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

FIFTH SECTION

CASE OF ISHKHANYAN v. ARMENIA

(Application no. 5297/16)

JUDGMENT

Art 5 § 1 • Applicant's arrest after the dispersal of a sit-in demonstration blocking a main public road in protest against a rise in electricity prices • Being under the exclusive control of the police for over seven hours in case circumstances amounted to a deprivation of liberty • No justification for arrest under Art 5 § 1 (b) • Arrest conducted *en masse* without an individualised assessment of any criminality in the applicant's actions and without a reasonable suspicion of him having committed an offence in breach of Art 5 § 1 (c) • Placement in police custody did not follow a procedure prescribed by law as no arrest record was drawn up for the period he was a *de facto* arrestee

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 February 2025

FINAL

13/05/2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ishkhanyan v. Armenia,

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

Mattias Guyomar, *President*,
María Elósegui,
Armen Harutyunyan,
Gilberto Felici,
Andreas Zünd,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the application (no. 5297/16) 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 Hovhannes Ishkhanyan ("the applicant"), on 23 December 2015;

the decision to give notice to the Armenian Government ("the Government") of the complaints raised under Articles 3 (keeping him in police custody in wet clothes and with no time to rest), 5 § 1 and 11 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 21 January 2025,

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

INTRODUCTION

1. The case concerns the dispersal of a mass sit-in demonstration and the applicant's subsequent arrest following its dispersal. The applicant invoked Articles 3, 5 § 1, 10, 11 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1988 and lives in Yerevan. He was represented by Mr R. Revazyan and Mr A. Zeynalyan, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

I. PROTEST RALLIES AGAINST THE RISE IN ELECTRICITY PRICES (ELECTRIC YEREVAN PROTESTS)

5. On 8 May 2015 the Electric Networks of Armenia (a closed joint-stock company) ("the ENA") – at the material time, the sole electricity supplier in

Armenia – lodged an application with the Public Services' Regulatory Commission ("the PSRC") seeking authorisation to increase electricity prices by 17 Armenia drams (AMD) per kilowatt hour.

6. On 17 June 2015 the PSRC decided to permit the price of electricity to be raised by 6.93 AMD, with effect from 1 August 2015.

7. Protest rallies flared up in response to this decision. In particular, from 19 June 2015 protests were organised in Yerevan's Freedom Square by a civic initiative (*քաղաքացիական նախաձեռնություն*) known as "No to Plunder" (*Ոչ թալանին*). The demonstrators gave the authorities seventy-two hours to suspend the decision of the PSRC.

8. Uninterrupted live media coverage of the assembly (archived live coverage can still be viewed on YouTube) of 22 June 2015 recorded the following[1]. On 22 June 2015, at about 6.30 p.m., the demonstrators, who, according to the findings of a later investigation conducted by the Special Investigative Service ("SIS") (see paragraphs 17 and 29 below), numbered around one thousand, marched from Freedom Square to the President's offices, but were stopped by a police cordon in front of 1 Baghramyan Avenue, where a large number of armed police had been deployed. The demonstrators eventually decided to hold a sit-in on the road until the decision of the PSRC was suspended by the President. The traffic on Baghramyan Avenue was completely brought to a halt. The then chief of the Yerevan police (A.K.) and his deputy (V.O.) began to negotiate with the demonstrators. They conveyed to them the message of the President that the latter was ready to receive a delegation of five demonstrators to discuss their concerns. They repeated this offer a number of times, arguing that this would allow the matter to be addressed, while at the same time avoiding any potential escalation of the situation. The police pointed out several times that the demonstrators had disrupted traffic on Bagharamyan Avenue (one of the main thoroughfares of Yerevan) – thus breaching public order; they also pointed out that they had failed to comply with the requirement that notification be submitted in advance for any demonstration, and that their failure (as the *de facto* organisers of the demonstration) to comply with this requirement had left them liable under Article 180[1] § 1 of the Code of Administrative Offences ("the CAO"; see paragraph 57 below). The police also informed the demonstrators that they would permit them to return to Freedom Square and to continue their protest there unhindered. The demonstrators, however, were adamant that they would clear the road only if the decision of the PSRC was suspended by the President. They started singing patriotic songs, chanting slogans, and reciting poems. They only stopped making a noise at about between 12.30 and 1 a.m., after receiving several warnings from the police to desist from creating a noise nuisance during night-time "quiet hours".

[1] https://www.youtube.com/watch?v=fztcPjL1TDs (last accessed on 18 December 2024)

9. On 22 June 2015 the prosecution opened criminal case no. 14203515 under Article 258 § 1 of the Criminal Code (see paragraph 44 below). Consequently, the relevant subdivision of the Investigative Committee of Armenia ("IC") opened an investigation given the fact that from 7.30 p.m. an unlawful and lengthy demonstration, march and sit-in had been organised on Baghramyan Avenue, during which the protesters had obstructed traffic, had caused a noise nuisance, had breached the freedom of movement and constitutional rights of others, and had grossly disrupted public order. It appears, however, that this information was made public only on the following day. The Court was not provided with the relevant decision.

10. The above-mentioned YouTube coverage further suggests that the demonstration was conducted in a leaderless, non-hierarchical fashion. Apart from a single incident of bottle-throwing, which was criticised by the organisers on the spot, it does not appear that the demonstrators engaged in any acts of violence. In fact, at a certain point during the demonstration, V.O. himself stated in front of the assembled journalists that the demonstration was peaceful. However, a short time later senior police officers, including V.O., informed the demonstrators that their conduct comprised elements of criminal offence – namely, hooliganism (see paragraph 44 below).

11. The demonstrators kept the road blocked for about ten hours – some of them even sleeping on the road. On 23 June 2015, at about 5 a.m., the deputy chief of the Yerevan police, V.O., addressed the protesters – who, according to the findings of the later investigation (see paragraphs 17 and 29 below), numbered around five hundred – over a loudspeaker. He ordered them to cease immediately their unlawful actions and to move their protest to Freedom Square or any other location chosen by them (as long as it was not a busy street); otherwise, the police would resort to physical force and "special means" (*հատուկ միջոցներ*) (see paragraph 73 below). The demonstrators whistled at him in response and linked arms to create a "human shield", with their backs to the police cordon. He repeated this demand about five minutes later, giving the demonstrators ten minutes to disperse. A water-cannon vehicle slowly approached the demonstrators after V.O.'s announcement. According to the findings of the above-noted investigation, about ten minutes later the police fired (simultaneously) two water jets from a water cannon into the centre of the rally [2]. The water jets knocked down the protesters, flinging some of them aside. The demonstrators nevertheless remained on the street, and some of them even stood up and raised their middle fingers at the police. Shortly afterwards, with the water cannon still firing, plain-clothes officers – some wearing armbands bearing the word "Police" – and officers in police uniform stepped in and began forcibly separating and arresting the demonstrators, some of whom tried to resist, and

[2] https://www.youtube.com/watch?v=QI7bhe-kF4M (starting from minute 12:36; last accessed on 18 December 2024).

tension escalated. Measures employed by the police included pushing protesters to the ground, twisting their hands, dragging them across the ground and forcing them into police vans[3]. Eventually, the police broke up the protest and cleared the road, arresting the demonstrators[4]. According to the findings of the investigation, some of the protesters fled and gathered in Freedom Square, but they were arrested too.

12. According to the above-noted investigation (see paragraphs 17 and 29 below), more than two hundred participants in the demonstration, including the applicant, were taken to different police stations on suspicion of having committed the crime of hooliganism. The demonstrators were then questioned by investigators of the IC as witnesses within the framework of criminal case no. 14203515 (see paragraph 9 above) and were required to submit to two tests for, respectively, alcohol and drugs. None of them was charged with any criminal offence and all were released by the evening of the same day (see paragraph 19 below).

13. The event was widely reported by the international media and some international organisations decried the use of force to break up the demonstration, calling on the national authorities to undertake a thorough investigation into the incident (see paragraphs 88-89 below).

14. On an unspecified date criminal case no. 14203515 (see paragraph 9 above) was closed for lack of *corpus delicti* in respect of the actions of the demonstrators. According to the applicant's submissions (uncontested by the Government), the relevant decision was taken on 26 October 2015.

15. On the evening of 23 June 2015 several thousand people gathered at the site of the dispersed rally and sit-in demonstrations continued on Baghramyan Avenue until 6 July 2015, halting traffic on Baghramyan Avenue. A smaller sit-in protest was held in September.

II. THE OFFICIAL INVESTIGATION INTO THE ABOVE-NOTED EVENTS

16. On 23 June 2015 the police opened an internal investigation into the lawfulness of the actions of the police when dispersing the sit-in protest. As a result, disciplinary measures were imposed on twelve police officers. In addition, the investigation revealed that on 23 June 2015 eleven police officers were injured[5]. The investigation was suspended following the opening of criminal case no. 62217915 (see paragraph 17 below).

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[3] https://www.youtube.com/watch?v=3kpNno_LMj0 (starting from minute 8; last accessed on 18 December 2024).

[4] https://www.youtube.com/watch?v=Qb9Sn5RM1ZE (starting from minute 4; last accessed on 18 December 2024).

[5] In one of the documents pertaining to the internal investigation the number of injured police officers was fourteen; however, the said document mentions no dates or circumstances under which those policemen suffered injuries.

17. On 2 July 2015 the SIS opened criminal case no. 62217915 under Articles 164 § 2 (Obstruction of lawful professional activity of journalist by a public official through abuse of official position), 185 § 1 (Deliberate destruction or damaging of property) and 309 § 2 (Exceeding one's official authority – see paragraph 46 below) of the Criminal Code. In particular, information was obtained indicating that persons engaged in undertaking special services for the State involved in the dispersal of the sit-in demonstration of 23 June 2015, and of those held on the following days, had subjected demonstrators and a number of journalists to violence that had caused injuries, and had damaged or destroyed journalists' equipment.

18. On 6 July 2015 the SIS asked the police about the circumstances of the dispersal of the sit-in demonstration of 23 June 2015 and whether any internal procedure had been instituted in an effort to establish whether the actions of the police had been lawful.

19. On 29 July 2015 the deputy chief of police replied that the organisers of the demonstration had failed to comply with the requirement to submit prior notification for any demonstration. As a result, the police had not been informed of, *inter alia*, the location of the start of the demonstration and its destination, the times of the start and the end of the demonstration, and the route of the march and its timeframe. Immediately after the unlawful protest march, the police had informed the organisers that they had committed an administrative offence under Article 180^1 § 1 of the CAO (see paragraph 57 below); the police had done this in an attempt to bring the conduct of the demonstration into line with the law and in order to influence the behaviour of the demonstrators, but to no avail. From 7 p.m. onwards the demonstrators had blocked Baghramyan Avenue by staging a sit-in on the road. The police had started negotiations: in particular, they had suggested that the organisers send a delegation to meet with the President of the Republic. The proposal had been dismissed. Thereafter, the police had demanded that the demonstrators open Baghramyan Avenue to traffic and return to Freedom Square. That proposal had also been rejected because of the influence exerted by the organisers on the demonstrators. From 19 June 2015 until the dispersal of the sit-in on 23 June 2015 at 5.30 a.m., the police had not interfered with the conduct of the demonstration, had not used force and had not held the organisers administratively liable under Article 180^1 § 1 of the CAO. Rather, the police had continued to ensure public order and the safety of the demonstrators, thus complying with the provisions of section 32(2) of the Freedom of Assemblies Act (see paragraph 66 below). As a result of the unlawful demonstration, the traffic on Bagharmyan Avenue had been brought to a halt, causing serious disruption to traffic on other streets as well. In addition, two dozen complaints had been lodged by residents of the neighbouring buildings about the disruption to traffic and the noise nuisance caused by the protesters during night-time "quiet hours". Taking into account the lasting nature of the demonstration, the fact that the organisers and

demonstrators had breached, respectively, sections 28 and 29 of the Freedom of Assemblies Act (see paragraphs 64 and 65 below), and the need to end the disproportionate restriction on the right of road users to freedom of movement, the police – pursuant to section 33 of that Act (see paragraphs 67 and 68 below) – had warned the demonstrators twice: they had given them ten minutes to end the demonstration voluntarily; otherwise they would disperse it – including by the use of force or "special means". The demonstration had been dispersed in the manner prescribed by section 34 of the Act (see paragraph 69 below). The protesters had thoroughly exercised their right to voice their demands and "further exercise of that right was disproportionately limiting to the public interest – that is, the need to protect public order". The police had dispersed the sit-in at dawn (namely, at 5.30 a.m.), when the number of demonstration participants on the Avenue would be relatively small. Pursuant to section 31(1)(2) and (7) of the Police Act (see paragraph 74 below), "special means" – namely, a water cannon – had been employed to disperse the protest.

The deputy chief of police added that after the dispersal of the rally some of the protesters had left the area, but that others had gathered in the area adjacent to Freedom Square, calling for a return to Baghramyan Avenue. Accordingly, pursuant to sections 2(1)(2) and 11(1)(1) of the Police Act (see paragraphs 70 and 71 below), the protesters had been taken into police custody in order for their identities to be established and for it to be determined whether their actions could be categorised as hooliganism. Those demonstrators had not been held for more than three hours (the maximum length of time that a person could be held in police custody and then released without an arrest record being drawn up), and no administrative penalty had been imposed on them.

20. On 1 October 2015 the applicant's lawyer lodged a criminal complaint with the SIS on behalf of the applicant. He asserted that after the dispersal of the sit-in demonstration on 23 June 2015 between about 5 and 5.30 a.m., the applicant had been apprehended near the site of the sit-in and had been taken to Shengavit police station on suspicion of hooliganism. At the police station, he had been questioned as a witness and had been submitted to two tests for, respectively, alcohol and drugs. The applicant stated that he had been released only at about 1.30 p.m. and that during the entire period that he had been in police custody he had been in wet clothes and had been left without any food or time to rest. He asked the SIS to bring to account those responsible and to investigate the lawfulness and proportionality of the police actions when dispersing the demonstration, including the necessity to use "special means".

21. On the same date the applicant's lawyer enquired at Shengavit police station about the circumstances of the applicant's arrest and placement in police custody. In reply, he was informed that on 23 June 2015, at 6.10 a.m., the applicant had been brought to the police station on suspicion of hooliganism and that at 8.50 a.m. he had been taken to the investigative unit.

The lawyer was advised that, should he wish for further information, he should lodge an application with the IC.

22. On 23 November 2015 he lodged a similar enquiry with the relevant subdivision of the IC. He was informed that no criminal proceedings had been opened against the applicant and that the applicant had no procedural status whatsoever in respect of any criminal cases being examined by the investigative subdivision of Shengavit District of the IC.

23. According to a record entitled "Bringing a person in to a police station" (*անձին ոստիկանություն բերման ենթարկելու մասին արձանագրություն*) drawn up on 23 June 2015, on the same day at about 6 a.m., the applicant was brought from a location near Freedom Square to Shengavit police station on suspicion of hooliganism. According to a written explanation of the applicant's rights that was given to him at the police station, the applicant had been deprived of liberty under Article 182 of the CAO (Failure to comply with a lawful order given by a police officer; see paragraph 58 below).

24. According to the summary of the procedural steps taken in respect of the applicant, as outlined in the decision of 24 July 2019 (see paragraph 31 below), the applicant was brought to Shengavit police station at about 6 a.m. During his police custody the applicant was subjected to a personal search, and was then fingerprinted and photographed. At some point, the latter refused to give a statement (*բացատրություն*) and was questioned as a witness in the investigative unit of Shengavit police station between 10.05 and 11.45 a.m. A police officer, V.T., took the decision to take samples of urine and hair from the applicant and to submit those samples for an expert toxicology examination.

25. On 16 March 2016, in the presence of his lawyer, the applicant was interviewed as a witness by an investigator from the SIS within the scope of criminal case no. 62217915 (see paragraph 17 above) and was subsequently accorded the status of a victim.

He submitted, in particular, that on 22 June 2015, together with the other protesters, he had marched to Baghramyan Avenue, where they had remained on Avenue overnight. The following day, in the early morning, the police had warned the protesters that their actions were unlawful and had demanded that they clear the road, warning that otherwise they (that is, the police) would disperse the sit-in. However, the protesters had remained on the street because they had believed that the protest was lawful. At about 5 a.m. the police had hosed down the protesters using a water cannon, and had then started arresting those sitting on the Avenue. Thereafter, in the company of many others, the applicant had headed towards Freedom Square, and the police had chased after them. Before long, he had been arrested and at about 6 a.m. had been brought to Shengavit police station. A police officer had drawn up standard procedural documentation upon his arrival to the police station. The applicant had called his brother, who had informed him that a lawyer was coming to

assist him. The applicant had been searched and photographed. About two hours later he had been taken to the police station's investigations department for questioning. At about 9 a.m. he had refused to testify in writing; a police officer had then taken him to the ground floor, but had not explained why he should wait there. The applicant noted that, although the police officers had not forbidden him from leaving, they had not told him that he had been free to go home; therefore, being a law-abiding citizen, he had decided to wait. At about 10 a.m. two police officers (holding him by the arms) had taken him out of the police station, where he had encountered his lawyer. The latter had asked the police officers where the applicant was being taken and had been informed in reply that the applicant had to undergo a drug test. The lawyer had told the officers that the applicant would not go anywhere without him, after which the applicant had been taken back inside to the office of another investigator who had announced that the applicant had the status of a witness. Subsequently, the applicant had been questioned as a witness in the presence of his lawyer, after which he had been asked to wait in one of the offices. There, a police officer, V.T., had told him that he had to be taken for a drug test. Soon the then deputy chief of the police station had entered the office and, having learnt that the applicant had already been interviewed as a witness, had told him that he was free to go. When they had been about to leave, the applicant and his lawyer had again been asked to wait in one of the offices – allegedly on the instructions of the chief of the police station (who had allegedly wished to talk to them). The applicant's lawyer had left the office to enquire about the reasons for their having to remain at the police station. When the applicant had attempted to leave the office, a police officer had told him to wait inside. Shortly thereafter, together with two other arrested demonstrators (and in the absence of his lawyer), the applicant had been placed in a police van and taken to undergo a drug test at National Addiction Treatment Centre ("the NATC"), where they had arrived at about 1 p.m. When the applicant had refused to undergo the test, V.T. had threatened him with arrest. The applicant had then given in and had been released only after undergoing the test.

In response to the investigator's question regarding whether the police officers had refused to release him after the expiry of the "three-hour time-limit", the applicant replied that his impression was that he had not been at liberty to leave and that was why he had not demanded that he be released – although they had not actually placed him under lock and key (*փակի տակ պահել*). The applicant added that at the police station he had been treated well: he had been allowed to use the toilet, and the police had given him water and had allowed to make a phone call. He had not felt cold notwithstanding his wet clothes.

26. Police officers testified within the scope of the above-noted criminal case no. 62217915 (see paragraph 17 above). They submitted similar statements, asserting that following the dispersal of the demonstration a

number of demonstrators had been "brought in" (*բերման են ենթարկվել*) to the police station on suspicion of having engaged in hooliganism. In particular, a criminal case had been opened against the participants of the sit-in demonstration at the IC (see paragraph 9 above). The police officers in charge had drawn up the standard procedural documents in respect of the demonstrators who had been brought to the police station, after which they had been transferred to the IC to be questioned within the scope of the hooliganism case. No one had been kept at the police station against his or her will after the expiry of the three-hour time-limit and, in fact, upon A.H.'s instruction, the officers had informed the demonstrators that they were free to leave but that investigators nevertheless had to question them. The majority of the demonstrators had decided to stay until their turn came to be questioned. The police officers had treated the arrestees with respect, had informed them of their rights, and had allowed them to drink water, make a telephone call, and use the toilet. The demonstrators had been placed in different offices within the police station. As regards the applicant's above-mentioned transfer to the NATC, it had been the obligation of the persons who had been brought into the police station, to submit samples for forensics tests.

27. Police officer L.A., who had drawn up the standard procedural documentation upon the applicant arriving at the police station, also asserted that his specifying different legal grounds in different documents for the applicant being brought in had been due to negligence and haste on his part, but that the applicant had been brought to the police station on suspicion of having engaged in hooliganism.

III. THE RESULTS OF THE INVESTIGATION AND THE APPLICANT'S APPEALS

28. During the investigation more than two hundred police officers were questioned. They gave similar statements, asserting that they had had no intention of keeping the demonstrators at the police station for more than three hours. Rather, because they had been overloaded with paperwork, it had sometimes taken a long time to draw up the relevant documentation in respect of each demonstrator; moreover, the demonstrators had been informed that they would be questioned, and that they had preferred to wait for their turn to be interviewed. Thirty-seven demonstrators were accorded the status of victim; fifteen of them had suffered bruises and contusions as a result of the above-mentioned use of water cannon, but with no serious damage to their health. While some of the victims complained of ill-treatment by the police officers, others submitted that during their stay at the police stations they had been treated well and had not been placed under any kind of special supervision. Rather, the police officers had allowed them to make calls and move around freely.

29. On 4 March 2019 an investigator of the SIS ("the SIS investigator") dealing with criminal case no. 62217915 (see paragraph 17 above) decided to suspend the investigation because the identity of those who could be charged remained unknown. The decision referred to the circumstances of the dispersal of the sit-in demonstration depicted in the clarification furnished by the police (see paragraph 19 above). It also referred to the testimony of the victims and the police officers (see paragraph 28 above). Most of the victims of the alleged police violence had not provided any information about the police officers who had been involved in that violence or who had committed other unlawful acts. Moreover, no evidence had been obtained to indicate that other police officers had (as submitted by certain victims) committed a criminal offence, thus making it impossible to legally classify those officers' alleged actions. As regards the dispersal of the sit-in by the use of water cannon, a breach of the rules governing the use of "special means" would render anyone breaching those rules criminally liable under Article 373 of the Criminal Code (see paragraph 47 below) only if light or medium-gravity damage had been negligently caused to a person's health by such a breach; however, there was nothing to confirm that anyone had suffered such damage.

30. On 15 April 2019 the prosecutor in charge of supervising the proceedings in criminal case no. 62217915 (see paragraph 17 above) – following appeals lodged by, among others, the applicant – decided to quash the above-mentioned decision and to remit the case for further investigation. The prosecutor noted that entrusting the fact-finding to the police could not ensure the independence of the investigation, given that the police officers would have to collect information implicating their fellow officers. In addition, he instructed that the SIS undertake a more thorough investigation into the portion of the time that the demonstrators had spent in police custody that exceeded the three-hour time-limit set by law. In particular, it was necessary: to establish the persons who had ordered that they be brought to the police station and the persons who had had implemented that; to enquire into the legality of recording the grounds for the demonstrators being brought to the police station; to establish the identity of each police officer responsible for keeping those demonstrators in police custody for more than three hours, and to determine whether in so doing the intention had been to breach the rights of the persons concerned; and to determine whether or not their conduct could be classified as a criminal breach.

31. Following the resumption of the proceedings, decisions were taken not to prosecute police officers for holding protesters in police custody for more than three hours. On 24 July 2019 such a decision was taken specifically in respect of the applicant. The SIS investigator, relying, *inter alia*, on the testimony of the applicant and the police officers, concluded that the mere fact that the applicant's stay at the police station had exceeded three hours was not sufficient of itself to conclude that the actions of the police officers involved had constituted the offence of abuse of office under Article 308 § 1

of the Criminal Code (see paragraph 45 below). This was so even though the prolonged length of the time that the applicant spent in police custody had been based on a verbal instruction given by the officers in question (rather than the applicant being kept under lock and key) in order to give them time to complete certain procedural steps. The actions of the police officers had thus lacked the *mens rea* element of the offence of abuse of office, which required direct intent. Therefore, given that (i) it had not been established that the police officers had intentionally kept the applicant at the police station for more than three hours, and (ii) the possibility to obtain new evidence had been exhausted, the actions of the police officers had lacked the *corpus delicti* element of the crime of abuse of office. At the same time, the fact that the actions of State officials had not been criminal did not rule out the possibility of their being subjected to disciplinary proceedings or of the applicant obtaining compensation for non-pecuniary damage from the State through civil proceedings.

32. By another decision of 26 July 2019 the SIS investigator decided to stay the proceedings in respect of criminal case no. 62217915 on the same grounds as those cited in his decision of 4 March 2019 (see paragraph 29 above).

33. The decisions of 24 and 26 July 2019 were, respectively, upheld by the prosecutor on 4 December and 12 August 2019, following appeals lodged with the prosecutor by the applicant.

34. On 26 December 2019 the applicant lodged an appeal with the Yerevan Court of General Jurisdiction against (i) the decision of the SIS investigator of 24 July 2019 not to prosecute the police officers, and (ii) the prosecutor's subsequent decision of 4 December 2019 to uphold that decision (see paragraphs 31 and 33 above). He pointed out that his stay at the police station had not been voluntary (as asserted by the police). Had he indeed been free to leave the police station, why he would have had any obligation to submit to a drug test. The applicant also alleged that his being deprived of his liberty for several hours could have pursued the aim of punishing him for his participation in the sit-in protest. He asserted out that hundreds of demonstrators had been targeted by the alleged criminal behaviour of the police officers.

35. On 30 July 2020 the Yerevan Court of General Jurisdiction dismissed as unsubstantiated the appeal lodged by the applicant. It found, in particular, that there had been no breach of the applicant's rights: the investigation into the alleged criminal conduct of police officers had been carried out thoroughly and diligently.

36. On 29 October 2020 the Criminal Court of Appeal dismissed an appeal lodged by the applicant against the above decision. The applicant did not lodge an appeal on points of law.

37. On 1 October 2019 the applicant lodged an appeal with the Yerevan Court of General Jurisdiction against the decision of 26 July 2019 and the

prosecutor's decision of 12 August 2019 to uphold it (see paragraphs 32 and 33 above). However, following the resumption of the proceedings in respect of criminal case no. 62217915 (see paragraph 38 below), he withdrew his appeal.

38. On 10 January 2020 the SIS investigator decided to resume the proceedings in respect of criminal case no. 62217915 because it was necessary to perform certain procedural actions.

39. On 22 January 2020 he decided, for the third time, to suspend the criminal proceedings on the same grounds as those stated above (see paragraphs 29 and 32 above). The decision stated that although (following the resumption of the proceedings) charges had been brought against a senior police officer for physically assaulting one of the protesters, no further evidence had been secured in respect of any other police officers.

40. On 12 February 2020 this decision was upheld by the prosecutor following an appeal lodged by the applicant.

41. On 11 March 2020 the applicant lodged an appeal with the Yerevan Court of General Jurisdiction (i) against the third suspension of the criminal proceedings (see paragraph 39 above) and (ii) the above-noted decision of the prosecutor to uphold it.

42. On 30 June 2021 the Yerevan Court of General Jurisdiction dismissed the applicant's appeal. It found, *inter alia*, that in so far as the applicant's rights were concerned, on 24 July 2019 the SIS investigator had already decided not to prosecute the police officers involved in his deprivation of liberty (see paragraph 31 above) – and indeed, after the resumption of the case, the episode concerning the applicant had not been re-examined. At the same time, the applicant had been able to lodge complaints against the decision of 24 July 2019; those complaints had been examined and dismissed by the courts at two levels of jurisdiction.

The applicant did not appeal against the above decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Criminal Code of 2003; as in force at the relevant time (abrogated on 1 July 2022)

43. Article 225 § 5 defined mass disorder as actions of more than one person in the form of violence, massacre, arson, destroying or damaging property, using firearms, explosives or explosive devices or showing armed resistance to a State official, as a result of which public safety was endangered.

44. Article 258 § 1 of the Criminal Code classified "hooliganism" as a gross and intentional violation of public order manifested through an

expressly disrespectful attitude towards society, and provided that it was punishable by a fine of up to fifty times the fixed minimum wage or by detention of up to one month.

45. Article 308 § 1 ("Abuse of office") provided that use by a public official of his or her official position against the interests of his or her service or the failure by such an official to carry out his or her official duties for selfish, personal or group interests (if causing significant damage to the rights and lawful interests of individuals or legal entities), or the lawful interests of society or the State, were punishable by a fine of between two and three hundred times the minimal wage, or forfeiture of the right to hold certain posts or to carry out certain activities for a period not exceeding five years, or detention for a period of two to three months, or up to four years' imprisonment.

46. Article 309 § 2 ("Exceeding one's official authority") provided that intentional actions committed by a public official that obviously fell outside the scope of his or her authority and caused significant damage to the rights and lawful interests of individuals or legal entities, or to the lawful interests of society or the State, if accompanied with use of violence, arms or "special means", were punishable by imprisonment for a period of two to six years, and by forfeiture of the right to hold certain posts or to carry out certain activities for a period not exceeding three years.

47. Article 373 § 1, contained in the chapter of the Criminal Code concerning offences against military service rules, provided that a breach of the rules governing the handling of arms, munitions, radioactive substances, explosives or other devices, objects or material that present a heightened risk to the environment, which caused light or medium damage to a person's health, was punishable by rendering the person responsible for that breach ineligible for promotion within the military for a period of one to three years, or by sentencing him or her to serve in a disciplinary battalion for up to two years, or by imprisonment for up to two years.

B. Code of Criminal Procedure of 1999; as in force at the relevant time (abrogated on 30 July 2022)

48. The relevant provisions of the Code of Criminal Procedure ("the CCP") are summarised in the case of *Mushegh Saghatelyan v. Armenia*, no. 23086/08, §§ 100-05 and 109-11, 20 September 2018.

49. Article 62 § 1 ("A suspect") provided that a suspect was a person (a) who had been arrested on suspicion of having committed an offence; or (b) in respect of whom, prior to the bringing of a charge, a decision had been taken to impose a preventive measure.

50. Article 63 § 5 (3) provided that, at the order of an authority conducting criminal proceedings (*քրեական վարույթն իրականացնող մարմին*), an accused had to undergo a medical examination, be fingerprinted,

photographed, and allow to be taken from him or her samples of blood and bodily fluids.

51. Article 128 § 1 ("The concept of arrest") defines arrest (*ձերբակալումը*) as the act of taking a person into custody, bringing him before an authority conducting criminal proceedings, and drawing up the relevant record (and informing that person thereof), for the purpose of preventing him or her from committing an offence or from fleeing after committing an offence and with the aim of keeping that person in short-term custody in places and under conditions defined by law. According to Article 128 § 3, a person could be arrested (1) on suspicion of having committed an offence; or (2) on the basis of an arrest warrant issued by an investigating authority.

52. Article 131[1] § 1 ("The procedure for a suspect's arrest") provided that a record of a suspect's arrest had to be drawn up within three hours of his being brought before an authority conducting initial inquiry (*հետաքննության մարմին*), an investigator or a prosecutor, and that a copy thereof had to be given to the arrested person, and that he or she had to sign it (by way of certifying that it was accurate).

53. Article 132 § 1 provided that an arrested person had to be released – should the authority conducting the criminal proceedings so decide – if (1) the suspicion that that person had committed an offence had not been confirmed; (2) there was no need to keep the person in custody; or (3) the maximum time-limit for an arrest [seventy-two hours] prescribed by the CCP had expired and the court had not issued a decision ordering that the accused be detained.

54. On 16 January 2018 Article 129 of the CCP was supplemented with paragraphs 3-8 setting out the rights and obligations of a person deprived of liberty before he or she acquired the status of an arrestee. In particular, under Article 129 § 3 – after the passage of four hours following the moment of a person's *de facto* deprivation of liberty, that person automatically acquired the rights and obligations of a suspect (regardless of whether or not an arrest record was formally presented to him or her).

C. Civil Code of 1999; as in force at the relevant time

55. Article 162.1 § 2 provided that a person (or his or her legal heir) had the right to claim compensation for non-pecuniary damage if it had been established by a court that – as a result of a decision, action or omission on the part of a State or local-government body (or an official thereof) – his or her fundamental rights under Articles 2, 3 or 5 of the Convention had been violated.

56. On 21 December 2015 the above-cited Article of the Civil Code was amended to extend the range of the right to claim compensation in respect of non-pecuniary damage. Notably, under the amended version of Article 162.1 § 2 it became possible to claim compensation in respect of non-pecuniary

damage for an alleged breach of one's right to freedom of expression and freedom of assembly. The new text of Article 162.1 § 2 entered into force on 1 January 2016. In addition, under new Article 162.1 § 5 compensation for non-pecuniary damage caused as a result of unlawful administration shall be made in the manner prescribed by the Act on Fundamentals of Administration and Administrative Proceedings.

D. Code of Administrative Offences of 1986

57. Article 180[1] § 1 provides that holding an assembly in breach of the requirement to give advance notice thereof to the relevant authority (or in breach of the conditions pertaining to that requirement) shall render the organiser or the leader of the assembly liable to an administrative fine in the amount of between a hundred and three hundred times the fixed minimum wage. Article 180[1] § 15 provides that disobeying lawful orders given by the police intended to ensure peaceful and orderly course of an assembly shall incur a fine in the amount of between fifty and hundred times the fixed minimum wage.

58. Article 182 provides that disobeying a lawful order given by a police officer or a military serviceman while fulfilling his or her duty to preserve public order, ensure public safety and preserve property shall incur a fine in the amount of fifty times the fixed minimum wage.

59. Article 258 lays down the procedure of depriving a person of liberty for up to one hour, *inter alia*, for the purposes of drawing up a record of an administrative offence, establishing an offender's identity, preventing the commission of offences, and so on.

60. Article 259 § 1 (measures to secure the conduct of the administrative-offence proceedings) states as follows:

> "[I]n order to put an end to the commission of administrative offences in instances explicitly provided for by the legislative instruments of Armenia, (if other measures of compulsion have been exhausted), and in order to determine an individual's identity, to draw up a record of an administrative offence (if it is mandatory that such a record be drawn up but cannot be done on the spot), and to ensure the timely and due consideration of an administrative-offence case and the enforcement of any decisions taken in that context, an individual may be placed under administrative arrest, subjected to a personal search or a search of their belongings, and have belongings and documents seized from them."

E. Code of Administrative Procedure of 2014

61. Article 3 § 1 provides that every natural or legal person has the right to apply to the Administrative Court, in accordance with the procedure established by the Code, if they believe that as a result of an administrative act, action, or failure to act on the part of a State or local self-government body (or an official thereof):

(1) their rights and freedoms, as enshrined in the Constitution, international treaties, laws, or other legal acts, have been violated or may be directly violated, including if:

(a) obstacles have been created to the exercise of those rights and freedoms,

(b) necessary conditions for the exercise of those rights and freedoms have not been ensured – even though they should have been ensured by the Constitution, international treaties, laws, or other legal acts;

(2) any obligation has been unlawfully imposed on them;

(3) they have been unlawfully subjected to administrative liability under administrative proceedings.

62. Article 69 § 3 ("Claim for acknowledgment" [*Ճանաչման հայց*]) provides that a plaintiff, by means of lodging a claim for acknowledgment, may seek acknowledgement of the unlawfulness of an interfering administrative measure that no longer has any legal force or an action (or non-action) that has ended by performance or by some other means (*կատարմամբ կամ որևէ այլ կերպ իրեն սպառած գործողությունը կամ անգործությունը)*, provided that the plaintiff has a legitimate interest in having the measures or action (or non-action) in question acknowledged as unlawful – that is, if (1) there is a risk of a similar interfering administrative measure being adopted or a similar action being undertaken in a similar situation; (2) the plaintiff intends to claim compensation for pecuniary damage; or (3) the plaintiff seeks to rehabilitate his honour, dignity or business reputation.

63. Article 72 § 1 (4)(b) provides that an acknowledgment claim, under Article 69 § 3 of the Code, can be lodged with the Administrative Court within five years from the moment the administrative measure lost its force or of exhaustion of an action or a failure to act.

F. Freedom of Assemblies Act of 2011

64. Section 28(1) provides that at the beginning of an assembly, the leader of the assembly must announce his or her name and surname; if the assembly has been organised by a legal entity, then the full name of the legal entity must also be announced, and also the purpose of the assembly and the approximate time that the assembly will end. If a march is to be held during the assembly, the route and schedule of the march must be announced.

65. Section 29(1) provides that at certain hours of the day (from 10 p.m. until 8 a.m.) assemblies held in areas adjacent to residential buildings, hospitals, boarding schools, or other buildings intended for overnight residence may not be accompanied by noise or light.

66. Section 32(2) provides that if an assembly takes place in breach of the requirement of prior notification, the police must warn the participants over a loudspeaker that the assembly is unlawful and that the participants are

subject to responsibility in the manner prescribed by law. If the assembly is peaceful, the police should facilitate it in so far as it has authority to do so.

67. Section 33(1), as in force at the material time, provided that the police could terminate an assembly only if there was no other way of preventing the disproportionate restriction of the constitutional rights of others or the public interest.

68. Section 33(3) provides that if an assembly does not have a leader, or if the leader does not comply with a police order, a member of the police shall order the participants at least twice over a loudspeaker to terminate the assembly, fixing a reasonable time-limit for its termination. At the same time, a member of the police shall warn the participants that, if they fail to terminate the assembly voluntarily within the fixed time-limit, the assembly will be dispersed, and shall alert them to the powers enjoyed by the police to apply "special means" prescribed by the Police Act.

69. Section 34 provides that, in the event of failure to terminate an assembly voluntarily within the time-limit specified in section 33(3), the police shall disperse the assembly.

G. Police Act of 2001; as in force at the relevant time

70. Section 2(1)(2) ("The objectives of the police") provides that the tasks of the police are, *inter alia*, to ensure in accordance with the law, the prompt prevention and disruption of crimes and administrative offences.

71. Section 11(1)(1) ("The duties of the police when combatting crimes and other offences") provided that, in accordance with the procedure and under the circumstances established by law, the police should, *inter alia*, prevent and disrupt crimes and other offences, "bring in" ("*բերման ենթարկել*") persons who committed a crime or another offence requiring the institution of proceedings, determine the causes of crimes and offences and the conditions contributing to them, and to take appropriate measures for eliminating them.

72. Section 20(1)(3) ("The rights of the police when combatting crimes and other offences") provided that, when detecting and discovering crimes, the police had the right to, *inter alia*, send or deliver persons suspected of criminal offence to a medical institution in order for it to be determined whether or not alcohol or drugs were present in their bodies, provided that the result of such a test was necessary to confirm or rule out the commission of the offence in question or to investigate the case objectively.

73. Section 31(1) provides that "special means" are technical means (devices, equipment, objects, material) and service dogs that fall under the category of police arsenal, that are provided for by the Act, and that are aimed primarily at having a direct physical or psychological impact on people, or a physical impact on material objects.

74. Section 31(1)(2) provides that police officers, individually or when discharging their service duties as part of a police unit, have the right to use the "special means" that are at the disposal of the police – in order to, *inter alia*, overcome resistance shown to a police officer or to persons who are (i) engaged in supporting the protection of public order and the fight against crime, and (ii) are performing their public or official duties, or when their orders are being disobeyed. Section (31)(1)(7) provides that police officers could use "special means" to disrupt mass disorder or group actions that obstruct the operation of transport, communication, and other organisations.

75. Section 31(2)(g) provides that police officers may deploy water cannon and armoured vehicles in circumstances specified in, *inter alia*, section 31(1) (2) and (7) of the Act.

H. Decision of the Constitutional Court of 17 December 2019 on the conformity with the Constitution of Article 69 § 3 of the Code of Administrative Procedure and Article 96 of the Act on Fundamentals of Administration and Administrative Proceedings

76. In its above-noted decision the Constitutional Court found Article 69 § 3 (2) of the Code of Administrative Procedure (see paragraph 62 above) to be incompatible with the Constitution in so far as it did not enable a person to lodge an acknowledgement claim on the basis of their intention to claim compensation in respect of non-pecuniary damage.

I. Decision of the Court of Cassation of 18 December 2009 (case no. EADD/0085/06/09)

77. The above decision of the Court of Cassation (unrelated to the present case) is summarised in the case of *Mushegh Saghatelyan v. Armenia* (no. 23086/08, § 123, 20 September 2018).

The Court of Cassation also noted in the above decision that, under Article 128 of the CCP, the process of arresting a person was considered completed after the arrest record was presented to the person deprived of his liberty (following the taking of that person into custody). Thus, a person could be considered to have been arrested in accordance with the law only when the deprivation of his liberty had been properly recorded and he or she had been familiarised with that record. However, according to the Court of Cassation, although Article 131^1 § 1 of the CCP laid down a time-limit for drawing up an arrest record, it did not set any deadline for presenting it to the person deprived of liberty. This could lead to a situation whereby a person suspected of having committed an offence could not acquire the status of an arrestee even three hours after being brought to the authority conducting criminal proceedings if the latter did not present him or her with an arrest record. The Court of Cassation thus held that Article 128 of the CCP should be interpreted

in the light of Article 131[1]: that is to say where, after a person was brought before the authority conducting proceedings, the latter drew up a record of the suspect's arrest, then it (that is, the authority conducting proceedings) should present the relevant record to the person deprived of liberty immediately or – should that be impossible – within one hour at most. Such a time-limit was reasonable and stemmed from the need to ensure the constitutional rights of a person deprived of liberty. Thus, if a record of arrest was not presented to a person deprived of liberty four hours after his or her being brought before the authority conducting criminal proceedings, then the person would be considered to be an arrestee by virtue of law and would have the right to avail himself or herself of the guarantees established by law in respect of arrestees.

J. Judgment of the Administrative Court of 17 June 2019 (no. VD/1299/05/16)

78. In this case, submitted by the Government, one of the demonstrators at the above-mentioned 22 June 2015 sit-in lodged an acknowledgement claim with Armenia's Administrative Court, under Article 69 § 3 of the CAP (see paragraph 62 above), alleging a breach of, *inter alia*, his rights to liberty and freedom of assembly. Specifically, after the dispersal of the sit-in, the demonstrator in question was deprived of his liberty on suspicion of having committed hooliganism, was held in police custody for several hours, and then released without charge. The Administrative Court found, *inter alia*, that the standard procedural documents drawn up at a police station in respect of his deprivation of liberty did not contain any specific facts or details about the acts committed by him and other demonstrators (which had served as grounds for the dispersal of the sit-in by water cannon). According to the Administrative Court, such acts could have constituted the obstruction of traffic, a noise nuisance, the use of obscene language, or violent conduct on the part of the demonstrators. The Administrative Court went on to conclude that the dispersal of the sit-in demonstration (which had constituted an interference with the demonstrator's right to freedom of expression and freedom of assembly) had not been prescribed by law and had not pursued a legitimate aim because there was no evidence to indicate that, by their actions, the demonstrators (including the demonstrator in question) had threatened the preservation of State security and public order, or had impinged upon the public interests and the enjoyment of the constitutional rights of others. As regards the demonstrator's complaint concerning the deprivation of his liberty, the Administrative Court noted that the record of his being brought to the police station did not specify the actual acts attributed to him. The court therefore concluded that, since the evidence in the case did not confirm that the demonstrator's actions had impinged upon the rights of others, or that his conduct could be characterised as hooliganism, the actions of the police in

depriving the demonstrator of his liberty had been unlawful. As to the length of his police custody (which had lasted for more than three hours), the Administrative Court, *inter alia*, referred to the provisions governing the procedure of administrative arrest, and found that the police had failed to release the demonstrator within three hours of his being deprived of his liberty and had failed to draw up an administrative arrest record or a record of the commission of an administrative offence. The Administrative Court therefore concluded that the actions of the police in keeping the plaintiff-demonstrator in police custody had been unlawful.

K. The case-law of the Administrative Court

79. In addition to the above-noted case, the Government submitted eleven other examples of the domestic practice (the oldest judgment was delivered by the Administrative Court in 2015 and became final on 2 June 2015) in respect of cases where individuals had lodged an acknowledgement claim with the Administrative Court under Article 69 § 3 of the CAP (see paragraph 62 above), alleging a breach of, *inter alia*, their rights to liberty, freedom of expression and freedom of assembly. In those cases the plaintiffs (demonstrators, and – in one case – a journalist) had been deprived of their liberty during a demonstration or after a public event, except for one case which did not involve deprivation of liberty; in the latter case – in which a plaintiff complained that, during a small assembly, the police had not allowed her to walk on the pavement (adjacent to the offices of the President) where that assembly was being held) – Armenia's Administrative Court of Appeal had found that there had been no interference with the plaintiff's right to freedom of assembly (no. VD/1043/05/16). As regards the remaining ten cases, except for one case (no. VD5/0027/05/18) where a demonstrator had been deprived of his liberty on suspicion of having committed a criminal offence (discussed in paragraph 81 below), the rest concerned a journalist's (no. VD/2981/05/16) or demonstrators' (eight cases in total – see paragraph 80 below) deprivation of liberty under Articles 258 or 259 of the CAO (cited in paragraphs 59 and 60 above) based on administrative charges.

80. In the above-noted eight cases the Administrative Court examined, *inter alia*, whether the actions of the police in depriving the demonstrators of their liberty for their alleged failure to comply with lawful orders given by police officers – an administrative offence under Articles 180^1 § 15 or Article 182 of the CAO (see paragraphs 57 and 58 above) – had been lawful. In the event that the Administrative Court found that the actions of the police had actually been unlawful – depending on the circumstances of the case – it would declare that those actions had been in breach of, *inter alia*, the rights to liberty, freedom of expression or freedom of assembly. Notably, in four of these cases (nos. VD/7759/05/18, VD/11083/05/18, VD/0500/05/19 and VD/0538/05/19) the Administrative Court examined, *inter alia*, the

plaintiffs' complaints that their deprivation of liberty under administrative law (in particular, Articles 258-259 of the CAO) had been unlawful, but without addressing their arguments regarding their right to freedom of assembly; in one case (no. VD/3313/05/14), having found that the plaintiffs' administrative arrest had been unlawful, the Administrative Court deemed that there had been no interference with their right to freedom of assembly, since the plaintiffs had been arrested after a demonstration ended.

As regards the remaining three cases, in one of them (no. VD/3222/05/16) the Administrative Court found that the interference with the plaintiff's right to freedom of assembly had been lawful, necessary and proportionate: despite the orders of the police for the demonstrators to clear the road and to demonstrate on the pavement, the plaintiff had failed to desist from blocking the road; at the same time, the court had found a breach of his right to liberty because his administrative arrest had lasted longer than allowed under the law. As regards the remaining two cases, in one of them the Administrative Court found that the actions of the police prohibiting a demonstrator to stage a show and his subsequent administrative arrest had been unlawful (no. VD/2952/05/14), while in the other case (no. VD/3263/05/15), the Administrative Court found, *inter alia*, that there had been no evidence in the case file that the police gave any order to the plaintiff-demonstrator and that his subsequent administrative arrest had thus not been in accordance with the law. It went on to conclude that the actions of the police – in interfering with the plaintiff's right to liberty, freedom of expression and freedom of assembly – had been unlawful.

81. Lastly, in the above-noted case no. VD5/0027/05/18, the Administrative Court – after examining a demonstrator's alleged deprivation of liberty when the police had stopped his car on charges of illegal possession of arms (a criminal offence) – found that the police had lacked sufficient reasonable suspicion to justify their actions. It declared the actions of the police unlawful and in breach of, *inter alia*, his rights to freedom of assembly and freedom of movement. On appeal, the Administrative Court of Appeal upheld this finding, noting that the demonstrator's deprivation of liberty had been in breach of the administrative law (Article 258 of the CAO, see paragraph 59 above). Due to the unlawful interference with the plaintiff's right to liberty, he had been unable to attend a demonstration; thus the police had breached his right to freedom of expression and freedom of assembly.

82. The Government also submitted five other examples of domestic case-law where, following successful acknowledgement claims, plaintiffs had sought compensation in respect of non-pecuniary damage from the police for breaches of, *inter alia,* their right to liberty (in all five cases) or right to freedom of assembly (only in two out of the five cases submitted).

II. INTERNATIONAL MATERIAL

A. United Nations

83. Principle 13 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provide:

> "13. In the dispersal of assemblies that are unlawful but non-violent, law-enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary."

84. The relevant paragraph of the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, issued on 1 June 2020 by the Office of the United Nations High Commissioner for Human Rights, provides as follows (footnote omitted):

> "7.7.2 In general, water cannon should only be used in situations of serious public disorder where there is a significant likelihood of loss of life, serious injury or the widespread destruction of property. In order to meet the requirements of necessity and proportionality, the deployment of water cannon should be carefully planned and should be managed with rigorous command and control at a senior level.

B. Council of Europe

85. The relevant part of Parliamentary Assembly of the Council of Europe Resolution 2435 (2022) on fighting and preventing excessive and unjustified use of force by law-enforcement officers, adopted on 27 April 2022, reads as follows:

> "9. The Assembly, therefore, calls on member States of the Council of Europe and observer States, where applicable, to:
>
> ...
>
> 9.3. ensure that the use of weapons and other lethal or non-lethal tools by law-enforcement agencies is thoroughly regulated by their national legislation, which should lay down instructions and safeguards against abuse;"

86. The Council of Europe Commissioner for Human Rights published a Human Rights Comment on 25 February 2014 entitled "Police abuse – a serious threat to the rule of law". It reads, in so far as relevant, as follows:

> "States should develop clear guidelines concerning the proportionate use of force by police, including the use of tear gas, pepper spray, water cannons and firearms in the context of demonstrations, in line with international standards."

C. Guidelines on Freedom of Peaceful Assembly

87. The Guidelines on Freedom of Peaceful Assembly (third edition, 2019), prepared by the Office for Democratic Institutions and Human Rights

of the Organization for Security and Co-operation in Europe in consultation with the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, read, in so far as relevant, as follows:

> "181. **Principles governing the use of force.** Force should only be applied to the minimum extent necessary, following the principles of restraint, proportionality, minimization of damage and the preservation of life...
>
> ...
>
> 185. **Specific means for officials to address disorder at an assembly.** The following good practice guidance relating to the specific means by which law-enforcement officials may exercise, or seek to regain, control when an assembly becomes disorderly, draws on the developing practices of national policing institutions:
>
> ...
>
> • The use of plastic/rubber bullets, baton rounds, attenuated energy projectiles (AEPs), or water cannons and other forceful methods of crowd control must be strictly regulated and recorded ..."

D. Reaction of international organisations to the dispersal of the sit-in of 23 June 2015

88. On 25 June 2015 the Spokesperson for the United Nations High Commissioner for Human Rights, Ravina Shamdasani, issued a statement regarding the use of force by Armenian police during the sit-in demonstration[6], which read as follows:

> "We are concerned at credible reports of excessive use of force by police officers, including against journalists, in their handling of protests in Yerevan on 23 June, and call on the authorities to investigate the incidents thoroughly and promptly.
>
> As protests continue to take place in the country, the Government must ensure that the policing of demonstrations strictly complies with international human rights norms and standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement.
>
> We welcome the statement by the Minister of Foreign Affairs of Armenia, expressing the Government's commitment 'to democracy, fundamental freedoms and protection of human rights in Armenia.' We encourage the Government to ensure that this commitment is translated in the way it responds to these protests, and we encourage all parties to engage in a constructive dialogue and to refrain from violence".

89. On 24 June 2015, the Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued a statement[7] regarding the dispersal of the sit-in, the relevant parts of which read as follows:

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[6] https://www.ohchr.org/en/press-briefing-notes/2015/06/press-briefing-note-armenia (last accessed on 18 December 2024)

[7] https://www.osce.org/odihr/166596 (last accessed on 18 December 2024)

> "...
>
> The reports of the actions of law enforcement agencies yesterday morning, including the use of water cannons against and the arrest of hundreds of peaceful protesters, raise serious concerns.
>
> ...
>
> The law-enforcement authorities have the duty to facilitate peaceful assemblies, and any police measure has to be legitimate, necessary and proportionate. All allegations of the excessive use of force or unjustified or indiscriminate arrests should be impartially, thoroughly and promptly investigated to hold those responsible accountable."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90. The applicant complained, under Article 3 of the Convention, that the prolonged length of the period that he had spent in police custody in wet clothes, without any food or time to rest, had amounted to inhuman treatment. Relying on Article 13, the applicant essentially complained that he had had no real possibility to have his rights remedied at the domestic level. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), and taking into account the applicant's submissions as a whole, considers that the crux of his complaint in the present case falls under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

91. The Government claimed that the applicant had failed to exhaust the available domestic remedies because he had raised his complaint about the alleged ill-treatment only in his criminal complaint (see paragraph 20 above) and had failed to pursue it further before the prosecutor or the courts. They also pointed out that the applicant had not lodged appeals (with, respectively, the Court of Cassation and the Criminal Court of Appeal) against the decisions of the Criminal Court of Appeal of 29 October 2020 (see paragraph 36 above) and that of Yerevan Court of General Jurisdiction of 30 June 2021 (see paragraph 42 above). In addition, under Article 162.1 of the Civil Code (see paragraph 55 above), the applicant could have lodged an application with the domestic civil courts seeking to establish a breach of his right not to be subjected to ill-treatment and, accordingly, to claim compensation in respect of non-pecuniary damage; however, he had failed to do this. They submitted a domestic case-law example where an acquitted person had successfully claimed compensation in respect of non-pecuniary damage suffered as a result of his detention and the conditions of the cell in which he had been held during his detention.

92. In addition, the Government argued that the treatment allegedly suffered by the applicant had not reached the severity threshold under Article 3 of the Convention.

93. The applicant maintained his complaints (see paragraph 90 above).

94. The Court does not need to determine whether the applicant exhausted the domestic remedies, because his complaint is in any event inadmissible for the following reasons. In his criminal complaint the applicant submitted that he had been subjected to inhuman and degrading treatment as a result of being kept in police custody for several hours in wet clothes and without food and the possibility to rest (see paragraph 20 above). He reiterated these complaints in his appeals against the decisions of the investigator; however, during his interview of 16 March 2016 (see paragraph 25 above) and in the presence of his lawyer, the applicant stated in unambiguous terms that he had been treated well at the police station and had not felt cold notwithstanding his wet clothes (contrast *D.H. and Others v. North Macedonia*, no. 44033/17, § 37, 18 July 2023). Given such circumstances, it cannot be said that the applicant was subjected to any treatment contrary to Article 3 of the Convention. Rather, his complaint essentially concerns the length of the time that he spent in police custody, which will be addressed in paragraphs 144-162 below.

95. It follows that the complaint under Article 3 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and should therefore be rejected, in accordance with Article 35 § 4.

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS ON THE REMAINING COMPLAINTS

A. The parties' arguments

96. The Government submitted that the applicant had failed to exhaust the available effective domestic remedies in respect of his complaints under Article 5 § 1 of the Convention because he had not lodged appeals with, respectively, the Court of Cassation and the Criminal Court of Appeal against the decisions of the Criminal Court of Appeal of 29 October 2020 (see paragraph 36 above) and that of Yerevan Court of General Jurisdiction of 30 June 2021 (see paragraph 42 above).

97. The Government also argued that, even though the criminal investigation could have put right the alleged violation of the applicant's rights under Articles 5 and 11 of the Convention, once the criminal investigation had established a lack of *corpus delicti* in the actions of the police officers (see paragraph 31 above), the applicant should have pursued an administrative remedy. According to the Government, an administrative remedy did not have essentially the same objective as the criminal investigation under Article 308 § 1 of the Criminal Code. In particular, the

applicant could have lodged an acknowledgement claim under Article 69 § 3 of the CAP with the Administrative Court (see paragraph 62 above) and sought to have the actions of the police officers declared unlawful. They submitted twelve examples of the relevant domestic case-law (see paragraphs 78-81 above).

98. The Government further argued that under Article 162.1 of the Civil Code, following the Administrative Court's acknowledgement of a breach of his rights to liberty and freedom of assembly, the applicant could then have obtained compensation in respect of non-pecuniary damage (see the case-law examples submitted by the Government summarised in paragraph 82 above).

99. The applicant originally claimed that there were no effective remedies in respect of his complaints raised before the Court. However, he later appeared to agree with the Government's argument that the criminal investigation could have addressed his complaints under Articles 5 § 1 and 11 of the Convention for the purposes of the exhaustion rule. However, this had not proved effective under the particular circumstances of his case given that it had taken the authorities around four years to find that his rights had not been breached. The applicant argued that the reason why he had not pursued his claims before the Court of Cassation was because it had already been obvious to him that his appeals were bound to fail. In support of this argument, he cited the example of a fellow demonstrator who had contested a similar decision as far as the Court of Cassation, but to no avail. According to the applicant, once the investigator decided not to prosecute the police officers for his police custody (see paragraph 31 above), the criminal proceedings no longer concerned his rights. Therefore, he was not obliged to appeal against the decision of the Yerevan Court of General Jurisdiction (see paragraph 42 above).

B. The Court's assessment

1. General principles

100. The Court reiterates that the only remedies that Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are capable of redressing the alleged violation. 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 *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 139 and 143, 27 November 2023; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014; and *Ter-Petrosyan v. Armenia*, no. 36469/08, § 55, 25 April 2019). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 139, and the authorities cited therein).

101. Thus, there is no obligation to have recourse to remedies which are inadequate or ineffective. In this connection, the Court has considered, for example, that applicants were dispensed from the obligation to exhaust a remedy referred to by the Government where it was bound to fail and there were objective obstacles to its use; or where its use would have been unreasonable and would have constituted a disproportionate obstacle to the effective exercise of the right of individual application under Article 34 of the Convention (see ibid., § 141).

102. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy advanced by them was an effective one, available in theory and in practice at the relevant time (ibid., § 143, and the authorities cited therein). The availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 88, 9 July 2015; *McFarlane v. Ireland* [GC], no. 31333/06, §§ 117 and 120, 10 September 2010, and *Mikolajová v. Slovakia*, no. 4479/03, § 34, 18 January 2011). Such case-law must in principle be well established and date back to the period before the application was lodged (see, among other authorities, *Gherghina*, cited above, § 88; *Sürmeli v. Germany* [GC], no. 75529/01, § 110, ECHR 2006-VII; *Norbert Sikorski v. Poland*, no. 17599/05, § 115, 22 October 2009; and *Zutter v. France* (dec.), no. 197/96, 27 June 2000) and be relevant to the case at hand (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 44, 2 November 2010, and *Ter-Petrosyan*, cited above, § 57).

103. Once this burden of proof has been discharged, it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective under the particular circumstances of the case, or that there existed special circumstances exempting him or her from this requirement (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 205, 22 December 2020).

104. Within this context the existence of mere doubts as to the prospects of success of a particular remedy that is not obviously futile is not a valid reason for failing to exhaust the available domestic remedies (ibid., § 206). Furthermore, an applicant who has availed himself of a remedy capable of redressing directly, and not merely indirectly, the situation complained of is not required to have recourse to other remedies that might be available but whose effectiveness is questionable (ibid.). In the event of there being a number of domestic remedies that an individual can pursue, that person is entitled to choose a remedy that addresses his or her essential grievance. In other words, when one remedy has been pursued, the use of another remedy that has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, 15 October 2009, and *Köhler v. Germany* (dec.), no. 3443/18, 7 September 2021, § 68).

105. As regards a remedy in respect of deprivation of liberty that has ended, the Court has already had occasion to rule on many such cases (see, among other authorities, *Kolevi v. Bulgaria* (dec.), no. 1108/02, 4 December 2007; *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 41, 6 November 2008; *Dolenec v. Croatia*, no. 25282/06, § 184, 26 November 2009; *Rahmani and Dineva v. Bulgaria*, no. 20116/08, § 66, 10 May 2012; and *Bryan and Others v. Russia*, no. 22515/14, § 67, 27 June 2023). The Court's case-law in this area indicates that where the applicant complains that he or she was detained in breach of domestic law and where the detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation in principle constitutes an effective remedy that needs to be pursued if its effectiveness in practice has been convincingly established (see *Selahattin Demirtaş*, cited above, § 208, and *Dzerkorashvili and Others v. Georgia*, no. 70572/16, § 78, 2 March 2023).

106. In addition, with regard to the effectiveness of domestic remedies in the specific field of freedom of assembly, the Court requires that domestic law provide for adequate and effective legal safeguards against arbitrary and discriminatory exercise of the discretion left to the executive. This judicial review must make it possible to obtain an assessment of the proportionality and necessity of the impugned restriction within the meaning of Article 11 § 2 (see, *mutatis mutandis*, *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 146, and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 428 and 430, 7 February 2017).

2. Application of the above principles to the present case

(a) Exhaustion of remedies in respect of the complaints under Article 5 § 1

107. The Court notes that it has previously rejected objections of non-exhaustion raised by the Armenian Government (albeit in different factual circumstances) in cases concerning lawfulness of deprivation of liberty effected on suspicion of having committed a criminal offence (see *Mushegh Saghatelyan,* cited above, §§ 175-78, and *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, §§ 74 and 76, 8 October 2020). In the present case, the Government raised different objections of non-exhaustion of domestic remedies (see paragraphs 96-98 above). The Court will deal with them below.

(i) The objection summarised in paragraph 96 above

108. The Court observes that criminal case no. 62217915 was not concerned with the assessment of the lawfulness of the applicant's arrest, but with ascertaining whether the actions of the police officers, which had resulted in his stay at the police station being protracted, contained elements of a criminal offence (namely, abuse of office – see paragraphs 30 and 31 above). The offence of abuse of office was an intentional crime and had to be

motivated by personal or group interests, or personal gain. Therefore the criminal avenue was not directly relevant for the applicant's complaints under Article 5 § 1 of the Convention. Indeed, it may be that a person's deprivation of liberty does not comply with the domestic law or the Convention, without there necessarily being (on the part of law-enforcement authorities) any intent to abuse one's official position in pursuit of personal gain or other interests.

109. The above is confirmed by the fact that the domestic courts did not assess, in the context of the impugned criminal proceedings, whether the applicant's deprivation of liberty complied with the domestic law and whether it was necessary in the circumstances. Rather, their assessment was essentially limited to ascertaining (i) whether the SIS investigator had objectively and thoroughly assessed the evidence before deciding not to prosecute the police officers and (ii) whether in so doing he breached the applicant's rights (see paragraphs 35 and 36 above).

110. Therefore, it has not been shown that in the present case the institution of criminal proceedings on account of an instance of abuse of office under Article 308 § 1 of the Criminal Code could constitute an effective remedy in respect of the applicant's complaints under Article 5 § 1 of the Convention for the purposes of the exhaustion rule under Article 35. The applicant was thus not obliged to lodge an appeal on points of law against the decision of the Criminal Court of Appeal of 29 October 2020.

111. As regards the applicant's alleged failure to appeal against the decision of 30 June 2021 delivered by the Yerevan Court of General Jurisdiction (see paragraph 42 above), the Court observes that the third decision to suspend the investigation had no bearing whatsoever on the applicant's rights, as was clearly stated by the decision of that court.

(ii) The objection summarised in paragraphs 97-98 above

112. As mentioned in paragraph 107 above, the Court has already found that, since 2008, the domestic law (and, in particular the CCP) has not provided for a possibility to obtain a *post-hoc* review of the lawfulness of an arrest of a person on suspicion of his having committed a crime (see *Mushegh Saghatelyan*, §§ 175-78, and *Jhangiryan*, §§ 74 and 76, both cited above). The Court therefore needs to ascertain whether, at the relevant time, the remedy suggested by the Government – namely, lodging an acknowledgement claim with the Administrative Court under Article 69 § 3 of the CAP (see paragraph 62 above) – was sufficiently certain both in theory and in practice to afford redress in respect of the applicant's complaint under Article 5 § 1 of the Convention. In particular, the Court has to verify that the availability, scope and application of the said remedy, was clearly set out and confirmed or complemented by domestic practice (see the case-law references cited in paragraphs 100-102 above).

113. The Government submitted that the applicant should have lodged an acknowledgement claim once it had been decided not to prosecute the police

officers owing to the lack of *corpus delicti* in their actions (see paragraphs 31 and 97 above). They did not clarify whether it was possible for the applicant to lodge an acknowledgment claim with the Administrative Court before the conclusion of criminal proceedings. However, in a case-law example submitted by them and concerning the same demonstration (discussed in paragraph 116 below), the administrative courts admitted for examination such a claim even while the criminal investigation in question was still pending[8].

114. The Court further observes that the acknowledgment claim referred to by the Government allowed for the possibility to contest, *inter alia*, actions undertaken by an administrative authority that were no longer ongoing. At the same time, in order to lodge such a claim, a plaintiff should pursue a legitimate interest in having those actions declared unlawful – that is to say if (1) there was a risk of a similar action being undertaken in a similar situation; (2) the applicant intended to claim compensation for pecuniary damage; or (3) the applicant sought to rehabilitate his honour, dignity or business reputation. The Government, for their part, did not explain how the applicant was supposed to substantiate his legitimate interest in having his alleged unlawful deprivation of liberty declared unlawful by reference to conditions (1)-(3) of Article 69 § 3 – none of which seem to be applicable to his case (see also *Ter-Petrosyan*, cited above, § 57, where the Court, among other things, reached a similar finding in respect of an almost identical remedy under the former CAP – albeit within the context of a complaint regarding the right to freedom of assembly, see paragraph 122 below). In this connection, in 2019 (that is, more than four years after the events of the present case) Armenia's Constitutional Court found Article 69 § 3 (2) of the CAP to be incompatible with the Constitution in so far as it did not enable a person to lodge an acknowledgement claim on the basis of their intention to claim compensation in respect of non-pecuniary damage (see paragraph 76 above). Although the relevant domestic provision has not been amended yet, in two case-law examples submitted by the Government (both post-dating the above-noted decision of the Constitutional Court), the plaintiffs substantiated their legitimate interest in bringing an acknowledgment claim (under Article 69 § 3 of the CAP) by, *inter alia*, indicating their intention to claim compensation in respect of non-pecuniary damage. It is therefore questionable, in the first place, whether, at the time of the events in question, the remedy at issue was clearly set out and available in law in respect of the applicant's complaints under Article 5 § 1 of the Convention.

115. As regards the examples of domestic practice cited by the Government, except for two case-law examples – discussed in paragraph 116 below – the bulk of the case-law examples (see paragraphs 79-80 above)

[8] While the Administrative Court originally suspended the proceedings due to the pending criminal investigation, the Administrative Court of Appeal quashed that decision.

concerned deprivation of liberty under administrative law (namely, Articles 258 or 259 of the CAO; see paragraphs 59 and 60 above) effected within the framework of administrative offence-related proceedings, rather than deprivation of liberty on suspicion of having committed a criminal offence. In the Court's view these case-law examples are not relevant to the present case because they do not shed light on the question of whether the Administrative Court is competent to examine complaints about depriving a person (under the rules of criminal procedure) of his liberty on suspicion of his having committed a criminal offence.

116. At the same time, in one case-law example submitted by the Government (see paragraph 81 above), the Administrative Court found that the police had lacked sufficient reasonable suspicion to stop the plaintiff's car on criminal charges of illegal possession of arms; on appeal, the Administrative Court of Appeal found that the plaintiff's subsequent police custody had been in breach of administrative law – namely, Article 258 of the CAO (cited in paragraph 59 above).

117. Moreover, in another case-law example, which concerned an acknowledgement claim lodged by a demonstrator at the same sit-in protest of 22-23 June 2015, the Administrative Court also examined the lawfulness of an instance of deprivation of liberty effected on suspicion of the person concerned having committed a criminal offence – namely, hooliganism (see paragraph 78 above). In that case, the Administrative Court similarly found that the police had lacked reasonable suspicion to deprive the demonstrator of his liberty. Hence, the Administrative Court accepted jurisdiction and examined the merits of a complaint about the lawfulness of deprivation of liberty effected on suspicion of the plaintiff's having committed a criminal offence. The Court observes, however, that it did so by essentially categorising the plaintiff's deprivation of liberty as an administrative arrest. Specifically, the Administrative Court referred to the provisions governing the procedure of administrative arrest, and found that the actions of the police had been unlawful because they had failed to release the plaintiff within the maximum time-limit set for an administrative arrest and had failed to draw up a record of an administrative arrest or a record of the commission of an administrative offence (ibid.). However, the applicant in the present case was deprived of liberty in relation to a suspicion of his having committed a criminal offence as opposed to any administrative offence (see paragraphs 21, 23 and 26-27 above). Therefore, while it was not unreasonable to assume that a dispersal of a demonstration by the police could constitute an administrative measure, the applicant could not have reasonably foreseen that administrative law was applicable in respect of his deprivation of liberty effected on suspicion of his having committed a criminal offence, and that he could contest it before the Administrative Court.

118. Having regard to the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the right of individuals

in a democracy to be free from arbitrary detention at the hands of the authorities (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 230, ECHR 2012), the remedies to contest the lawfulness of one's deprivation of liberty should be clearly set out in domestic law and practice. Therefore, in so far as the applicant's complaint under Article 5 § 1 is concerned, it cannot be said that, at the relevant time, it was reasonably foreseeable for the applicant that he could contest his deprivation of liberty, effected on suspicion of his having committed a criminal offence, before the Administrative Court.

119. Consequently, the Court does not deem it necessary to examine the question of whether the applicant had the possibility to claim compensation in respect of non-pecuniary damage. According to the Government, such a possibility depended on the success of an acknowledgement claim – which, as found above, did not constitute an effective remedy at the relevant time in respect of the applicant's complaints under Article 5 § 1 of the Convention.

(iii) Conclusion

120. In the light of the above, the Court dismisses the Government's objections of non-exhaustion.

(b) Exhaustion of remedies in respect of the complaint under Article 11

121. The Government's objection concerned the acknowledgment claim under the CAP (see paragraphs 97-98 above).

122. As mentioned above, the Court has already examined a similar remedy in respect of a complaint under Article 13 in conjunction with Article 11. Namely, in the case of *Ter-Petrosyan* (cited above), the Government argued that an acknowledgment claim lodged under Article 68 of the former CAP (ibid., § 30 above) would have constituted an effective remedy in respect of the complaints lodged by the applicant in that case regarding an alleged breach of his right to freedom of assembly (ibid., § 49). The Court made the following observations:

> "57. ...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..."

123. The above-noted considerations concerning the lack of clarity of Article 68 § 3 of the former CAP hold true in the present case because it contained wording that was almost identical to Article 69 § 3 of the new CAP (see paragraph 62 above). Therefore, as observed in respect of the applicant's complaint under Article 5 § 1 (see paragraph 114 above), at the relevant time, the applicant could not have possibly substantiated his legitimate interest in bringing an acknowledgment claim under Article 69 § 3 of the CAP, because none of the conditions laid down in sub-paragraphs (1)-(3) of that Article seem to be applicable to his case.

124. At the same time, the Government submitted twelve case-law examples in order to demonstrate that domestic practice had evolved in such a way that the Administrative Court now had jurisdiction to examine the merits of acknowledgment claims in respect of, *inter alia*, alleged interferences by the police with one's right to freedom of assembly (see paragraphs 78-81 above). The Court observes that of the eleven cases which concerned, *inter alia*, alleged breaches of the right to freedom of assembly, in respect of four of them the Administrative Court examined the plaintiffs' complaints concerning the lawfulness of their deprivation of liberty – but without making any finding in relation to their arguments pertaining to the alleged breaches of their right to freedom of assembly; in two other cases it found that there had been no interference with the plaintiffs' right to freedom of assembly (see paragraphs 79-80 above). However, in the remaining five case-law examples (one of which concerned an acknowledgment claim lodged by a demonstrator of the same sit-in of 22-23 June 2015 – see paragraph 78 above), the Administrative Court examined the substance of complaints concerning the right to freedom of assembly (see the summary of the relevant domestic case-law in paragraphs 78-81 above). The Court further observes that in none of the cases submitted by the Government (including those not pertaining to a complaint concerning one's right to freedom of assembly) were the conditions laid down in subparagraphs (1) to (3) of Article 69 § 3 interpreted by the Administrative Court as constituting a bar to the examination on the merits of those complaints. Rather, the Administrative Court either did not address the applicability of those conditions to a given case or did so briefly, by citing the arguments advanced in that respect by the plaintiffs (who either referred to subparagraph (1) of Article 69 § 3 or to their intention to "claim damages"). Hence, despite the lack of clarity in the text of

the law noted in paragraph 123 above, the domestic practice in respect of acknowledgment claims evolved in such a manner that the Administrative Court would examine complaints about one's right to freedom of assembly and, depending on the circumstances of the case, would declare the actions of the police (in interfering with that right) unlawful (as evidenced by four case-law examples; in the fifth case, by contrast, the Administrative Court essentially found that the interference with the plaintiff's right to freedom of assembly had been prescribed by law, necessary and proportionate under the circumstances; see paragraphs 78 and 80-81 above).

125. It is true that only in one case-law example submitted by the Government did the Administrative Court embark on an assessment of the necessity and proportionality of the interference with a plaintiff's right to freedom of assembly; in the remaining cases it did not continue its assessment beyond the finding that the interference had been unlawful (see paragraphs 78 and 80-81 above). However, this approach appears legally sound. There is no indication that the assessment carried out by the Administrative Court was only limited to the formal lawfulness of a contested administrative measure. It could have encompassed the examination of such aspects as necessity and proportionality. Therefore, regard being had to the examples of domestic practice submitted to it, the Court concludes that the Administrative Court was capable of properly engaging with the substance of a Convention complaint under Article 11 (compare, *mutatis mutandis*, *P.C. v. Ireland*, no. 26922/19, § 107, 1 September 2022).

126. The Court is mindful of the fact that apart from one case in respect of which the judgment of the Administrative Court was delivered on 30 April 2015 (and entered into force on 2 June 2015; see paragraph 79 above), the remaining four cases produced by the Government were decided by that court and became final in the period between 2016 and 2021 – after the events addressed by the present case. In this connection it reiterates that the effectiveness of a given remedy is normally assessed with reference to the date on which the application was lodged (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 158, and the authorities cited therein). However, under Article 72 § 1(4)(b) of the CAP (see paragraph 63 above) limitation period for lodging an acknowledgment claim under Article 69 § 3 of the CAP is five years from the moment that the action in question ended. The applicant, for his part, did not point to any particular circumstance that would have released him, at the relevant time, from the obligation to exhaust the said remedy prior to bringing his complaints before the Court. The Court reiterates that the existence of mere doubts as to the prospects of the success of a particular remedy that is not obviously futile does not constitute a valid reason for failing to exhaust that avenue of redress (compare *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 159). Under the Armenian legal system, where an administrative remedy could provide protection against alleged breaches of fundamental rights by

public officials (see, in particular, Article 3 of the CAP, cited in paragraph 61 above), it is incumbent on the aggrieved individual to test the extent of that protection and to allow the domestic courts to develop case-law in respect of those rights by way of interpretation. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 159.).

127. Regard being had to the domestic practice submitted to it, in the Court's view, an acknowledgement claim under Article 69 § 3 could, in principle, constitute as an effective remedy for the purposes of the exhaustion rule under Article 35 § 1 of the Convention, in so far as the applicant's specific complaint under Article 11 is concerned. As the applicant did not try to lodge an acknowledgment claim, the Court considers that he failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system – namely, to put right the Convention violations through their own legal system (see, *inter alia*, *Gherghina*, cited above, § 115).

128. Given these circumstances, it is not necessary to deal with the Government's additional argument that the applicant had not lodged a compensation claim.

129. It follows that the complaint under Article 11 of the Convention is inadmissible for failure to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention and must be dismissed in accordance with Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

130. The applicant complained that his deprivation of liberty had been unlawful and arbitrary. He relied on Article 5 § 1 of the Convention, which reads as follows:

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

A. Remaining issues as to admissibility

131. Without arguing explicitly that the applicant had not been deprived of his liberty, the Government pointed to the applicant's testimony (see paragraph 25 above), in which he had stated that no one had prohibited him from leaving the police station after he had been held for three hours. The Government argued that, as submitted by the police officers of Shengavit police station (see paragraph 26 above), all apprehended individuals had been free to leave three hours after the moment of their "bringing-in" to the police station. Thus, the applicant's police custody had not exceeded three hours.

132. The applicant maintained his submissions that from the moment of his arrest near Freedom Square and until his discharge from the NATC he had been deprived of his liberty – that is, from between about 5 and 5.30 a.m. (and, in any event, half an hour after the dispersal of the sit-in) until about 1.30 p.m.

133. The Court notes that the question of whether the period that the applicant spent under the control of the police officers (allegedly lasting more than three hours) constituted a *de facto* deprivation of liberty is closely linked to his complaint that his arrest had been unlawful and thus should be joined to the merits of that complaint.

134. The Court further notes that the 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

135. The applicant complained that his deprivation of liberty had been effected in the absence of any grounds and had been unrecorded. He considered that he had been the victim of a mass arrest, without reasonable suspicion or any individualised analysis of whether his own actions had been criminal. He had been arrested and had been kept in police custody for about eight hours without any legal basis. In particular, although he had been deprived of his liberty on suspicion of hooliganism, he had later been interviewed as a witness. However, under Articles 86 § 1 (providing the definition of a witness) and 205 § 1 (laying down the procedure for summoning a person to an interview) of the CCP, in order to question him as a witness, the police should have summoned him, rather than resorting to arresting him. The applicant also pointed to the discrepancy in his arrest documents (that is, two different documents listed two different grounds for his deprivation of liberty). Specifically, the record on his "bringing-in" to the police station referred to his engagement in hooliganism – a criminal offence

under Article 258 § 1 of the Criminal Code – whereas the written explanation of his rights referred to Article 182 of the CAO (see paragraph 23 above).

136. Later, when the applicant had asked the police and the IC what the grounds of his deprivation of liberty were, it had turned out that no criminal proceedings had been instituted against him and that he had no status whatsoever in respect of those criminal cases that had been opened (see paragraphs 21 and 22 above). Therefore, according to the applicant, the case of hooliganism had been fabricated in order to justify the mass arrest to which he and hundreds of protesters had fallen victim. In fact, none of the two hundred arrested demonstrators had ever been prosecuted on charges of hooliganism. If one were to follow the line of argument advanced by the Government, every participant of any peaceful protest was a potential offender and could be arrested on suspicion of hooliganism.

(b) The Government

137. The Government submitted that the applicant's deprivation of liberty had been based on suspicion of having committed a criminal offence – namely, hooliganism (as defined by Article 258 § 1 of the Criminal Code; see paragraph 44 above). On 22 June 2015 the police had opened criminal case no. 14203515 on account of the demonstrators' alleged commission of the crime of hooliganism in view of the fact that they had obstructed traffic and caused a noise nuisance, and had thereby disrupted public order (see paragraph 9 above). Thus, in order to ensure the prevention or early prevention of crimes or other offences, some of the protesters had been "brought in" to police station (under sections 2 and 11 of the Police Act, setting out the objectives and duties of the police when combatting crimes and other offences; see, for instance, sections 2(1)(2) and 11(1)(1) of the Act cited in paragraphs 70 and 71 above) in order for it to be determined whether their actions had encompassed elements of hooliganism. The applicant had been "brought in" to the police station on suspicion of hooliganism because he had fled from the police officers; the applicant's attempted escape had been sufficient for the police to believe that he had committed a crime. Moreover, once at the police station, all the relevant arrest documents had been drawn up within three hours. They submitted that, in accordance with Article 131[1] of the CCP (see paragraph 52 above), an arrest record was to be drawn up within three hours after bringing a person before an authority conducting criminal proceedings.

138. The Government reiterated their above-summarised assertion (see paragraph 131 above) that the applicant's police custody had not exceeded three hours.

2. The Court's assessment

(a) Whether the applicant was deprived of liberty

(i) General principles

139. The Court reiterates firstly that Article 5 of the Convention guarantees a right of primary importance in a "democratic society" within the meaning of the Convention – namely, the fundamental right to liberty and security (see *Selahattin Demirtaş*, cited above, § 311). In proclaiming the "right to liberty", paragraph 1 of Article 5 concerns itself with the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. It is not concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4 (see *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012, and *Friedrich and Others v. Poland*, nos. 25344/20 and 17 others, § 149, 20 June 2024). The difference between deprivation of and restrictions upon liberty is one of degree or intensity, and not of nature or substance (see *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 57, ECHR 2012; *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 64, 15 December 2016; and *De Tommaso v. Italy* [GC], no. 43395/09, § 80, ECHR 2017 (extracts) and the cases cited therein).

140. Furthermore, the Court has held that the notion of deprivation of liberty does not only comprise the objective element of a person's confinement in a particular restricted space for a significant length of time. A person can only be considered to have been deprived of his or her liberty if, as an additional subjective element, he or she has not validly consented to the confinement in question (compare *Bryan and Others*, cited above, § 62).

141. The Court also reiterates that deprivation of liberty may take various forms (see *Guzzardi v. Italy*, 6 November 1980, § 95, Series A no. 39). The Court does not consider itself bound by the legal conclusions of the domestic authorities as to whether or not there has been a deprivation of liberty, and undertakes an autonomous assessment of the situation (see the above-cited cases of *Khlaifia*, § 71; *Creangă*, § 92; see also *Valerian Dragomir v. Romania*, no. 51012/11, § 67, 16 September 2014; *Čamans and Timofejeva v. Latvia*, no. 42906/12, § 108, 28 April 2016; and *Bryan and Others*, cited above, § 62).

142. In order to determine whether a person has been deprived of his or her liberty, the starting point must be his or her specific situation, and account must be taken of a whole range of criteria, such as the type, duration and effects of the measure in question and the manner in which it was implemented (see *Khlaifia*, cited above, § 64). The Court attaches importance to factors such as whether there is a possibility to leave the restricted area, the degree of supervision and control over the movements of the person concerned, the extent of that person's isolation and the possibility of contact with the outside world (see *Guzzardi*, cited above § 95; *Friedrich and Others*;

cited above, § 151; and *H.M. v. Switzerland*, no. 39187/98, § 45, ECHR 2002-II).

143. The Court has considered that what is indicative of deprivation of liberty is an element of coercion in the exercise of police powers in terms of the applicant's physical discomfort and inability to leave (see, for example, *Friedrich and Others*; cited above, §§ 155, 165, 170, 175 and 182; *Čamans and Timofejeva,* cited above, § 112*;* and *Khalikova v. Azerbaijan*, no. 42883/11, § 102, 22 October 2015; also compare *Austin and Others,* cited above, § 64). As to the element of coercion, the Court has held that the absence of handcuffing or other measures of physical restraint does not constitute a decisive factor in establishing the existence of a deprivation of liberty (see *Friedrich and Others*; cited above, § 155 and the cases cited therein; also compare *Čamans and Timofejeva,* cited above, § 113).

(ii) Application of the above principles to the present case

(α) The period to be taken into consideration

144. In the present case, the Court considers it first necessary to determine the period to be taken into consideration.

145. With regard to the starting point, according to the material concerning the applicant's deprivation of liberty (see paragraphs 23 and 24 above), he had been brought to Shengavit police station at about 6 a.m. – in one document, the time is indicated at 6.10 a.m. (see paragraph 21 above). Therefore, on the basis of all the material in its possession, the Court finds that the starting point of the applicant's deprivation of liberty was at about 6 a.m. on 23 June 2015.

146. The parties held diverging views as to when that period had ended. In particular, without indicating the actual hour of the applicant's release, the Government argued that the applicant had been free to leave three hours after he had been admitted to Shengavit police station (see paragraph 131 above). According to the applicant, however, he had been released only after he had submitted hair and urine samples for the above-mentioned drug test (see paragraph 132 above). In this connection, according to the applicant's submissions (uncontested by the Government), the last procedural step to which he had been subjected was his submission to drugs tests at the NATC, from where he had been discharged only at about 1.30 p.m. While the issue as to whether the applicant was deprived of his liberty up until his discharge from the NATC will be addressed below, the Court considers that the period to be taken into consideration ended at 1.30 p.m. on 23 June 2015.

(β) Did the applicant's stay at the police station amounted to deprivation of liberty throughout the period concerned?

147. The Court observes that, according to the Government's submissions, the applicant was deprived of liberty and held in police custody

under the so called "bringing-in" procedure, which had lasted no more than three hours. In this connection, the procedure for "bringing in" was for the first time clarified by the Court of Cassation in 2009. In particular, after a person was brought before an authority conducting criminal proceedings, an arrest record should be drawn up within three hours and – following the decision of the Court of Cassation – notified to that person immediately, or within an hour at the latest. Moreover, after the expiry of the fourth hour, the person deprived of liberty would be considered to be an arrestee by virtue of law – even in the absence of an arrest record. However, should the authorities decide to release him or her within those three hours, they did not need to draw up a record on his or her arrest (see paragraph 52 above), and the person concerned would not be considered to have been arrested under the domestic law (see the concept of arrest in paragraph 51 above). Rather, during that period, he or she would have the status of a "brought-in person" (the term coined by the Court of Cassation; see paragraph 77 above).

148. The Court has previously examined the procedure of "bringing in" in the case of *Mushegh Saghatelyan* (cited above). In respect of that case, the Court noted:

> "170. ... none of the Articles of the CCP cited by the Government – or indeed any other Article of the CCP – contains any rules concerning the alleged status of a 'brought-in person', including an explanation of such a notion and of any rights and obligations arising from that status. The only formal status – recognised by the CCP – of a person arrested on suspicion of having committed an offence was that of a suspect under Article 62 of the CCP (see paragraph 101 above). The Court further notes that the only Article of the CCP that prescribed a procedure called 'bringing-in' was Article 153 which, however, did not apply to a person taken into custody on suspicion of having committed an offence and concerned a different type of situation, that is, when a person was taken forcibly before the investigating authority because of a failure to appear upon the latter's summons (see paragraph 110 above). Nothing suggests that that Article was applicable to the applicant's case and this has not been suggested by the parties either.
>
> 171. It is true that Article 180 § 2 of the CCP, relied on by the Government, also mentioned the possibility of 'bringing a person in' on suspicion of their having committed an offence (see paragraph 111 above). However, firstly, that Article concerned specifically cases in which authorities were called upon to investigate crime reports, as opposed to a situation like the applicant's, in which a person was taken into custody on an immediate suspicion of having committed an offence. It is therefore questionable that that provision, which moreover was never cited in any of the documents related to the applicant's deprivation of liberty, was applicable in his case. Secondly, even assuming that this provision was applicable, it is doubtful that it satisfied the principle of legal certainty. In particular, it is not clear what was meant by the phrase 'persons may be brought in' on a suspicion of having committed an offence and what procedure this implied, given that the only procedure for short-term deprivation of liberty of a person on suspicion of their having committed an offence was defined under the CCP as 'arrest'. In that sense, the wording of Article 180 § 2 appears to be in conflict with other relevant provisions of the CCP, including Articles 6, 34, 62, 128 and 129 (see paragraphs 109, 100, 101, 103 and 104 above).

> 172. The Court also notes that the concept of a 'brought-in person' appears to have been developed for the first time by the Court of Cassation in its decision of 18 December 2009 (see paragraph 123 above) ... Nothing suggests that, prior to that decision, the relevant provisions of the CCP, including Articles 128 and 180, had been interpreted – whether separately or in combination with each other – by the domestic courts in such a manner as to provide for a pre-arrest procedure called 'bringing-in'. Nor do the particular circumstances of the applicant's case suggest that his deprivation of liberty ... was pursuant to such a procedure. In particular, the only document which mentioned that the applicant was 'brought in' was a record entitled 'record of bringing-in', a handwritten document drawn up at some point after the applicant had been taken to the police station (see paragraph 24 above). However, according to Article 131.1 of the CCP, the only record which was to be drawn up in such cases was the record of a suspect's arrest and there was no mention in the CCP of a 'record of bringing-in' (see paragraph 106 above). Thus, the record in question lacked any basis in domestic law ..."

149. Although the events of the present case took place after the decision of the Court of Cassation developing the notion of a "brought-in" person, the procedure in question was not codified in the CCP until 2018 (see paragraph 54 above)[9].

150. In any event, nothing indicates that the applicant was held at the police under the "bringing-in" procedure. It can be seen from the Government's submissions and the investigation material that, after the expiry of the above-mentioned three-hour time-limit, as a "brought-in person" the applicant should have been released, because there was no longer any reasonable suspicion of the applicant's having committed an offence that would justify keeping him at the police station. However, there is nothing to suggest that the applicant was free to leave the police station. In fact, the investigation established that the applicant's police custody had lasted for more than three hours (although it did not determine the actual length of the time that he had been deprived of his liberty) (see paragraph 31 above). At about 8.50 a.m. – slightly before the expiry of three hours following the moment of his "bringing-in" – the applicant was taken to the investigation committee located in the same police station for questioning, where he refused to submit a statement at about 9 a.m. (see paragraphs 21 and 25 above). According to the applicant's submissions (uncontested by the Government or the findings of the investigation), at about 10 a.m. he had been escorted out of the police station to undergo a drug test (ibid.). In this connection, the Court observes that, under the relevant domestic law, the submission of an individual for impairment tests was a measure applicable to persons suspected of having committed a criminal offence (see paragraph 72 above; see also Article 63 § 5 (3) of the CCP in paragraph 50 above regarding the obligation of a suspect of a crime to submit, *inter alia*, bodily fluids). It follows that, up until that moment (that is, about four hours after he had been

[9] The bringing-in procedure was eventually abandoned in 2021 after the adoption of the new CCP (in force since 2022).

brought to the police station), the applicant was still under the exclusive control of the police and had the *de facto* status of a suspect (see the definition of "a suspect" in paragraph 49 above) – even though no arrest record had been drawn up, despite the explicit requirement provided by Article 131[1] of the CCP (see paragraph 52 above).

151. It was at this point that the applicant and the escorting officers encountered his lawyer and, when the lawyer protested at the applicant being taken for a drug test in his absence, all of them returned to the police station. The applicant was then taken to the office of an investigator and, in the presence of his lawyer, was questioned as a witness between 10.05 and 11.45 a.m. The Government, however, did not put forward any explanation as to why the applicant, who had been arrested four hours earlier on suspicion of having committed an offence, was subsequently questioned as a witness. Nor do the contents of the case file indicate that there were any new developments in the criminal proceedings that prompted the investigating authority to reconsider his status minutes before the police officers attempted to take him to undertake a drug test – as mentioned above, a measure applicable to persons suspected of having committed a criminal offence. Lastly, according to the applicant's submissions (uncontested by the Government), even after he had been questioned as a witness and then discharged by virtue of an oral instruction delivered by a senior police officer, he had been called back and placed in a room, which he had not been allowed to leave; then (without his lawyer) he had eventually been taken to the NATC, where he had been made to undergo the drug test (see paragraph 25 above).

152. The Court considers that an element of coercion was without a doubt present in the measures which were applied to the applicant and which prevented him from leaving. Regard being had to the aforementioned considerations, the Court considers that, even though the applicant had not been placed under lock and key (compare *Valerian Dragomir*, cited above, §§ 68 and 70) but was simply taken from one office to another (and at a certain point was even discharged by an oral instruction given by a senior officer), he was actually *de facto* released only after submitting hair and urine samples for the purpose of a drug test. It is true that in the present case the applicant was able to telephone his brother and during his interview stated that the police officers had not prohibited him from leaving (see paragraph 25 above). However, he also submitted that he had not specifically been told that he could leave either, and his impression was that he had not actually been told that he was at liberty to leave (ibid.). In this connection, as mentioned above, a deprivation of liberty is not confined to the classic case of detention following arrest or conviction, but may take numerous other forms (see the above-cited cases of *Guzzardi*, § 95; *Bryan and Others*, § 63; and *Friedrich and Others*, § 150). In the Court's view, the confusion was due to the chaotic situation at the police station, where the applicant was arrested on alleged suspicion of having engaged in hooliganism, then questioned as a witness,

and finally submitted to a drug test – even though he had earlier been released by an oral instruction given by a senior officer. Therefore, apart from a short period (lasting for a couple of minutes) when the applicant and his lawyer were about to leave the police station, during the whole time (that is, from the moment of his deprivation of liberty until his discharge from the NATC at about 1.30 p.m.) the applicant was under the exclusive control of the police, and the Government failed to demonstrate that he could have left of his own free will after the expiry of three hours following his deprivation of liberty (compare *I.I. v. Bulgaria*, no. 44082/98, § 87, 9 June 2005; *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010; and *Valerian Dragomir*, cited, § 70). It therefore follows that the applicant was deprived of liberty from about 6 a.m. until 1.30 p.m. and the Government's objection – that the applicant was no longer deprived of liberty following three hours from the moment of his police custody (see paragraph 131 above) – should be dismissed.

(b) Was the applicant's deprivation of liberty in conformity with Article 5 § 1 of the Convention?

(i) General principles

153. The main relevant principles regarding Article 5 § 1 (b) and (c) of the Convention are recapitulated in Grand Chamber judgment of *S., V. and A. v. Denmark* ([GC], nos. 35553/12 and 2 others, §§ 73-77, and 79-83, 22 October 2018).

154. The Court further reiterates that Article 5 § 1 of the Convention requires that any deprivation of liberty be "lawful", which includes the condition that it must be effected "in accordance with a procedure prescribed by law" (ibid., § 74). This primarily requires any arrest or detention to have a legal basis in domestic law (see *Selahattin Demirtaş*, cited above, § 313). Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 § 1; moreover, the notion of "arbitrariness" under Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Creangă*, § 84, and *Mushegh Saghatelyan*, § 164, both cited above).

155. The Court further refers to the general principles set out in the Grand Chamber judgment in the case of *Selahattin Demirtaş v. Turkey (no. 2)* (cited above, §§ 314-19) concerning the requirement, under the first limb of Article 5 § 1 (c) of the Convention, that an arrest in the context of criminal proceedings must be based on reasonable suspicion of having committed an offence (ibid., §§ 314 et seq.).

(ii) Application of the above-noted principles to the present case

156. The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision – namely, to ensure that no one is arbitrarily deprived of his or her liberty (see, among many others, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, Reports of Judgments and Decisions 1997-IV).

157. In the present case, while the applicant failed to comply with the orders of the police to desist from blocking the road (see his submissions in this respect in paragraph 25 above), he was arrested after the dispersal of the sit-in, when he was leaving the area; thus there was no longer any obligation that the applicant could be said to have disobeyed. It follows that taking the applicant to the police station was not justified under the second limb of Article 5 § 1 (b).

158. The other subparagraphs of Article 5 § 1 not being pertinent to the present case, it remains to be determined whether the applicant's deprivation of liberty fell within the ambit of sub-paragraph 5 § 1 (c). Notably, the police justified his deprivation of liberty by citing their suspicion that he had committed a criminal offence (namely, hooliganism). Although the Court was not provided with the relevant decision, it can be seen from the material pertaining to the internal investigation, that on the day of the sit-in (that is, on 22 June 2015) a criminal case no. 14203515 was opened into the alleged hooliganism committed by the protesters in obstructing traffic and causing a noise nuisance – thus breaching public order (see paragraph 9 above). The applicant himself acknowledged that he had helped to block the road. The document drawn up upon the applicant's deprivation of liberty refers to his "bringing-in" on suspicion of hooliganism. Therefore, on the basis of the entirety of the material before it, the Court finds it established that the applicant was deprived of his liberty which was effected on the basis of sub-paragraph (c) of Article 5 § 1 of the Convention – namely, for the purpose of bringing him before the relevant legal authority.

159. The Government referred to sections 2 and 11 of the Police Act as grounds for his deprivation of liberty (see the Government's submissions in paragraph 137 above). They argued that all the relevant records had been drawn up within three hours of the applicant being "brought in" to the police station. The Court, however, observes that, as established in paragraph 152 above, the applicant remained at the police station beyond three hours; therefore, pursuant to Article 131[1] of the CCP and the decision of the Court of Cassation (see paragraphs 52 and 77 above), an arrest record should have been drawn up and presented to him – either immediately or within one hour at the most. However, this has not been done in the present case. The only document drawn up on the applicant's deprivation of liberty was the record of his "bringing-in" – the legal basis for which was not indicated by the Government – which provided very little detail: it was couched in very

abstract terms and contained no references to any provision of criminal law or any factual details or evidence regarding the alleged offence (see paragraph 23 above). Another document submitted by the Government in respect of the applicant's deprivation of liberty was a written explanation setting out the applicant's rights – which, however, referred to a completely different legal ground for the applicant's police custody (namely, Article 182 of the CAO; see paragraph 23 above). The police officer in charge of drawing up the relevant records regarding the applicant's deprivation of liberty ascribed that inconsistency to his negligence and haste (see paragraph 27 above). However, the Court cannot but note that the above-noted material does not indicate with sufficient clarity the grounds for the applicant's deprivation of liberty.

160. The Court further observes that, about four hours after his arrest, the applicant was questioned again, this time as a witness (see paragraphs 24 and 25 above), within the scope of the same criminal case which had served as the basis for his arrest. In this context, all two hundred protesters "brought in" on suspicion of having engaged in hooliganism on that date (see paragraph 12 above) were subsequently questioned as witnesses and then released – without any one of them being charged with the offence of hooliganism. This sequence of events – coupled with an almost complete absence of factual information or evidence in respect of the offence allegedly committed by the applicant (compare *Myasnik Malkhasyan v. Armenia*, no. 49020/08, § 71, 15 October 2020) – casts doubt on whether there was ever a reasonable suspicion that the applicant had committed a criminal offence. The Government, for their part, did not indicate any factual circumstance that could have prompted the investigating authority to question all two hundred protesters as "witnesses" shortly after their arrest *en masse*.

161. In view of the above-mentioned considerations, the Court concludes that the applicant was a victim of an arrest conducted *en masse* – without any individualised assessment of any criminality in his actions. The only available official documents drawn up in respect of his deprivation of liberty indicate different legal grounds, and contain no details whatsoever concerning the actual acts attributed to the applicant. Therefore, it cannot be said that the applicant's arrest was based on a reasonable suspicion of his having committed an offence. Moreover, his placement in police custody did not follow a procedure prescribed by law because, while he was a *de facto* suspect in respect of a crime (and thus an arrested person under the domestic law), no arrest record was drawn up in respect of his deprivation of liberty (as required under Article 131^1 of the CCP).

162. There has accordingly been a violation of Article 5 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. 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

164. The applicant, while claiming 14,000 euros (EUR) in respect of non-pecuniary damage, left it to the Court's discretion to decide on whether to afford just satisfaction in respect of such damage. He did not claim any compensation in respect of pecuniary damage.

165. The Government contested these claims, arguing that they were excessive.

166. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

167. The applicant also claimed 1,300,000 Armenian drams (AMD) for the legal costs incurred before the domestic courts and EUR 6,971 (which according to the applicant is equivalent to AMD 2,900,000) for the costs incurred before the Court.

168. The Government contested these claims.

169. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 650, 9 April 2024). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses incurred during the domestic proceedings and considers it reasonable to award the sum of EUR 1,500 for the costs incurred during the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,600 (four thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 13 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President