



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

FOURTH SECTION

CASE OF BARSEGHYAN v. ARMENIA

(Application no. 17804/09)

JUDGMENT

Art 15 • State of emergency and derogation in State capital inapplicable
ratione loci to events taking place in another city
Art 11 • Freedom of peaceful assembly • Failure to provide relevant and
sufficient reasons for ban on and arrest after entering a public space and
inciting others to join a rally • Reliance by domestic court on situation in
capital to justify a blanket ban on assembly in another city

STRASBOURG

21 September 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Barseghyan v. Armenia,

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

Yonko Grozev, *President*,

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Pere Pastor Vilanova,

Jolien Schukking, *judges*,

Anna Margaryan, *ad hoc judge*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 17804/09) 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 Levon Barseghyan (“the applicant”), on 1 April 2009;

the decision to give notice to the Armenian Government (“the Government”) of the complaint concerning an alleged violation of the applicant’s right to freedom of peaceful assembly;

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 31 August 2021,

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

INTRODUCTION

1. The case concerns the applicant’s prohibition from holding and participating in a rally and his being subjected to an administrative penalty for disobeying the orders of police officers. It raises issues under Article 11 of the Convention.

THE FACTS

2. The applicant was born in 1967 and lives in Gyumri. The applicant was represented by Mr K. Tumanyan and Mr E. Marukyan, lawyers practising in Vanadzor.

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

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

I. THE EVENTS FOLLOWING THE 19 FEBRUARY 2008 PRESIDENTIAL ELECTION AND THE DECLARATION OF A STATE OF EMERGENCY IN YEREVAN

5. The applicant is a journalist, a political activist and the chairman of a journalists' club based in Gyumri, which is the second largest city in Armenia.

6. On 19 February 2008 a presidential election was held in Armenia. After the announcement of the preliminary results, the main opposition candidate, 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 thousands of Mr Ter-Petrosyan's supporters, their main meeting place being Freedom Square and the surrounding park, where several hundred demonstrators stayed around the clock, having set up a camp.

7. On 1 March 2008 in the early morning a police operation was conducted on Freedom Square where several hundred demonstrators were camping, as a result of which Freedom Square was cleared of all the demonstrators. It appears that later that day the situation in Yerevan escalated and the rallies continued throughout the city until the early morning of 2 March, involving clashes between some protesters and law enforcement officers and resulting in ten deaths, including eight civilians, numerous injured and destruction of private and public property.

8. On the same date the incumbent President of Armenia issued a decree declaring a state of emergency in Yerevan for a period of twenty days, which included a prohibition on holding meetings, rallies, demonstrations, marches and other mass events in Yerevan.

II. THE ADMINISTRATIVE PROCEEDINGS AGAINST THE APPLICANT

9. On 2 March 2008 at around 12.30 p.m. the applicant arrived at Theatre Square in central Gyumri and tried to enter the Square in order to hold a protest, but was refused entry by police officers who were stationed there for the purpose of preventing any demonstrations from taking place. It is alleged that the applicant started calling on people who were present at the site to gather and to hold a demonstration, but was ordered by the police officers to leave and to stop inciting others to assemble. The applicant did not obey their orders and was taken to a police station.

10. At the police station an administrative case was initiated against the applicant under Article 182 of the Code of Administrative Offences (“the CAO” – see paragraph 19 below) for disobeying the lawful orders of the police officers. A record of an administrative offence was drawn up and a statement was taken from the applicant, after which he was released.

11. On 5 March 2008 the police lodged a claim with the Administrative Court seeking to subject the applicant to a penalty under Article 182 of the CAO. It was stated that the applicant had called on others to hold a demonstration at Theatre Square and refused to obey the lawful orders of the police officers, who had been stationed there for the purpose of preventing the conduct of unauthorised demonstrations, to stop his actions and to leave. The police noted that the Gyumri Mayor’s Office had not been duly notified of the demonstration and consequently no authorisation had been obtained to hold it.

12. On 24 March 2008 the applicant lodged a counter-claim against the police. He firstly argued that the police had failed to substantiate the factual basis of their claim, namely the fact that he had called on others to hold a rally, insisting that he had not intended to organise a rally and that there had not been any rally at the given time and place. In any event, the act of “calling on people” was not an act prohibited and therefore punishable by law. Furthermore, no evidence had been produced to show that more than 100 people had gathered at or in the vicinity of Theatre Square at the material time and therefore the allegation that he had called on others to hold a rally without prior notification was unsubstantiated, since the law did not require prior notification if fewer than 100 people took part in a rally. Hence, the police orders addressed to him could not be considered lawful.

13. On an unspecified date the police lodged a written response to the applicant’s counter-claim, seeking to dismiss it as unsubstantiated and claiming that well-known facts were not liable to be proved. The police asserted that such well-known facts included the fact that a tense situation had been created in Armenia after the tragic events of 1 March 2008 (see paragraph 7 above), which threatened national security and public safety. The day before the incident, an unauthorised rally had been held on Theatre Square, at which the time and place of the next rally had been announced, as well as the fact that the applicant, who was known to be an active rally participant, would make a speech there. Hence, it was not by chance that the applicant had appeared at Theatre Square on 2 March 2008 as he was not just an accidental passer-by. The administrative case against the applicant was therefore justified.

14. On 31 March 2008 the applicant lodged his objections to the written response, contesting the factual allegations made by the police.

15. On 10 June 2008 the Administrative Court granted the police claim and dismissed the applicant’s counter-claim, subjecting the applicant to an administrative fine under Article 182 of the CAO in the amount of

50,000 Armenian Drams (AMD – approximately 110 euros at the material time) for disobeying the lawful orders of the police officers. The Administrative Court held at the outset as follows:

“On 2 March 2008 at around 12 noon police officers of the Gyumri Police Station were performing their duties at Gyumri’s Theatre Square and its surroundings for the purpose of prohibiting the conduct of a demonstration in respect of which no notification had been made in accordance with the procedure prescribed by law.”

Referring to the requirements of Section 10 of the Assemblies, Rallies, Marches and Demonstrations Act (see paragraph 21 below), the Administrative Court found it to be established that there had been no legal basis for holding a demonstration on that day and continued as follows:

“On 2 March 2008 at around 12.30 p.m. [the applicant] arrived at the above-mentioned square and wanted to enter the square, but was prevented and ordered to leave that area and not to call on people to gather and hold an event ... [which he disobeyed].”

The Administrative Court made reference to Sections 2, 12, 22 and 38 of the Police Act (see paragraphs 22-25 below) and held as follows:

“In accordance with the requirements of the Assemblies, Rallies, Marches and Demonstrations Act, mass public events may be held only after notification in writing to the competent authority, in this case the Head of the Gyumri Community. No notification of a mass public event on 2 March 2008 had been submitted to the relevant competent authority, whereas in connection with the events which had taken place in the capital of the country on 1 March 2008, the President of Armenia, by Decree no. NH-35-N of 1 March 2008 on Declaration of a State of Emergency, declared a state of emergency in Yerevan starting from 1 March 2008 for a period of twenty days for the purpose of preventing the threat to the constitutional order of the [country] and protecting the rights and lawful interests of the population. Based on the above, the [Administrative] Court finds that the conduct of a mass public event in Gyumri, the second largest city of the country, could have endangered the protection of public order and public health, the more so when no notification to hold such an event had been submitted in accordance with the prescribed procedure. This was the reason why the police applied certain restrictions on gathering and holding events on Gyumri’s Theatre Square, a right which [the police] enjoyed in accordance with [Article 43 of] the Constitution and the Police Act.”

The Administrative Court concluded that the orders given to the applicant, which he had disobeyed, had been lawful.

16. On 8 September 2008 the applicant lodged an appeal on points of law against the judgment arguing, *inter alia*, that the Administrative Court, by subjecting him to a fine, had violated his rights under Article 11 of the Convention, and that its judgment did not explain why his right to hold a rally and to participate in it was subject to a restriction.

17. On 2 October 2008 the Court of Cassation declared the applicant’s appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

A. The Constitution (2005-2015)

18. Article 43 of the Constitution, as in force at the material time, permitted restrictions on a number of rights guaranteed by the Constitution, including the right to freedom of peaceful assembly, under the conditions of being prescribed by law and necessary in a democratic society for the protection of national security and public order, the prevention of crimes, the protection of public health and morals, or the protection of constitutional rights and freedoms, honour and good reputation of others.

B. The Code of Administrative Offences (1986)

19. Article 182 of the CAO, as in force at the material time, provided that disobeying a lawful order of a military serviceman or a police officer issued in the performance of his duties of preserving public order and of ensuring public safety would result in a fine in the amount of 50 times the fixed minimum wage.

C. The Assemblies, Rallies, Marches and Demonstrations Act (2004-2011)

20. According to Section 2 of this Act, the concept of a public event includes peaceful assemblies, rallies, marches (parades) and demonstrations (including sit-ins). “Mass public events” are defined as public events which have 100 or more participants. “Non-mass public events” are defined as public events which have fewer than 100 participants.

21. Section 10 §§ 1, 2 and 4 provides that, except for cases when a non-mass public event spontaneously turns into a mass public event, mass public events may be held only after notifying the competent authority in writing. Everyone has the right to hold non-mass public events without notifying the competent authority and without violating public order.

D. The Police Act (2001)

22. Section 2 of the Police Act provides that the objectives of the police include the prevention of crimes and the protection of public order and public safety.

23. Section 12 provides that the police are obliged to ensure the protection of public order in the streets, squares, parks, railway stations, airports, polling stations and other public spaces, as well as during court hearings upon a court’s request.

24. According to Section 22, when protecting public order, the police are entitled, *inter alia*, to restrict or ban temporarily the traffic and the pedestrian flow, as well as to oblige people to remain in specific spaces, facilities, streets or roads for the protection of their life, health or property or for the conduct of investigative or operative-search measures, and must immediately inform their superiors about this.

25. Section 38 provides that every citizen and public official is obliged to obey lawful orders of a police officer. Failure to obey such orders or actions obstructing the performance of a police officer's duties result in liability in accordance with the procedure prescribed by law.

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

26. The Armenian Ombudsman carried out a comprehensive and in-depth analysis of the post-election events in Armenia (for the relevant extracts, see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, § 124, 20 September 2018, and *Myasnik Malkhasyan v. Armenia*, no. 49020/08, § 49, 15 October 2020). A relevant part of the Report, which was not quoted in those judgments, provides as follows:

“2. The practical enforcement of the Decree [declaring a state of emergency] was accompanied with a number of violations:

- Though the state of emergency was declared only in the City of Yerevan, some restrictions specified in the Decree were effectively applied in other towns of Armenia as well (such as the restriction of the freedom of assembly); ...”

II. RELEVANT INTERNATIONAL MATERIALS

27. For the relevant Council of Europe and other international materials concerning the presidential election of 19 February 2008 and the events of 1 March 2008 see *Mushegh Saghatelyan* (cited above, §§ 125-134) and *Myasnik Malkhasyan* (cited above, §§ 50-57). Those materials, which were not quoted in those judgments, include the following.

A. Parliamentary Assembly of the Council of Europe (PACE): Report on the Functioning of Democratic Institutions in Armenia (Doc. 11579, 15 April 2008)

28. The relevant part 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”), provides as follows:

“5.3 Although the state of emergency was formally only declared in Yerevan, a large number of provisions, especially those related to the media and the activities of political parties and NGOs, had a nationwide application. A number of broadcasters stopped operating, either by their own decision, or forced by the national security service. In addition, a number of news websites were taken offline after intervention by the national security service. Restrictions on rallies and demonstrations were not limited to Yerevan alone, but also applied to other major cities in Armenia.”

B. Report by the Council of Europe Commissioner for Human Rights on his Special Mission to Armenia on 12-15 March 2008 (CommDH(2008)11REV, 20 March 2008)

29. The relevant extract from the Report provides:

“The actual scope and implementation of the State of Emergency

The Commissioner found in his discussions with different interlocutors that a number of restrictions enacted by the State of emergency affected the whole country and they were not limited to the boundaries of the capital. The restrictions on rallies and demonstrations have been applied also outside of the capital, in other major cities of Armenia. ...”

III. NOTICE OF DEROGATION OF 2 MARCH 2008 MADE BY ARMENIA TO THE COUNCIL OF EUROPE

30. The text of the derogation contained in a *Note verbale* from the Ministry of Foreign Affairs of Armenia, dated 2 March 2008, transmitted by the Permanent Representation of Armenia and registered by the Secretariat General of the Council of Europe on 4 March 2008, in so far as relevant, reads as follows:

“The ministry of Foreign Affairs of the Republic of Armenia presents its compliments to H.E. Mr. Terry Davis, Secretary General of the Council of Europe, and, pursuant to Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (ETS No. 5), has the honor to forward, herewith, the Decree of the President of the Republic of Armenia on Declaration of State of Emergency in Yerevan, Armenia.

Decree of the President of the Republic of Armenia on Declaration of a State of Emergency (No. NH-35-N)

1 March 2008

In order to prevent the threat of danger to the constitutional order in the Republic of Armenia and to protect the rights and lawful interests of the population, guided by point 14 of Article 55 and point 6 of Article 117 of the Constitution of the Republic of Armenia, I decree:

1. To declare a state of emergency in Yerevan from 1 March 2008 for 20 days;

...

4. To establish the following temporary limitations in the area under state of emergency:

1) Banning meetings, rallies, demonstrations, marches and other mass events;

...

The decree comes into force from the moment of its announcement.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

31. The applicant complained that his right to freedom of peaceful assembly had been violated. He relied on Article 11 of the Convention, which, in so far as relevant, reads as follows:

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

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

A. Admissibility

1. *The parties’ submissions*

(a) **The Government’s objections**

32. The Government raised two objections regarding the admissibility of the applicant’s complaint under Article 11.

33. Firstly, the Government argued that at the material time Armenia had derogated under Article 15 of the Convention from its obligations under Article 11 (see paragraph 30 above), therefore the applicant’s complaint was incompatible with the provisions of the Convention and manifestly ill-founded. They claimed that, while it was true that the derogation referred specifically to the capital city of Yerevan, a state of emergency had also existed in the country’s second city of Gyumri and therefore a limited derogation had been necessary in that location at the material time, since there was a close link between the events in Yerevan and the ongoing potential risk of a repeat of those events in Gyumri.

34. Secondly, referring to the applicant’s counter-claim of 24 March 2008, in which the applicant had alleged that he had not intended to organise or participate in any public assembly (see paragraph 12 above), the Government argued that, if the Court were to accept the applicant’s version of the facts as true, then it would mean that the applicant could not claim to be a victim of a violation of Article 11 and that he had not suffered a significant disadvantage. Having said this, the Government insisted, nevertheless, that the applicant’s allegations had been untrue, that he had in

reality attempted to organise an unlawful assembly on 2 March 2008 and that the police had lawfully restricted that right.

(b) The applicant's reply

35. The applicant argued that the Government's first objection was groundless because the state of emergency and the derogation had applied only to the city of Yerevan, whereas the actions against the applicant had taken place in Gyumri where there had been no violence or uncontrollable or emergency situation. If there had been such a situation, then the presidential decree would have applied also to Gyumri. As regards their second objection, the applicant submitted that the Government had accepted in their submissions that he had wanted to join the people gathered and participate in the assembly initiated by them.

2. The Court's assessment

36. As regards the Government's first objection, the Court notes that the state of emergency declared by the President of Armenia on 1 March 2008 and the relevant derogation concerned exclusively the city of Yerevan (see paragraphs 26 and 28-30 above), whereas the circumstances of the present case took place in the city of Gyumri, to which the above-mentioned measures did not apply. According to the Court's established case-law, Article 15 authorises derogations from the obligations arising from the Convention only "to the extent strictly required by the exigencies of the situation". As a result, the Court would be working against the object and purpose of that provision if, when assessing the territorial scope of the derogation concerned, it were to extend its effects to a part of Armenian territory not explicitly named in the notice of derogation. It follows that the derogation in question is inapplicable *ratione loci* to the facts of the case (see, *mutatis mutandis*, *Sakik and Others v. Turkey*, 26 November 1997, § 39, *Reports of Judgments and Decisions* 1997-VII).

37. As regards the Government's second objection, the Court notes that their objection builds on the factual allegations made by the applicant before the Administrative Court (see paragraph 12 above) and the assumption that the Court was to accept those factual allegations as established facts.

38. The Court observes at the outset that, contrary to the Government's submissions, the applicant does not appear to have claimed before the Administrative Court that he had no intention to participate in a rally as such, but rather that he had not organised or incited others to participate in a rally (see paragraph 12 above).

39. In any event, the Court has emphasised on many occasions that it is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. As a general rule,

where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, ECHR 2011 (extracts), and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR). In the present case, the Administrative Court found it to be established that the applicant had tried to enter Theatre Square, apparently with the intention of holding a rally, and had called on others to do the same. The Court has no reasons to call into doubt the facts as established by that court. Moreover, the Government themselves specifically asserted that the applicant had the intention to hold an unauthorised rally (see paragraph 34 *in fine* above). The Court therefore cannot accept the Government's second objection which is therefore dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

41. The applicant submitted that the Administrative Court had failed to provide any reasons justifying the restriction on his right to organise or participate in a demonstration or showing that that restriction was necessary in a democratic society. While finding that restriction to be lawful, it had failed to specify the legal grounds on which the police had had the right to restrict his entry to Theatre Square. The domestic law provisions referred to by the Government were not applicable in his case because they concerned the rules regulating the organisation and conduct of rallies, whereas in his case the violation of his rights related to a prohibition on his approaching the gathered crowd. Neither the legitimate aim nor the necessity of the interference were made out because on 2 March 2008 there had been no violence or uncontrollable or emergency situation in Gyumri. The Government's allegation that there had been more than a 100 people gathered at the square at the material time was not true. In reality the Square had been closed by the police and no one had been able to enter it, which was why people had been standing on the adjacent pavements. Similarly, there was no proof that he had organised the rally by announcing it on a local television channel, as alleged by the Government.

(b) The Government

42. The Government submitted that there had been no violation of the applicant's rights guaranteed by Article 11 of the Convention. The interference with the applicant's rights had been prescribed by law. In particular, Sections 2 and 10 of the Assemblies, Rallies, Marches and Demonstrations Act (see paragraphs 20 and 21 above) required that a written notification be made to the local authority of the intention to hold a mass public event. In this connection, the Government argued that the assembly which was to be held on Theatre Square on 2 March 2008 had not been spontaneous but planned. The police had information that an unlawful rally would be held on 2 March 2008 and the rally had been announced a day earlier on a television channel and on the Square itself. The relevant provisions of the Police Act required the applicant to comply with the lawful orders of the police. Furthermore, the interference pursued the legitimate aims of protecting public order and public safety and preventing crimes.

43. The Government further submitted that the interference had been necessary in a democratic society. They repeated their allegations that the assembly had not been spontaneous and that it had been announced and known to the police. A police officer had asked the applicant three times to discontinue his attempts to gather people in the Square in order to organise a rally and repeatedly stated that the attempts to assemble were unauthorised. Despite such repeated requests, the applicant had disobeyed the police officers' lawful orders and they had had no choice but to take him to a police station. The Government alleged that, at the time the applicant had attempted to gather people at the Square, there had already been more than 100 people present and he had therefore been required, under Section 10 of the Assemblies, Rallies, Marches and Demonstrations Act, to notify the authorities of his intention to hold a mass public event.

44. Even assuming that there had been fewer than 100 people at Theatre Square at the material time, preventing a rally had still been necessary for the following reasons. First, there had been a tense situation surrounding the presidential election which had come to a head only one day prior to the circumstances of the present case. There had been mass riots in Yerevan, involving injuries and deaths of both civilians and law enforcement officers, and the police had been given strict directives to be particularly careful in their duty to maintain public safety and prevent any further injuries. Thus, the police had been more than justified in preventing a public rally that risked escalating into a dangerous and unmanageable situation and repeating the events of the previous day. Second, even if the mass riots had taken place in Yerevan, the issues surrounding the ongoing events had concerned a national presidential election and had not been isolated to one geographical area. Therefore, being the second largest city in the country, Gyumri had been particularly at risk of repeating the events which had taken

place in Yerevan and escalating into mass disorder. Thus, the administrative proceedings against the applicant had been necessary in a democratic society to ensure continued respect for the domestic authorities and for the preventive security measures they take in relation to organising demonstrations. Since the applicant had violated the law, the penalty had been necessary to ensure the supremacy of the rule of law in a democratic state. Furthermore, the sanction had had a deterrent effect on the applicant and others.

2. *The Court's assessment*

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

45. The Court reiterates that an interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly, such as a prior ban, dispersal of the rally or the arrest of participants, and those, such as punitive measures, taken afterwards, including penalties imposed for having taken part in a rally (see, among other authorities, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 100, ECHR 2015).

46. In the present case, the parties did not dispute the existence of an interference. The Court notes that the applicant was prevented by the police from holding a political protest in the centre of Gyumri and, when he disobeyed, was arrested and later sanctioned for those actions. The Court therefore considers that there has been an interference with the applicant's right to freedom of peaceful assembly.

(b) Whether the interference was justified

47. An interference will constitute a breach of Article 11 unless it is “prescribed by law”, pursues one or more legitimate aims under paragraph 2 and is “necessary in a democratic society” for the achievement of the aim or aims in question (*ibid.*, § 102).

48. The parties disagreed as to whether the interference had been prescribed by law and pursued a legitimate aim. The Court, however, does not consider it necessary to decide these issues having regard to its conclusions set out below, regarding the necessity of the interference (see, *mutatis mutandis*, *Mushegh Saghatelyan*, cited above, § 237).

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

“necessary in a democratic society” the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction’s compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, cited above, § 142, with further references).

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

51. In the present case, the applicant was prevented from entering a public space, namely a central square, where he apparently wanted to participate in a rally. He was ordered by police officers to leave and not to call on people, who were apparently present in that area, to join him in his attempt to hold a rally. After he refused to stop his actions, he was arrested and later fined. The Administrative Court held that the police actions of preventing the applicant from availing himself of his right to protest and to incite others to do so were justified, finding that a public assembly on Theatre Square could have endangered public order and public health in view of the fact that no notification had been made to hold the assembly as required by law and the state of emergency which had been declared in Yerevan a day earlier (see paragraph 15 above).

52. As regards the first ground relied on by the Administrative Court, the Court reiterates in this connection that, although it is not *a priori* contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to authorisation, an unlawful situation, such as the staging of a demonstration without prior authorisation, does not *per se* justify an infringement of freedom of assembly. While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise disruption to traffic and take other safety measures, their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence, the Court has required public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly

guaranteed by Article 11 of the Convention is not to be deprived of all substance (see, among other authorities, *Oya Ataman v. Turkey*, no. 74552/01, §§ 39 and 42, ECHR 2006-XIV, and *Kasparov and Others v. Russia*, no. 21613/07, § 91, 3 October 2013). The appropriate “degree of tolerance” cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly the extent of the “disruption of ordinary life” (see *Primov and Others v. Russia*, no. 17391/06, § 145, 12 June 2014). The Court has found, for example, that, in special circumstances when an immediate response to a political event in the form of a demonstration might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly (see *Bukta and Others v. Hungary*, no. 25691/04, § 36, ECHR 2007-III).

53. Having regard to the Armenian system of prior notification as in force at the material time, the Court notes that such notification was required only when a public assembly involved 100 or more participants (see paragraphs 20 and 21 above). Furthermore, if an event involving fewer than a 100 participants spontaneously grew into a bigger event exceeding that number, similarly no notification was required. The Government alleged that there had been more than a 100 persons gathered in that area and that the assembly had not been spontaneous (see paragraphs 40 and 41 above), but failed to support this allegation with any objective evidence. Moreover, the Government’s allegation has no basis in the findings of the domestic court which, in fact, failed to carry out any examination of that question. The relevant domestic decision (see paragraph 15 above) is entirely silent on that matter and the domestic court appears to have simply proceeded on the assumption that the protest, which the applicant had wanted to hold and incited others to join, required a prior notification, without clarifying the number of persons present or the circumstances which gave rise to the gathering in the first place, including the question of whether it could fall into the category of “spontaneous” gatherings.

54. As regards the second ground relied on by the Administrative Court, the Court notes that, while finding that the assembly would have posed a risk to public order and safety, the domestic court based this conclusion exclusively on the fact that a state of emergency had been declared in Yerevan as a result of “the events which had taken place in the capital of the country on 1 March 2008”. While not specifying those events, it can nevertheless be understood from the context that this was an implied reference to the tense situation in the capital of Armenia on the previous day, which had involved clashes between protesters and the law enforcement authorities and resulted in physical damage, loss of life and destruction of property (see paragraph 7 above). The Court notes, however, that the domestic court relied on that fact to justify a blanket ban on holding

any assembly at Theatre Square in Gyumri without any examination of the particular situation in that city or the applicant's specific behaviour. Similarly, it appears that the presence of the police at Theatre Square and their apparent cordoning off of that area pursued the aim of ensuring that no assembly, whatever its intended purpose or size, took place in that location, thereby cutting any such attempts at the roots. The Court notes that, while the events which took place in Yerevan were undoubtedly tragic and a cause for grave concern, there is no evidence to suggest that anything similar had happened or was about to happen in Gyumri. Nor is there any evidence to suggest that the applicant had violent intentions or incited others to commit acts of violence or any similarly reprehensible acts. The Court therefore considers that the authorities, including the domestic courts, failed to provide "relevant and sufficient" reasons to justify the interference with the applicant's right to freedom of assembly which, in such circumstances, cannot be said to have been necessary in a democratic society.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. The applicant also raised a number of complaints under Articles 6, 13 and 18 of the Convention and Article 2 of Protocol No. 4.

57. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage, of which EUR 1,500 in respect of the violation of his right to freedom of peaceful assembly and the remaining amount in respect of the other violations alleged in his application.

60. The Government argued that the applicant's claim concerning damages suffered as a result of the other alleged violations was to be

rejected since only the complaint under Article 11 of the Convention was communicated. They further argued that a finding of a violation would represent a sufficient just satisfaction in the circumstances of the present case.

61. The Court notes that it may award damages only in respect of the violations found. Since all the applicant's complaints other than that under Article 11 of the Convention were declared inadmissible, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage for the violation of Article 11 of the Convention.

B. Costs and expenses

62. The applicant also claimed 540,000 Armenian Drams for the costs and expenses incurred before the domestic courts and EUR 1,500 for those incurred before the Court. He further claimed EUR 500 for other expenses, such as correspondence, travel and telephone bills.

63. The Government argued that the applicant had failed to submit any evidence in support of his claims, which were therefore to be rejected.

64. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses for the failure to substantiate it with any documents.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning an alleged violation of the applicant's right to freedom of peaceful assembly admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Ilse Freiwirth
Deputy Registrar

Yonko Grozev
President