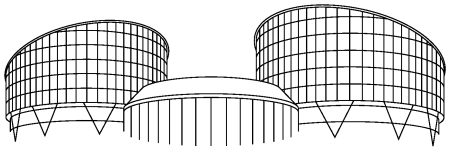

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HELSINKI COMMITTEE OF ARMENIA v. ARMENIA

(Application no. 59109/08)

JUDGMENT

STRASBOURG

31 March 2015

FINAL

30/06/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Helsinki Committee of Armenia v. Armenia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 10 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 59109/08) 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 a non-governmental organisation based in Armenia, the Helsinki Committee of Armenia ("the applicant organisation"), on 10 November 2008.

2. The applicant organisation was represented by Mr R. Revazyan, 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 organisation alleged, in particular, that the Mayor's decision of 8 May 2008 had violated its right to freedom of assembly and that it did not have an effective remedy.

4. On 21 January 2010 the application was communicated to the Government. The seat of judge in respect of Armenia being currently vacant, the President of the Court decided to appoint Judge Johannes Silvis to sit as an *ad hoc* judge (Rule 29 § 2 (a) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant organisation is a non-governmental human rights organisation based in Yerevan.

6. On 12 May 2007 a third person, L.G., who was apparently a witness in a murder investigation, died while at a police station. According to the official version, L.G. died in an attempt to escape by jumping out of a second-floor window of the police station. It appears that this event provoked an outcry among Armenian human rights groups and civil society.

7. On 19 February 2008 a presidential election was held in Armenia, which was followed by mass post-election rallies and protests and an intense standoff between the authorities and the supporters of the opposition, resulting in clashes and at least ten persons being killed.

8. On 1 March 2008 a state of emergency was declared by the President of Armenia for a period of 20 days, during which all public assemblies were banned.

9. On 6 May 2008 the applicant organisation applied to the Mayor of Yerevan, notifying its intention to hold a mourning march on the first anniversary of L.G.'s death. The march was to take place on 12 May from 8 p.m. to 9.30 p.m. It was to start at Republic Square and continue through Nalbandyan Street in the direction of the police station.

10. On 8 May 2008 the Mayor decided to ban the planned event, with reference to Sections 9 § 4 (3) and 13 § 1 (3) of the Assemblies, Rallies, Marches and Demonstrations Act ("the Act"), finding:

> "According to the official opinion of the Police ... of 8 May 2008 ..., the mass public event held on 1 March 2008 turned into mass disorder resulting in human casualties and not all the circumstances of the crime and offenders have been disclosed, and not all weapons and ammunition used [at that event], whose circulation may pose danger to the lives and health of citizens, have been found in the course of the investigation into the criminal case instituted in connection with that fact by the Special Investigative Service of Armenia[. H]ence, it will be impossible to prevent new crimes, if the mass public event [in question] is held.
>
> According to the official opinion of the National Security Service ... of 7 May 2008 ..., the National Security Service of Armenia has credible and verified data which show that the mass public event in question, if allowed, will result in undermining national security, public order, and the health and morality of society, in encroachments on constitutional rights and freedoms and in disorder and [new] crimes."

11. By a letter of 12 May 2008 this decision was posted to the applicant organisation. On the same date the police, who had apparently been informed of the decision of 8 May 2008, prevented the organisers from holding the planned event.

12. On 13 May 2008 the applicant organisation received the letter of 12 May 2008.

II. RELEVANT DOMESTIC LAW

A. The Assemblies, Rallies, Marches and Demonstrations Act (as in force at the material time)

13. According to Section 9 § 4 (3), the competent authority may ban the holding of a public event if, according to credible data, it is aimed at forcibly overthrowing the constitutional order, or inflaming ethnic, racial or religious hatred, or campaigning for violence or war, or may lead to mass disorder and crime, or to undermining national security, public order and the health and morality of society, or to encroachments on the constitutional rights and freedoms of others. Such data may be considered credible, if the Police or the National Security Service under the Government of Armenia have issued an official opinion on the data. In the same manner, the aforementioned authorities issue an opinion if such grounds cease to exist. Such an opinion is also issued in cases envisaged by Section 9 § 6.

14. According to Section 9 § 6, in cases where mass public events have turned into mass disorder resulting in human casualties, the competent authority, in order to prevent new crimes, given that other means of prevention have been exhausted, may temporarily ban the holding of mass public events until the circumstances of the crime and the identity of the offenders have been disclosed.

15. According to Section 10 § 1, mass public events may be held only after notifying the competent authority in writing.

16. According to Section 10 § 4, the organisers shall send written notification of the intention to hold a mass public event to the head of the local authority where the event is to be organised or to the Mayor of Yerevan, if the public event is to be held in Yerevan, not later than five working days and not earlier than twenty days before the planned date of the event.

17. According to Section 12 § 1, the competent authority shall examine the notification within 72 hours of receipt, in the order in which notifications have been received.

18. According to Section 12 § 6, as a result of examination of the notification, in the absence of the circumstances mentioned in Section 13, the notification of the mass public event shall be taken into consideration and the event shall be held in the place and at the time indicated in the notification. In the presence of the circumstances mentioned in Section 13, a decision shall be taken banning the mass public event.

19. According to Section 12 § 7, the competent authority shall immediately inform the organisers and the police of its decision taken as a

result of examination of the notification, as well as post up the decision on its premises in a specially designated spot, accessible and visible to the public. The decision of the competent authority shall remain posted up in that spot until 6 p.m. on the planned date of the mass public event indicated in the notification.

20. According to Section 12 § 8, should the competent authority not take a decision banning the mass public event, the organisers shall have the right to hold the mass public event on the terms and conditions set forth in the notification.

21. According to Section 13 § 1 (3), a mass public event may be banned only when, *inter alia*, there exist grounds stipulated by Section 9 of this Act.

22. According to Section 13 § 2, a decision banning a mass public event shall contain a reasoned and clear explanation of the grounds on which the mass public event is banned.

23. According to Section 13 § 3, a decision banning a mass public event may be contested before the courts. The court shall adopt a judgment within 24 hours. A court judgment annulling a decision banning a mass public event shall enter into force from the moment of its delivery.

B. The Code of Administrative Procedure

24. According to Articles 66-69, four types of application may be lodged with the Administrative Court: an application to challenge, seeking the annulment in part or in whole of the administrative act constituting an interference (Article 66); an application to oblige, seeking the adoption of a favourable administrative act (Article 67); an application to perform an action, seeking the performance of certain actions or refraining from certain actions (Article 68); and an application to recognise, seeking the recognition of existence or absence of a legal relationship (Article 69). An application to recognise may be lodged only if it is impossible to lodge an application under Articles 66-68. Such application may seek to recognise the invalidity of an administrative act, as well as to recognise the unlawfulness of the interfering administrative act, which is no longer in force, or of actions or inaction, if the applicant has a justified interest in doing so, namely: (a) if there is a risk of adoption of a similar act or of performance of similar actions or inaction; (b) if the applicant intends to claim pecuniary damage or (c) if the applicant seeks to restore his honour, dignity or reputation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

25. The applicant organisation complained that the Mayor's ban on holding a mourning march had been in violation of its right to freedom of assembly as provided in Article 11 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

1. The parties' submissions

26. The Government submitted that the applicant organisation had failed to exhaust domestic remedies since it had not applied to the Administrative Court seeking a recognition of a violation of its rights. In particular, the actions or inaction of the Mayor's Office could be contested before the courts under Article 68 of the Administrative Code. Therefore, the applicant organisation, with reference to Section 12 § 7 of the Act, could have challenged the inaction of the Mayor's Office, namely its failure to inform immediately the organisers about its decision of 8 May 2008 and the fact that the Mayor's decision was served on it after the date of the planned event. This appeal mechanism constituted an effective remedy capable of resulting in the recognition of a violation of the applicant organisation's rights. The applicant organisation, however, failed to pursue this procedure.

27. The applicant organisation submitted that, according to the domestic practice, applications filed against a public authority seeking to acknowledge a violation of the right to freedom of assembly had been regularly declared inadmissible by the Administrative Court as not falling into any of the categories listed in Articles 66-69 of the Code of Administrative Procedure. Had the applicant organisation been notified of the decision of 8 May 2008 in due time, it would have had a possibility to challenge that decision before the Administrative Court under the provisions of the Act and that court would have been obliged to take a decision within 24 hours, thereby providing an effective remedy. But since the decision was

received after the planned event, a *post-hoc* application could not have provided an effective remedy.

28. As regards contesting the inaction of the Mayor's Office, such an application would not have been admitted for examination either, since claims against the inaction of an administrative body, if such inaction was demonstrated in the process of adopting a final administrative act, could not be the subject of a standalone challenge.

2. The Court's assessment

29. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Assenov and Others v. Bulgaria*, no. 24760/94, § 85, ECHR 1999-VIII).

30. Furthermore, under Article 35 the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77, and *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

31. In the present case, the Government suggested that the applicant organisation should have contested before the Administrative Court the failure of the Mayor's Office to notify it of its decision of 8 May 2008 and to serve a copy of that decision in due time. It had failed to do so and thereby had failed to exhaust the domestic remedies. The Court notes, however, that the applicant organisation's grievances in essence concern the Mayor's Office's ban on holding a march, that is the decision of 8 May 2008 itself, rather than the failure to provide a copy of that decision in due time. Thus, it is not clear how an application contesting the inaction of the Mayor's Office could have provided a remedy in respect of the applicant organisation's grievances.

32. As regards the available remedies, the Court notes that under Armenian law the applicant organisation was entitled to contest the Mayor's

ban before the courts. According to Sections 12 §§ 1 and 7 and 13 § 3 of the Act the Mayor had a maximum of 72 hours to take a decision on the applicant organisation's request to hold a march. This decision was to be served on the applicant organisation "immediately" and, if contested before the courts, the latter had a maximum of 24 hours to adopt a judgment either annulling or upholding the decision. Thus, it appears that in theory the applicant organisation had at its disposal a remedy which was capable of providing sufficient redress by overruling the Mayor's ban in due time.

33. In practice, however, the applicant organisation was deprived of this remedy. In particular, the request to hold a march on 12 May 2008 was filed by the applicant organisation with the Mayor's Office on 6 May 2008, that is within the permissible time limits (see paragraph 16 above). The Mayor, similarly in compliance with the relevant time limits, took his decision on 8 May 2008, namely four days before the date of the planned event. However, a copy of that decision was sent to the applicant organisation only on 12 May 2008, namely on the very day of the planned event, and was received by it the day after. Such a belated service of the Mayor's decision, which could hardly be considered as "immediate" within the meaning of Section 12 § 7 of the Act, effectively deprived the applicant organisation of the opportunity of overturning the ban prior to the date of the planned event, which would have allowed it to proceed with the march.

34. As regards the possibility of overturning the ban *post factum*, even assuming that the domestic law provided for such a possibility, the Court reiterates that in certain circumstances when the timing of rallies is crucial for their organisers and participants and when the organisers had given timely notice to the competent authorities, the notion of an effective remedy implies the possibility to obtain a ruling before the time of the planned events. Such is the nature of democratic debate that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such meetings. If a public assembly is organised after a given social issue loses its relevance or importance in a current social or political debate, the impact of the meeting may be seriously diminished. Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless (see *Bączkowski and Others v. Poland*, no. 1543/06, §§ 81-82, 3 May 2007).

35. In the present case, the Court cannot overlook the importance of the chosen date for the event planned by the applicant organisation. It was not a random date but the first anniversary of a tragic event, namely the death of a third person, L.G., while in a police station, which the applicant organisation was planning to mark with a mourning march held on that anniversary. Thus, the event had a special temporal significance and the applicant organisation should have been able to obtain a ruling before the time of the planned event (see, *mutatis mutandis*, *ibid.*, § 83).

36. Lastly, the Government did not suggest – or even contest the applicant organisation's argument in that connection – that any of the procedures provided by the Administrative Code could have provided redress of a *post-hoc* nature in respect of the applicant organisation's grievances, such as an acknowledgement of a violation of the applicant organisation's right to freedom of peaceful assembly and, if necessary, payment of a compensation. Nor does any material before the Court suggest that such remedies existed at the material time.

37. In the light of the above, the Court rejects the Government's claim of non-exhaustion.

38. 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

39. The Government submitted that there had been no violation of the applicant organisation's right to freedom of assembly. Since the applicant organisation had not been informed of the Mayor's decision within the 72 hours prescribed by law, it automatically acquired the right to conduct the planned event by virtue of Section 12 §§ 1, 7 and 8 of the Act. Being unaware of that decision on the date of the event, they had a legal right to conduct the rally as planned. The applicant organisation, however, had decided not to avail itself of this right.

40. The applicant organisation submitted that not having received any decision from the Mayor's Office by the date of the planned event did not mean that it had acquired by default the right to conduct the event. The applicant organisation had to be in possession of a decision to be sure that the event had been authorised. Furthermore, the Government's claim that the applicant organisation had opted not to attempt to hold the planned event did not correspond to reality. In fact, having not received any decision, it did wish to hold the march on 12 May 2008 as planned but the police officers, who had been informed of the Mayor's ban, prohibited the applicant organisation and the assembled persons from doing so.

2. The Court's assessment

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

41. The Government appear to have suggested that there was no interference with the applicant organisation's right to freedom of peaceful assembly because, not having received a copy of the Mayor's decision of

8 May 2008, it was entitled to proceed with the planned event. The Court does not, however, accept the Government's line of reasoning. The decision in question banned the applicant organisation from holding the event and the fact that a copy of it had not been served on the applicant organisation did not in any way nullify that decision. Furthermore, the applicant organisation was prevented by the police from holding the planned march, apparently on the basis of the Mayor's ban.

42. There has therefore been an interference with the applicant organisation's right to freedom of peaceful assembly.

(b) Whether the interference was justified

43. 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.

44. The Court notes that nothing suggests that the interference was not prescribed by law. Furthermore, it can accept that the interference pursued the legitimate aim of preventing disorder or crime.

45. As regards the third requirement, the Court reiterates that the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of expression, one of the foundations of such a society (see *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 62, ECHR 2006-II).

46. States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right. In view of the essential nature of freedom of assembly and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right (see *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 36, ECHR 2005-X (extracts)).

47. In carrying out its scrutiny of the impugned interference, the Court has to ascertain whether the respondent State exercised its discretion reasonably, carefully and in good faith. It must also look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "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 *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 87, ECHR 2001-IX, and *Makhmudov v. Russia*, no. 35082/04, § 65, 26 July 2007).

48. In the present case, the Court notes that the reason for banning the march in question was that the post-election rallies had resulted in clashes and human casualties, there was still an on-going investigation and not all

the offenders had been identified or weapons found. The Court, however, doubts whether these could be considered as relevant or sufficient reasons for banning the march in question.

49. First, the march was supposed to take place more than two months after the post-election clashes and more than a month after the expiry of the state of emergency declared by the President of Armenia (see paragraphs 7 and 8 above).

50. Second, there is no evidence to suggest that the organisers or the participants of the planned march were in any way involved or implicated in the post-election disorder or violence.

51. Third, nothing suggests that the organisers or the participants of the planned march had violent intentions or that the march might for any other reason degenerate into mass disorder. The Court notes in this respect that the purpose of the planned march had nothing to do with politics, elections or the confrontation between the opposition and the government and was instead to raise awareness on a matter of public concern, namely the death of a person while in a police station. According to the applicant organisation, this was supposed to be a quiet march marking the anniversary of a tragic event and not posing any threats to security. The Court has no reason to doubt this allegation. It notes that the Mayor's reference to the official opinion of the National Security Service alleging that the march posed a danger is couched in general terms (see paragraph 10 above). It is not even clear whether the "credible and verified data" referred to were ever presented to the Mayor or what such data were or whether such data even existed. The Mayor's finding in this respect therefore appears not to be supported by any concrete, clear and convincing evidence.

52. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant organisation's right to freedom of peaceful assembly was not "necessary in a democratic society".

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicant organisation complained that it had been deprived of an effective remedy in violation of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

55. 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

56. The Government submitted that the Armenian law, namely Sections 10 § 4, 12 § 1 and 13 § 3 of the Act, envisaged a procedure that obliged the authorities to reach a decision on a request to hold a mass public event within such a time limit that would allow an applicant to lodge an appeal with the Administrative Court against an unfavourable decision before the date of the planned event. Thus, the applicant organisation had an effective remedy at its disposal.

57. The applicant organisation submitted that the Government had limited themselves to a theoretical analysis of the relevant domestic law, while disregarding the particular circumstances of the case and the fact that the arbitrary application of that law had deprived it of an effective remedy. For the applicant organisation to have been able to contest the merits of the Mayor's ban before the Administrative Court and for such an appeal to have been effective, it would have been necessary at the very least for the Mayor's decision to be served on it 24 hours prior to the planned event. An appeal against a decision received after the time of the planned event would have been not only ineffective, but also completely meaningless.

2. The Court's assessment

58. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see, among other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports of Judgments and Decisions* 1996-V).

59. In the present case, the Court found that the applicant organisation's rights under Article 11 had been infringed (see paragraph 53 above). Therefore, it had an arguable claim within the meaning of the Court's case law and was thus entitled to a remedy satisfying the requirements of Article 13.

60. The Court is mindful of its finding above that the applicant organisation was deprived in practice of a remedy which was capable of providing sufficient and adequate redress in the particular circumstances of the case and that there were no other effective remedies shown to exist (see paragraphs 32-36 above). It follows that the applicant organisation has been denied an effective domestic remedy in respect of its complaint concerning a breach of its right to freedom of assembly.

61. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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."

63. The applicant organisation did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention.

Done in English, and notified in writing on 31 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President