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

THIRD SECTION

CASE OF MKRTCHYAN v. ARMENIA

(Application no. 6562/03)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

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 Mkrtchyan v. Armenia,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 7 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 6562/03) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Armen Mkrtchyan ("the applicant"), on 25 November 2002.

2. The applicant, who had been granted legal aid, was represented by Mr N. Baghdasaryan, a lawyer practising in Yerevan. 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. The applicant alleged that the interference with his right to freedom of peaceful assembly was contrary to the guarantees of Article 11 of the Convention, in particular, that it was not prescribed by law.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 20 October 2005, the Court declared the application partly admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972 and lives in Yerevan.

8. The applicant at the material time was a member of the "Republic" Party (*«Հանրապետություն» կուսակցություն*).

9. On 10 May 2002 the "Republic" Party applied to the Mayor of Yerevan for permission to hold a demonstration on Freedom Square in Yerevan on 14 May 2002.

10. On 13 May 2002 the Mayor authorised the demonstration as requested.

11. The demonstration was held as planned on 14 May 2002, at around 15.00, on Freedom Square. It was jointly organised by the "Republic" Party and six other political parties. The applicant participated in the demonstration.

12. Following the demonstration, at around 16.00, the applicant called on participants to hold a procession through the Baghramyan Avenue towards the Parliament building. It appears that a crowd of people followed the applicant in a procession along the Avenue.

13. The same day, at 23.10, the applicant was arrested and brought to the Arabkir District Police Station of Yerevan (*ՀՀ ոստիկանության Երևան քաղաքի Արաբկիրի բաժին*). The record of an administrative offence (*վարչական իրավախախտման արձանագրություն*) prepared by the police officers stated that the applicant had "organised an unlawful procession and violated the prescribed rules for holding demonstrations and street processions".

14. On 15 May 2002 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) examined the applicant's case. The District Court found that:

> "[The applicant], in violation of the prescribed rules for holding street processions and demonstrations, on 14 May 2002 at around 16.00 o'clock, participated with a group of people in an unauthorised procession. Thus, he has committed an offence envisaged by Article 180.1 of the Code of Administrative Offences [(*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք*)]. Taking into consideration the circumstances of the case and the personality of [the applicant], the court finds it necessary to impose an administrative penalty in the form of a fine."

15. The District Court imposed a fine in the amount of 500 Armenian drams (AMD) (approx. EUR 1 at the material time). The decision was final and not subject to appeal.

16. On 24 May 2002 the applicant lodged an appeal with the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*). In his appeal the applicant argued that in accordance with the Constitution he had a right to contest the decision of the District Court before a higher court. He further argued that the interference with his right to freedom of assembly was not prescribed by law, as there did not exist any law which prescribed the rules that the applicant had allegedly violated. Furthermore, he expressly requested the Court of Appeal to name any such law if it existed.

17. On 14 June 2002 the Civil Court of Appeal examined the applicant's appeal and found that:

> "On 14 May 2002 at around 15.00 o'clock [the applicant] participated in an authorised demonstration on the Freedom Square in Yerevan. Thereafter, at around 16:00 [the applicant] with a group of people participated in an unauthorised procession through the Baghramyan Avenue, during which he headed the procession [. For this reason] he was brought to the [police station].
>
> The fact of the applicant heading an unauthorised procession is characterised as an offence envisaged under Article 180.1 of the Code of Administrative Offences, therefore, he must be subjected to administrative liability."

18. On 24 June 2002 the applicant lodged a cassation appeal with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*).

19. By a letter of 1 July 2002 the Court of Cassation informed the applicant that the domestic legislation did not provide for a right to lodge a cassation appeal against the decisions which the applicant sought to contest.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Code of Administrative Offences (6 December 1985)

20. The relevant provision of the Code reads as follows:

Article 180.1

> "Violation of the prescribed rules for organising or holding assemblies, rallies, street processions and demonstrations shall be punishable by imposition of a penalty in the amount of fifty to one hundred per cent of the fixed minimum wage, or, in exceptional cases where, in the circumstances of the case, taking into account the offenders personality, the application of these measures would be deemed insufficient, by imposition of administrative detention not exceeding fifteen days."

B. The Decree of the Chairmanship of the Supreme Soviet of the USSR on "Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR" (28 July 1988) *(ՍՍՀՄ Գերագույն սովետի նախագահության հրամանագիրը ՍՍՀՄ-ում ժողովների, միտինգների, փողոցային երթերի ու ցույցերի կազմակերպման և անցկացման կարգի մասին)*

21. This Decree defined the relevant rules, such as the requirement of prior authorisation, the authority deciding on requests for authorisation (i.e. the executive committee of the relevant local council of people's deputies), the procedure for making a request and its content, a decision to be taken following the examination of the request, a possibility to appeal this decision to a superior authority, requirements to be met when holding the mass event (e.g. that the event must take place at the time and place specified in the request, public order must be respected, no carrying of arms, etc.), reasons for refusal of an authorisation, and the grounds on which this or that particular event could be dispersed (e.g. absence of a request, refusal of an authorisation, violation of public order, etc.).

C. The USSR Law on "Approving Decrees of the Chairmanship of the Supreme Soviet of the USSR on Making Amendments and Supplements to Certain USSR Legal Acts" (28 October 1988) *(ՍՍՀՄ օրենքը ՍՍՀՄ որոշ օրենսդրական ակտերում փոփոխություններ ու լրացումներ կատարելու մասին ՍՍՀՄ Գերագույն սովետի նախագահության հրամանագրերը հաստատելու մասին)*

22. By adopting the Law, the Supreme Soviet of the USSR approved a number of decrees of the Chairmanship, including the above Decree of 28 July 1988 (see paragraph 21 above).

D. Armenia's Declaration of Independence (23 August 1990) *(Հռչակագիր Հայաստանի անկախության մասին)*

23. The relevant provisions of the Declaration read as follows:

> "The Supreme Soviet of the Armenian [Soviet Socialist Republic] ... based on the principles enshrined in the Universal Declaration of Human Rights and the general norms of international law ... [and] aiming to achieve the establishment of a democratic society ruled by law;

Declares

1. The [Armenian Soviet Socialist Republic] is renamed as the Republic of Armenia...

2. ... Only the Constitution and laws of the Republic of Armenia are valid on the ... territory of the Republic of Armenia."

E. Constitutional Law on the Foundations of Independent Statehood (25 September 1991) *(ՀՀ սահմանադրական օրենքը անկախ պետականության հիմնադրույթների մասին)*

24. The relevant provision of the Law reads as follows:

Article 16

"Until the adoption of a new constitution of the Republic of Armenia, the valid Constitution and laws are effective to the extent to which they do not contradict this Law and the legal acts adopted on the basis of the Declaration of Independence."

F. The CIS Convention (8 December 1991) signed and ratified by Armenia on 21 December 1991 and 18 February 1992 respectively *(ԱՊՀ-ի ստեղծման մասին համաձայնագիրը)*

25. The relevant Article of the Convention reads as follows:

Article 11

"From the moment of signing this Convention, norms of third states, including those of the former USSR, shall not be applied on the territories of the signatory states."

G. The Constitution of the Republic of Armenia (5 July 1995, in force at the material time)

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

Preamble

"The Armenian nation, taking as a basis the fundamental principles of the Armenian statehood enshrined in the Armenia's Declaration of Independence ... adopts the Constitution of the Republic of Armenia."

Article 4

"The State guarantees the protection of human rights and freedoms on the basis of the Constitution and laws, and in accordance with the principles and norms of international law."

Article 26

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

Article 44

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

Article 116

"From the date of entry into force of this Constitution, (1) the Constitution of 1978 with subsequent amendments and supplements, and constitutional laws lose their force; (2) the laws and other legal acts of the Republic of Armenia are effective to the extent to which they do not contradict this Constitution."

H. Presidential Decree on Public Administration of Yerevan (6 May 1997) *(ՀՀ նախագահի հրամանագիրը Երևան քաղաքում պետական կառավարման մասին)*

27. The relevant provision of the Decree reads as follows:

Article 1.5

"The Mayor of Yerevan shall decide on the issue of holding assemblies, rallies, processions, demonstrations and other mass events in Yerevan in accordance with the rules prescribed by law."

I. The Law on Holding Assemblies, Rallies, Street Processions and Demonstrations adopted on 28 April 2004 *(ՀՀ օրենքը ժողովներ, հանրահավաքներ, երթեր և ցույցեր անցկացնելու մասին)*

28. On 28 April 2004 the Armenian Parliament adopted a law regulating the procedure for holding assemblies, rallies, street processions and demonstrations. Article 16 of this law stated that, from the date of its entry into force, the Decree of the Chairmanship of the Supreme Soviet of the USSR on "Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR" of 28 July 1988 was not to be applied on the territory of the Republic of Armenia.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

29. The applicant complained that the sanction imposed on him unlawfully interfered with his right to freedom of peaceful assembly since it was not prescribed by law. He invoked Article 11 of the Convention which, insofar as relevant, reads as follows:

> "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. The parties' submissions

30. The Government submitted that the rules for organising and holding demonstrations and street processions, referred to in Article 180.1 of the Code of Administrative Offences (CAO), were prescribed by the USSR Law on "Approving Decrees of the Chairmanship of the Supreme Soviet of the USSR on Making Amendments and Supplements to Certain USSR Legal Acts" of 28 October 1988 (hereafter, the Law) which approved, *inter alia*, the Decree on "Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR" of 28 July 1988 (hereafter, the Decree). The Law was adopted before Armenia's independence of 23 August 1990, but continued to be valid following independence by virtue of Article 16 of the Constitutional Law on the Foundations of Independent Statehood of 25 September 1991, since the phrase "valid Constitution and laws" referred to in that Article also included the laws of the former USSR. Thus, from 1991 to 1995 the Law continued to operate as a law of the Republic of Armenia. Following the adoption of the Constitution on 5 July 1995, the Law continued to be valid by virtue of Article 116 § 2 of the Constitution.

31. The applicant submitted that a law must be accessible and foreseeable. The Law was not accessible since he was not able to find it. Furthermore, he asked why, if the Law was valid, the courts failed to refer to it. In any event, the Law was not valid in Armenia because of Article 11 of the CIS Convention of 8 December 1991 which prohibited the application of the former USSR laws on the territory of the signatory states. This Convention was signed and ratified by Armenia on 8 December 1991 and 18 February 1992, respectively.

32. In their further observations, the Government submitted that the Law was accessible since it was published in Bulletin no. 31 of the Supreme Soviet of the USSR of 3 August 1988. Article 11 of the CIS Convention did not apply to the Law, because the Law, by the time when the Republic of Armenia joined this Convention, was already operating as a law of the Republic of Armenia by virtue of Article 16 of the Constitutional Law of 25 September 1991. Following 1995 it continued to operate on the basis of the Constitution.

33. In his further observations, the applicant submitted that a law which had lost its force in 1991 due to the CIS Convention could not re-acquire force in 1995 by virtue of the Constitution. Furthermore, the Decree could not be applied in practice since it contained concepts which did not exist any more after the dissolution of the USSR, such as an "executive committee of the local council of people's deputies" and a "superior authority" to which the executive committee's decision could be appealed.

34. In the proceedings on the merits, the Government submitted that the Law was valid and applicable in practice. It would have been irrational to terminate the validity of all previously adopted laws and legal acts from the date when the Republic of Armenia became independent and did not yet have its own legal system, because then the country would have faced a legal crisis. Thus, not only the Law but also many other laws adopted during the USSR period continued and still continue to be valid in the Republic of Armenia. As an example of this serves the Decision of the Supreme Council of Armenia of 26 February 1992 on "Putting into Application of the Law of the Republic of Armenia on Enterprises and Entrepreneurial Activities", paragraph 15 of which stated that the application of the former USSR laws on "Cooperative Activity in the USSR" and "State Enterprises (Unions)" was to be allowed on the territory of the Republic of Armenia. Also, until the adoption of relevant rules on 23 May 2002, entire road traffic in Armenia was regulated by the Decree of the USSR Ministry of Internal Affairs of 2 November 1979. Finally, in accordance with legislative technical rules, a legal act is applicable in the country until a decision on its termination is adopted. Thus, a new law on holding demonstrations and rallies was adopted in Armenia on 28 April 2004, Article 16 of which stated that, from the date of entry into force of this law, the Decree was not to be applied on the territory of the Republic of Armenia.

35. The Government further repeated their submissions that Article 11 of the CIS Convention did not apply to the Law. It concerned only the USSR legal acts which were adopted within the short period from the moment of Armenia's independence until the dissolution of the USSR in December 1991. All other USSR legal acts adopted before Armenia's independence, including the Law, had been already recognised by Armenia as constituting part of its own legislation by virtue of Article 16 of the Constitutional Law of 25 September 1991. The Government further

submitted that the Law applied to the entire USSR territory and was therefore an integral part of the legislation of the former Armenian Soviet Socialist Republic (ASSR). Thus, it was directly transformed into the legislation of the Republic of Armenia on the basis of Articles 1 and 2 of the Armenia's Declaration of Independence.

36. In reply, the applicant repeated that the Law could not be valid by virtue of Article 11 of the CIS Convention. He further submitted that, in accordance with Article 1 of the Declaration of Independence, the former ASSR was succeeded by the Republic of Armenia. Thus, according to Article 2 of the Declaration, only the laws of the former ASSR were valid on the territory of the Republic of Armenia, and not those of the former USSR.

B. The Court's assessment

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

37. It has not been disputed between the parties that the applicant's conviction constituted an interference with his right to freedom of peaceful assembly. The Court recalls that the term "restrictions" used in Article 11 § 2 cannot be interpreted as not including measures – such as punitive measures – taken not before or during but after a meeting (*Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, § 39). The Court concludes that there has been an interference with the applicant's right to freedom of peaceful assembly.

2. Whether the interference was justified

38. 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.

39. The Court reiterates that the expression "prescribed by law" in Article 11 of the Convention not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 31, § 49; *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III; *Rotaru v. Romania* [GC], no. 28341/95, § 55, ECHR 2000-V; *Maestri v. Italy* [GC], no. 39748/98,

§ 30, ECHR 2004-I). The Court also recalls that such factors as the national courts' lack of reference to any legal provision as a basis for the interference and the apparent inconsistencies of case-law compared to the national legislation may constitute grounds for the failure of a given legal provision to meet the requirement of foreseeability (see, in the context of Article 1 of Protocol No. 1, *Baklanov v. Russia*, no. 68443/01, § 46, 9 June 2005).

40. The Court notes that the fine was imposed on the applicant under Article 180.1 of the CAO, which prescribed a penalty for the violation of the prescribed rules for organising and holding rallies and street processions. Therefore, the interference had a basis in domestic law. It has not been disputed that the CAO was accessible and the Court does not have reason to doubt that. It remains, therefore, to be determined whether this provision was foreseeable.

41. The Court notes that it is in dispute between the parties whether at the material time there was any legal act in Armenia which envisaged the "prescribed rules" referred to in Article 180.1 of the CAO. The Government alleged that the "prescribed rules" were envisaged by the Law and the Decree, while the applicant contended that these were legal acts of the former USSR and were no longer valid and applicable in Armenia following its independence. Thus, according to him, no "prescribed rules" existed in Armenia which he was found to have violated. In support of their arguments, both parties advanced their own interpretation of various domestic and international provisions, such as Armenia's Declaration of Independence, the Constitutional Law on the Foundations of Independent Statehood, the Constitution of 1995 and the CIS Convention.

42. In this respect, the Court notes that these documents allow various interpretations as to the applicability of the former USSR laws. There is no domestic provision which clearly stated whether the former USSR laws remained or did not remain in force on the territory of Armenia. While the Decision of the Supreme Council of Armenia of 26 February 1992, as pointed out by the Government, explicitly allowed the application of two former USSR laws on the territory of Armenia (see paragraph 34 above), no such decision was ever adopted in respect of the Law or the Decree. Furthermore, the Court does not agree with the Government that Armenia would have faced a legal crisis if the former USSR laws were no longer applied after its independence, since it is clear from Articles 1 and 2 of Armenia's Declaration of Independence that all the legal acts of the former ASSR, which included a constitution and all the vital codes, were transformed into legal acts of the newly independent Republic of Armenia. It is not obvious, however, from the wording of these provisions whether the same applied to the former USSR laws.

43. The Court recalls that its power to review compliance with domestic law is limited as it is in the first place for the national authorities to interpret and apply that law. The Court, however, would draw attention to the

absence of any domestic case-law concerning the disputed matter. Notwithstanding the Court's request, the Government failed to submit any examples of domestic practice, such as copies of any court decisions or judgments which would clarify this issue or at least make references to any former USSR laws, in general, or the Law and the Decree, in particular. Furthermore, the domestic courts in the present case also failed to refer to any legal act which prescribed the rules for holding rallies and street processions which the applicant was found to have violated. Thus, having regard to the domestic courts' lack of reference to any legal provision prescribing the rules in question and to the absence of any case-law concerning the applicability of the former USSR laws in Armenia following its independence, the Court considers that the law in question, namely the "prescribed rules" referred to in Article 180.1 of the CAO, was not formulated with such precision as to enable the applicant to foresee, to a degree that was reasonable in the circumstances, the consequences of his actions (see, *mutatis mutandis*, in the context of Article 1 of Protocol No. 1, *Baklanov*, cited above). The Court notes that following the dissolution of the USSR there was no legal act applicable in Armenia which contained these rules and the relevant law was adopted only on 28 April 2004. The Court accepts that it may take some time for a country to establish its legislative framework in a transition period, but it cannot accept the delay of almost thirteen years to be justifiable, especially when such a fundamental right as freedom of peaceful assembly is at stake. The Court concludes that the interference with the applicant's right to freedom of peaceful assembly was not prescribed by law.

44. Having reached this conclusion, the Court does not need to verify whether other two requirements (legitimate aim and necessity of the interference) set forth in Article 11 § 2 have been complied with.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed EUR 5,000 in respect of non-pecuniary damage. In particular, he submitted that, as a result of the unlawful

interference, his reputation as a political activist was seriously damaged. The imposition of a fine was degrading in the eyes of his party colleagues, as well as his family and those citizens who supported his party. The applicant made no claim in respect of pecuniary damage.

48. The Government contested his claim. Referring to the judgment in the case of *Ezelin v. France* (judgment of 26 April 1991, Series A no. 202, §§ 55-57), they submitted that the finding of a violation would in itself constitute sufficient compensation. In any event, the amount claimed was excessive.

49. The Court considers that the finding of a violation of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Costs and expenses

50. The applicant made no claim under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President