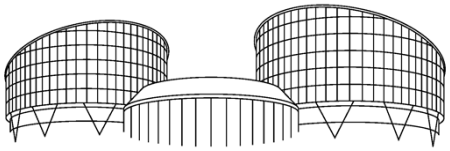

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MYASNIK MALKHASYAN v. ARMENIA

(Application no. 49020/08)

JUDGMENT

Art 5 § 1 (c) • Reasonable suspicion • Arrest and pre-trial detention following post-presidential election demonstrations • Allegations against applicant vague and unsubstantiated by evidence • Minimum standard for the reasonableness of a suspicion required for an individual's arrest and continued detention not met

STRASBOURG

15 October 2020

FINAL

15/01/2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Myasnik Malkhasyan v. Armenia,

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

Krzysztof Wojtyczek, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski, *judges,*
Anna Margaryan, ad hoc *judge,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the application 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 Myasnik Malkhasyan ("the applicant"), on 20 September 2008;

the decision to give notice to the Armenian Government ("the Government") of the complaints concerning the applicant's arrest and pre-trial detention, namely that his arrest and detention had not been based on a reasonable suspicion, the courts had failed to provide relevant and sufficient reasons for his pre-trial detention, he had been precluded by law from being released on bail and the proceedings before the Criminal Court of Appeal had not been adversarial.;

the parties' observations;

the decision by the President of the Chamber to appoint Mrs Anna Margaryan to sit as an *ad hoc* judge (Rule 29 of the Rules of Court), Mr Armen Harutyunyan, the judge elected in respect of Armenia, being unable to sit in the case (Rule 28);

Having deliberated in private on 15 September 2020,

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

INTRODUCTION

1. The case concerns the applicant's arrest and pre-trial detention, including whether his deprivation of liberty was based on a reasonable suspicion that he had committed an offence as required by Article 5 § 1 (c) of the Convention, and whether his continued detention and the proceedings authorising his detention complied with the requirements of Article 5 §§ 3 and 4 of the Convention.

THE FACTS

2. The applicant was born in 1961 and lives in Yerevan. The applicant was represented by Ms Arustamyan, a lawyer practising in Yerevan.

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.

I. THE 19 FEBRUARY 2008 PRESIDENTIAL ELECTION AND THE POST-ELECTION EVENTS

A. 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.

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.

7. The applicant, who at the material time was an opposition member of parliament and a supporter of Mr Ter-Petrosyan, attended the ongoing demonstrations on three occasions and gave speeches.

B. The events of 1-2 March 2008 and institution of criminal cases

8. On 1 March 2008, apparently at some point around 6-7 a.m., a police operation was conducted at Freedom Square where several hundred demonstrators were camping.

9. The applicant, who had not been present at Freedom Square at that time, alleged that the aim of the police operation had been to clear the square of demonstrators and to prevent further assembly. About 3,000 police officers had first encircled and then attacked the demonstrators with batons and electric shock devices, without any prior warning, using excessive force and removing those present from the square. Within minutes no demonstrators remained at the square which was then sealed off by the police. The police chased many protesters through the streets, beating and arresting some of them.

10. The Government contested the applicant's allegations and claimed that the assembly at Freedom Square, since its inception, had been a

premeditated attempt by the leaders of the opposition, including the applicant, to inflame passions and to push the crowd to disobedience and mass violence, for which they had even recruited people, formed gangs and distributed among them various kinds of weapons and weapon-like objects in order to instigate mass disorder. The purpose of the police operation in the morning of 1 March 2008 had been to verify the information obtained on the previous day by the Armenian Police and National Security Service, according to which a large number of weapons, including metal rods, wooden clubs, firearms, grenades and explosives, were to be distributed to the demonstrators at Freedom Square in order to incite provocative actions and mass disorder in Yerevan on 1 March 2008. The demonstrators, as incited and directed by the applicant and the other opposition leaders, had reacted aggressively to police attempts to conduct an inspection and had attacked the police officers. When the relevant police units had later carried out an inspection at the scene, various types of weapons had been found.

11. On the same date a criminal case was instituted under several Articles of the Criminal Code ("CC"), in connection with the events at Freedom Square, on account of organising and holding an unlawful assembly, incitement to disobedience of police orders to terminate the unlawful assembly, illegal possession of arms and ammunition, and life-threatening assaults on police officers. The decision stated:

> "After the announcement of the preliminary results of the presidential election of 19 February 2008, the presidential candidate, Mr Levon Ter-Petrosyan, members of parliament, [K.S. and S.M.], the chief editor of Haykakan Zhamanak daily newspaper, [N.P.], and others organised and held mass public events at Yerevan's Freedom Square in violation of the procedure prescribed by law and made calls inciting to disobey the decisions ordering an end to the events held in violation of the procedure prescribed by law, while a number of participants in the mass events illegally possessed and carried illegally obtained arms and ammunition.
>
> On 1 March 2008 at around 6 a.m., when the police took measures aimed at forcibly ending the public events held in violation of the procedure prescribed by law, in compliance with the requirements of section 14 of the Assemblies, Rallies, Marches and Demonstrations Act, the organisers and participants in the events, disobeying the lawful orders of the [police officers], who were performing their official duties, committed a life- and health-threatening assault on them with clubs, metal rods and other adapted objects, which had been in their possession for that purpose, causing the police officers injuries of varied severity."

12. The applicant alleged that, since Freedom Square had been cordoned off by the police, the protesters had relocated to the area of the French Embassy, the Yerevan Mayor's Office and the Myasnikyan monument, situated at Grigor Lusavorich Street, about 1.7-2 km from Freedom Square, where there was a large opening, and where they were later joined by thousands of others who poured onto the streets of Yerevan in response to the events of the early morning. The applicant alleged that he had arrived in that area at around 12 noon when a major concentration of people was

already present, including police forces. He, like many other MPs, had gone there in order to be by his electorate's side and had addressed the crowd through a loudspeaker, calling for calm and restraint, as well as vigilance in order to avoid provoking the police troops which had by then encircled the demonstrators. Tensions had continued to rise and a number of incidents had added fuel to an already tense situation which, later that day, involved clashes between the protesters and the law enforcement officers on a number of central Yerevan streets, including Leo and Paronyan Streets and Mashtots Avenue, with police forces regularly launching attacks on the positions of the protesters who had built barricades and had used stones, Molotov cocktails and other improvised objects to defend themselves. The main demonstration at the Myasnikyan monument, however, was about a kilometre away from that area and had remained peaceful throughout the night, with about five thousand people present. The clashes had continued until the early morning of 2 March 2008, resulting in ten casualties, including eight civilians, numerous injured and a declaration of a state of emergency by the outgoing President Kocharyan.

13. The Government contested the above allegations and submitted that the demonstrators' relocation to the area near the Myasnikyan monument had not been spontaneous but had been directed by the opposition leaders, including the applicant, who, in order to bring their conspiracy to its completion, had incited the crowd to stay put, arm themselves and assault the police. As a result, the crowd had armed themselves with improvised weapons, as well as explosives, firearms and Molotov cocktails which had been brought to that area in advance. New protesters had been recruited and weapons had been distributed among the most aggressive protesters. Thus, in the period from 1 to 2 March 2008 mass disorder had taken place in the area near the Myasnikyan monument and the Yerevan Mayor's Office, as well as Grigor Lusavorich, Mashtots, Leo and Paronyan Streets, involving firearms and explosives, as well as armed resistance to police officers, and resulting in almost 200 police officers and around 30 civilians being injured, private businesses, public property and numerous vehicles being damaged and ten persons being killed. It had been possible to quell the mass disorder only through declaring a state of emergency and the preventive actions of the law enforcement bodies.

14. On 2 March 2008 another criminal case was instituted under, *inter alia*, Article 225 § 3 of the CC (organising mass disorder involving murders) in connection with the events of 1 and 2 March 2008. The decision stated:

> "[Mr Ter-Petrosyan], the candidate running for president at the presidential election of 19 February 2008, and his followers and supporters, members of parliament [K.S. and S.M.], the chief editor of Haykakan Zhamanak daily newspaper, [N.P.], and others, not willing to concede defeat at the election, with the aim of casting doubt on the election, instilling distrust towards the results among large segments of the population, creating illusions of public discontent and revolt and discrediting the

election and the authorities, from 1 March 2008 in the area of the Yerevan Mayor's Office and central streets organised mass disorder involving murders, violence, massacre, arson, destruction of property and armed resistance to public officials, with the use of firearms, explosives and other adapted objects."

15. Later that day the two criminal cases were joined and examined under no. 62202608.

II. THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. The applicant's arrest

16. On 2 March 2008 at around 6 a.m. the taxi carrying the applicant and a few others was stopped by the police at Shahumyan Square, situated about 400 metres from the Myasnikyan monument, and he was taken into custody.

17. According to the "record of a person's bringing-in", the applicant was "brought in" to Kentron Police Station on 2 March 2008 at around 6 a.m. by three police officers, A.H., M.A.. and K.K., from Shahumyan Square situated at Khorenatsi Street on a suspicion of "illegal possession of arms and ammunition and organising mass disorder". It was stated in the record that the applicant "had been carrying a metal rod at the time of his 'bringing-in'".

18. At 5.10 p.m. the investigator drew up a record of the applicant's arrest, stating that the applicant was suspected of having committed an offence under Article 300 of the CC, in particular, of having "organised and carried out actions aimed at usurping State power and violently overthrowing the constitutional order during a public event organised on 1 March 2008 near the Yerevan Mayor's Office in violation of the procedure prescribed by law". The applicant denied having committed the offence in question.

B. The charges against the applicant and his pre-trial detention

19. On 4 March 2008 the General Prosecutor applied to the Armenian parliament with a request to have the applicant's parliamentary immunity lifted and for an authorisation to bring charges against him and to have him and three other members of parliament detained. The request described at the outset the events which had taken place in Yerevan between 20 February and the early morning of 2 March 2008 and stated that the evidence obtained in the case provided sufficient grounds to believe that the applicant and three other members of parliament had taken an active part in inciting the violence with the public calls they had made and organising the mass disorder through direct participation, instigation and various types of support, including the recruitment and arming of attackers. This was sufficient to bring charges against them under Articles 225 § 3 and 300 § 1 of the CC for organising the mass disorder which had taken place in

Yerevan between 20 February and 2 March 2008 with the aim of a violent usurpation of State power in breach of the Constitution. The request further stated that there was sufficient evidence justifying their detention, including the risk of absconding and obstructing justice.

20. On the same date the Armenian parliament adopted a resolution granting the General Prosecutor's request.

21. On 5 March 2008 the applicant was formally charged under Articles 225 § 3 and 300 § 1 of the CC within the scope of criminal case no. 62202608, as follows:

> "[A]fter the presidential candidate Levon Ter-Petrosyan had lost at the presidential election of 19 February 2008, [the applicant] joined his group of supporters and, having conspired with them to usurp State power in violation of the constitutional order, actively participated in carrying out together with them actions aimed at the achievement of that criminal plan, including discrediting the pre-election process and the conduct of the election, casting doubt on the lawfulness of the election in the eyes of the international community, instilling distrust towards the results among large segments of the population, creating illusions of public discontent and revolt, thereby organising and holding mass public events in violation of the procedure prescribed by law aimed at destabilising the internal political situation, during which [the applicant, together with three other members of parliament] and a number of other persons assisting Levon Ter-Petrosyan in the above-mentioned plan incited and organised the mass disorder which took place in Yerevan from 1 to 2 March 2008 and involved mass violence, massacre, arson, destruction of and damage to public and private property, armed resistance to public officials, effected with the use of firearms, explosives and other adapted objects, as well as murders."

22. The applicant was questioned and submitted that he had not organised or incited any mass disorder. He had been present at the demonstrations as a participant and in his speeches he had always called for calm and restraint. He had not been at Freedom Square in the morning of 1 March 2008 and the crowd had already been uncontrollable when he arrived in the area near the Myasnikyan monument. He had left that area at around 11 p.m. It appears that the applicant also requested that the rod allegedly found in his possession be examined for fingerprints, which was refused by the investigator on the ground that the rod in question had passed from hand to hand.

23. On the same date the investigator applied to a court citing verbatim the charge against the applicant (see paragraph 21 above) and seeking to have him detained for a period of two months on the ground that he might abscond and obstruct the investigation.

24. The applicant objected to the application, arguing that he was known to be of good character, had a permanent place of residence, two minor children dependent on him and past military achievements. He stated that he was not able to obstruct the investigation and would not abscond. Furthermore, he was a member of parliament and a number of members of parliament had requested his release under their personal guarantee.

25. On the same date the Kentron and Nork-Marash District Court of Yerevan ("the District Court") allowed the investigator's application, taking into account the fact that the Armenian parliament had granted the General Prosecutor's request, the requirements of Article 135 §§ 1 and 3 of the Code of Criminal Procedure (CCP) and the fact that the acts imputed to the applicant fell within the category of particularly serious offences within the meaning of Article 19 of the CC.

26. On an unspecified date the applicant lodged an appeal arguing, *inter alia*, that the charge against him was not based on a reasonable suspicion but on assumptions, in violation of Article 5 § 1 (c) of the Convention. The District Court's decision was unreasoned and the risks of his absconding or obstructing the investigation were unsubstantiated. He had been thrice elected as a member of parliament and had two minor children dependent on him, no previous convictions and a permanent place of residence. The gravity of the charge alone could not justify his detention.

27. On 21 March 2008 the Criminal Court of Appeal dismissed the appeal, holding that "in the appeal proceedings the investigator has referred to certain evidence substantiating [the applicant's] guilt, which confirm his involvement in the imputed act", and that "the presented materials contain a reasonable suspicion that [the applicant] has committed offences proscribed by Articles 225 § 3 and 300 § 1 of the CC".

28. On 19 April 2008 eight members of parliament lodged a request with the General Prosecutor, seeking to have the applicant's detention replaced with their personal guarantee. They claimed at the outset that the detention of several hundred persons, including the applicant, following the presidential election was a disproportionate measure and was not based on reasonable suspicions. They further submitted that they personally knew the applicant and guaranteed that, if he remained at large, he would not abscond, obstruct the proceedings, commit another offence or evade his penalty, if any. It appears that this request was refused.

29. On 28 April, 27 June and 28 August 2008 the District Court extended the applicant's detention, on each occasion by two months, taking into account the nature and dangerousness of the imputed offences and the fact that he was accused of particularly serious offences punishable by imprisonment, which increased the probability of his absconding. The District Court also held that it was unacceptable to release the applicant on bail because he was accused of particularly serious offences.

30. On various dates the applicant lodged appeals, raising similar arguments to those in his previous appeal. He reiterated that there was no reasonable suspicion that he had committed an offence since the charge against him failed to mention what concrete acts prohibited by Articles 225 § 3 and 300 § 1 of the CC he had committed. Furthermore, the District Court had violated the Convention by refusing bail.

31. On 12 May, 14 July and 11 September 2008 respectively the Criminal Court of Appeal upheld those decisions, holding on each occasion that "the presented materials [confirmed the applicant's] involvement in the event and the suspicion that [the applicant] had committed an offence [was] substantiated".

32. On 29 August 2008 an additional charge was brought against the applicant of complicity in committing an offence prescribed by Article 316 § 2 of the CC (life or health-threatening assault on a public official). It was stated that the applicant and several other opposition leaders, having realised that they were not able come to power through lawful means, had conspired to usurp State power and, according to the roles assigned among themselves, each had organised and taken premeditated actions aimed destabilising the internal political situation in the country and violently overthrowing the constitutional order. The applicant and the others, through pressure, promises and, in some cases, remuneration, had recruited a crowd of people and from 20 February 2008 onwards had organised in Yerevan unlawful demonstrations, during which they had made provocative speeches and, by inflaming passions, had pushed the crowd towards violent seizure of State power. With the aim of carrying out mass disorder in Yerevan, they had organised groups of people ready to commit mass violence and had distributed among them firearms, ammunition, explosive substances and devices, and other dangerous objects. The applicant, according to the role assigned to him, had recruited and personally led groups of people from the town of Aparan and nearby villages, organising their transfer to Yerevan and their participation in the unlawful demonstrations. Being a veteran of the Nagorno Karabakh war and using his standing among other veterans, he had incited them to seize violently power and to struggle against the authorities, including, if necessary, by fighting them. For the purpose of instigating mass disorder, on either 26 or 27 February 2008 the applicant, in his car, had transported to Freedom Square metal rods and wooden clubs together with his driver, A.S., who upon the applicant's orders had hidden them in the tent called "Aparan". When in the morning of 1 March 2008 the police had attempted to carry out at Freedom Square an inspection for weapons, the applicant and the other organisers of mass disorder had ordered a big group of those present at the square to resist the police officers and to assault them. Moreover, the applicant had personally directed the actions of the crowd by inciting them not to retreat and to prevent the police from entering the square. Thereafter, the applicant and his accomplices had directed the demonstrators towards the area of the Myasnikyan monument where they had incited, organised and led the mass disorder by calling on the demonstrators to arm themselves and to disobey and assault the police, recruiting new people and distributing arms, metal rods, wooden clubs, spiky, hedgehog-like objects and Molotov cocktails among the particularly aggressive group of people. The applicant had regularly addressed the

crowd, inciting them to topple the government, to arm themselves and to struggle whichever way possible, including by burning public buildings. As a result, mass disorder had taken place in the area of the Myasnikyan monument, the Yerevan Mayor's Office and a number of adjacent streets, during which numerous police officers had been injured, ten persons had been killed and pecuniary damage of various scale had been caused to the police, the city of Yerevan and private businesses, and which had stopped only after the declaration of a state of emergency and its prevention by the actions of the police.

33. On 29 October 2008 the District Court extended the applicant's detention by two more months on the same grounds as previously, which was upheld by the Criminal Court of Appeal on 14 November 2008.

C. The applicant's trial and his conviction at first instance

34. On 1 December 2008 the prosecutor approved the bill of indictment against the applicant and six other opposition leaders (commonly known as the "Case of Seven"), and the criminal case was transferred for trial. The bill of indictment contained a verbatim reproduction of the factual allegations contained in the charge of 29 August 2008 (see paragraph 32 above).

35. On 9 December 2008 the lawyer for the applicant and two other defendants requested the Yerevan Criminal Court to terminate the prosecution and to release the applicant and others from detention. He argued that the charges were based on assumptions and there were no facts or evidence suggesting that the applicant and the others had conspired to usurp violently State power, including organising the clashes which had taken place in Yerevan on 1 and 2 March 2008 and assigning roles among themselves for the achievement of that purpose. There was no evidence that they had ordered the demonstrators to disobey or attack the police or had distributed arms among the demonstrators and it was evident from the materials of the case that the demonstrators had relocated and gathered near Myasnikyan monument spontaneously, as a result of being ejected from Freedom Square. None of them had incited the crowd to commit illegal acts but, to the contrary, they had called for calm.

36. On 10 December 2008 the Yerevan Criminal Court decided to set the case down for trial and to keep the applicant in detention, taking into account that he was accused of serious and particularly serious offences punishable by a hefty prison term which gave reasons to believe that, if released, he would abscond and obstruct the proceedings by failing to appear upon a summons.

37. On 31 March 2009 the prosecutor dropped the charge under Article 300 § 1 in view of the fact that, on 24 March 2009, that provision had been amended and, as a result, could not be applied retroactively. The prosecutor

further replaced the charge under Article 225 § 3 with a new charge under Article 225 § 1, since, on the same date, Article 225 § 3 had been repealed and the offence of organising mass disorder under Article 225 no longer involved an aggravated circumstance of murder.

38. On 1 April 2009 the District Court, to which the case was transferred for examination, decided to terminate the proceedings under Article 300 § 1 for lack of *corpus delicti*, to proceed with the examination of charges under Articles 225 § 1 and 316 § 2 of the CC and to keep the applicant in detention on the same grounds as previously. The District Court also decided to sever the applicant's individual case into separate proceedings.

39. On 5 June 2009 the prosecutor dropped the charge under Article 316 § 2 of the CC for lack of evidence.

40. On 22 June 2009 the District Court found the applicant guilty under Article 225 § 1 of the CC, sentencing him to five years in prison, at the same time applying an amnesty and releasing the applicant from detention. The District Court found it to be established as follows:

> "[The applicant], together with a group of his co-thinkers, organised mass disorder in the area adjacent to the Myasnikyan monument and the Yerevan Mayor's Office, as well as on Grigor Lusavorich, Leo and Paronyan Streets and Mashtots Avenue, during which a number of persons carried out arson and destruction of and damage to property, used explosive devices and showed armed resistance to public officials within the period of 1-2 March 2008, which endangered public safety.
>
> Thus, after the victory of [Mr Serzh Sargsyan] in the presidential election of 19 February 2008, [the applicant], starting from the next day, together with a group of others, carried out organisational activities with the aim of creating discontent in society towards the conduct and the results of the election and preparing the crowd gathered at the assembly held at Yerevan's Freedom Square for use of violence and disobedience, in particular they spread false information about the assembly being authorised, about around 500,000 people attending it and about [Mr Levon Ter-Petrosyan] winning 60% of the votes cast. In order to boost the number of participants and to ensure attendance, they provided (financial and other) means. [The applicant] and his driver brought metal rods and wooden clubs to the location of the assembly and kept them in a tent. On 29 February 2008 intelligence information was received by the Armenian Police and the National Security Service that a group of persons intended to instigate mass disorder in Yerevan on 1 March through provocations, to form groups of people ready to commit mass violence and to distribute among them unlawfully obtained firearms, ammunition, explosive substances, explosive devices and various objects adapted to cause physical injuries. Thanks to the measures taken by the law enforcement authorities metal rods, wooden clubs, firearms, ammunition and other items and objects were found at Freedom Square and the adjacent area, while the square was freed from demonstrators.
>
> Thereafter some of the demonstrators relocated and continued the demonstration with a number of other people in the area adjacent to the French, Italian and Russian embassies, the Alexander Myasnikyan monument and the Yerevan Mayor's Office where around 11 a.m. mass disorder erupted, as organised by [the applicant] and a group of his co-thinkers, during which numerous cars parked in the streets were turned over, broken, damaged and burnt, shops were broken into and looted, violence was inflicted and resistance shown, with the use of weapons and various objects used

> as weapons, against the police officers and the police troops. Stones, metal rods, wooden clubs, Molotov cocktails and explosive devices were thrown at the police officers and the police troops, as well as shots fired. The orders voiced from the podium of the Alexander Myasnikyan monument played a special role in providing guidance and command to the participants in the mass disorder. In order to plan further organisational work during the mass disorder and to decide on its course a meeting was held right on the podium with [the applicant's] participation. In his speeches made through the loudspeaker from the podium of the Myasnikyan monument [the applicant] called on the crowd to arm themselves with sticks, rods and any other objects and to attack the police officers, as well as to obey only orders given from the podium, which included such orders as to block streets with means of transport, to build barricades, arm themselves whichever way possible, burn and damage property, show armed resistance to public officials and other types of calls."

41. The District Court proceeded to list the names of all the police officers injured and specify the number of vehicles damaged and persons killed and the pecuniary damage caused to the police, the city of Yerevan and private businesses. The District Court concluded that the mass disorder had stopped only after the declaration of a state of emergency and its prevention by the actions of the police.

42. In reaching the above findings, the District Court relied on the following evidence: the statement of one demonstrator, G.Y., who had testified that he had seen metal rods 80-90 cm length and wooden clubs in the applicant's car parked near Freedom Square, which G.Y. had then carried and stored in one of the tents installed at Freedom Square together with the applicant's driver; the statements of three other protesters who had been present near the Myasnikyan monument and had testified that the applicant had incited the crowd to arm themselves with various weapons and to attack the police, as a result of which the crowd had become agitated and started destroying the nearby fences and a construction site in order to arm themselves with rods; various evidence suggesting that mass disorder had taken place in Yerevan on 1 and 2 March 2008. The District Court also excluded from evidence the witness statements of three other demonstrators, since the witnesses alleged that they had been coerced and ill-treated to make those statements and there was a need to investigate those allegations.

43. It appears that the applicant lodged appeals against his conviction.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

A. Criminal Code (2003)

44. Article 225 § 1 provided, prior to the amendments of 24 March 2009, that organising mass disorder involving violence, massacre, arson, destruction of or damage to property, use of firearms, explosive substances or devices, or armed resistance to public officials was punishable by

imprisonment for a period from four to ten years. Article 225 § 3 provided that the same act, if involving murder, was punishable by imprisonment for a period from six to twelve years.

45. Article 225 § 1 provides, following the above-mentioned amendments, that organising mass disorder is punishable by imprisonment for a period from four to ten years. Article 225 § 5 defines "mass disorder" as actions of more than one person involving violence, massacre, arson, destruction of or damage to property, use of firearms, explosive substances or devices, or armed resistance to public officials, and endangering public safety.

46. Article 300 § 1 provided, prior to the above-mentioned amendments, that usurpation of State power, namely actions aimed at violent seizure of State power or its violent retention in violation of the Armenian Constitution, as well as violent overthrow of the constitutional order of Armenia or violent violation of the territorial integrity of Armenia, was punishable by imprisonment for a period from ten to fifteen years.

47. Article 316 § 2 provides that a life-threatening or a health-threatening assault on a public official or his or her next-of-kin, connected with the performance of his or her official duties, is punishable by imprisonment for a period from five to ten years.

B. Code of Criminal Procedure (1999)

48. For the relevant provisions of the CCP see *Ara Harutyunyan v. Armenia* (no. 629/11, § 31, 20 October 2016) and *Piruzyan v. Armenia* (no. 33376/07, §§ 42 and 51, 26 June 2012).

C. Ad Hoc Public Report of Armenia's Human Rights Defender (Ombudsman): On the 2008 February 19 Presidential Election and the Post-Electoral Developments

49. The Armenian Ombudsman carried out a comprehensive and in-depth analysis of the post-election events in Armenia, some relevant parts of which were cited in the case of *Mushegh Saghatelyan v. Armenia* (no. 23086/08, § 124, 20 September 2018). A number of relevant extracts from the Report not cited in that judgment provide as follows:

> "**3.2.2. The French Embassy (starting from 11.30 a.m. on 1 March)**
>
> At around 11 a.m. on 1 March, people started gathering on the square adjacent to the French Embassy. People had gathered to express their protest and indignation about the events that had taken place earlier that morning.
>
> There is a clear correlation between the events of the morning of 1 March and what happened during the second half of the day. The events that took place during the second half of 1 March cannot be investigated without a focus on their causal link with the violence done to the demonstration participants earlier in the morning; hence, these two events should be investigated in a common framework.

At 11.15 a.m. on 1 March, the Police and Police Troops detachments that were near the Opera started moving towards the French Embassy. Servicemen of the Police Troops and other special detachments were standing in several directions and lines. The faces of some "police officers" were covered with masks. Employees of [the Principal Department for the Fight against Organised Crime of the Armenian Police] were taking part in the attempt to disperse the demonstrators.

Numerous provocateurs, planted among the demonstrators, were doing their best to incite clashes with the Police. All of these allegations, including eyewitness accounts, must be thoroughly investigated.

Unlike the Freedom Square operation earlier that morning, which was subject to the criminal procedure legislation (given the "build-up of arms" hypothesis), the use of force near the French Embassy is subject exclusively to the [Armenian Assemblies, Rallies, Marches and Demonstrations Act], especially its provisions regarding the termination of demonstrations and the use of special means. The Police have the right to compulsorily terminate a gathering, if the gathering poses a real threat to the lives of people, health, state and public security, the public order, or may inflict considerable property damage on the state, the community, or on natural and legal persons. Therefore, the physical force applied by the Police at around noon on 1 March should be considered unlawful, because there was no official presentation and explanation that the citizens' gathering in the vicinity of the French Embassy posed a real threat to any of the aforementioned. Moreover, up to 2 p.m., the demonstration was peaceful...

The engagement of the Police Troops of the Republic of Armenia in the attempt to disperse the citizens in the vicinity of the French Embassy at noon on 1 March should be considered unlawful, as well, because [Section 20 of the Police Troops Act] directly provides that 'it shall be prohibited to engage Police Troops in the prevention of peaceful and unarmed meetings, assemblies, rallies and demonstrations'. ...

The situation was different in the second half of the day, when the demonstrators became, in a sense, uncontrollable, which was accompanied with disorder. The events near the French Embassy in the second half of 1 March took place in two places: (i) in the vicinity of the Myasnikyan monument, where demonstrators had assembled and were waiting for their leader, and (ii) in the area between Mashtots Avenue and Paronyan and Leo streets, where discrete clashes took place between police officers and groups of persons. Moreover, during the night of 1 March, the looting of shops on Mashtots Avenue and the burning of vehicles took place under questionable and controversial circumstances. It is worth noting that the participants in the demonstration in the vicinity of the French Embassy did not attack any of the nearby shops... The investigation needs to reveal whether the peaceful demonstrators gathered in the vicinity of the French Embassy are actually related with those perpetrating disorder in the nearby streets. This question is of particular legal importance from the standpoint of charging the *de facto* leaders of the demonstration with the organisation of disorder in the nearby streets."

II. RELEVANT INTERNATIONAL MATERIALS

A. Council of Europe bodies

1. Parliamentary Assembly of the Council of Europe (PACE)

(a) Resolution 1609 (2008): The functioning of democratic institutions in Armenia, 17 April 2008; Resolution 1620 (2008): Implementation by Armenia of Assembly Resolution 1609 (2008), 25 June 2008; and Resolution 1643 (2009): The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008), 27 January 2009

50. In its Resolutions regarding the 19 February 2008 presidential election and the events that followed, the PACE condemned the arrest and continuing detention of scores of persons, including more than 100 opposition supporters and three members of parliament, some of them on seemingly artificial and politically motivated charges, especially those under Articles 225 and 300 of the CC (for the relevant extracts, see *Mushegh Saghatelyan*, cited above, §§ 125-127).

(b) Report on the Functioning of Democratic Institutions in Armenia (Doc. 11579, 15 April 2008)

51. The relevant parts of the Explanatory Memorandum to this Report, produced by the co-rapporteurs of the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe ("the Monitoring Committee"), provide as follows:

> "58. Following the declaration of the state of emergency, scores of people were arrested for their participation in the protest on and prior to 1 March 2008. ... The prosecutor general announced that as of the end of March, 106 persons had been arrested in connection with the events of 1 March 2008, including three of the four MPs whose immunity was lifted by parliament after they were charged with incitement or attempt to usurp public power or coup d'état under Article 300 of the Criminal Code...
>
> ...
>
> 60. Most persons arrested are charged with inciting mass disorder (Article 225 § 3 of the Criminal Code), violence against a representative of the authorities (Article 316 of the Criminal Code) and usurpation of power (Article 300 of the Criminal Code). As also noted in the report of the Commissioner [for Human Rights of the Council of Europe], the wording of these provisions leaves a great deal of discretion to the prosecutor and especially the definition of usurpation of power 'allows for a very broad interpretation and fails to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence'.
>
> 61. The courts generally grant the prosecutors' requests for a two-month detention on remand without properly weighting whether such detention is justified... This fact raises questions about the independence of the judiciary and the effectiveness of the courts' role as a 'check and balance' vis-à-vis the powers of the prosecutors.
>
> 62. The arrest of persons solely for their participation in the protest after the presidential election – without proof that they committed violent crimes themselves –

or on seemingly artificial charges after voicing their opinion that the presidential election was fraudulent, can only be construed as a crackdown by the authorities on the opposition. This crackdown is undermining the possibilities for a constructive dialogue between all political forces in Armenia. In addition, the co-rapporteurs are seriously concerned about the existence in Armenia of what are alleged political prisoners as a result of the continued recourse to politically motivated detentions."

(c) Report on the Implementation by Armenia of Assembly Resolution 1609 (2008) (Doc. 11656, 24 June 2008)

52. The relevant parts of the Explanatory Memorandum to this Report, produced by the co-rapporteurs of the Monitoring Committee, provide as follows:

"35. We were informed that a significant number of persons who were arrested under [Articles 225 and 300 of the Criminal Code] had had additional criminal charges brought against them at a later stage. This could indicate an attempt to circumvent the Assembly's demand that individuals charged with seemingly artificial and politically motivated charges should be released, by accusing them of having 'personally committed violent acts or serious offences'.

36. We are especially concerned regarding the three detained members of parliament whom we visited in prison. All three were arrested and had their parliamentary immunity lifted for alleged violations of Articles 300 and 225. However, up to now, their cases have not been transmitted to court. In addition, under Article 17 of the Constitution of Armenia, members of parliament can only be arrested in *flagrant delict*. However, all three were arrested after the events of 1 March 2008, which would indicate that their constitutional rights were violated during their arrest."

(d) Report on the Implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008) (Doc. 11786, 26 January 2009)

53. The relevant parts of the Explanatory Memorandum to this Report, produced by the co-rapporteurs of the Monitoring Committee, provide as follows:

"4. In our meetings with the authorities and especially with the general prosecutor, we underlined the concerns of the Monitoring Committee with regard to charges brought under [Articles 225 and 300 of the Criminal Code]. In relation to Article 300, we stressed that we have not received compelling information, including from the reference materials provided by the general prosecutor's office, that would indicate that the events of 1 and 2 March 2008 were aimed at the usurpation of state power or the violent overthrow of the constitutional order of Armenia. We have not received evidence that the seven opposition leaders organised violent actions with premeditation with the aim to usurp the state power, for which they have been charged under Article 300. ...

...

6. In all our meetings with the authorities, we stressed that the insistence on bringing charges under Articles 300 and 225 § 3 and the systematic use of aggravated charges over more lenient ones – notwithstanding that the evidence to do so appeared weak – as well as the charges and convictions on the basis of police testimony alone, clearly indicated in our opinion that the charges brought against, and convictions of,

these persons may have been politically motivated and that, under those conditions, political prisoners could exist in Armenia.

...

30. We would like to highlight that among the seven cases that are ... now brought before the court are those of three parliamentarians whose parliamentary immunity was lifted by the National Assembly on the basis of evidence provided by the general prosecutor that would indicate that these individuals had committed serious crimes. However, it took the prosecution seven more months to collect evidence and finalise the indictment. It would thus appear that the National Assembly had taken its decision to lift the parliamentary immunity of three of its members on very summary evidence at best, which could indicate that political motivations played a role in this decision.

...

33. ...In [those] seven cases ... all the individuals have been charged under Articles 300 and [225 § 3].

...

38. On the basis of our observations regarding Articles [225 § 3] and 300, we can only conclude that the charges brought under these articles were politically motivated and, unless the Armenian authorities can provide us with detailed and conclusive evidence to the contrary for each individual case, that persons convicted on these charges should be considered political prisoners."

2. Council of Europe Commissioner for Human Rights

(a) Report by the Commissioner on his Special Mission to Armenia on 12-15 March 2008, CommDH(2008)11REV, 20 March 2008

54. The relevant extracts from the Report provide:

"**12. Procedural safeguards of the accused**

The prosecutors have consistently brought the same charges irrespective of the person's actual doing and involvement. A few articles in the Criminal Code are regularly invoked: [Article 225 § 3, Article 316 and Article 300]. ...

The Prosecutors have applied standardized language in the charges against ... [those] arrested. The judges seemed not to have entered into a serious test of the charges, the legality of the apprehension and the proportionality of deprivation of liberty vis-à-vis the gravity of the crime. The courts seem to have routinely granted pre-trial detention ... of two months to allow the prosecutor to investigate further and prepare the charges and the criminal case."

(b) Summary of Findings by the Commissioner on his Special Mission to Armenia on 13-15 July 2008, CommDH(2008)29, 29 September 2008

55. The relevant extracts of the Summary provide:

"**Persons deprived of their liberty in relation to the events of 1-2 March 2008**

...

3. The Commissioner finds that serious questions persist as to the very nature of the criminal charges brought against the persons apprehended in connection with the events of 1-2 March. In particular, the letter by the Head of the Special Investigation

Service issued in early March 2008 to some regional prosecutors, requesting them to collect information on participants in opposition rallies, rather than information on specific acts, raises questions about the nature and the intent of the investigation. The Commissioner is particularly concerned as regards the remaining seven persons in preliminary detention, including the three members of parliament and the presidential campaign leader for Levon Ter-Petrosyan, who are charged very broadly for trying to prepare a coup d'état (usurpation of power, [Article] 300 of the Criminal Code). The Commissioner's concern is exacerbated by the fact that in several of those cases, the relevant court ordered further two-month extensions as recently as early September 2008."

(c) Report by the Commissioner following his visit to Armenia from 18 to 21 January 2011: CommDH(2011)12, 9 May 2011

56. The relevant extracts from the Report provide:

"**1. Persons deprived of their liberty**

...

18. Judges relied on witness statements which were allegedly obtained under duress. There were several allegations of the use of ill-treatment by law enforcement officials to coerce individuals to testify against opposition figures who were charged in relation to the March events. Witnesses in [the 'Case of Seven'] against [H.H., S.M., the applicant (the three of them former National Assembly members), G.V., A.A. and S.S.] stated that they gave their testimony under duress and pressure. ...

...

20. Out of the seven most prominent opposition figures who were considered by the authorities as playing a leading role in the March events, six were freed by mid-2009, [including the applicant,] mostly because they were eligible under the amnesty..."

B. Human Rights Watch Report: Democracy on Rocky [Ground], Armenia's Disputed 2008 Presidential Election, Post-Election Violence, and the One-Sided Pursuit of Accountability, February 2009

57. The relevant extracts from the Report provide:

"Demonstrators gather near the French Embassy

As news spread about the morning's violence and the de facto house arrest of [Levon Ter-Petrosyan], other people started making their way to Freedom Square, only to find it closed off by a police cordon. Police were ordering people away...

Unable to assemble on Freedom Square, many people started to gather near the Alexander Miasnikyan monument on Grigor Lusavorich Street, about 15 minutes walk across the city center from Freedom Square. The monument faces a large open area in front of the new Yerevan [Mayor's Office] with the French embassy on the adjacent corner. The Italian and Russian embassies are also in the vicinity.

The number of people assembling at this location grew very fast...

...

The protesters started setting up barricades of motor vehicles. As one participant, [G.G.] ... explained to Human Rights Watch, 'We were expecting police to attack, and

unlike in the morning we wanted to be more prepared for it. We made barricades at Grigor Lusavorich Street, by stopping buses and trolley buses and mini vans ... and then using them to barricade.'

Lack of accurate information about the earlier police operation at Freedom Square contributed to numerous rumours about possible casualties and heightened feelings among the demonstrators. As [G.G.] explained to Human Rights Watch, 'There were rumours floating around about a 12-year-old girl having been killed during the police attack in the morning. People were just furious about it and wanted to be more prepared if police attacked again.' (This rumour was untrue: there were no fatalities during the events at Freedom Square.)

Negotiations and police withdrawal

Around 11.30 a.m. other opposition leaders arrived near the French Embassy. Estimates vary widely as to the number of protesters gathered by then, but they were at least many thousands. [D.S. and L.Z.], close Ter-Petrosyan associates, led negotiations with police officials ... on changing the venue for the spontaneous rally that was already in progress. The police offered to allow the demonstration to continue at the Dinamo football stadium, but the protest leaders rejected this; [as they] 'were afraid it would be too easy to entrap people there and beat them'.

According to [L.Z.], the police seemed genuinely engaged in negotiating a new venue and in deescalating the situation, and even provided a car for him to travel to Levon Ter-Petrosyan's residence to talk to him about a possible new venue for the rally. The police offered to move the demonstration to a venue in front of Matenadaran, the museum of ancient manuscripts in downtown Yerevan, a venue frequently used for political meetings. They allowed [D.S.] to address the crowd through a police loudhailer at 1 p.m., to announce that the police would withdraw soon to allow the crowd to move to Matenadaran. Believing that they had agreement that police would leave and people would move on, at around 2 p.m. police began withdrawing...

Deputy police chief [M.] told Human Rights Watch that [N.P.], an opposition leader and member of Ter-Petrosyan's pre-election campaign, broke the deal, calling for people to stay put. However, eyewitnesses interviewed by Human Rights Watch claimed that people did not want to leave as they felt more secure at the present location, as roads were barricaded and the venue was close to several foreign embassies, and also that they wanted to see Ter-Petrosyan first.

As police withdrew, an incident occurred that led to the first violence at the afternoon demonstration. A police car with three policemen inside drove into people at high speed, injuring at least two protesters; two witnesses who recounted the incident to us believe that the driver lost control of the car in panic at being among the last police to leave the scene. The incident further infuriated the protesters, who attacked the police car and set it on fire, while the policemen escaped.

A group of mostly young protesters began throwing stones at a group of about 50 policemen outside [Yerevan Mayor's Office]. Recounting the episode to us, [S.S.] ... noted, 'The crowd did not look like the crowd that had been demonstrating peacefully for 10 days. People were furious'. Another group of protesters tried to protect the policemen by forming a line between the sides. ...

...

Demonstrators prepare for police attack

There were two construction sites near [the Mayor's Office. G.G.] told Human Rights Watch:

We went into the construction sites and collected the iron and wooden bars. We did not destroy anything, but collected loose iron bars from there. Some also collected stuff from the nearby parks... We were expecting to be attacked and wanted to be better prepared for it.

...

[V.V.] told Human Rights Watch:

People were getting makeshift weapons from a construction site. Almost everyone was under the impression that the protesters were violently dispersed in the morning and there were rumours about several deaths. People were very angry. They wanted to see the leader, but we heard on the radio that Levon Ter-Petrosyan was under house arrest.

During this time police was not making any calls to the protesters to disperse. Around 5 p.m. loudspeaker equipment was brought to the rally (opposition leaders had been attempting to address the crowd before this was with a loudhailer, but their attempts had been largely inaudible). The leaders called for the gathered demonstrators to stay calm and not to provoke the police. At the same time, however, calls to build further barricades to prevent police from attacking were also made. People were shouting 'Levon! Levon!' and demanded his appearance.

...

At the Myasnikyan monument, a rally continued until around 3 a.m. on [2 March]. An aggressive police action to disperse the crowd began at around 9.30 p.m. on [1 March], and was met with stone throwing and even petrol bombs from the side of the demonstrators. After that, the police retreated and left the large crowd alone. A smaller group of demonstrators, however, engaged in a violent confrontation with police and security forces. It was in this context that most of the fatalities occurred. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

58. Relying on Article 5 §§ 1 (c) and 3 of the Convention, the applicant complained that his arrest and continued detention had not been based on a reasonable suspicion, that the courts had failed to provide relevant and sufficient reasons for his detention and that he had been precluded by law from being released on bail because he had been accused of a "particularly serious offence". Article 5 §§ 1 (c) and 3 of the Convention reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Article 5 § 1 (c) of the Convention

1. Submissions by the parties

59. In his application lodged on 20 September 2008 and supplemented on 2 March 2009 the applicant complained that his arrest and pre-trial detention had not been based on a reasonable suspicion of his having committed an offence, in violation of Article 5 § 1 (c) of the Convention. He referred to the five sets of court proceedings, between 5 March and 29 October 2008, whereby his pre-trial detention had been authorised and extended, and submitted that, as of 29 October 2008, no concrete facts or evidence had been produced by the authorities, either at the domestic level or before the Court, substantiating the suspicions against him. The charges against him had been a mere formality based solely on assumptions and had been brought against him only because he was an active member of the opposition. Thus, his deprivation of liberty had been a concealed attempt to limit his freedom of expression and had been effected in bad faith. While being accused of making violent speeches during the assembly near the Myasnikyan monument, none of the materials of the criminal case had cited his speeches. The courts repeatedly used such vague expressions as "the presented materials" or "certain evidence" as grounds justifying the existence of a reasonable suspicion, without ever specifying the materials or evidence in question. The applicant admitted that he had made speeches at the assembly but denied any incitement to public disorder or disobedience to the authorities. He submitted that, if he had indeed made such speeches, the audio and video recordings would undoubtedly have been included in the case file since the events of 1 March 2008, especially those around the Myasnikyan monument, had been continually recorded by the authorities. The fact that his deprivation of liberty had not been based on a reasonable suspicion was also supported by the findings reached as a result of the trial monitoring project conducted in the aftermath of the events of 1-2 March 2008 by the Organisation for Security and Cooperation in Europe, which were based also on the monitoring of his trial. The failure of the courts to

provide any grounds for a reasonable suspicion had been also incompatible with the relevant case-law of the Court of Cassation.

60. In his observations lodged on 30 August 2011 the applicant extended his complaint about the alleged lack of a reasonable suspicion also to his continued detention during trial proceedings up until his conviction by the District Court on 22 June 2009.

61. The Government submitted that the applicant's deprivation of liberty had been based on a reasonable suspicion of his having committed an offence, as required by Article 5 § 1 (c) of the Convention. The applicant had been taken to a police station at a time when clashes were taking place in Yerevan and, as it follows from the "record of the applicant's bringing-in" of 2 March 2008, he had been suspected of organising and participating in mass disorder. Furthermore, he had been armed with an illegal weapon at the time of his apprehension, namely a metal rod. Moreover, the applicant had been known as one of the organisers of the unlawful demonstrations at Freedom Square and a person who had incited disobedience to police orders to end the demonstrations in question. Thus, he had been taken to a police station on a real suspicion of having committed an offence, namely possession of illegal arms and ammunition and organising mass disorder. Since, according to the Court's case-law, the facts which raised a suspicion did not need to be of the same level as those necessary to bring charges or justify a conviction, Article 5 § 1 (c) of the Convention had been complied with in this case.

2. The Court's assessment

(a) Admissibility

62. The Court considers it necessary first to determine the period of detention under consideration in the present case. It notes that in his original application to the Court, lodged on 20 September 2008 and supplemented on 2 March 2009, the applicant complained of the alleged lack of a reasonable suspicion under Article 5 § 1 (c) of the Convention only in respect of his arrest and detention during the pre-trial proceedings (see, *mutatis mutandis*, *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 100, 22 May 2014), including the last decision taken on that matter by the District Court on 29 October 2008 (see paragraph 33 above). This complaint was communicated to the Government. In his observations lodged with the Court on 30 August 2011 the applicant raised an additional complaint, alleging lack of a reasonable suspicion also in respect of his detention during the trial proceedings. Consequently, the applicant's complaint regarding lack of a reasonable suspicion for his detention after 10 December 2008 must be dismissed as being introduced outside the six-month time-limit and rejected pursuant to Article 35 §§ 1 and 4 of the Convention (see,

mutatis mutandis, *R & L, s.r.o., and Others v. the Czech Republic*, nos. 37926/05 and 4 others, §§ 80-83, 3 July 2014).

63. As regards the alleged lack of a reasonable suspicion for the applicant's detention during the pre-trial proceedings, 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

64. The Court reiterates that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty which must be interpreted strictly. A person may be detained under Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on "reasonable suspicion" of "having committed an offence" (see *Jėčius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX, and *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 114, 17 March 2016).

65. In order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c), it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody; nor is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Ilgar Mammadov*, cited above, § 87; and *Rasul Jafarov*, cited above, § 115).

66. However, the requirement that a suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words "reasonable suspicion" mean the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182; *Ilgar Mammadov*, cited above, § 88; and *Rasul Jafarov*, cited above, § 116).

67. When assessing the "reasonableness" of a suspicion, the Court must be in a position to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) has been secured. Consequently, a respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence (see *Fox, Campbell and Hartley*, cited

above, § 34; *Ilgar Mammadov*, cited above, § 89; and *Rasul Jafarov*, cited above, § 117).

68. Apart from its factual side, which is most often at issue, the existence of such suspicion additionally requires that the facts relied on can be reasonably considered as behaviour criminalised under domestic law. Thus, there could clearly not be a "reasonable suspicion" if the acts held against a detained person did not constitute an offence at the time when they were committed (see *Kandzhov v. Bulgaria*, no. 68294/01, § 57, 6 November 2008; and *Rasul Jafarov*, cited above, § 118).

69. The Court notes that the applicant in the present case complained of the lack of "reasonable" suspicion against him throughout the entire period of his pre-trial detention, including both during the initial period following his arrest and the subsequent periods when his remand in custody was authorised and extended by court orders on four occasions. In this connection, the Court reiterates that the persistence of reasonable suspicion that an arrested person has committed an offence is a prerequisite for the lawfulness of his continued detention (see, among many other authorities, *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). Accordingly, while reasonable suspicion must exist at the time of the arrest and initial detention, in cases of prolonged detention it must also be shown that the suspicion persisted and remained "reasonable" throughout the detention (see *Ilgar Mammadov*, cited above, § 90, and *Rasul Jafarov*, cited above, § 119).

70. The Court has to have regard to all the relevant circumstances in order to be satisfied that objective information existed showing that the suspicion against the applicant was "reasonable". In this connection, at the outset, the Court considers it necessary to have regard to the general context of the facts of this particular case. The Court notes that the applicant was an opposition politician and member of parliament who took part in the rallies which gripped the Armenian capital following the allegedly unfair presidential election of 19 February 2008 and culminated in the events of 1 and 2 March 2008. The response of the authorities that followed, including the arrests and detention of scores of opposition leaders and supporters, was condemned by the PACE as a "*de facto* crackdown on the opposition", while the charges brought against many of them, especially those under Articles 225 and 300 of the CC, were suspected to have been "artificial and politically motivated". Repeated concerns were expressed by both the PACE and the Council of Europe Commissioner for Human Rights about the nature of the charges under those Articles, as well as Article 316 of the CC, mentioning the applicant's specific case on several occasions (see paragraphs 50-55 above). While the Court is not called upon to give a judicial assessment of the general context, it nevertheless considers that this background information is extremely relevant to the present case and calls

for particularly close scrutiny of the facts giving rise to the charges brought against the applicant.

71. Turning to the applicant's particular case, the Court notes that the very first document drafted in respect of the applicant's police custody indicated that he had been taken into custody on suspicion of, *inter alia*, "organising mass disorder" without, however, providing any factual details, as well as grounds or evidence which gave rise to that suspicion (see paragraph 17 above). The record of the applicant's arrest was drafted in a similar manner. Thus, while stating that the applicant was arrested under Article 300 of the CC on suspicion of having committed "usurpation of power", namely actions aimed at violent seizure of State power or violent overthrow of the constitutional order, it failed, however, to indicate any specific acts which the applicant had allegedly committed within the meaning of that provision or any evidence on which that suspicion was based (see paragraph 18 above).

72. Later, the General Prosecutor requested the Armenian Parliament to lift the applicant's immunity in order to bring charges against him under that Article, as well as Article 225 § 3 of the CC which prescribed a penalty for "organising mass disorder" involving an aggravated circumstance of murder. Similarly, that document failed to specify any factual details of the acts allegedly committed by the applicant or any evidence on which those suspicions were based. The General Prosecutor's request, while stating that the applicant had made public calls inciting violence, failed to provide any examples or citations of such calls. The allegation of organising mass disorder, which had presumably been committed by the applicant "through direction, participation, instigation and various types of support, including the recruitment and arming of attackers", again failed to specify any details, including the nature of the alleged participation, instigation and support, the method of the alleged recruitment and the number or identities of any persons so recruited (see paragraph 19 above). Furthermore, the request in question labelled all the demonstrations which had taken place in Yerevan during the entire period from 20 February to 2 March 2008 as "mass disorder". In this connection, the Court is mindful that it has already scrutinised the circumstances of the assembly at Freedom Square held from 20 February until the morning of 1 March 2008 and found that it had been peaceful, without any incitement to violence or acts of violence, and had in fact provided a platform for expression on a matter of major political importance directly related to the functioning of a democracy and of serious concern to large segments of Armenian society (see *Mushegh Saghatelyan*, cited above, §§ 230-233 and 246).

73. It appears that the same approach was taken in the charge brought against the applicant on 5 March 2008. The assembly at Freedom Square was presented as part of a plan to usurp power masterminded and implemented by the applicant in conspiracy with other opposition leaders.

However, the specific acts imputed to the applicant which he had allegedly committed in the pursuit of that plan, such as "discrediting the pre-election process and the conduct of the election", "casting doubt on the lawfulness of the election", "instilling distrust towards the results among large segments of the population" and similar, having regard to all the circumstances, do not appear to be, in the Court's opinion, anything but examples of legitimate expressions of opinion in the context of the public debate surrounding the conduct of the presidential election, including the criticism voiced in that respect. As to the allegation that during that period the applicant had "incited and organised the mass disorder which took place in Yerevan from 1 to 2 March 2008", this was, once again, not supported by any factual details or evidence (see paragraph 21 above).

74. The Court further notes that, when requesting the applicant's remand in custody, the investigator relied exclusively on the charge of 5 March 2008. Contrary to the Government's claim, there is nothing to suggest that any evidence was attached to the investigator's application and presented to the court (see paragraph 23 above). Furthermore, the first instance court examining the investigator's application did not carry out any examination of the question of existence of a reasonable suspicion, when either authorising or extending the applicant's pre-trial detention (see paragraphs 25 and 29 above). The Court of Appeal, in its turn, justified the existence of a reasonable suspicion with a vague reference to "certain evidence" and some unspecified "presented materials".

75. In sum, the charges against the applicant were drafted in very general and abstract terms, without any specific factual details of the acts allegedly committed by him which could be considered as falling within the ambit of Articles 225 § 3 and 300 of the CC, and were not backed by any evidence whatsoever, whether witness statements or other materials. Nor were such facts or evidence ever submitted to and examined by the domestic courts which ruled on the applicant's continued detention. The applicant consistently claimed before the domestic courts, and later before the Court, that there existed no information or evidence giving rise to a reasonable suspicion that he had committed any of the criminal offences with which he was charged. The Government did not submit any specific arguments to rebut the applicant's assertion, their main contention amounting to an allegation that the applicant was "known as one of the organisers of the unlawful demonstrations at Freedom Square and a person who had incited disobedience to police orders to end the demonstrations". Thus, in the Court's opinion, the information in question could not be considered sufficient to satisfy an objective observer that the applicant might have committed the offences with which he was charged.

76. The Court notes that the applicant was prosecuted and detained on such precarious grounds for more than six months until a new and somewhat more detailed charge was brought against him on 29 August 2008

(see paragraph 32 above). However, even that document cannot be said to have contained sufficient information to satisfy the requirements of Article 5 § 1 (c), especially taking into account that it was produced after more than six months of investigations.

77. Firstly, many of the allegations against the applicant were still presented in a vague manner without sufficient factual detail. No examples or citations were provided of the applicant's allegedly "provocative speeches", incitement to "violent seizure of State power", orders "to resist the police officers and to assault them" and similar.

78. Secondly, and more importantly, the allegations against the applicant, including some more serious ones such as his alleged incitement to violence in the area near the Myasnikyan monument, were not backed up by a single piece of evidence. No evidence whatsoever was cited or attached in support of the suspicions against the applicant and it is not clear on what grounds the applicant was believed to have committed the acts in question.

79. Thirdly, after the charge of 29 August 2008 was brought, the applicant's pre-trial detention was extended only once, namely on 29 October 2008, but even then the domestic court did not examine the question of existence of a reasonable suspicion. Consequently, no relevant factual details or evidence were produced or examined at that stage of the pre-trial detention either.

80. Lastly, the Court cannot overlook the fact that serious doubts have been voiced by the PACE Monitoring Committee regarding the version, according to which the events of 1 and 2 March 2008 had been part of a planned and organised attempt by the leaders of the opposition to seize violently State power or, in other words, to carry out a coup, and in fact such prosecutions were deemed highly likely to be politically motivated (see paragraph 53 above). The Court itself has previously concluded that there was no convincing evidence to suggest that there had been a build-up of arms at Freedom Square for the purpose of instigating mass disorder (see *Mushegh Saghatelyan*, cited above, §§ 230 and 245). It has rejected the allegations that the police were deployed at Freedom Square in order to carry out an inspection for weapons and that armed demonstrators were first to attack, and has found that the main, if not only, purpose of the police operation in the early morning of 1 March 2008 was to disperse the assembly at Freedom Square and that any clashes that happened there must likely have been caused by the measures taken by the police to end the assembly, including the alleged excessive use of force, as opposed to being premeditated acts (ibid., §§ 232, 245 and 247). There are a number of credible reports which suggest that the gathering of people in the area of the Myasnikyan monument, including their later being armed, were spontaneous and unorganised developments and that the escalation of violence later that day may have similarly been a response to the earlier dispersal of demonstrators from Freedom Square, including its

heavy-handed nature, as well as a number of other similar or uncontrollable events which had happened later that day (see paragraphs 49-57 above). The Court notes that the Government have failed to produce any evidence in the present case which would prompt it to doubt the above reports or the findings reached in the *Mushegh Saghatelyan* case.

81. The Court is mindful of the fact that the applicant's case has been taken to trial. That, however, does not affect the Court's findings in connection with the present complaint, where it is called upon to consider whether the deprivation of the applicant's liberty during the pre-trial period was justified on the basis of the information or facts available at the relevant time (see, *mutatis mutandis*, *Ilgar Mammadov*, cited above, § 100; and *Rasul Jafarov*, cited above, § 133). In this respect, having regard to the above analysis, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. Accordingly, during the period the Court is considering in the present case, the applicant was deprived of his liberty in the absence of a "reasonable suspicion" of his having committed a criminal offence.

82. Accordingly, there has been a violation of Article 5 § 1 (c) of the Convention.

B. Article 5 § 3 of the Convention

83. The above finding makes it unnecessary to assess whether the domestic courts provided relevant and sufficient reasons for the applicant's continued detention, as required by Article 5 § 3 of the Convention, or whether the refusal to release the applicant on bail was in violation of that provision. Therefore, the Court does not consider it necessary to examine separately any issues under Article 5 § 3 of the Convention (see *Ilgar Mammadov*, cited above, § 102, and *Rasul Jafarov*, cited above, § 135).

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

84. The applicant complained that the court proceedings imposing detention had not been adversarial and had failed to ensure equality of arms. In particular, "certain evidence" mentioned in the decision of the Criminal Court of Appeal of 21 March 2008 had never been presented to him. The applicant relied on Article 5 § 4 of the Convention, which reads as follows:

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

85. The Government contested that complaint.

86. The Court reiterates that a court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings

must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001).

87. The Court notes that the applicant's submissions in this respect are somewhat contradictory, claiming, on the one hand, that the vague reference to "certain evidence" substantiating the existence of a reasonable suspicion in the decision of the Criminal Court of Appeal of 21 March 2008 suggested that no such evidence had existed (see paragraph 59 above) and, on the other hand, that the proceedings had not been adversarial because such evidence had not been presented to him. The Court, however, is mindful of its finding above that the charges against the applicant and his pre-trial detention were not based on any specific evidence and that no such evidence was ever produced before the courts (see paragraphs 72-75 above). In such circumstances, there is no appearance of a violation of the applicant's rights guaranteed by Article 5 § 4 of the Convention.

88. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. Lastly, the applicant raised a number of other complaints under Articles 3, 5, 6, 10 and 11 of the Convention.

90. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed a total of 18,610,400 Armenian drams (AMD) in respect of pecuniary damage, including AMD 2,740,400 for the costs of food parcels and transport borne by his family and AMD 15,870,000 for the loss of salary and work expenses which he would have received as a member of parliament between 2 March 2008, the date of his arrest, and 12 May 2012, the end of his mandate, his monthly salary amounting to AMD 300,000. He also claimed EUR 70,000 in respect of non-pecuniary damage.

93. The Government submitted that the costs of food parcels and transport were not substantiated with any evidence. Furthermore, these alleged costs had been borne not by the applicant but by his family. Nor had any causal link been demonstrated between those costs and the applicant's detention. As regards the claim for lost salary, the applicant's calculation of the period was unreasonable since he had been in detention for only 15 months, namely from March 2008 to June 2009. As regards the claim for non-pecuniary damage, there was no proof that the applicant had suffered such damage or a causal link between the alleged violation and the damage claimed.

94. The Court notes that the alleged costs of food parcels and transport are not substantiated with any proof and, in any event, the costs in question were allegedly borne by the applicant's family, who were not applicants in the present case and cannot therefore be regarded as persons directly affected by the violation found (see *Harutyunyan v. Armenia*, no. 36549/03, § 71, ECHR 2007-III). The Court therefore rejects this claim. As regards the claim for lost salary, the Court notes that the period under consideration in the present case concerns the applicant's pre-trial detention which lasted about nine months. It therefore awards this claim in part, making an award of EUR 5,085 for lost salary. The Court further awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

95. The applicant also claimed AMD 3,000,000 for the costs and expenses incurred before the domestic courts and the Court, supported by a

copy of a contract of legal services, of which AMD 500,000 had already been paid to the lawyer and the remainder was payable in the case of a favourable outcome in the proceedings before the Court.

96. The Government submitted that only the sum of AMD 500,000 could be considered as actually incurred and, in any event, even that sum was exaggerated and unreasonable.

97. 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 to its case-law, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

98. 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

1. *Declares*, unanimously, admissible the complaints concerning the alleged lack of a reasonable suspicion justifying the applicant's arrest and pre-trial detention, the alleged failure to provide relevant and sufficient reasons for his detention and the refusal to release the applicant on bail and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been a violation of Article 5 § 1 (c) of the Convention in that the applicant's arrest and pre-trial detention were not based on a reasonable suspicion;

3. *Holds*, by six votes to one, that it is not necessary to examine the complaints under Article 5 § 3 of the Convention;

4. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,085 (five thousand and eighty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 7,500 (seven thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,000 (two thousand 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;

5. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Krzysztof Wojtyczek
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly dissenting opinion of Judge Linos-Alexandre Sicilianos;
(b) Partly dissenting opinion of Judge Tim Eicke.

K.W.O.
R.D.

PARTLY DISSENTING OPINION OF JUDGE SICILIANOS

1. I agree with the majority on all points of the operative part, except as regards point 3, according to which "it is not necessary to examine the complaints under Article 5 § 3 of the Convention". Paragraph 83 of the judgment specifies further that the finding of a violation of Article 5 § 1 (c) of the Convention "makes it unnecessary to assess whether the domestic courts provided relevant and sufficient reasons for the applicant's continued detention, as required by Article 5 § 3 of the Convention, or whether the refusal to release the applicant on bail was in violation of that provision. Therefore, the Court does not consider it necessary to examine separately any issues under Article 5 § 3 of the Convention [references omitted]".

2. It is true that since the Grand Chamber judgment in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, ECHR 2014), the Court has frequently used the so-called "Câmpeanu formula" in order not to examine *in extenso* peripheral or secondary complaints or complaints which are in one way or another absorbed by the main complaint. Such an approach is understandable from the viewpoint of the economy of the judgment and may contribute to a greater focus on the main issues and thus to the clarity of the judgment. In my view, however, this formula should only be used in the above circumstances – peripheral or secondary complaints or complaints which are absorbed by the main complaint – as it is otherwise in danger of being perceived by the applicant as a sort of partial "denial of justice". One should also bear in mind that its use has an impact on the amount of just satisfaction. Furthermore, the "Câmpeanu formula" should be used in a consistent manner, that is to say, if the Court decides to use it in a given case it should also use it in similar cases and vice versa.

3. In the present case, I am not persuaded that the above conditions are met. The issue relating to Article 5 § 3 is neither peripheral nor secondary. Furthermore, despite the finding of a violation of Article 5 § 1 (c), a similar complaint under Article 5 § 3 was examined in two other cases against Armenia (see *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, §§ 89-92, 8 October 2020, and *Smbat Ayvazyan v. Armenia*, no. 49021/08, §§ 86-91, 8 October 2020) and a violation of this provision was found (which also had an impact on just satisfaction under Article 41 of the Convention). The cases in question concern the same set of facts and bear strong similarities to the present case. In such circumstances I found it difficult to agree with the majority and to consider that the examination of the complaint under Article 5 § 3 was "unnecessary" in the present case.

PARTLY DISSENTING OPINION OF JUDGE EICKE

1. The Chamber was in complete agreement that there has in this case been a clear breach of Article 5 § 1 (c) of the Convention on the basis that the applicant's arrest and pre-trial detention were not based on a reasonable suspicion.

2. Nevertheless, I find myself unable to agree that it was appropriate, in the circumstances of this case and on the material before us, to make an award of pecuniary damages under Article 41 of the Convention in relation to the alleged loss of his salary as a member of Parliament. In fact, it seems to me that this judgment is a further example of the problem identified in the Joint Partly Dissenting Opinion I wrote with Judges Lemmens and Koskelo in *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, 18 June 2020. In paragraph 4 of that Joint Partly Dissenting Opinion we noted that "the majority has avoided having to grapple with some of the more difficult issues arising in the context of an assessment of pecuniary damages under Article 41 of the Convention. ..., in the context of judgments of the Court in which admissibility, merits and just satisfaction are almost invariably considered together, the just satisfaction aspect of a complaint frequently receives only the most cursory attention, almost as an afterthought, without detailed exposition of or reference to applicable legal principles".

3. While the issue here was, in many ways, much more straightforward than in the *Molla Sali* case, unfortunately the same is true in the present case.

4. A convenient (and in this case sufficient) point of reference for analysing the applicant's claim for pecuniary damages is the Practice Direction of 28 March 2007 entitled "just satisfaction claims".[1] That Practice Direction, issued by the President of the Court under Rule 32 of the Rules of Court, states clearly that "Claimants are warned that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is a condition for the award of just satisfaction" (paragraph 4) and goes on to confirm the following basic requirements relating to any claim (and consequent award) of just satisfaction (including pecuniary damages):

> "5. ... the Court requires specific claims supported by appropriate documentary evidence, failing which it may make no award. ....
>
> ...
>
> 1. Damage in general
>
> 7. A clear causal link must be established between the damage claimed and the violation alleged. The Court will not be satisfied by a merely tenuous connection

[1] This Practice Direction can be found on the Court's website under https://www.echr.coe.int/Documents/PD_satisfaction_claims_ENG.pdf

between the alleged violation and the damage, nor by mere speculation as to what might have been.

8. Compensation for damage can be awarded in so far as the damage is the result of a violation found. No award can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible at an earlier stage of the proceedings.

...

2. Pecuniary damage

...

11. It is for the applicant to show that pecuniary damage has resulted from the violation or violations alleged. The applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage."

5. Unfortunately, the applicant's claim for pecuniary damages satisfies none of these requirements. In his observations before the Court, the applicant did no more than assert that

"[a]s a member of Parliament [he] used to receive a monthly salary in the amount of 300,000AMD. This rate is established under Article 3 of the Law of the Republic of Armenia on Official Rates of Remuneration of Senior Officials of Legislative, Executive and Judicial Authorities. Due to the fact that the Applicant was arrested, detained and convicted unlawfully, the calculation period starts from the moment of his arrest on March 2, 2008 .... The Applicant has not received his salary from the date of his arrest until now and he will not be receiving his salary until ...".

6. This assertion was not, however, backed up either by any evidence of the facts or loss asserted nor by any evidence (or argument) that it had, in fact, clearly been caused by the violation of Article 5 § 1 (c) of the Convention found in relation to his arrest and pre-trial detention.

7. In relation to the loss allegedly suffered, the applicant provided no evidence at all, whether it is in the form of a provision in law or in the Rules of Procedure of the National Assembly of Armenia pointing to an automatic cessation of salary entitlements upon arrest of a member of Parliament, an order of the parliamentary authorities directing the cessation of his salary payments as a result of his arrest or even extracts from bank statements showing that his regular salary payments had ceased. Especially in the context of a member of Parliament, i.e. a democratically elected office holder, it seems highly inappropriate (and inconsistent with the presumption of innocence) for the Court, absent any evidence, to assume that an apparently lawful arrest and/or detention would automatically lead to the loss of salary payable in relation to the exercise of that elected office.

8. In relation to the question of the clear and direct causal link it is also important to note the limited nature of the violation found by the Court in this case. After all, the applicant did not complain of and the Court was not concerned with (and even less found established) a violation of his rights as a member of Parliament under Article 3 of Protocol No 1 to the Convention

(right to free elections) and even less a breach of Article 18 of the Convention (limitation on use of restrictions on rights). As the Practice Direction makes clear no award of just satisfaction can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention.

9. The reason why this is important is that, as far as I can ascertain from the observations and the evidence accessible to me:

(a) the applicant's arrest and detention were, in fact, only possible because, on 4 March 2008, the National Assembly decided to accede to a request of the public prosecutor of the same day to lift the applicant's immunity as a member of Parliament (see the judgment in paragraphs 19 and 20); and

(b) (in absence of any evidence as to the applicable contemporaneous Rules of Procedure of the National Assembly of Armenia) it appears from the version of the Rules of Procedure of the National Assembly closest in time to the events underlying this application which are available to the Court that, in fact, the more likely scenario is that the loss of salary is not an automatic consequence of the arrest or detention of a member of Parliament at all. Article 6 of the Rules of Procedure (as last supplemented on 13 September 2012), entitled "The Obligations of the Deputy", provides in Article 6(1.1) that:

> "The Deputy receives no salary for the days of absences without a good reason from the sittings of the National Assembly [...], as well as the parliamentary hearings [...].
>
> The absences of Deputies are calculated by the staff of the National Assembly (hereinafter: the staff,) and the President of the National Assembly, and by the presence of corresponding justifications the calculated absences may be considered valid."

10. Furthermore, Article 90(3) of the Rules of Procedures (as last supplemented on 8 April 2010) provides that:

> "3. A Deputy's absence from voting is considered for a good reason if:
>
> a) within four days after s/he has recovered his capability s/he submits a certificate on incapability to the chairperson of the standing committee or the chief of staff;
>
> ...
>
> a.2) s/he has been arrested or remanded in custody for preventive reasons but he was not sentenced to imprisonment or decision to discontinue his/her criminal prosecution was adopted with regard to him/her;
>
> ..."

11. Consequently, not only was the loss of his salary dependent upon his immunity being lifted, it also required a decision by the staff and President of the National Assembly that his period in detention amounted to an absence "without good reason", a decision which would have been

inconsistent with the Rules of Procedures of the National Assembly (in the form available to the Court) but which in any event would apparently have had to be reached after taking into account (it appears) any submissions/justifications the member of Parliament in question wishes to advance. Again, in my view it is highly inappropriate for the Court, absent any evidence, to assume that an apparently lawful arrest and/or detention would automatically be considered not to be a "good reason" for absence (a conclusion which would also raise potential questions as to its compliance with the presumption of innocence); especially where, as here, the National Assembly had itself lifted the applicant's immunity and thereby consciously enabled the arrest/detention and consequent "absence".

12. The mere fact that the Government did not contradict the applicant's mere assertions cannot, in my view, by itself be sufficient to overcome these difficulties or to absolve the Court from considering whether the applicant has, in fact, established on the basis of evidence either the loss allegedly suffered or the clear and direct causal connection between the loss and the violation of the Convention found, both of which are necessary prerequisites for the Court making an award of just satisfaction in relation to pecuniary damages.

13. As a consequence, in the context of the finding of a violation of the Convention limited to Article 5 § 1 (c), the present applicant has, in my view, wholly failed to establish either the existence of the loss claimed or the necessary clear and direct causal link to his arrest and subsequent pre-trial detention at the initiative of the investigators and/or the public prosecutor and no award of just satisfaction in respect of pecuniary damage should have been made.