

> of [police officers H.K. and E.K.], assaulted them in a non-life or health-threatening way by pushing and pulling them..."

In reaching these findings, the District Court relied on the statements of police officers H.K. and E.K.

29. On 3 July 2008 the applicant lodged an appeal arguing, *inter alia*, that the trial court, by dismissing his request to call as witnesses H.M. and A.O. and relying solely on witness statements of police officers H.K. and E.K., had violated his right to a fair trial as protected by Article 6 of the Convention. Besides, his prosecution and conviction had also been in violation of Articles 10, 11 and 14 of the Convention.

30. During the examination of his appeal by the Criminal Court of Appeal, the applicant lodged a request similar to the one lodged before the trial court seeking to call H.M. and A.O. as witnesses.

31. On 24 September 2008 the Court of Appeal dismissed the applicant's appeal and upheld his conviction. As regards the applicant's request to call witnesses, the Court of Appeal dismissed it, finding that the applicant's submissions were insufficient to conclude that the District Court's dismissal of that request had been unfounded. The Court of Appeal further held that, as could be seen from the materials of the case, before police officers H.K. and E.K. had approached the applicant, both H.M. and A.O. had already been taken from the scene by other police officers and had therefore not witnessed the incident involving the applicant.

32. On 17 December 2008 the applicant lodged an appeal on points of law, raising similar arguments.

33. On 22 January 2009 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND RELEVANT INTERNATIONAL MATERIALS

34. For a summary of the relevant domestic law and practice, as well as of the relevant international materials, see *Mushegh Saghatelyan v. Armenia* (no. 23086/08, §§ 91-134, 20 September 2018).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

35. The applicant complained that he had not had a fair hearing since he had been denied the opportunity to call witnesses on his behalf in breach of Article 6 § 3 (d) of the Convention. Bearing in mind that the requirements of Article 6 § 3 of the Convention are to be seen as particular aspects of the

right to a fair trial guaranteed by Article 6 § 1 of the Convention (see, among other authorities, *Gabrielyan v. Armenia*, no. 8088/05, § 59, 10 April 2012), the Court considers that the applicant's complaint falls to be examined under both provisions taken together which, in so far as relevant, provide:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

37. The applicant submitted that his trial had been unfair since he had not been given reasonable opportunity to challenge the charges against him. In particular, his conviction had been based solely on the testimony of two police officers – a practice that had been condemned by both the Parliamentary Assembly and the Human Rights Commissioner of the Council of Europe – and the only possibility to challenge that testimony effectively was for him to call the two persons, H.M. and A.O., who had witnessed his arrest. His repeated requests to call those witnesses had been dismissed by the District Court without giving any reasons, while the Court of Appeal, in reasoning its dismissal, relied on the testimony of the same police officers. By giving priority to the police officers' testimony without good reasons the courts had put into doubt the impartiality of their judgments, taking into account that the police had been party to the conflict. Moreover, there had been contradictions and ambiguities in the police officers' statements which the courts had failed to make any effort to clarify. In particular, while initially reporting that he had been arrested at Freedom Square, the police officers had later changed their story and indicated the intersection of Northern Avenue and Abovyan Street as the

location of his arrest. Furthermore, it was unclear why he had been stopped in the street in the first place and based on what suspicions the police officers had wanted to "invite" him to a police station. Lastly, as regards his admission of guilt, the applicant submitted that, since the case against him had been a political one and he had been told by the investigator that he would be convicted in any case, making the confession, upon the investigator's offer, had been the price that he had had to pay in order to have the charge against him changed to a less severe one, as he was the sole breadwinner for his family and could not afford to spend years in prison.

38. The Government submitted that the applicant had had a fair hearing as required by Article 6 of the Convention. He had been present throughout his trial, represented by a lawyer, and given the opportunity effectively to participate, familiarise himself with the case file and challenge all the witnesses and evidence against him. He had availed himself of his right to lodge requests and his request to call witnesses had received due consideration. The Criminal Court of Appeal when dismissing the request had, in particular, indicated, relying on the statements of the police officers, that neither of the two witnesses whom the applicant sought to call had been present during the contested events. Moreover, the applicant had voluntarily admitted his guilt during the investigation of his case. Thus, the trial as a whole had been in conformity with the guarantees of Article 6.

2. The Court's assessment

39. The Court reiterates that its task under Article 6 of the Convention is to ascertain whether the proceedings as a whole, including the way in which evidence was obtained, were fair. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence have been respected and whether the applicant was given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system. In the context of taking evidence, the Court has paid particular attention to compliance with the principle of equality of arms, which is one of the fundamental aspects of a fair hearing and which implies that the applicant must be "afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent". Therefore, even though it is normally for the national courts to decide whether it is necessary or advisable to call a witness, there might be exceptional circumstances which could prompt the Court to conclude that

the failure do so was incompatible with Article 6. When a request by a defendant to examine witnesses is not vexatious, is sufficiently reasoned, is relevant to the subject matter of the accusation and could arguably have strengthened the position of the defence or even led to his acquittal, the domestic authorities must provide relevant reasons for dismissing such a request (see, among other authorities, *Mushegh Saghatelyan*, cited above, §§ 202-204, and *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 139-159, 18 December 2018).

40. In a number of cases in which prosecution and conviction of individuals for their conduct at a public event was based exclusively on the submissions of police officers who had been actively involved in the contested events, the Court found that, in those proceedings, the courts had accepted the submissions of the police readily and unequivocally and had denied the applicants any opportunity to adduce any proof to the contrary. It held that in the dispute over the key facts underlying the charges where the only witnesses for the prosecution were the police officers who had played an active role in the contested events, it was indispensable for the courts to use every reasonable opportunity to check their incriminating statements (see *Kasparov and Others*, cited above, § 64; *Navalnyy and Yashin v. Russia*, no. 76204/11, § 83, 4 December 2014; and *Frumkin v. Russia*, no. 74568/12, § 165, ECHR 2016 (extracts)). A similar situation was examined by the Court in a case against Armenia, in which a violation of Article 6 was found and which, moreover, concerned the same events as in the present case (see *Mushegh Saghatelyan*, cited above, §§ 200-211).

41. It appears that the criminal proceedings against the applicant were conducted in a similar manner. The criminal case against the applicant, who was, as the applicant in the above case, facing charges for certain acts allegedly committed by him at Freedom Square, was built entirely on the testimony of two police officers who had been actively involved in the contested events and whose statements, moreover, appear to have contained inconsistencies, including regarding the location of the applicant's arrest. The applicant's request to call witnesses, which was sufficiently substantiated and of direct relevance to the charges against him, was dismissed by the trial court with very brief and unconvincing reasoning (see paragraph 27 above). While the appeal court, when dismissing a similar request, reasoned that the persons whom the applicant sought to call had not witnessed his arrest, that finding was based on the testimony of the very police officers whose statements the applicant sought to challenge by calling the witnesses in question (see paragraph 31 above). The Court therefore considers that the domestic courts, in a dispute over the key facts underlying the charges which, moreover, were based on conflicting evidence, failed to use every reasonable opportunity to verify the incriminating statements of the police officers who were the only witnesses for the prosecution and had played an active role in the contested events. Their unreserved endorsement

of the police version of events, failure to address properly the applicant's submissions and refusal to examine the defence witnesses without proper regard to the relevance of their statements can be said to have led to a limitation of the defence rights incompatible with the guarantees of a fair hearing (see, *mutatis mutandis*, *Mushegh Saghatelyan*, § 210).

42. As regards the applicant's admission of guilt during his questioning of 27 March 2008, the Court notes that the applicant later, during the court proceedings, retracted that statement and pleaded not guilty. The Court cannot speculate on the reasons why the applicant made such an admission and later retracted it, but notes that he undoubtedly continued to enjoy the guarantees of Article 6 and should have had the opportunity to defend his case and to challenge the evidence against him effectively, if necessary, as in this case, by calling witnesses.

43. Based on the above, the Court concludes that the criminal proceedings against the applicant, take as a whole, were conducted in violation of his right to a fair hearing under Article 6 § 1 of the Convention.

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

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

45. The applicant complained that his prosecution and conviction had been in breach of the guarantees of Articles 10 and 11 of the Convention, which, in so far as relevant, provide:

Article 10

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

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

Article 11

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the

protection of health or morals or for the protection of the rights and freedoms of others...”

A. Admissibility

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

B. Merits

1. The parties' submissions

47. The applicant submitted that his prosecution and conviction had been a disguised form of interference with his freedom of expression and his right to participate in the public demonstrations and the daily protests against the authorities. He had been known to the authorities and had been targeted for his public protest against the conduct of the election and for his political views and activism. The police officers had had no reasonable suspicion on which to arrest him. His prosecution on fabricated and artificial charges had been pre-meditated and pursued the aim of punishing him for his support for the opposition and his political activity as a member of Mr Ter-Petrosyan's election headquarters. While the charges against him had concerned only non-dangerous violence against a police officer, he had nevertheless been prosecuted within the scope of the criminal case instituted against the leaders and supporters of the opposition in connection with the mass disorder which had allegedly taken place later that day in Yerevan and during the investigation he had been questioned repeatedly about his role in organising the protests, including his relation to Mr Ter-Petrosyan. His eventual conviction had been based solely on the statements of the two arresting police officers, who had moreover been actively involved in the contested events and had used excessive force against the demonstrators, while the court judgments had not been well-reasoned due to the pressure put on the judges by the executive. The fact that politically motivated charges had often been used in criminal cases related to the events of 1 March 2008 had been confirmed and criticised by the Parliamentary Assembly of the Council of Europe. Thus, the interference with his rights had been not only unlawful but also arbitrary. Furthermore, it had not pursued any legitimate aim and was not necessary in a democratic society, in violation of the guarantees of Articles 10 and 11 of the Convention. As to the Government's allegation that the assembly had not been peaceful, this had been based exclusively on the official version of the events, not supported by any reliable evidence.

48. The Government submitted that the applicant had been present at Freedom Square in the early morning of 1 March 2008 when the police operation had been conducted and had disobeyed the lawful orders of the police officers to terminate the unlawful assembly and had assaulted them. The applicant had been stopped by police officer H.K., assisted by police officer E.K., in the aftermath of those events on suspicion of having assaulted police officers at Freedom Square. The applicant had put up resistance during his arrest and had later been prosecuted for that and had, moreover, admitted his guilt. Thus, since the applicant had been indicted for assaulting a police officer during his arrest, his conviction had had nothing to do with the assembly at Freedom Square and therefore did not interfere with his rights guaranteed by Articles 10 and 11 of the Convention. However, even assuming that there had been an interference, the interference had been prescribed by law and had pursued a legitimate name, namely the dispersal of the unlawful assembly and the confiscation of illegal arms and ammunition. The assembly at Freedom Square had not been authorised as required by law and had disturbed public order and the peace and calm of life in the capital. Even so, the authorities had not made any attempts to interfere with the conduct of the assembly until information had been obtained about the demonstrators being armed and planning to instigate mass disorder. This also suggested that the assembly at Freedom Square had not been peaceful within the meaning of Article 11 of the Convention.

2. The Court's assessment

(a) The scope of the applicant's complaints

49. The Court notes that in the circumstances of the case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis*. The Court therefore finds that the applicant's complaints should be examined under Article 11 alone (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 85, ECHR 2015).

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

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

51. It further reiterates that an interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures

taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly, such as a prior ban, dispersal of the rally or the arrest of participants, and those, such as punitive measures, taken afterwards, including penalties imposed for having taken part in a rally (see *Navalnyy and Yashin v. Russia*, no. 76204/11, § 51, 4 December 2014, and *Kudrevičius and Others*, cited above, § 100).

52. As regards the Government's claim that the assembly at Freedom Square was not peaceful and therefore did not fall within the scope of Article 11, the Court notes that it has already examined and dismissed a similar claim by the Government, finding that there was not sufficient and convincing evidence to conclude that the organisers and the participants of the assembly at Freedom Square had had violent intentions and that the assembly in question had not been peaceful (see *Mushegh Saghatelyan*, cited above, §§ 229-233).

53. As regards the Government's claim that the applicant's conviction was not linked to his Article 11 rights the Court notes that, while the statements of the police officers against the applicant indeed concerned mostly the circumstances of the applicant's arrest, including the alleged resistance which he had put up during the arrest (see paragraph 17 above), the actual charges against the applicant and his subsequent conviction concerned his behaviour and acts which he had allegedly committed during the assembly at Freedom Square when exercising his Article 11 rights, such as incitement to disobedience and assault on police officers during the dispersal of the assembly (see paragraphs 18, 21 and 28 above).

54. The Court therefore concludes that there has been an interference with the applicant's right to freedom of peaceful assembly on account of his prosecution and conviction.

(c) Whether the interference was justified

55. An interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims (see *Galstyan v. Armenia*, no. 26986/03, § 103, 15 November 2007).

56. In the present case, the Court does not consider it necessary to decide whether the interference was prescribed by law and pursued a legitimate aim having regard to its conclusions set out below, regarding the necessity of the interference (see *Mushegh Saghatelyan*, cited above, § 237).

57. The Court reiterates that the right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain

but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, cited above, § 142).

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

59. The Court notes at the outset that the present case concerns the same events which it has already examined in the case of *Mushegh Saghatelyan*, cited above, namely the demonstrations held after the presidential election of 19 February 2008 at Freedom Square and their dispersal in the early morning of 1 March 2008. The applicant in the present case was similarly an active supporter of the opposition and was also regularly present at the demonstrations, including during the police operation of 1 March 2008. While the applicant appears to have been eventually arrested for allegedly putting up resistance to the arresting police officers, it is unclear on what grounds the officers, who had approached the applicant at a considerable distance from Freedom Square, assumed, in the first place, that he had participated in the assembly and had, moreover, committed anything illegal. This similarly suggests that the officers either knew the applicant as an active demonstrator or at the very least were carrying out random arrests. The applicant was subsequently charged under the same Articles of the CC as in the *Mushegh Saghatelyan* case and the charges were similarly couched in very general and abstract terms, without any specific evidence or factual details being provided for the acts allegedly committed by the applicant, namely the alleged incitement to disobedience and the alleged life and health-threatening assault on police officers (see paragraph 18 above). All of those charges were similarly subsequently dropped for lack of evidence, while the applicant's eventual conviction for a non-life and health-threatening assault on the arresting police officers was a mere recapitulation of the charges against him, lacking details and full of ambiguities, completely leaving out such important facts as the circumstances of the clashes between the demonstrators and the police at

Freedom Square (see paragraph 28 above). The Court therefore considers that the domestic courts in the present case similarly failed to carry out a thorough and objective establishment of the facts underlying the charges against the applicant and to demonstrate the rigour and scrutiny which, in the particular circumstances of the case and given the overall context, were required of them in order to ensure an effective implementation of the right to freedom of peaceful assembly guaranteed by Article 11. In such circumstances, it cannot be said that the reasons adduced by the domestic courts to justify the interference were genuinely "relevant and sufficient" or that the courts based their decisions on an acceptable assessment of the relevant facts. The Court therefore concludes that the measures in question were not necessary in a democratic society (see, *mutatis mutandis*, *Musegh Saghatelyan*, cited above, §§ 249-254).

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

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

61. The applicant further complained that his prosecution and conviction were motivated by his political opinion and amounted to discrimination in breach of Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

62. The Government contested that argument.

63. Having regard to its findings under Article 11 of the Convention (see paragraphs 57-60 above), the Court considers that there is no need to examine whether, in this case, there has been a violation of Article 14 of the Convention in conjunction with Article 11.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government contested the applicant's claim.

67. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violations found and awards the applicant EUR 13,200 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant did not claim any costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

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

5. *Holds* that there is no need to examine the complaint under Article 14 of the Convention in conjunction with Article 11 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 13,200 (thirteen thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Tim Eicke
Deputy Registrar	President