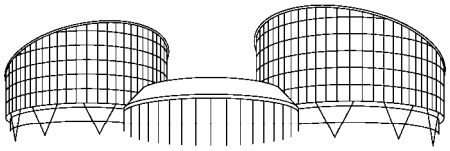

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TER-PETROSYAN v. ARMENIA

(Application no. 36469/08)

JUDGMENT

STRASBOURG

25 April 2019

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 Ter-Petrosyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Ksenija Turković,
Aleš Pejchal,
Krzysztof Wojtyczek,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 26 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 36469/08) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Levon Ter-Petrosyan ("the applicant"), on 30 August 2008.

2. The applicant was represented by Mr V. Grigoryan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that his right to freedom of peaceful assembly had been violated and that he had had no effective remedy in that respect.

4. On 15 May 2012 the complaints concerning the applicant's alleged house arrest, the interference with his right to freedom of peaceful assembly, the alleged lack of an effective remedy and his alleged discrimination were communicated to the Government and the remainder of the application was declared inadmissible.

5. The Government submitted their observations on 5 November 2012, while the applicant filed his on 25 March 2013. In view of the fact that the applicant's observations had been filed outside the time-limit of 28 February 2013 set by the Court, the President of the Section decided, pursuant to Rule 38 § 1 of the Rules of Court, not to include his belated observations in the case file for the consideration of the Court.

6. Mr Armen Harutyunyan, the judge elected in respect of Armenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the

President of the Chamber decided to appoint Mr Jovan Ilievski to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1945 and lives in Yerevan. He was the President of Armenia between 1991 and 1998.

A. The 19 February 2008 presidential election and the post-election demonstrations

8. On 19 February 2008 a presidential election was held in Armenia. The applicant was running as the main opposition candidate, his main opponent being the then Prime Minister, Mr Sargsyan, who represented the ruling party and was a close ally of the outgoing President, Mr Kocharyan.

9. Immediately after the announcement of the preliminary results of the election, the applicant 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.

10. From 20 February 2008 onwards, nationwide daily protest rallies were held by the applicant's supporters, their main meeting place being Freedom Square and the surrounding park. It appears that the rallies at Freedom Square, held during the daytime and late into the night, attracted at times tens of thousands of people, while several hundred demonstrators stayed in that area around the clock, having set up a camp. The applicant participated in the rallies in his capacity as opposition leader and presidential candidate, giving speeches two to three times a day on issues of political and public interest and regularly calling on his supporters to continue the mass protests. He himself also stayed at Freedom Square around the clock, leaving only for two to three hours a day.

11. On 23 February 2008 the outgoing President held individual meetings with the chief of police, chief of the army and chief of national security, announcing that he would not allow anybody to destabilise the situation in the country and giving instructions to that effect. The applicant alleged that, following those meetings, persecution had begun against many of his supporters. Various political and public figures who had expressed their support for his candidacy, members of his election campaign and other supporters were arrested and charged on various grounds. Furthermore, many of his supporters in the regions were subjected to ill-treatment and

psychological pressure at police stations, were dismissed from work or deprived of social benefits. His telephone conversations and those of his supporters were tapped and various party premises searched.

12. On 24 February 2008 the Central Election Commission announced that Mr Sargsyan had won the election with around 52% of all votes cast, while the applicant had received around 21% of votes.

13. On 29 February 2008 the rallies were still in full swing, while all the international election observers had left the country. The applicant alleged that the authorities had deliberately waited for the departure of the international observers before starting their unlawful dispersal of the assembly at Freedom Square.

14. On the same date the applicant applied to the Constitutional Court, contesting the election results and seeking to annul them.

B. The early morning police operation on 1 March 2008 and the applicant's alleged house arrest

15. The applicant alleged that on 1 March 2008 at around 6 a.m. the police had arrived at Freedom Square. At that time he had been asleep in his car parked at the square. Most of the demonstrators who were camping there were also asleep, but news spread that the police were in the vicinity and the demonstrators began to waken. The applicant was woken by his bodyguard and walked to one of the statues situated in the centre of the square. By then the police forces had already encircled the several hundred demonstrators based on the square. They started making a loud noise by banging their rubber batons against their shields, which spread panic among the demonstrators. Some of them managed to switch on the microphones and the lights on the square, whereupon the applicant addressed the demonstrators from a platform: "We see that police forces have arrived on the square. Please, do not have any contact with them and do not touch them. Please, keep your distance from them. Let us wait and see what they want from us. If they have something to tell us, we are ready to listen. Please, be patient and peaceful". The demonstrators followed his request and kept their distance from the police forces, which by then had surrounded the demonstrators with a triple cordon. Suddenly, without any prior warning or orders to disperse, the police forces, shouting loudly, had attacked the demonstrators, violently beating them with rubber batons and destroying the camp. In a matter of minutes the demonstrators were pushed out of Freedom Square. They tried to save themselves by fleeing from the police officers who chased, beat and kicked them brutally, regardless of their age and gender.

16. In the meantime, the applicant, who was on the platform, was approached by the Head of the State Protection Department (SPD) of the National Security Service, who was also the chief of the Armenian

President's bodyguard team, and other SPD officers. They surrounded the applicant and his bodyguards and then forcibly took them to one of the central statues on the square, where the applicant was ordered to sit on a bench surrounded only by SPD officers. After the square was cleared of all demonstrators, the Head of the SPD approached the applicant and ordered him to leave the square. The applicant refused to comply, saying that he would not leave the square voluntarily and that they could make him do so only by arresting him. After further attempts to make the applicant leave the square failed, the Head of the SPD forced the applicant into a car and took him to his house in Yerevan. Once there, he was not allowed to leave the territory of his house and garden. The roads to his house were blocked by special police forces, SPD officers, the road traffic police and other police units. Block posts were set up and all vehicles heading to and from his house were checked and searched. No one could reach the applicant or go in or out of his home without the permission of the special forces. The special forces, after carrying out a search of visitors and their vehicles, reported their identity and the purpose of their visit to an unidentified superior and allowed visitors to go in and out only after receiving instructions from that person.

17. It appears that, after Freedom Square was cleared of demonstrators, some of them relocated to the area near the French Embassy, where they were later joined by thousands of others who apparently poured into the streets of Yerevan in response to the events of the early morning in order to voice their discontent. It further appears that the rallies continued throughout the city until late at night, involving clashes between protesters and law enforcement officers and resulting in ten deaths, including eight civilians, numerous injured and a state of emergency being declared by the outgoing President. The state of emergency, *inter alia*, prohibited the holding of any further rallies and other mass public events for a period of twenty days.

18. The Government contested the applicant's above-mentioned allegations and alleged the following. Firstly, the reason for the police operation of 1 March 2008 at Freedom Square had been the information obtained the day before by the law enforcement authorities, according to which a large number of weapons were to be distributed to the protesters to incite provocative actions and mass disorder in Yerevan. Members of the relevant police force had arrived on Freedom Square at around 7 a.m. to verify that information, but met with resistance from the demonstrators who had attacked the police officers with wooden bats, metal rods and stones. Secondly, once violence had erupted on Freedom Square, because his security was in danger the applicant had been surrounded on the platform by the Head of the SPD and other SPD officers and taken to the edge of the square, about 20 to 30 metres away, where he sat on a bench surrounded by SPD officers. After the assembly was terminated, the applicant, who was

still sitting on the bench, was advised by the Head of the SPD to go home, but he refused. During that time a journalist freely approached the applicant, interviewed him and left. The applicant was then again advised by the Head of the SPD to go home, but did not respond. An SPD car then approached and the applicant got into the car voluntarily and was taken by SPD officers to his home in Yerevan. While being taken home, the applicant did not express any wish to go elsewhere. Later in the afternoon additional SPD and police forces were stationed near the applicant's house as part of special security measures employed on that day in respect of all persons under State protection, because of the escalating violence in Yerevan. For security reasons SPD officers were instructed to search everyone entering the applicant's house, but they were never instructed to prohibit anyone from entering the house or to prevent the applicant from leaving. The applicant expressed the wish to leave the house and to join the demonstrators near the French Embassy only once, on 1 March. He was told by the Head of the SPD that he was free to leave and go wherever he wanted, but the SPD would not be able to ensure his security in the area near the French Embassy and they would not accompany him there. The applicant did not wish to leave the house without State protection.

19. On 1 March 2008 the Secretary General of the Council of Europe issued the following press release:

> "I am very concerned about reports of injuries during the security forces' operation to disperse protesters in Yerevan this morning. If these reports are confirmed, all allegations of excessive force should be properly investigated. It is also vital to prevent any further violence.
>
> I am also alarmed by the reports that the runner-up in the recent presidential elections, former President [Levon Ter-Petrosyan], has been put under house arrest. If this is true, he should be immediately released. If he is accused of committing a crime, he should be properly charged and prosecuted in a court of law like anyone else. In a democracy you cannot arbitrarily detain political opponents."

20. On the same day the SPD issued a statement that was broadcast on the public television channel, to the effect that SPD officers had decided to remove the applicant from Freedom Square, pursuant to Section 6 § 3 of the Act on Ensuring the Security of Persons Subject to Special State Protection, in order to ensure his safety – as a former President of Armenia subject to State protection – from any danger posed by the situation created during the police operation in the morning of 1 March 2008. The applicant had been removed from the square and taken to his house, which was similarly to be protected by the SPD, pursuant to Section 12 (2) of the same Act. Bearing in mind the necessity of ensuring the applicant's security, as well as taking into account the fact that the applicant's leaving his home might lead to unpredictable developments and pose a danger to his security, the SPD – in the situation which had arisen – had warned the applicant that he must categorically refrain from attempting to leave his house, indicating that

otherwise the SPD could not bear responsibility for his safety, since they could not accompany him to an unlawful demonstration.

21. On 4 March 2008 the applicant's representative filed a request at the hearing before the Constitutional Court, submitting that the applicant was under *de facto* house arrest and unable to attend, and requesting that the Constitutional Court take measures to ensure his attendance. The President of the Constitutional Court replied that the applicant had three representatives at the hearing. However, if the applicant also wished to attend but was unable for whatever reason, the request would be examined and an appropriate decision would be taken.

22. On the same date the Constitutional Court took a decision, ordering the General Prosecutor's Office to clarify the fact of the applicant's alleged *de facto* deprivation of liberty, as claimed by his representatives, and to ensure his attendance at the hearing before the Constitutional Court if he so wished.

23. On the same date the General Prosecutor's Office replied that the applicant was not deprived of his liberty, there were no restrictions on his freedom of movement, there was no such concept as "house arrest" under the law and he was free to attend the hearing before the Constitutional Court if he so wished. It was not the duty of the General Prosecutor's Office to ensure his attendance.

24. The applicant alleged that, following the decision of the Constitutional Court, he was allowed to attend the hearing on 5 March 2008 for one hour. Otherwise, his house arrest lasted without interruption until at least 20 March 2008.

25. The Government contested the applicant's allegations and claimed that the applicant had attended the hearing before the Constitutional Court after he had expressed the wish to do so and had been accompanied by SPD officers. After the hearing was over, he himself had asked to return home and thereafter he did not express any wish to leave his house until the state of emergency was lifted on 20 March 2008. The special SPD reinforcements were removed from the applicant's house on 16 March 2008. Throughout that period the applicant had numerous visitors at his house, including journalists, diplomats and other persons, none of whom was prohibited from entering.

26. On 8 March 2008 the Constitutional Court dismissed the applicant's application of 29 February 2008.

II. RELEVANT DOMESTIC LAW

A. Code of Administrative Procedure (2008-2014)

27. Article 65 (challenging claim) provides that an applicant, by lodging a challenging claim, may demand partial or full annulment or modification of an interfering administrative act.

28. Article 66 (obligating claim) provides that an applicant, by lodging an obligating claim, may demand the enactment of a favourable administrative act which an administrative authority refused to – or did not – enact.

29. Article 67 (performance of an action claim) provides that an applicant, by lodging a claim for performance of an action, may demand the performance of certain actions or refraining from such actions which are not aimed at the enactment of an administrative act.

30. Article 68 (acknowledgement claim) provides that an applicant, by lodging an acknowledgement claim, may demand (1) an acknowledgement of existence or absence of any legal relationship, if he cannot lodge a claim under Articles 65-67 of the Code; (2) an acknowledgement of invalidity of an administrative act; and (3) an acknowledgement of unlawfulness of an interfering administrative act or action which no longer has legal force, if the applicant has a legitimate interest in having the act or action in question acknowledged as unlawful, that is if (a) there is a risk of once again enacting a similar interfering administrative act or performing a similar action in a similar situation; (b) the applicant intends to claim pecuniary damages; or (c) the applicant pursues the aim of rehabilitating his honour, dignity or business reputation.

B. Act on Ensuring the Security of Persons Subject to Special State Protection (2004)

31. Section 1 lists the main concepts used in the Act which include, among others, "protected objects", that is buildings, constructions, structures, adjacent territories and transportation means where persons subject to State protection are permanently or temporarily located and which require protection in order to ensure the security of persons subject to State protection.

32. Section 6 § 3 provides that a former President of Armenia is provided with personal lifetime State protection, except in cases prescribed by law.

33. Section 10 provides that the authority carrying out State protection is the State Protection Department of Armenia (hereafter, the competent authority).

34. Section 11 lists the main tasks of the competent authority which include, among others, (2) ensuring the security of persons subject to State protection at their permanent or temporary location, including during travel, and (7) ensuring the regime of access control established at a protected object.

35. Section 12 (2) provides that the competent authority is obliged to organise and implement protective, regime, technical and other measures aimed at ensuring the security of persons subject to State protection.

36. Section 13 (4) provides that the competent authority has the right to check the identity documents of public officials and other persons during their entry and exit to and from a protected object, to carry out their inspection and an inspection of objects which they have on them, their transportation means and objects transported in them, including by applying technical measures.

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

37. Section 14 § 1(4) provides that the police are entitled to decide to terminate a public event and to order the organisers to terminate the event, by allowing them a reasonable time-limit to do so, if, after a warning by the police, public order and requirements of the law continue to be violated and this poses a real risk to the life and health of others, State and public security and public order, and may cause substantial pecuniary damage to the State, the community, natural or legal persons.

III. RELEVANT INTERNATIONAL MATERIALS

A. Council of Europe bodies

1. *The Functioning of Democratic Institutions in Armenia: Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Doc. 11579, 15 April 2008*

38. The relevant extract from the Report provides:

> "13. The exact circumstances that led to the tragic events of 1 March 2008, as well as the manner in which they were handled by the authorities, including the declaration of the state of emergency, must be subject to an official independent investigation. However, according to the official version, in the early morning of 1 March 2008, the police attempted a search of the tent camp on Freedom Square. After they met with resistance from the protesters, the police took the decision to clear the tent camp. During this action, 31 persons were injured – according to official information – and Mr Levon Ter-Petrosyan was placed under *de facto* house arrest[1]. ...
>
> [Footnote:]

1. The authorities have said he is free to travel if he rescinds his security detail. However, the clearly existing threats to his personal safety and life make it impossible for him to do so, as is obviously known by the authorities."

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

39. The relevant extract from the Report provides:

"**1. Introduction**

...During his visit from 12 to 15 March 2008, the Commissioner ... had a separate meeting with the former President and Presidential candidate, [Levon Ter-Petrosyan]. ...

3. Events on 1 March

... The search operation reportedly started early Saturday morning at approximately 6.30, according to several interlocutors. During this operation tents were taken down and people were beaten and injured. Demonstrators started resisting and clashes broke out between the police and security forces and the demonstrators.

According to the both parties, a tentative agreement seems to have been reached later that same morning to relocate the demonstration and allow it to continue, either in front of the Myasnikyan's monument [near the French Embassy] or close to the main train station. However, this agreement appears never to have been properly communicated to the demonstrators by their leaders, notably [Mr Ter-Petrosyan], who at that stage was prevented from leaving his residence. ...

8. Arrests

... Former President [Mr Levon Ter-Petrosyan] is currently held in what must be qualified as *de facto* house arrest. He is provided close protection by the authorities in charge of the State of Emergency, notably the National Security Services. According to the Head of Police, he is free to leave his house, however the close protection service will only accompany him to safe places."

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

40. The relevant extract from the Report provides:

"[Levon Ter-Petrosyan], who had been sleeping in his car parked at the square, was woken up. According to the account he gave Human Rights Watch, he addressed the [protesters], some of whom by this time were out of their tents, asking them to step back from the police line, and then to stay where they were and wait for instructions from the police. He also warned the police that there were women and children among the demonstrators.

Even before [Ter-Petrosyan] finished his address, police advanced towards the demonstrators in several lines, beating their truncheons against their plastic shields. According to multiple witnesses, the police made no audible demand for anyone to

disperse nor gave any indication of the purpose of their presence. They started pushing demonstrators from the square with their shields, causing some to panic and scream and others to run. Some demonstrators appeared ready to fight the police, which was why, according to [Ter-Petrosyan], he urged the crowd not to resist the police. Others were still in their tents.

Immediately afterwards, without any warning, riot police attacked the demonstrators, using rubber truncheons, iron sticks, and electric shock batons. According to [the applicant], a group of about 30 policemen under the command of [the Head of the SPD] approached him and forcibly took him aside. When asked if he was arrested, [Ter-Petrosyan] was told that police were there to guarantee his safety and that he was requested to cooperate. [Levon Ter-Petrosyan] was subsequently taken home and effectively put under house arrest."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 4

41. The applicant complained that during the police operation at Freedom Square he had first been isolated by the SPD officers and later placed under *de facto* house arrest which had lasted until about 25 March 2008. He relied on Article 2 of Protocol No. 4, while the Court considered it necessary to examine this complaint also under Article 5 § 1 of the Convention, which in so far as relevant read as follows:

Article 5 § 1 of the Convention

"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:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

Article 2 of Protocol No. 4

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

A. The parties' submissions

42. The Government submitted that these complaints were inadmissible on the following grounds.

Firstly, the applicant lacked victim status, since he had never been deprived of his liberty or of his right to freedom of movement in March 2008. He had not been removed from Freedom Square against his will or taken home by force. He had been aware that the SPD, entrusted with the protection of his security, was taking him home after a violent clash at Freedom Square and he had not objected to that. Nor did he express the wish to stay at Freedom Square or to go elsewhere. While at home, the applicant was free to go anywhere, and it was he who refused to leave the house after SPD officers told him that they would not accompany him when he expressed the wish to join the demonstrators in the vicinity of the French Embassy. The applicant's presence at the hearing before the Constitutional Court was the result of his own free will, as opposed to any actions or decisions by the Constitutional Court or the General Prosecutor's Office. As regards the additional SPD and police forces which were deployed at the applicant's house on the afternoon of 1 March 2008 as a result of the escalation of violence in Yerevan, they were merely performing their duty of ensuring the applicant's security and they never barred his exit from the house or prevented anyone from entering.

Secondly, the applicant had failed to exhaust the domestic remedies. In particular, he could have lodged a challenging claim under Article 65 of the Code of Administrative Procedure (CAP) and/or an acknowledgement claim under Article 68 of the CAP against the allegedly unlawful actions of the SPD, namely his alleged forcible removal from Freedom Square and the alleged ban on leaving his house. The Government argued that there had

been numerous cases at the material time in which applicants had made successful claims in the Administrative Court against law enforcement authorities, and submitted copies of four judgments rendered by that court against the Armenian Police. They added that it was not possible to produce any judgment by the Administrative Court concerning specifically the actions of the SPD, because no such claims had ever been lodged with that court, in view of the narrow sphere of law enforcement activities of that particular administrative body.

43. As regards the merits of the applicant's complaints, the Government submitted that there had been no interference with the applicant's rights guaranteed by Article 5 of the Convention and Article 2 of Protocol No. 4. He had been removed without his consent only from the platform on Freedom Square and taken to a secure place about 20 to 30 metres away, for his own security, since violence had broken out on Freedom Square, but no force or compulsion had been applied to the applicant as he had left Freedom Square, nor any restrictions on his liberty or freedom of movement thereafter. In any event, even assuming that there was an interference with Article 2 of Protocol No. 4, it was prescribed by law, namely Sections 6 § 3, 11 (2) and 12 (2) of the Act on Ensuring the Security of Persons Subject to Special State Protection. The interference, namely the security measures, was aimed at the prevention of possible crimes against the applicant since there was violent disorder at Freedom Square, and then later at home because all persons under State protection were affected by the security measures due to the security situation in Yerevan. The interference was necessary in a democratic society since it was normal practice in democratic societies to protect both current and former presidents and high-ranking officials, especially in emergency situations.

44. The applicant did not reply to the Government's submissions, having failed to submit his observations in due time.

B. The Court's assessment

45. The Court notes at the outset that the parties disagreed on the issue of whether any restrictions had been placed on the applicant's liberty and freedom of movement following the early morning events of 1 March 2008. The Government contested the applicant's allegations that he had been taken home by force and not allowed to leave his residence for several weeks, with the exception of attending a hearing before the Constitutional Court. Both the applicant and the Government submitted witness statements in support of their positions. Thus, the dispute between the parties is primarily of fact and the Court must therefore first examine whether there was, in the instant case, deprivation of liberty or a restriction on the applicant's liberty of movement to which Article 5 of the Convention and Article 2 of Protocol No. 4 apply.

46. In this connection, the Court notes the several reports suggesting that the applicant may have been placed under so-called "house arrest" as a result of his political activity, including a press release by the Secretary General of the Council of Europe, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, Human Rights Watch and the Council of Europe Commissioner for Human Rights, who also personally met with the applicant during his special mission to Armenia between 12 and 15 March 2008 (see paragraphs 19 and 38-40 above). At the same time, the Court does not have at its disposal any strong and unequivocal evidence which would corroborate those allegations and show beyond reasonable doubt that this was indeed the case and that the SPD acted in bad faith and abused its authority by restricting the applicant's liberty or freedom of movement under the guise of ensuring his security or otherwise. This issue was never examined before any domestic authority, while the above-mentioned reports, while undoubtedly worrying, are not sufficient by themselves to allow the Court to accept unhesitatingly the applicant's version of events. The Court is therefore not in a position to conclude that the applicant was deprived of his liberty or that his freedom of movement was restricted within the meaning of Article 5 § 1 of the Convention and Article 2 of Protocol No. 4 as alleged.

47. In these circumstances, the Court finds that the applicant's complaints under Article 5 § 1 of the Convention and Article 2 of Protocol No. 4 are not sufficiently substantiated and that, consequently, 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.

II. ALLEGED VIOLATION OF ARTICLES 11 AND 13 OF THE CONVENTION

48. The applicant complained that his right to freedom of peaceful assembly had been violated as a result of unlawful and disproportionate interference by the police, namely the dispersal of the assembly at Freedom Square, and that he had had no effective remedy against the breach of that right. He relied on Articles 11 and 13 of the Convention, which in so far as relevant read as follows:

Article 11

"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 ..."

Article 13

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

A. The parties' submissions

49. The Government submitted that the applicant had had effective domestic remedies at his disposal in respect of the alleged violation of Article 11 of the Convention, as required by Article 13 of the Convention. In particular, it was open to the applicant to lodge an acknowledgement claim under Article 68 of the CAP contesting the actions of the police, namely the dispersal of the assembly at Freedom Square. They argued that this remedy was effective both in theory and in practice, stating that at the material time there had been cases in which plaintiffs successfully brought proceedings before the Administrative Court concerning rights protected by Article 11 and submitting in support of their argument copies of three judgments rendered by that court between August and October 2008. Having failed to avail himself of this remedy, the applicant failed to exhaust the domestic remedies and his complaint under Article 11 was therefore inadmissible.

50. The Government further submitted that Article 11 was not applicable to the assembly at Freedom Square because the latter was not of a peaceful nature. Even assuming that Article 11 were applicable, the dispersal of the assembly was justified under Section 14 § 1(4) of the Assemblies, Rallies, Marches and Demonstrations Act, in force at the material time. The police officers had had no intention of terminating the assembly on 1 March 2008 and their sole intention had been to carry out an inspection for weapons, to which the demonstrators had reacted violently. The decision to terminate the assembly was therefore taken spontaneously in response to such violence. Thus, the interference was proportionate and necessary, since no democratic society could tolerate such aggressive behaviour and disorder from a large crowd. Moreover, the authorities had shown a very lenient approach to the assembly at Freedom Square by allowing it to take place from 20 February to 1 March 2008, despite the fact that it had been organised in breach of domestic law, and had thereby ensured the freedom of assembly of its participants.

51. The applicant did not reply to the Government's submissions, having failed to submit his observations in due time.

B. The Court's assessment

1. Admissibility

52. Taking note of the Government's non-exhaustion claim (see paragraph 49 above), the Court considers that this issue is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy regarding the alleged violation of his right to freedom of assembly. Thus, the Court finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 70, 10 January 2012).

53. As regards the Government's claim of inapplicability of Article 11, the Court reiterates that Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 92, ECHR 2015). It notes that it has already examined and dismissed a similar claim by the Government, finding that there was not sufficient and convincing evidence to conclude that the organisers and the participants of the assembly at Freedom Square had had violent intentions and that the assembly in question had not been peaceful (see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, §§ 229-233, 20 September 2018). The Court therefore rejects this objection.

54. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

55. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 et al., ECHR 2010). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of

providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Kennedy v. the United Kingdom*, no. 26839/05, § 109, 18 May 2010). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

56. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The effect of that provision is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, as noted above, the remedy required by Article 13 must be "effective" in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant, but it must be capable either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Ananyev and Others*, cited above, § 96, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, ECHR 2016 (extracts)).

57. In the present case, the applicant alleged that he had had no effective remedy in respect of the police actions, namely the forcible termination of the assembly at Freedom Square, while the Government claimed that the applicant could have raised that issue before the courts, which he had failed to do and thereby failed to exhaust the domestic remedies. In this connection, the Government relied on Article 68 of the CAP. The Court notes, however, that, while the Government did produce copies of three judgments in support of their argument, nothing suggests that those judgments were rendered by the Administrative Court under the procedure prescribed by Article 68 of the CAP. In fact, it is explicitly stated in one of the judgments that the claim is lodged under Article 65 of the CAP, while the other two judgments are silent on this point. More importantly, all three judgments concern challenges lodged against interfering administrative *acts*, such as decisions taken by the Yerevan Mayor's Office prohibiting the holding of a rally, as opposed to any interfering *actions* taken by law enforcement authorities during a demonstration, including its dispersal or forcible termination. The Government have therefore failed to produce any examples of Article 68 of the CAP ever having been applied in a situation similar to the present case. This is further exacerbated by the fact that the applicability of that Article to situations such as the one at hand is not obvious from its wording either. In particular, while paragraph 3 of that Article does mention the possibility of seeking an acknowledgement of

unlawfulness of an interfering administrative action, this applies only to an action which "no longer has legal force" and which an applicant has a legitimate interest to have acknowledged as unlawful depending on certain conditions listed under (a)-(c), none of which would appear to exist in the present case. It is therefore not clear whether Article 68 § 3 could apply to such police actions as the dispersal of an assembly, like in the present case. In view of such lack of clarity and the absence of any examples of domestic practice, the Court considers that the Government have failed to demonstrate – and there are otherwise no reasons to believe – that the applicant had an effective remedy in respect of the interference with his right to freedom of assembly.

58. In view of the above, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies and finds that the applicant did not have at his disposal an effective domestic remedy for his grievances under Article 11, in breach of Article 13 of the Convention.

(b) Article 11 of the Convention

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

59. The Court reiterates that an interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly, such as a prior ban, dispersal of the rally or the arrest of participants, and those, such as punitive measures, taken afterwards, including penalties imposed for having taken part in a rally (see *Navalnyy and Yashin v. Russia*, no. 76204/11, § 51, 4 December 2014, and *Kudrevičius and Others*, cited above, § 100).

60. The Court notes at the outset that the Government did not dispute the existence of an interference, other than arguing that the assembly had not been peaceful. It further notes that it has already held that the dispersal of the assembly at Freedom Square had interfered with the right to freedom of assembly of its participants (see *Mushegh Saghatelyan*, cited above, § 234). This conclusion undoubtedly applies to the applicant, who was the main leader of the demonstrations held at Freedom Square and was, moreover, on site during the dispersal. The Court concludes that there has been an interference with the applicant's right to freedom of peaceful assembly.

(ii) Whether the interference was justified

61. The Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the

achievement of those aims (see *Galstyan v. Armenia*, no. 26986/03, § 103, 15 November 2007).

62. In the present case, the Court does not consider it necessary to decide whether the interference was prescribed by law and pursued a legitimate aim having regard to its conclusions set out below, regarding the necessity of the interference (see, *mutatis mutandis*, *Christian Democratic People's Party v. Moldova*, no. 28793/02, §§ 49-54, ECHR 2006-II, and *Mushegh Saghatelyan*, cited above, § 237).

63. The Court reiterates at the outset that the right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, cited above, § 142).

64. The Court notes that it has already examined the necessity of the interference with the assembly at Freedom Square and concluded that its dispersal was without sufficient justification and took place under somewhat dubious circumstances, apparently without warnings to disperse and with unjustified and excessive use of force, and that it was a disproportionate measure which went beyond what it was reasonable to expect from the authorities when curtailing freedom of assembly (see *Mushegh Saghatelyan*, cited above, §§ 240-248). The Court sees no reasons to depart from that conclusion in the present case.

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

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

66. The applicant further complained that his alleged house arrest and the interference with his right to freedom of assembly were motivated by his political opinions and amounted to discrimination. The applicant relied on Article 1 of Protocol No. 12 but the Court considers that this complaint falls to be examined under Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

67. The Government contested that argument.

68. The Court considers that, as far as the applicant's allegations of discrimination in connection with his alleged "house arrest" are concerned, this part of the application must similarly be declared inadmissible as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention, in view of the Court's findings under Article 5 § 1 of the Convention and Article 2 of Protocol No. 4 (see paragraph 47 above).

69. As regards the applicant's allegations of discrimination in connection with the interference with his right to freedom of assembly, having regard to its findings under Article 11 of the Convention (see paragraphs 63-65 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 14 of the Convention in conjunction with Article 11.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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."

71. The applicant did not duly submit a claim for just satisfaction in accordance with the requirements of Rule 60 of the Rules of Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objection of non-exhaustion of domestic remedies and dismisses it;

2. *Declares* the complaints concerning the interference with the applicant's right to freedom of peaceful assembly and the alleged lack of effective remedies in that regard admissible and the remainder of the application inadmissible;

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

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 11 of the Convention;

5. *Holds* that there is no need to examine the complaint under Article 14 of the Convention in conjunction with Article 11 of the Convention.

Done in English, and notified in writing on 25 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Linos-Alexandre Sicilianos
Deputy Registrar	President