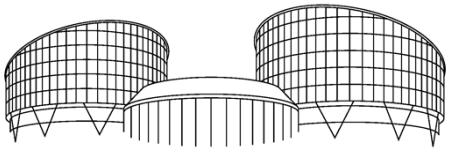

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HOVHANNISYAN v. ARMENIA

(Application no. 8049/10)

JUDGMENT

STRASBOURG

18 May 2021

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

In the case of Hovhannisyan v. Armenia,

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

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

Having regard to:

the application (no. 8049/10) 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 Hovhannisyan ("the applicant"), on 27 January 2010;

the decision to give notice to the Armenian Government ("the Government") of the complaint concerning the alleged interference with the applicant's right to freedom of peaceful assembly and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 13 April 2021,

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

INTRODUCTION

1. The case concerns the applicant's dismissal from work, *inter alia*, on the ground of his participation in the assembly that followed the disputed presidential election of 19 February 2008. The applicant relies on Article 11 of the Convention.

THE FACTS

2. The applicant was born in 1961 and lives in Vanadzor. The applicant, who had been granted legal aid, was represented by Mr Tumanyan, a lawyer practising in Vanadzor.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 7 July 2006 the applicant began working as a leading specialist at the Lori Regional Administration. He held the rank of Civil Servant of the First Category.

6. From 1 February to 5 March 2008 the applicant took leave. According to the applicant, he did so in order to be able to participate in the upcoming presidential election to be held in Armenia on 19 February 2008. The main

contenders in the election were the then Prime Minister, Mr Serzh Sargsyan, representing the ruling party, and the main opposition candidate, Mr Levon Ter-Petrosyan.

7. On the election day the applicant acted as Mr Ter-Petrosyan's authorised election assistant (վստահված անձ).

8. 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, attracting at times tens of thousands of people, their main meeting point being the Freedom Square.

9. On 26 and 28 February 2008 the applicant also took part in such a rally at Freedom Square.

10. On 6 March 2008 the Chief of the Lori Regional Police sent a letter to the Lori Regional Governor to the effect that the applicant and several other employees of the Lori Regional Administration, who were members of the opposition party, had participated in Mr Ter-Petrosyan's pre-election campaign and in the unauthorised demonstrations held at Freedom Square.

11. On the same day the Head of Staff of the Lori Regional Administration asked the applicant to submit a written explanation of his conduct during his leave. The applicant replied on the same day that he had participated in the peaceful demonstrations held on 26 and 28 February 2008 at Freedom Square.

12. The applicant alleged that on 7 March 2008 his house had been searched. Later he had been taken to a police station and questioned about the demonstrations organised by the opposition.

13. On 11 March 2008 the applicant was dismissed from his post by an order of the Head of Staff of the Lori Regional Administration, with reference to section 33 § 1(j) of the Civil Service Act, for a breach of the principle of political restraint of civil servants.

14. On 14 March 2008 the applicant was deprived of the rank of Civil Servant of the First Category.

15. On 18 April 2008 the applicant instituted proceedings against the Lori Regional Administration, seeking to annul the order of 11 March 2008. He submitted, *inter alia*, that from 1 February to 5 March 2008 he had been on leave, during which he had acted as one of Mr Ter-Petrosyan's authorised election assistants and had participated on two occasions in the opposition demonstrations, which had become the reason for his dismissal. He argued that he had not used his official position in the interests of any political party since he had been on leave during that period and claimed that he was being persecuted for his political views.

16. On 28 April 2008 the Administrative Court set the case down for trial.

17. On 12 May 2008 the Lori Regional Governor decreed to introduce staffing changes in the Regional Administration by, *inter alia*, cutting the applicant's post.

18. On 19 June 2009 the Administrative Court allowed the applicant's claim and annulled the order of 11 March 2008. At the same time, however, the court refused to reinstate the applicant in his post. The court found that the conclusion of the Regional Administration that the applicant had breached the principle of political restraint of civil servants by participating in the pre-election campaign and attending the demonstrations had been based on assumptions. No evidence had been produced to demonstrate that, by doing so, the applicant had engaged in any behaviour that could be characterised as a breach of that principle. Thus, none of the grounds for dismissal envisaged by section 24 §§ 1-3 of the Civil Service Act were present in the applicant's case and the decree was to be annulled. However, taking into account the fact that the applicant's position at the Lori Regional Administration had been cut on 12 May 2008 bringing to an end the employment relationship between the applicant and the administration, it was impossible to restore that relationship and to reinstate the applicant in his previous post. The court also awarded the applicant, of its own motion, the sum of his unpaid salary for the period of his involuntary absence, namely from 11 March to 12 May 2008.

19. The applicant lodged an appeal on points of law.

20. On 9 September 2009 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

21. At later dates the applicant addressed letters to various authorities inquiring about the reasons why his post had been cut.

22. By letters of 16 December 2010 and 23 February 2011 the applicant was informed by the Lori Regional Governor and the Deputy Minister of Regional Administration that two posts, including that of the applicant, had been vacant and had been cut in order to create two other posts within the Regional Administration.

RELEVANT LEGAL FRAMEWORK

23. Section 24 § 1(d) of the Civil Service Act (2002-2018) provides that a civil servant does not have the right to violate the principle of political restraint of civil servants, that is to use his official position in the interests of political parties or non-governmental organisations, including religious associations, campaign in their favour or carry out other political or religious activities while performing his service duties.

24. Section 33 § 1(j) of the same Act provides that grounds for dismissal of a civil servant from his position include, *inter alia*, failure to comply with the restrictions envisaged in section 24 §§ 1-3 of this Act.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

25. The applicant complained that his dismissal had violated his rights guaranteed by Article 11 of the Convention, which, in so far 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. Admissibility

26. The Government argued that the applicant lacked victim status since the domestic authorities had acknowledged the breach of the Convention and had afforded sufficient redress. In particular, the Administrative Court had allowed the applicant's claim against the Lori Regional Administration and had annulled the order whereby the applicant had been dismissed from his post. Furthermore, the court had awarded the applicant compensation in the form of unpaid salary for the period of involuntary absence. While the court had refused to reinstate the applicant in his previous post, this decision had not been motivated by the applicant's political views but had been due to the elimination of the applicant's post which had made his reinstatement impossible. The court's refusal to reinstate the applicant had been in full compliance with domestic law and the case-law of the Court of Cassation.

27. The applicant submitted that he could still claim to be a victim of a violation of Article 11 because the authorities had failed to correct their mistake. In particular, he had been dismissed from his post because of his participation in the demonstrations and, while his claim against that decision had been still pending, his post had been unlawfully cut, because of being vacant, thereby creating an artificial obstacle to his reinstatement. Even if the Administrative Court had found his dismissal to be unlawful, instead of restoring his violated rights it had found his reinstatement to be impossible due to the fact that his post had been cut. The applicant disagreed with this finding and argued that the authorities had had the possibility to restore his rights in various ways. They could have obliged his previous employer to

create a new post for him or to appoint him to some other vacant post, or could have annulled the decree cutting his post.

28. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of "victim" status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V). The redress afforded must be appropriate and sufficient. This will depend on all the circumstances of the case, with particular regard to the nature of the Convention violation in issue (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010). Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see *Scordino*, cited above, § 202).

29. Turning to the present case, the Court notes that the Administrative Court indeed allowed the applicant's claim and annulled the order whereby the applicant had been dismissed from his position. However, in doing so, the court did not expressly acknowledge a breach of the applicant's right to freedom of peaceful assembly. Even assuming that such a breach can be considered to have been acknowledged in substance, the Court points to the fact that, while finding the applicant's dismissal to be unlawful, the Administrative Court refused to reinstate him in his position and limited itself to awarding the applicant unpaid salary for the brief period (about two months) falling between the date of the applicant's dismissal and the date of elimination of his post (see paragraph 18 above). Furthermore, no non-pecuniary damage was – or even could be – awarded to the applicant either, in view of the absence of non-pecuniary damage as a form of compensation at the material time (see *Ghavalyan v. Armenia*, no. 50423/08, § 79, 22 October 2020). The Court does not consider that, given the circumstances of the case and the nature of the applicant's complaint, the redress afforded was sufficient to deprive the applicant of his victim status. It therefore concludes that the applicant can still claim to be a "victim" within the meaning of Article 34 of the Convention.

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

B. Merits

1. The parties' submissions

31. The applicant submitted that his dismissal had violated his right to freedom of peaceful assembly. He had not violated any laws by participating in the pre-election campaign and the subsequent

demonstrations, as confirmed by the judgment of the Administrative Court. The police letter had not mentioned anything else but the mere fact of his participation in the demonstrations held at Freedom Square (see paragraph 10 above). He had been simply present at the demonstrations like thousands of others and had not even made any speeches. Thus, the interference had not pursued any of the legitimate aims enshrined in Article 11 § 2 of the Convention.

32. The Government did not make any submissions on the merits of the applicant's complaint.

2. The Court's assessment

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

33. The Court 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 v. Lithuania* [GC], no. 37553/05, § 100, ECHR 2015).

34. The Court notes that one of the grounds on which the applicant, a civil servant, was dismissed from his post was the fact that he had attended an assembly at Yerevan's Freedom Square in February 2008 following the disputed presidential election. The Court is mindful that it has already scrutinised the circumstances of that assembly and found that it had been peaceful, without any incitement to violence or acts of violence (see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, §§ 230-33, 20 September 2018). The Court therefore concludes that the applicant's dismissal amounted to an interference with his right to freedom of peaceful assembly.

(b) Whether the interference was justified

35. 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)

36. The applicant did not allege and the Court has no grounds to conclude that the interference was not prescribed by law, noting that the applicant's dismissal was based on sections 24 § 1(d) and 33 § 1(j) of the Civil Service Act. Furthermore, while the applicant argued that the interference had not pursued a legitimate aim, the Court considers that these arguments would be more appropriately addressed under the necessity of the

interference and is prepared to accept that the interference had pursued the legitimate aim of preventing disorder (see, *mutatis mutandis*, *Küçükbalaban and Kutlu v. Turkey*, nos. 29764/09 and 36297/09, § 29, 24 March 2015, and *Dedecan and Ok v. Turkey*, nos. 22685/09 and 39472/09, § 33, 22 September 2015). It remains to be determined whether the interference had been necessary in a democratic society.

37. The Court reiterates at the outset 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, and *Mushegh Saghatelyan*, cited above, § 238).

38. 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 (see *Kudrevičius and Others*, cited above, § 143, and *Mushegh Saghatelyan*, cited above, § 239).

39. The Court has also held that measures directed at the need to preserve the political neutrality of a precise category of civil servants can in principle be considered legitimate and proportionate for the purposes of Article 11 of the Convention. However, such a measure should not be applied in a general manner which could affect the essence of the right protected, without having in mind the functions and the role of the civil servant in question, and, in particular, the circumstances of each case (see *Küçükbalaban and Kutlu*, cited above, § 34, and *Dedecan and Ok*, cited above, § 38).

40. Turning to the circumstances of the present case, the Court notes that the applicant was a civil servant holding a post in the Lori Regional Administration. On 26 and 28 February 2008 he took part in the assembly at

Freedom Square which was organised by the political opposition in the wake of the disputed presidential election of 19 February 2008. This became one of the reasons why the applicant was considered to have breached the principle of political restraint of civil servants enshrined in section 24 § 1(d) of the Civil Service Act and was dismissed from his post.

41. The Court observes that the question whether there were grounds to sanction the applicant on the basis of section 24 § 1(d) of the Civil Service Act was examined by the Administrative Court which held that no such grounds existed, finding that the applicant's behaviour had not breached the principle in question (see paragraph 18 above). The Court notes in this respect that the applicant's participation in the said assembly was purely passive and without any expression of political opinions (see *Küçükbalaban and Kutlu*, cited above, § 35, and *Dedecan and Ok*, cited above, § 39). Moreover, the applicant was officially on leave when he attended the rallies in question. It therefore appears that the applicant was sanctioned for the mere fact of taking part in a political demonstration which, as already noted above, was of a peaceful nature. By joining it the applicant simply exercised his right to freedom of peaceful assembly.

42. In the light of the above, it cannot be said that the sanction imposed on the applicant, especially such a severe one as his dismissal, was a proportionate measure within the meaning of Article 11 § 2 of the Convention. The Court therefore concludes that the interference with the applicant's right to freedom of peaceful assembly was not necessary in a democratic society.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 9,032,206 Armenian drams (AMD) in respect of pecuniary damage as outstanding salary and interest for the period from 13 May 2008 to 1 July 2014, that is the month following the date of submission of his observations with the Court. He further asked the Court to calculate and award him outstanding salary and interest for the period from 1 July 2014 to the date of the Court's judgment. The applicant also claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested the applicant's claim for pecuniary damage, arguing that he had already been awarded such damage for the period until 13 May 2008, that is the date on which his position had ceased to exist making his reinstatement impossible and terminating the continuity of the applicant's involuntary absence. There was therefore no causal link between the damage claimed and the alleged violation of the Convention. Furthermore, the applicant's claim for non-pecuniary damage was excessive and unsubstantiated.

47. The Court considers that, in support of his claim for pecuniary damage, the applicant has failed to substantiate the real pecuniary losses he suffered as a result of the Convention violation found and any steps he has taken to mitigate them; it therefore dismisses this claim. On the other hand, it awards the applicant EUR 7,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant also claimed EUR 2,000 for the legal costs incurred before the Court, submitting a copy of the contract signed between him and his lawyer on 21 February 2014.

49. The Government argued that this claim was unreasoned and excessive. The applicant had had no representation when he lodged his application and the contract in question had been concluded with his lawyer only on 21 February 2014. Moreover, it failed to specify the number of hours worked or the hourly rates.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and taking into account the amount of legal aid already granted to the applicant by the Council of Europe, the Court considers it reasonable to award the sum of EUR 150 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

51. 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 complaint concerning the interference with the applicant's right to freedom of peaceful assembly admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 150 (one hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President