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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 6562/03
by Armen MKRTCHYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 20 October 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Ms I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 25 November 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Armen Mkrtchyan, is an Armenian national, who was born in 1972 and lives in Yerevan. He is represented before the Court by Mr N. Baghdasaryan, a lawyer practising in Yerevan. The respondent Government are represented by Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

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A. The circumstances of the case

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

The applicant is a member of the “Republic” Party (*«Հանրապետություն» կուսակցություն*).

On 10 May 2002 the “Republic” Party applied to the Mayor of Yerevan for an authorisation to hold a demonstration on the Freedom Square in Yerevan on 14 May 2002.

On 13 May 2002 the Mayor authorised the demonstration as requested.

The demonstration was held as planned on 14 May 2002, at around 15.00, on the Freedom Square. It was jointly organised by the “Republic” Party and six other political parties. The applicant participated in the demonstration.

Following the demonstration, at around 16.00, the applicant called upon its participants to hold a procession through the Baghramyan Avenue towards the Parliament building. It appears that a crowd of people followed the applicant in a procession through the Avenue.

The same day, at 23.10, the applicant was arrested and brought to the Arabkir District Police Station of Yerevan (*ՀՀ ոստիկանության Երևան քաղաքի Արաբկիրի բաժին*). The record of an administrative offence (*վարչական իրավախախտման արձանագրություն*) prepared by the police officers stated that the applicant had “organised an unlawful procession and violated the prescribed rules for holding demonstrations and street processions”.

On 15 May 2002 the Kentron and Nork-Marash Districts Court of Yerevan (*Երևանի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) examined the applicant’s case. The Court, on the basis of the materials prepared by the police, found that:

> “[The applicant], in violation of the prescribed rules for holding street processions and demonstrations, on 14 May 2002 at around 16.00 o’clock, participated with a group of people in an unauthorised procession. Thus, he has committed an offence envisaged by ... Article 180.1 of the Code of Administrative Offences [(*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք*)]. Taking into consideration the circumstances of the case and the personality of [the applicant], the court finds it necessary to impose an administrative penalty.”

The Court imposed a penalty in the amount of 500 Armenian drams. The decision was final and not subject to appeal.

On 24 May 2002 the applicant lodged an appeal with the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*). In his appeal the applicant argued that in accordance with the Constitution he had a right to contest the decision of the Districts Court before a higher court. He further argued that the interference with his right to freedom of assembly was not prescribed by law, as there did not exist any law which prescribed

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the rules that the applicant had allegedly violated. Furthermore, he expressly requested the Court of Appeal to name any such law if it existed.

On 14 June 2002 the Civil Court of Appeal examined the applicant's appeal and found that:

> "On 14 May 2002 at around 15.00 o'clock [the applicant] participated in an authorised demonstration on the Freedom Square in Yerevan. Thereafter, at around 16:00 [the applicant] with a group of people participated in an unauthorised procession through the Baghramyan Avenue, during which he headed the procession [. For this reason] he was brought to the [police station].
>
> The fact of the applicant heading an unauthorised procession is characterised as an offence envisaged under Article 180.1 of the Code of Administrative Offences ..."

On 24 June 2002 the applicant lodged a cassation appeal with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*).

By a letter of 1 July 2002 the Court of Cassation informed the applicant that the domestic legislation did not provide for a right to lodge a cassation appeal against the decisions which the applicant sought to contest.

B. Relevant domestic and international law

1. Code of Administrative Offences (6 December 1985)

Article 180.1

> "Violation of the prescribed rules for holding assemblies, rallies, street processions and demonstrations shall be punishable by imposition of a penalty in the amount of fifty to one hundred per cent of the established minimum salary, or up to 15 days of administrative detention."

2. Decree of the Chairmanship of the Supreme Soviet of the USSR on the "Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR" (28 July 1988) (ՍՍՀՄ Գերագույն սովետի նախագահության հրամանագիրը ՍՍՀՄ-ում ժողովների, միտինգների, փողոցային երթերի ու ցույցերի կազմակերպման և անցկացման կարգի մասին)

This Decree defined the relevant rules, such as the requirement of prior authorisation, the authority deciding on requests for authorisation (i.e. the executive committee of the relevant local council of people's deputies), the procedure for making a request and its content, a decision to be taken following the examination of the request, a possibility to appeal this decision to a superior authority, requirements to be met when holding the mass event (e.g. that the event must take place at the time and place specified in the request, public order must be respected, no carrying of arms, etc.), reasons for refusal of an authorisation, and the grounds on which this

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or that particular event could be dispersed (e.g. absence of a request, refusal of an authorisation, violation of public order, etc.).

3. The USSR Law (hereafter, the Law) on “Approving Decrees of the Chairmanship of the Supreme Soviet of the USSR on Making Amendments and Supplements to Certain USSR Legal Acts” (28 October 1988) (ՍՍՀՄ օրենքը ՍՍՀՄ որոշ օրենսդրական ակտերում փոփոխություններ ու լրացումներ կատարելու մասին ՍՍՀՄ Գերագույն սովետի նախագահության հրամանագրերը հաստատելու մասին)

By adopting the Law, the Supreme Soviet of the USSR approved a number of decrees of the Chairmanship, including the above Decree of 28 July 1988.

4. Armenia’s Declaration of Independence (23 August 1990) (Հռչակագիր Հայաստանի անկախության մասին)

Article 1

“The Armenian SSR is renamed as the Republic of Armenia...”

Article 2

“Only the Constitution and laws of the Republic of Armenia are valid on the ... territory of the Republic of Armenia.”

5. Constitutional Law on the Foundations of Independent Statehood (25 September 1991) (ՀՀ սահմանադրական օրենքը անկախ պետականության հիմնադրույթների մասին)

Article 16

“Until the adoption of a new constitution of the Republic of Armenia, the valid Constitution and laws are effective to the extent to which they do not contradict this Law and the legal acts adopted on the basis of the Declaration of Independence.”

6. CIS Convention (8 December 1991) signed and ratified by Armenia on 21 December 1991 and 18 February 1992 respectively (ԱՊՀ-ի ստեղծման մասին համաձայնագիրը)

Article 11

“From the moment of signing this Convention, norms of third states, including those of the former USSR, shall not be applied on the territories of the signatory states.”

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7. The Constitution of the Republic of Armenia (5 July 1995)

Preamble

“The Armenian nation, taking as a basis the fundamental principles of the Armenian statehood enshrined in the Armenia’s Declaration of Independence ... adopts the Constitution of the Republic of Armenia.”

Article 26

“Citizens have the right to hold peaceful assemblies, rallies, processions and demonstrations without carrying arms.”

Article 44

“No restrictions may be placed on the exercise of the rights and freedoms enshrined in Articles 23-27 of the Constitution other than such as are prescribed by law and are necessary in the interests of national security or public safety, for the protection of public order, health or morals, or for the protection of the rights, freedoms, honour and reputation of others.”

Article 116

“From the date of entry into force of this Constitution, (1) the Constitution of 1978 with subsequent amendments and supplements, and constitutional laws lose their force; (2) the laws and other legal acts of the Republic of Armenia are effective to the extent to which they do not contradict this Constitution.”

8. Presidential Decree on Public Administration of Yerevan (6 May 1997) (ՀՀ նախագահի հրամանագիրը Երևան քաղաքում պետական կառավարման մասին)

Article 1.5

“The Mayor of Yerevan shall decide on the issue of holding assemblies, rallies, processions, demonstrations and other mass events in Yerevan in accordance with the rules prescribed by law.”

COMPLAINTS

1. The applicant complained under Article 11 of the Convention that the interference with his right to freedom of peaceful assembly was not prescribed by law.

2. He further complained under Article 13 of the Convention that he did not have an effective remedy before the Court of Cassation since it refused to examine his cassation appeal.

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THE LAW

1. The applicant complains that the interference was not prescribed by law. He invokes Article 11 of the Convention which, insofar as relevant, provides:

> "Everyone has the right to freedom of peaceful assembly ...
>
> No restrictions shall be placed on the exercise of [this right] 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..."

The Government submit that the rules for organising and holding demonstrations and street processions were prescribed by the Law (see Relevant domestic law, above) which approved the Decree of 28 July 1988. The Law was adopted on 28 October 1988, i.e. before the Armenia's independence of 23 August 1990, but continued to be valid following the independence by virtue of Article 16 of the Constitutional Law on the Foundations of Independent Statehood of 25 September 1991. Thus, between 1991 to 1995 the Law continued to operate as a law of the Republic of Armenia. Following the adoption of the Constitution on 5 July 1995, the Law continued to be valid by virtue of Article 116 § 2 of the Constitution.

The applicant submits that a law must be accessible and foreseeable. He could not find the Law. Furthermore, he asks why, if the Law was valid, the courts failed to refer to it. In any event, the Law was not valid in Armenia on the basis of Article 11 of the CIS Convention of 8 December 1991 which prohibited the application of USSR laws on the territory of the signatory states. This Convention was ratified by Armenia on 18 February 1992.

The Government submit in reply that the Law was published in Bulletin no. 31 of the Supreme Soviet of the USSR on 3 August 1988. Article 11 of the CIS Convention did not apply to the Law, because the Law by that time was already operating as a law of the Republic of Armenia by virtue of Article 16 of the Constitutional Law of 25 September 1991. Following 1995 it continued to operate on the basis of the Constitution.

The applicant submits in reply that a law which lost its force in 1991 due to the CIS Convention could not re-acquire force in 1995 by virtue of the Constitution. Furthermore, the Decree of 28 July 1988 could not be applied in practice since it contained concepts which did not exist any more after the dissolution of the USSR, such as an executive committee of the local council of people's deputies and a superior authority to which the executive committee's decision could be appealed.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court

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concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complains that he did not have an effective remedy before the Court of Cassation. He invokes Article 13 of the Convention which, insofar as relevant, provides:

> “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ...”

The Court recalls that Article 13 cannot be interpreted as affording a right of appeal from an inferior court to a superior court (*S. and Others v. the United Kingdom*, no. 13135/87, decision of 4 July 1988).

In the present case the Court of Cassation refused to examine the applicant’s cassation appeal because the domestic law did not provide at the material time for a right to lodge a cassation appeal in administrative proceedings. Such right could not be inferred from Article 13 either for the reason indicated above.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant’s complaint concerning the interference with his right to freedom of assembly;

Declares the remainder of the application inadmissible.

Vincent BERGER	Boštjan M. ZUPANČIČ
Registrar	President

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