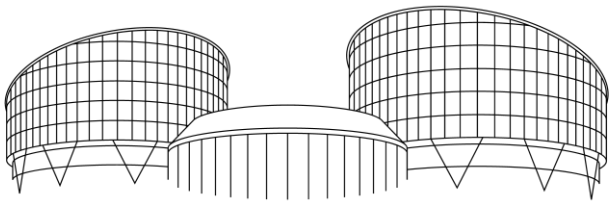

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HAKOBYAN AND OTHERS v. ARMENIA

(Application no. 34320/04)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

10/07/2012

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

In the case of Hakobyan and Others v. Armenia,

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 34320/04) 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 three Armenian nationals, Mr Hakob Hakobyan ("the first applicant"), Mr Gor Martirosyan ("the second applicant") and Mr Hamlet Petrosyan ("the third applicant), on 25 August 2004.

2. The applicants were represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz, Ms L. Claridge and Ms A. Stock, lawyers of the Kurdish Human Rights Project (KHRP) based in London, and Mr T. Ter-Yesayan and Ms N. Gasparyan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicants alleged, in particular, that their arrest and detention violated their rights guaranteed by Articles 5, 10, 11 and 14 of the Convention, while the administrative proceedings against them had been conducted in violation of the guarantees of Article 6 of the Convention and Article 2 of Protocol No. 7.

4. On 6 December 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1). On 14 April 2009 the Chamber decided to re-communicate the application and to request the parties to submit further observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1967, 1969 and 1956 respectively, and live in the town of Armavir, the village of Nairi and the village of Nalbandyan respectively, Armavir Region of Armenia.

A. Background to the case

6. The applicants were members of the main opposition parties at the material time in Armenia. The first applicant was the Chairman of the Armavir Town Office of the National Unity Party. The second applicant was a member of the Republic Party. The third applicant was a member of the Armavir Regional Branch of the National Unity Party.

7. In February and March 2003 a presidential election was held in Armenia which was won by the incumbent President. The international election observation mission concluded that the overall election process fell short of international standards. It appears that mass protests followed. The main opposition candidate challenged the election results in the Constitutional Court, which on 16 April 2003 recommended that a referendum of confidence in the re-elected President be held in Armenia within a year.

8. As the April 2004 one-year deadline approached, the united opposition stepped up its campaign to challenge the legitimacy of the re-elected President. A series of protest rallies were organised in Yerevan in March and April 2004, calling for the referendum of confidence. According to the applicants, several demonstrations were scheduled for 5, 9 and 12 April 2004 which they intended to attend.

B. The first and the third applicants

1. The first administrative detention of the first applicant

9. The first applicant alleged that on 30 March 2004 at around 8 a.m. he was visited at his home by a plain clothes police officer who informed him that the Chief of the Armavir Town Police Department wished to speak with him. He complied with the order and was taken to the police station. According to the first applicant, he did not question the police officer's demands since three weeks earlier he had already been invited by the Chief of the Police Department who wanted to become familiar with the leaders of the opposition parties.

10. According to the first applicant's arrest record and other police materials, the first applicant was taken to the police station by several police officers on 30 March 2004 at around 2 p.m. The arrest record stated that the first applicant had been brought to the police station for inspection purposes in order to confiscate illegal ammunition in his possession.

11. At the police station an administrative case was initiated against the first applicant under Article 182 of the Code of Administrative Offences ("the CAO") for disobeying the lawful orders of police officers.

12. One of the arresting police officers reported to the Chief of the Police Department that:

> "... on 30 March 2004 ... [the first applicant] who, according to information obtained, kept at his house illegal ammunition, was brought to [the police station]. While being brought to [the police station, the first applicant] disobeyed our lawful order, flatly refused to come to the station and used foul language addressed both at us and the regime. The row lasted about five minutes, after which [the first applicant] was brought to [the police station]. [The first applicant] was brought to [the police station] for preventive purposes and for surrendering the ammunition in his possession."

13. The first applicant was subjected to a personal search but nothing of an illegal nature was found in his possession. He alleged that a written statement was then presented to him, in which it was stated that he had refused to obey the orders of the police officers when asked to accompany them to the police station, had become annoyed at them, had used offensive language and had prevented their work for about three to five minutes. He refused to sign that statement.

14. Shortly thereafter the first applicant was brought before Judge A. of the Armavir Regional Court who, after a brief hearing, sentenced him under Article 182 of the CAO to seven days of administrative detention. The judge's entire finding amounted to the following:

> "On 30 March 2004 at around 2 p.m. [the first applicant] disobeyed the lawful orders of the police officers when asked to go with them to the Armavir Town Police Department on suspicion of illegal possession of ammunition, for which on the same day at 2 p.m. he was taken to the Armavir Town Police Department. The commission of the offence by [the first applicant] is corroborated by the [police] report, [the arrest record], the record of an administrative offence and other relevant information."

15. According to this decision, the first applicant's detention period was to be calculated from 2 p.m. on 30 March 2004.

16. According to the record of the court hearing, the judge informed the first applicant of his right to challenge the judge and the clerk and his right to have a lawyer. The first applicant did not wish to lodge any challenges or to have a lawyer. The judge then proceeded with examination of the materials of the case. The judge heard the police officer presenting the case and the first applicant who claimed that he had not committed any administrative offence and refused to make further submissions. The judge

continued the examination of evidence and decided to impose an administrative penalty.

17. According to the first applicant, the hearing lasted about one minute, without examination of witnesses and without him being able to make any submissions or being represented by counsel, his request to see a lawyer having been refused.

18. The first applicant was taken to the detention facility of the Armavir Town Police Department to serve his sentence. According to the register of administrative detention, the first applicant was admitted to the detention facility at 4 p.m.

2. The first administrative detention of the third applicant

19. The third applicant alleged that on 2 April 2004 at 6.30 a.m. he was visited at his home by four police officers who told him to accompany them to the Armavir Town Police Department. The third applicant asked for reasons, to which the police officers replied that they were not authorised to explain and that he would be informed of the reasons at the police station. The third applicant then accompanied the officers to the police station.

20. According to the third applicant's arrest record and other materials of the case, the third applicant was taken to the police station at an unspecified hour on 2 April 2004 on suspicion of having been involved in a traffic accident. The arrest record added that, when being brought to the police station, the third applicant obstructed the lawful work of the police officers for about five to seven minutes.

21. The third applicant alleged that at the police station he asked to see the Chief of the Police Department. Three hours later he met with the Chief who told him that he was to be detained and that nothing could be done about this as it had been ordered from above. He was then taken to the investigation department where an administrative case against him was initiated under Article 182 of the CAO for disobeying the lawful orders of police officers for about five to seven minutes. Only then did he find out the reason for his arrest.

22. The Government contested the above allegations. They claimed that the third applicant had been informed orally of the reason for his arrest, namely his use of foul language and disobeying the lawful orders of the police officers, at the time of his arrest.

23. One of the arresting police officers reported to the Chief of the Police Department that:

> "...on 29 June 2003 at around 11 p.m. in the area of the 17th km of the Margara-Ejmiatsin highway the driver of a car, whose model and licence number are unknown, ran over [a third person, A.A.], causing grave physical injuries.

> For the purpose of a check, based on operative information obtained, we visited the village of Nalbandyan in Amavir Region in order to take the resident of the same village, [the third applicant], together with his [car], to the police station.
>
> It turned out that the car was not at home, while [the third applicant] showed a disrespectful attitude, started to argue and use foul language, calling the Armenian state oppressive. We finally managed to calm [him] down and to bring him to the police station."

24. The third applicant noted in his arrest record and his written statement that he had "not committed any offence". He refused to sign any of the other materials. None of the materials in the third applicant's administrative case indicated the time of his arrest.

25. Shortly thereafter the third applicant was brought before Judge H. of the Armavir Regional Court who, after a brief hearing, sentenced him under Article 182 of the CAO to four days of administrative detention. The judge's entire finding amounted to the following:

> "For the purposes of verifying the information obtained, according to which [a person had been hit in a traffic accident] sustaining serious physical injuries, [the police officers] visited the village of Nalbandyan ... in order to take [the third applicant and his car] to the police station ... [D]uring the visit [the third applicant] behaved disrespectfully and started to argue, use foul language and behave disrespectfully towards the Armenian public authorities, hindering the work of the police for about three to five minutes. The police officers managed to calm [the third applicant] down and to bring him to the Armavir Town Police Department. [The third applicant] denied committing the offence. The commission of the offence by [the third applicant] is corroborated by the record of an administrative offence, the [police] report and [the arrest record]."

26. According to this decision, the third applicant's detention period was to be calculated from 5 p.m. on 2 April 2004.

27. According to the record of the court hearing, the judge informed the third applicant of his right to challenge the judge and to have a lawyer. The third applicant did not wish to lodge any challenges or to have a lawyer. The judge then proceeded with the examination of the materials of the case. The judge heard the third applicant who claimed that he had not committed any administrative offence and pleaded not guilty. He denied having used foul language or behaved disrespectfully towards the State. Thereafter, the judge examined the materials prepared by the police. No further evidence was produced or motions filed by the third applicant. The judge departed to the deliberation room, after which he returned and announced the decision.

28. According to the third applicant, the hearing lasted about two minutes and the judge refused to listen to any of his arguments.

29. The third applicant was taken to the detention facility of the Armavir Town Police Department to serve his sentence, sharing a cell with the first and the second applicants. According to the register of administrative detention, the third applicant was admitted to the detention facility at 5 p.m.

3. The second administrative detention of the first and the third applicants

30. The first and the third applicants alleged that on 6 April 2004, the final day of their detention, at around 2 p.m. they were taken together to the Armavir Regional Court. After waiting in the corridor of the courthouse for about 10 to 20 minutes, they were both taken back to the temporary detention facility at the Police Department. Two hours later they were again taken to the Armavir Regional Court where they were brought before Judges H. and A. respectively. At the conclusion of brief hearings conducted in the same manner as those on 30 March and 2 April 2004, they were sentenced under Article 182 of the CAO to seven days of administrative detention for disobeying the lawful orders of police officers.

31. The Government contested this allegation, relying on the following materials of the case.

32. According to the register of administrative detentions, the first and the third applicants were released from detention on 6 April 2004 at 2 p.m. and 5 p.m. respectively upon expiry of their sentences.

33. According to their respective arrest records and other police materials, the first and the third applicants were re-arrested at 4.30 p.m. and 5.30 p.m. respectively in front of the police station for using foul language and disobeying the lawful orders of the police officers who tried to calm them down. At the police station administrative cases were initiated against them under Article 182 of the CAO.

34. A police officer's report made in the first applicant's case stated that:

> "... on 6 April 2004 at 4.30 p.m. I was approaching the building of the Armavir Police Department[. A person was standing in the yard of the Department] and using swearwords. I approached him in order to call him to order, however, [he] maliciously disobeyed my lawful orders[. I] tried for about two to three minutes to call him to order. The mentioned [person] was brought to the police station where it was established that he was ... [the first applicant] who had just been released from administrative detention..."

35. A police officer's report made in the third applicant's case stated that:

> "... on 6 April 2004 at 5.30 p.m. I was approaching the building of the Armavir Police Department[. A person was standing in the yard of the Department] and using random swearwords. I approached him in order to call him to order, however, [he] maliciously disobeyed my lawful orders, using foul language for two to three minutes. The mentioned [person] was brought to the police station where it was established that he was ... [the third applicant] who had just been released from administrative detention..."

36. According to the Government, at 5.30 p.m. the first applicant was taken to the Armavir Regional Court where a new sentence was imposed on him. The third applicant was also taken to the Regional Court shortly after his arrest and subjected to a new administrative penalty.

37. The judges' findings in respect of both applicants were virtually the same and stated that on 6 April 2004 the first and the third applicants, at 4.30 p.m. and 5.30 p.m. respectively, had randomly used swearwords in front of the Armavir Town Police Department. The police officers had tried to call them to order but the first and the third applicants had maliciously disobeyed their lawful orders and used foul language for about three minutes. The first and the third applicants denied their guilt which was, however, corroborated by the records of an administrative offence, the police reports and the arrest records.

38. According to the respective court decisions, the first applicant's detention period was to be calculated from 7 p.m. on 6 April 2004, while the third applicant's detention period was to be calculated from 5.30 p.m. on the same day.

39. According to the records of the court hearings, the trials were conducted in a manner similar to that reflected in the records of the hearings of 30 March and 2 April 2004 (see paragraphs 16 and 27 above).

40. The first and the third applicants were then taken to the detention facility of the Armavir Town Police Department where they fully served their sentences, sharing a cell with the second applicant. According to the register of administrative detention, the first applicant was admitted to the detention facility at 7 p.m. on 6 April 2004, while the third applicant at 5.30 p.m. on the same date. The time of their release was indicated as 7 p.m. and 5.30 p.m. respectively on 13 April 2004.

C. The second applicant

1. The first administrative detention

41. On 2 April 2004 between 7.30 and 8 a.m. the second applicant was visited at his home by several police officers. The police officers informed the second applicant that he was suspected of hiding a wanted person in his home. The officers proceeded to conduct a search of the house. The person for whom they were searching was not found.

42. The second applicant alleged that, following the search, the police captain invited him to accompany them to the Village Council. He replied that the Village Council opened at 9 a.m. and that he would go there on foot. The police officers then tried to force him into their car and take him to the Armavir Town Police Department.

43. At the police station an administrative case was initiated against the second applicant under Article 182 of the CAO. The police officers drew up a record of the second applicant's arrest, in which it was stated that he had been "brought to the police station on 2 April 2004 at 8 a.m. for disobeying the lawful orders of the police officers, using foul language and obstructing the work of the police for about five minutes".

44. One of the arresting police officers reported to the Chief of the Police Department that:

> "... on 2 April 2004 ... I and [two other police officers] visited the village of Nairi ... where, according to information obtained, [a wanted person] was hiding in [the second applicant's] home. During our visit to [the second applicant's] home, [the second applicant] disobeyed our lawful orders, used foul language, answered our questions with a question and obstructed our work for about five minutes."

45. The second applicant made a written statement in which he submitted that:

> "... during the search a disagreement arose in the discussion between me and a police officer: the police officers were inviting me to the Village Council to which I replied that I wanted to go there on foot, which they did not accept. Thereafter, I followed them to [the police station]. The disagreement between me and the police officers lasted about two to three minutes."

46. The same day at 5 p.m. the second applicant was brought before Judge H. of the Armavir Regional Court who, after a brief hearing, sentenced the second applicant under Article 182 of the CAO to seven days of administrative detention. The judge's entire finding amounted to the following:

> "On 2 April 2004 [the police officers] visited [the second applicant's] flat where, according to information obtained, [a wanted person] was hiding. During the visit [the second applicant] obstructed the police officers for about three to five minutes, did not follow their lawful orders and used foul language, for which he was taken to Armavir Town Police Department. [The second applicant] admitted and regretted having committed the offence. The commission of the offence by [the second applicant] is also corroborated by the record of an administrative offence, the [police] report, and [the arrest record]."

47. According to this decision, the second applicant's detention period was to be calculated from 5 p.m. on 2 April 2004.

48. According to the record of the court hearing, the trial was conducted in a manner similar to other hearings (see paragraphs 16, 27 and 39 above). The second applicant admitted to having committed an administrative offence and pleaded guilty.

49. The second applicant contested the version of the trial presented in the above record and alleged that no witnesses were examined during the hearing and his request to be represented by a lawyer was refused. At no time did he admit to having committed an offence.

50. The second applicant was taken to the detention facility of the Armavir Town Police Department to serve his sentence, sharing a cell with the first and the third applicants. According to the register of administrative detention, the first applicant was admitted to the detention facility at 5 p.m.

2. The second administrative detention

51. The second applicant alleged that on 9 April 2004 at around 4 p.m., one hour before the expiry of his sentence, he was taken to the investigator's office. There he was presented with a second charge. At 5.05 p.m. he was taken from the detention cell and brought before Judge S. of the Armavir Regional Court. A brief hearing took place, conducted in the same manner as that on 2 April 2004.

52. The Government contested this allegation. They submitted that the second applicant was released from detention on 9 April 2004 at 5 p.m. following the expiry of his sentence. At 5.10 p.m. he was re-arrested at the crossroads of Hanrapetutyun and Shahumyan Street which was about 50 to 100 metres away from the Police Department where he had been serving his first sentence. At 6 p.m. he was brought before Judge S.

53. According to the register of administrative detention, the second applicant was released from detention at 5 p.m. on 9 April 2004 upon expiry of his sentence. According to the record of the second applicant's arrest, he was "brought to the police station on 9 April 2004 at 5.10 p.m. for using foul language at the police officers and maliciously disobeying their lawful orders for five to seven minutes". The applicant refused to sign this record and to make a written statement.

54. A police officer's report stated that:

> "... on 9 April 2004 at around 5.10 p.m. at the crossroads of Hanrapetutyun and Shahumyan Street ... I noticed a citizen who was swearing loudly. I approached him to call him to order but he started to swear at me and the police. For three to five minutes I tried to call him to order but he disobeyed my lawful orders, for which I brought him to the police station where it turned out that he was [the second applicant] who had just been released from administrative detention."

55. Judge S. sentenced the applicant under Article 182 of the CAO to four days of administrative detention. The judge's entire finding amounted to the following:

> "On 9 April 2004 at around 5.10 p.m. on Hanrapetutyun Street ... [the second applicant] for about three to five minutes maliciously disobeyed the lawful order of [the police officer] ... [The second applicant] did not accept the charges brought against him. He stated that he had not used foul language and swearwords. The charges brought against [the second applicant] are corroborated by [the police report, the arrest record and the record of an administrative offence]."

56. According to this decision, the second applicant's detention period was to be calculated from 5.10 p.m. on 9 April 2004.

57. The second applicant was taken to the detention facility of the Armavir Town Police Department where he served his sentence in full. According to the register of administrative detention, the second applicant was admitted to the detention facility at 6.30 p.m. on 9 April 2004 and he was released upon expiry of his sentence in April 2004 (exact date illegible) at 5.10 p.m.

D. Subsequent developments

58. While serving their second administrative sentences the applicants complained to the Armenian Ombudsman that within the period from 30 March to 3 April 2004 they had been unlawfully taken to the Armavir Town Police Department in the early morning, from where, after having been presented with trumped-up charges, they were transported to the Armavir Regional Court. Judges A. and H., without trying to clarify any circumstance or to examine any witnesses in connection with the "charges" against them, adopted pre-ordered decisions subjecting them to four and seven days of administrative detention. Upon expiry of their respective administrative sentences, they had not been released from detention but instead new trumped-up "charges" were brought against them, following which Judges A., H. and S. subjected them to another four and seven days of administrative detention. The applicants claimed that such actions by the authorities were directly linked with the demonstrations held in Yerevan and that they were being detained for their political views.

59. According to the applicants, following their release from detention, they continued to be visited frequently by police officers. Several days after their release they were each visited by the Head of the Armavir Town Police Department who attempted to persuade them not to become involved actively in opposition politics. The applicants were invited to appear at the police office on this occasion and periodically thereafter whenever a political demonstration was due to take place. They did not take up these invitations due to the fear that they would be detained once again on allegedly falsified charges.

60. The applicants allege that, as a result of the frequent police visits, the first applicant had to move away from his home. The second applicant was subjected to almost daily visits, causing great stress to his family. On the afternoon of 22 May 2004 his home was surrounded by police with dogs. He left his home unnoticed, following which the police entered his home and carried out a search. As a result of these visits, the second applicant was unable to undertake farming work on his land, attend to daily chores or partake in social life, spending most of his time hiding from the police.

61. On 20 April 2004 the first and the third applicants complained to the Ombudsman about the continuing observation by the police. On 27 April and 24 May 2004 the second applicant also complained to the Ombudsman about the same and about the events of 22 May 2004.

62. On 25 April 2004 the Ombudsman decided to admit the applicants' case for examination.

II. RELEVANT DOMESTIC LAW

63. For a summary of the relevant provisions of the CAO see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, § 26, 15 November 2007). The provisions of the CAO which were not cited in the above judgment, as in force at the material time, provide:

Article 182: Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police

"Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police made in the performance of his duties of preserving public order shall result in the imposition of a fine of between 50% of and double the fixed minimum wage, or of correctional labour for between one and two months with the deduction of 20% of earnings or, in cases where, in the circumstances of the case, taking into account the offender's personality, the application of these measures would be deemed insufficient, of administrative detention not exceeding 15 days."

III. RELEVANT INTERNATIONAL AND DOMESTIC DOCUMENTS AND PRESS RELEASES

A. Resolution 1374 (2004) of the Parliamentary Assembly of the Council of Europe (PACE): Honouring of obligations and commitments by Armenia, 28 April 2004

64. The relevant extracts from the Resolution provide:

"1. Since the end of March 2004, a series of protests have been organised by the opposition forces in Armenia, calling for a 'referendum of confidence' in President Kocharian. The possibility of such a referendum was first mentioned by the Armenian Constitutional Court following the presidential elections in February and March 2003. The Constitutional Court later clarified its proposal and the authorities are calling the opposition demands and protests an attempt to seize power by force.

2. The demonstrations, although announced, were not authorised by the authorities, who have threatened the organisers with criminal prosecution. Following the demonstrations on 5 April, the General Prosecutor opened criminal investigations against several members of the opposition and arrested many more, in connection with the opposition parties' rally. On the same occasion, several journalists and politicians were beaten up by unknown persons while the police stood by and took no action.

3. New demonstrations took place on 9, 10 and 12 April in Yerevan. In the early morning of 13 April, the security forces violently dispersed some 2,000 to 3,000 protesters who were attempting to march towards the presidential palace, calling for President Kocharian's resignation. The police reportedly used truncheons, water cannons and tear gas, causing dozens of injuries. A number of protesters were arrested, including members of parliament, some of whom are members of the

Assembly, and some were allegedly mistreated by the police while in custody. The security forces also assaulted and arrested several journalists who were covering the opposition rally.

4. Tensions in Armenia continue to run high; new protests are planned for the week of 26 April. For the time-being there seems to be little room for dialogue between the authorities and the opposition, even if some offers have been made and some members of the ruling majority – for example, the Speaker of the Armenian Parliament – have begun criticising the heavy-handed crackdown on demonstrations.

5. With regard to the conduct of the authorities, the Parliamentary Assembly ... is particularly concerned with the fact that:

i. arrests, including those carried out on the basis of the Administrative Code, ignored the demand to immediately end the practice of administrative detention and to change the Administrative Code used as a legal basis for this practice; ...

9. The Assembly calls upon the Armenian authorities to: ...

iii. immediately release the persons detained for their participation in the demonstrations and immediately end the practice of administrative detention and amend the Administrative Code to this effect...”

B. Report by the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Doc. 10163, 27 April 2004

65. The Report contains an explanatory memorandum to the draft of the PACE Resolution 1374. The relevant extracts from the explanatory memorandum provide:

“Since the end of March, opposition forces in Armenia decided to jointly organise mass protests to force a ‘referendum of confidence’ in President Kocharian. The possibility of such a referendum was first mentioned by the Armenian Constitutional Court following the presidential elections in February and March last year, which were strongly criticised by the international community. ...

The Armenian authorities reacted to the opposition call for protests with a campaign of political intimidation and administrative and judicial harassment. Once the protests started, the reaction was even more ruthless. Demonstrations were violently dispersed, journalists were beaten up, a large number of opposition supporters were arrested and premises of the opposition parties were raided by the police.

...

In January 2004 the Assembly adopted its second monitoring report since the accession of Armenia to the Council of Europe in January 2001. Resolution 1361, adopted on this occasion, takes note of some encouraging developments that took place in the last two years...

However, the Resolution ... sharply criticised the [presidential and parliamentary] elections carried out in 2003. Moreover, it listed a number of serious concerns with regard to the democratic and human rights conduct of the Armenian authorities and expressed its expectations that these issues will be speedily dealt with in accordance with Council of Europe standards and principles.

Regrettably, the reaction of the Armenian authorities in the events of March and April [2004] demonstrate that the Assembly's request for further progress was ignored and that, with regard to some of the Assembly's key concerns, the situation has even worsened.

Administrative detention

With regard to the scandalous and continued use of administrative detention, Resolution 1361 urged the authorities to amend the Administrative Code to put an end to this practice which is incompatible with the organisation's standards. The Assembly also asked the authorities to submit this new draft to Council of Europe expertise by April 2004.

Instead of immediately ending this practice and preparing the necessary legislative drafts to this effect, the Armenian authorities resorted to a wide use of administrative detentions during the recent events. While it is difficult to verify the exact number of persons who were arrested and the legal basis used for their detention, most reports indicate that their number was between two and three hundred.

The Assembly repeats its demand for an immediate end to the practice of administrative detention. The Administrative Code must be revised without any further delay. ..."

C. Human Rights Watch Briefing Paper, 4 May 2004, Cycle of Repression: Human Rights Violations in Armenia

66. The relevant extracts of the Briefing Paper provide:

"At the end of March 2004, Armenia's political opposition united in mass peaceful protests to force a "referendum of confidence" in President Robert Kocharian and to call for his resignation. In response, the Armenian government embarked on a campaign to break the popular support for the political opposition with mass arrests, violent dispersal of demonstrations, raids on political party headquarters, repression of journalists, and restrictions on travel to prevent people from participating in demonstrations. Hundreds of people were detained, many for up to fifteen days; some were tortured or ill-treated in custody...

The origin of the opposition's demands was the government's failure to date to redress the deeply flawed 2003 presidential election, which Kocharian, the incumbent, won. Disturbingly, the government is now repeating, with increasing violence, a pattern of repression that surrounded last year's election. At that time, the international community warned the Armenian government that its intimidation of the opposition through the use of arrests and administrative detentions must stop. However, in March and April 2004, the Armenian government not only began a fresh campaign of detentions, but added to the intimidation with security force violence. ...

At the end of March 2004, two of the main opposition groups, the Artarutiun (Justice) Alliance, which consists of nine parties – including the Republic Party, the People's Party, and the National Unity Party – joined forces and announced its campaign of action. Following this move, the opposition intensified its efforts, making further announcements and mobilising in Armenia's provinces. The authorities responded by restricting freedom of movement, carrying out detentions, and threatening criminal charges against opposition campaign organisers. ...

From [5 April] the number of rallies in Yerevan steadily increased, as did the number of opposition supporters detained or otherwise intimidated. The Republic Party estimated that from the end of March until [12 April], police had detained, searched, or harassed more than 300 of its supporters. ...

From the end of March until mid-April 2004, police restricted the movement of opposition supporters trying to travel to Yerevan to attend rallies by setting up road blocks, stopping cars, questioning the passengers, and denying permission to travel further to those they believed were opposition supporters. ...

On the morning of [5 April], between [10.30 a.m. and 12.00 noon], police stopped nine members of the National Unity Party in three cars at a check point as they were leaving Vanadzor, Armenia's third largest city, on the main road to Yerevan. They were intending to participate in a rally at [3.00 p.m.] in Yerevan. Police held the nine men at the Vanadzor police station, reportedly telling them, 'we have saved you from being beaten in Yerevan'. Police took three of the men to the local courts, which sentenced them to five days of administrative detention for not following police orders. ...

It is difficult to estimate the total number of opposition supporters detained since the beginning of April 2004. By April 17, the Justice Alliance had documented the detentions of 327 opposition supporters, and the Republic Party estimated that about 300 of its members had been either detained, harassed, or searched...

[Some opposition supporters] were detained and held for from several hours to fifteen days. Many were held and then released with no documentation or registration of the arrest ever having occurred. Others were taken to court, and given penalties of up to fifteen days in custody for petty offences under the Administrative Code.

The trials were cursory, flouting all international protections for a fair trial, and repeating a pattern of abuses with administrative detentions documented during the 2003 presidential elections. Defendants in administrative cases were denied access to lawyers, not able to present evidence, and routinely convicted on the basis of several minutes of police evidence. Practical barriers to appeal make it virtually impossible to take the cases to higher courts. ..."

D. Europe and Central Asia: Summary of Amnesty International's Concerns in the Region, January-June 2004

67. The Report contains a chapter devoted to Armenia whose relevant extracts provide:

"Opposition demonstrations in April [2004] were part of a two-month campaign of mass public protests launched by opposition political parties demanding the resignation of President Robert Kocharian. ... During their campaign hundreds of opposition supporters, including prominent opposition party members, were reportedly arbitrarily detained throughout the country and dozens were sentenced to 15 days' administrative detention after trials that were said to have fallen far short of international fair trial standards..."

E. Annual Report: Activities of the Republic of Armenia's Human Rights Defender (Ombudsman), and on Violations of Human Rights and Fundamental Freedoms in Armenia During 2004

68. The relevant extracts of the Report provide:

"**3.4 Right to Freedom of Movement**

The early stages of the Defender's activities coincided with the demonstrations that were held in the country during March and April of 2004.

The opposition began to hold demonstrations and meetings with constituents in several regions starting in early February. The authorities did not interfere with these meetings.

The first time the authorities interfered with the demonstrations was at the end of March in Gyumri, which involved the arrest of demonstration participants and the commencement of criminal cases against them. ...

The Defender found a number of human rights violations in police actions regarding demonstrations held in the capital city in April.

On the days of the demonstrations, the police reportedly limited the movement of public transport into the capital city, which violated citizens' right to freedom of movement within the country. ...

During this period, individuals were frequently apprehended for administrative infractions and taken to police stations where administrative detention was ordered against them by the court.

A review of these cases shows that the legislation on administrative infractions was abused: "foul language" was cited as a basis for sentencing a person to administrative detention. ...

3.5 Right to Conduct Meetings, Gatherings, Rallies and Protests

The Defender took from the courts a number of cases related to administrative infractions and conducted a thorough study. The findings were sent to the Prosecutor General of Armenia and, in light of the apparent abuses of power in such cases, it was recommended that the guilty parties be punished. Some of the Defender's findings were isolated and sent to the Armavir Region Prosecutor for corroboration and processing. The regional prosecutor later announced that no crime was identified. The

police officers in question were given warnings for some of the less significant violations."

F. Article published in *Ayb-Fe* newspaper, 14-20 May 2004

69. The local weekly, *Ayb-Fe*, published an interview with the Chairman of the International Association of Armenian Advocates (IAAA), Mr T. Ter-Yesayan, which included a list of opposition political activists, compiled jointly by the opposition forces and the IAAA, who had been allegedly detained by the authorities in April and May 2004. The list contained a total of 476 names and featured the first, second and third applicants at spots 98, 190 and 100 respectively.

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO NON-EXHAUSTION IN CONNECTION WITH THE APPLICANTS' CONVICTIONS

70. The Government claimed that the applicants had failed to exhaust domestic remedies in respect of all the complaints raised in their application by not lodging appeals against their convictions with the President of the Criminal and Military Court of Appeal under Article 294 of the CAO.

71. The applicants contested the Government's objection.

72. The Court notes that it has already examined this issue and found that the review possibility provided by Article 294 of the CAO was not an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Galstyan*, cited above, § 42). The Government's objection must therefore be rejected.

II. ORDER OF EXAMINATION OF THE COMPLAINTS

73. The Court considers it appropriate to examine first the applicants' complaints concerning an alleged violation of their right to freedom of expression and freedom of peaceful assembly, in view of the entirety of the applicants' complaints.

74. The Court further considers it possible to examine the complaints under Article 5 §§ 1 and 4, Article 6, Articles 10, 11 and 14 of the Convention and Article 2 of Protocol No. 7 of all three applicants jointly in view of their factual similarity and the practically identical nature of their allegations.

III. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

75. The applicants complain that their arrests and detention were measures used by the authorities to punish them for their political allegiance and to prevent them from attending the demonstrations organised in Yerevan by the opposition in early April 2004. They invoke Articles 10 and 11 of the Convention which, in so far as relevant, provide:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

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

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

A. Admissibility

76. The Government claimed that the applicants had failed to exhaust the domestic remedies. In particular, if the applicants considered that their rights guaranteed by Articles 10 and 11 of the Convention had been violated, they were entitled to request institution of criminal proceedings against those responsible.

77. The applicants did not comment on this point.

78. The Court considers it necessary to join this objection to the merits of this complaint.

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

B. Merits

1. The parties' submissions

(a) The applicants

80. The applicants submitted that their arrests and detention were aimed at silencing their political opposition which they expressed by, *inter alia*, attending political demonstrations. They were known to be members of political parties and the timing of their detention for alleged administrative offences in late March and early April 2004 was intended to prevent them, and indeed did prevent them, from attending and encouraging others to attend public demonstrations organised during that time by their respective parties, calling for a referendum and challenging the incumbent President. This constituted an interference with their right to freedom of expression and to freedom of peaceful assembly.

81. The applicants further submitted that the interference with their rights was not prescribed by law. In particular, arresting and detaining persons active in opposition politics ostensibly for the administrative offence of failing to obey police orders but in reality in order to prevent their attendance of opposition rallies could not be considered as a measure prescribed by law. Furthermore, the interference did not pursue a legitimate aim, since the aim of such administrative detention was not to prevent disorder but to hinder opposition calls challenging the incumbent President. There was no history of public disorder at previous opposition demonstrations, nor was there any ban on demonstrations in April 2004 which were essentially peaceful rallies. Thus, their detention was merely a pretext to interfere unlawfully with the opposition campaign of peaceful protests.

82. The applicants lastly submitted that mass arrests of opposition activists and supporters to prevent them from attending peaceful political demonstrations could not be "necessary in a democratic society". Freedom of political debate and of peaceful assembly were at the core of a democratic society. In light of the peaceful nature of previous demonstrations and of those held in April 2004, the authorities could not convincingly establish that there existed a "pressing social need" to arrest and subsequently sentence them to administrative detention. Furthermore, the interference was disproportionate as they had been twice sentenced to the highest penalty available, that is to a period of administrative detention. Moreover, their detention operated as prior restraint in that it was imposed in order to prevent them from attending political demonstrations. Thus, the detention could be said to have had a chilling effect since they had the serious potential to deter other opposition supporters from attending those demonstrations or indeed in engaging actively in opposition politics.

83. In support of their allegations the applicants relied on the Human Rights Watch report. They also submitted letters from the Deputy Chairman of the National Unity Party and the Chairman of the Republic Party addressed to the Court stating that the applicants were members of their parties and took active part in the demonstrations organised by the opposition. The letters further alleged that the applicants had been subjected to administrative detention in March and April 2004 because of their political opinion and that they had never been released from detention following the expiry of their first sentences.

(b) The Government

84. The Government submitted that the sole reasons for the applicants' arrest and subsequent detention were those indicated in the materials of the administrative cases against them. All three applicants were subjected to administrative detention for using foul language and disobeying the lawful orders of police officers. These reasons were stated in the relevant court decisions which were based on the evidence provided by the police. The applicants had failed to prove their allegations under Articles 10 and 11 "beyond reasonable doubt". The fact that the applicants were members of political parties was not sufficient to argue that the alleged interferences with the applicants' rights were politically motivated. The applicants had been treated as any other person in a similar situation regardless of political or other views.

2. The Court's assessment

(a) The scope of the applicants' complaints

85. The Court notes that the applicants' complaints under Article 10 and 11 are mainly based on the allegation that their administrative detention was a measure to prevent them from participating in demonstrations. In such circumstances, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis*. It is therefore unnecessary to take the complaint under Article 10 into consideration separately (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202).

86. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (*ibid.*, § 37).

(b) Whether there was an interference with the exercise by the applicants of their freedom of peaceful assembly

87. The Court notes that it is in dispute between the parties whether there was an interference with the applicants' right to freedom of assembly. The applicants alleged that the true reason behind their convictions was to prevent them from participating in opposition demonstrations. The Government contested this allegation and claimed that the sole ground for the applicants' convictions was that indicated in the relevant court decisions, namely their failure to obey the lawful orders of police officers in circumstances unrelated to demonstrations.

88. The Court notes that in essence the parties are disputing the factual basis for the applicants' convictions. In this respect, the Court has emphasised on many occasions that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 135, 24 February 2005). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The Court, however, is not bound by the findings of domestic courts, although in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, §§ 29-30, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)). The Court considers that this reasoning applies also in the context of Articles 10 and 11 of the Convention (see, *mutatis mutandis*, *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 62, 22 October 2009).

89. The Court further reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted

presumptions of fact (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

90. The Court notes that the period surrounding March and April 2004 was one of increased political sensitivity in Armenia. The political opposition intensified its rallies in protest against the results of the presidential election which had been held the previous year and which they claimed had been flawed and unfair. In this respect, the Court notes that a number of international and domestic reports alleged that, during the same period, the authorities resorted to various seemingly arbitrary measures to quell the support for the opposition (see paragraphs 64-68 above). The PACE Committee on the Honouring of Obligations and Commitments by Members States of the Council of Europe stated, in particular, in its Report no. 10163 of 27 April 2004 that "the Armenian authorities reacted to the opposition call for protests with a campaign of political intimidation and administrative and judicial harassment" (see paragraph 65 above). It further follows from these materials that the CAO and its provisions prescribing short-term administrative detention for petty offences were widely used by the authorities for that purpose. Other means, such as restricting freedom of movement, were also employed to prevent people from participating in demonstrations. Moreover, a number of sources suggest that the legal grounds used for detention of opposition activists were quite diverse and also included such grounds as use of foul language and not following police orders (see, in particular, the Human Rights Watch and the Armenian Ombudsman's reports in paragraphs 66 and 68 above).

91. The Court further observes that there have already been a number of cases before it in which applicants made almost identical allegations (see *Kirakosyan v. Armenia*, no. 31237/03, § 87, 2 December 2008; *Mkhitaryan v. Armenia*, no. 22390/05, § 87, 2 December 2008; *Tadevosyan v. Armenia*, no. 41698/04, § 81, 2 December 2008; *Gasparyan v. Armenia (no. 2)*, no. 22571/05, § 38, 16 June 2009; *Karapetyan v. Armenia*, no. 22387/05, §§ 75-76, 27 October 2009; and *Stepanyan v. Armenia*, no. 45081/04, § 22, 27 October 2009). In all of those cases the applicants were either approached or visited at home by police officers for reasons or suspicions unrelated to the charges brought against them later, that is the failure to obey police orders and use of foul language which eventually served as a basis for their short term convictions.

92. It can be inferred from the existence of such numerous and consistent allegations coming from various sources that at the material time there was an administrative practice of deterring or preventing opposition activists from participating in demonstrations, or punishing them for having done so, by resorting to the procedure of administrative detention under various substantive provisions of the CAO. While no sufficient elements existed in the above-mentioned cases against Armenia to reach a conclusion that the applicants fell victim to such administrative practice, there are a

number of elements in the present case which may allow the Court to reach a different finding.

93. The Court observes at the outset that all three applicants were members of opposition political parties. All three of them, residents of Armavir Region situated close to Yerevan, were individually taken to the same police department, around the same period, that is the period when the protest rallies were being held in Armenia, and were subjected to two practically consecutive terms of administrative detention by the same court in strikingly similar circumstances.

94. First, in all three cases the applicants were initially visited by the police on suspicions unrelated to the charges of public order offence brought against them later. In particular, the first applicant was asked to come to the police station "for inspection purposes in order to confiscate illegal ammunition in his possession", the second applicant was visited at home by police officers because he was suspected of hiding a wanted person and the third applicant was invited to the police station on suspicion of having been involved in a traffic accident (see paragraphs 10, 20 and 41 above). None of these suspicions received any follow up whatsoever and they were quickly forgotten once the applicants were charged with using foul language and disobeying police orders. No specific sources or reasons were ever indicated for these initial suspicions, which were constantly justified in very general terms with reference to "information obtained". Furthermore, no alleged illegal ammunition was found in the first applicant's possession upon his arrival at the police station nor a wanted person at the second applicant's home, while the third applicant's link to a traffic accident which had apparently taken place almost an entire year before the police visit remained unclear and unexplained.

95. Second, in all three cases the applicants were charged and later convicted of having committed practically identical acts, that is disobeying lawful orders of police officers and using foul language for several minutes. It is remarkable that none of the charges and convictions provide sufficient details of these acts and are couched in standardised and vague terms.

96. Third, in all three cases the applicants, after allegedly having been released following their first terms of detention, almost immediately committed new offences in practically identical circumstances: in each of the three cases the applicant was standing in the street and for no apparent reason using unaddressed and random swear words, which prompted a police officer to call him to order but the applicant disobeyed. What the Court finds particularly worrying is that even the texts of the relevant police reports, especially those concerning the first and third applicants, were almost word for word duplicates (see paragraphs 34, 35 and 54 above).

97. All the above similarities and coincidences, which can hardly be considered to have been of a purely accidental nature, point to the existence of a repetitive pattern of subjecting persons to administrative detention

which fits into the description of the administrative practice mentioned above (see paragraph 92 above). Furthermore, the lack of any real and substantiated reasons for the initial police visits prompts the Court seriously to doubt whether the true reasons for such visits were those indicated in the relevant documents. This, in turn, casts serious doubt on the veracity of the entirety of the police materials, including the factual basis for the charges against the applicants, and only reinforces the Court's opinion about the applicants' cases fitting into the above-mentioned description.

98. Lastly, the Court would point out that the findings of fact made by the domestic court in the applicants' cases were reached following trials conducted in a matter of minutes. The facts established in such manner were based solely on the materials provided by the police and similarly to those materials lacked any details and were strikingly succinct. The resulting court decisions appear to have been a mere and unquestioned recapitulation of the circumstances and the charges as presented in the relevant police reports and do not appear to have been reached as a result of an objective and thorough judicial examination.

99. In view of all the above factors, the Court considers that there are cogent elements in the present case prompting it to doubt the credibility of the administrative proceedings against the applicants. It further notes that the entirety of the materials before the Court allow it to draw strong, clear and concordant inferences to the effect that the administrative proceedings against the applicants and their ensuing detention was a measure aimed at preventing or discouraging them from participating in the opposition rallies, which it is undisputed were peaceful, held in Yerevan at the material time. The Court considers that this measure undoubtedly amounted to an interference with the applicants' right to freedom of peaceful assembly.

100. Having reached this conclusion, the Court considers it necessary to address the Government's allegation as to non-exhaustion. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Assenov and Others v. Bulgaria* no. 24760/94, § 85, ECHR 1999-VIII).

101. Furthermore, under Article 35 the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77, and *Vernillo*

v. France, 20 February 1991, § 27, Series A no. 198). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

102. The Court observes that the Government did not provide any details whatsoever concerning the proposed remedy, limiting their argument to the statement that the applicants could have requested institution of criminal proceedings against those responsible. They did not specify the Article of the Criminal Code to which the applicants should have supposedly resorted, nor provide any details as to the kind of redress this could have offered in the particular circumstances of the case. The Government also failed to clarify whether the applicants should have attempted to institute criminal proceedings against the police officers or the judges or both. In this respect, the Court notes that, while the administrative proceedings against the applicants were initiated by police officers, the administrative detention as such was imposed by judges' decisions. As far as those decisions are concerned, the applicants had no effective remedies to exhaust (see paragraph 72 above).

103. Furthermore, the Court is mindful of its finding above that the applicants fell victim to an administrative practice (see paragraph 97 above). In such circumstances, it is doubtful whether a separate complaint, whether criminal or other, lodged with the authorities would have had any reasonable prospects of success. The Government also failed to produce any examples which would point to the contrary and dispel these doubts. Moreover, as it follows from the Armenian Ombudsman's report, an attempt to have criminal proceedings instituted in a number of cases in which an abuse of the CAO procedures in the context of demonstrations was believed to have been apparent produced no results (see paragraph 68 above).

104. In light of the above, the Court does not find the Government's objection as to non-exhaustion to be convincing and decides to reject it.

(c) Whether the interference was justified

105. The essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (see *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 37, 27 February 2007). Accordingly, where the State does intervene, such interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims.

(i) Prescribed by law

106. The first step in the Court's examination is to determine whether the measure imposed on the applicants was "prescribed by law", within the meaning of Article 11. This expression requires, first and foremost, that the interference in question have some basis in domestic law (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 86, Series A no. 61).

107. The Court notes that the interference in the present case amounted to the applicants' being sentenced to short-term detention in order to prevent or discourage their participation in demonstrations. The legal basis for that measure was Article 182 of the CAO which prescribed an administrative penalty for disobeying lawful orders of a police officer. Thus, the measure in question was imposed relying on a legal provision which had no connection with the intended purpose of that measure. The Court cannot but agree with the applicants that an interference with their freedom of peaceful assembly on such legal basis could only be characterised as arbitrary and unlawful.

108. The Court therefore concludes that the interference in question did not meet the Convention requirement of lawfulness. That being so, it is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

110. The applicants raised several complaints under Article 5 § 1, 2 and 4 of the Convention. The relevant provisions of Article 5, in so far as relevant, read 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (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;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

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

A. Admissibility

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

B. Merits

1. Article 5 § 1 of the Convention

(a) The parties' submissions

(i) The applicants

112. The applicants submitted that their administrative detention was unlawful and did not meet any of the purposes set out in Article 5 § 1. The alleged offences giving rise to their detention were fabricated. They were brought to the police on completely different grounds to those on which they were eventually charged. None of the initial suspicions received any follow up and none of them was questioned in connection with those suspicions. The second charges against them were fabricated because they were never even released from detention and were subjected to a consecutive penalty simply to prevent their further participation in demonstrations.

113. Furthermore, their detention was arbitrary in its motivation and effect and was imposed in bad faith. While ostensibly imposed in order to punish them for maliciously disobeying lawful orders of police officers under Article 182 of the CAO, their detention was in reality designed to punish them for their political allegiances and to prevent them from attending opposition demonstrations in Yerevan at the material time. The numbers and manner in which waves of detention were being used by the authorities in March and April 2004 indicates that a policy of blanket arrests of opposition supporters was sanctioned under cover of the administrative detention provisions with the intention of preventing people from attending, or making them afraid to attend, political demonstrations and thereby hindering the opposition parties' calls for a referendum and their challenge

to the incumbent President. The number of arrests and detentions carried out pursuant to the CAO during that period, viewed in the context of the history of the CAO's use in detaining hundreds of opposition supporters and activists during the 2003 presidential election, provided evidence of the illegal purpose for which these domestic provisions were being used.

114. In addition, their detention was disproportionate since the CAO required imposition of administrative detention only in exceptional cases. They did not commit the offences for which they were convicted but, even if they had, their cases were not so exceptional as to justify the imposition of the highest penalty.

115. The applicants lastly submitted that, in any event, the provisions of the CAO contravened internationally recognised standards and were therefore not in compliance with the requirements of Article 5.

(ii) The Government

116. The Government submitted that the applicants' administrative detention was imposed under Article 5 § 1 (a) and was compatible with the requirements of that provision. Their cases were examined by a court of first instance, which was the sole competent authority to do so. The sentences were imposed in a procedure prescribed by law and in compliance with the relevant procedural rules.

117. The Government further submitted that the police had reasonable grounds to arrest the applicants on a suspicion of having committed an offence under Article 182 of the CAO since they were eyewitnesses to those offences. Furthermore, the offences were directed against police officers who were acting within the scope of their authority to protect public order and prevent offences. Thus, the police had first hand information that the applicants had committed an offence and the applicants had been deprived of their liberty in order to be brought before a competent legal authority. The applicants' allegations that their detention pursued any aim other than punishing them for an offence prescribed by Article 182 of the CAO were not true. If the real purpose was to prevent the applicants from participating in demonstrations, the courts could have immediately imposed the highest penalty, that is fifteen days of detention, instead of allegedly abusing the procedure and again detaining the applicants.

(b) The Court's assessment

118. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).

119. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 (see *Medvedyev and Others, v. France* [GC], no. 3394/03, § 77, ECHR 2010-...). The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one (see *Quinn v. France*, judgment of 22 March 1995, § 42, Series A no. 311, and *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV), and only a narrow interpretation of those exceptions is consistent with the aim of that provision (see *Engel and Others v. the Netherlands*, 8 June 1976, § 58, Series A no. 22, and *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 171, ECHR 2009-...)

120. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a)-(f), be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, 29 January 2008). 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 (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008-...).

121. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in 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 *Saadi*, cited above, § 67). While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *Mooren v. Germany* [GC], no. 11364/03, § 77, ECHR 2009-...).

122. Furthermore, detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano*, cited above, § 59, and *Saadi*, cited above, § 69) or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports of Judgments and Decisions* 1996-III, and *Liu v. Russia*, no. 42086/05, § 82, 6 December 2007). The condition that there be no arbitrariness further demands that both the order to detain and the execution of the detention

must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see *Winterwerp*, cited above, § 39; *Bouamar v. Belgium*, judgment of 29 February 1988, Series A no. 129, § 50; and *O'Hara v. the United Kingdom*, no. 37555/97, § 34, ECHR 2001-X).

123. In the present case, the Court is mindful of its finding above that the applicants fell victim to an administrative practice by having been twice consecutively subjected to a measure, namely an arrest followed by a short-term conviction, which was arbitrary (see paragraphs 97 and 107 above). It pursued aims unrelated to the formal grounds relied on to justify the deprivation of liberty and clearly involved an element of bad faith on the part of the police officers. Furthermore, while there are not sufficient elements to conclude that the domestic court which imposed the detention also acted in bad faith, it undoubtedly showed negligence in reviewing both the factual and the legal basis for the applicants' detention (see paragraph 98 above). In such circumstances, the Court cannot but conclude that the applicants' deprivation of liberty as a whole was arbitrary and therefore unlawful within the meaning of Article 5 § 1. Having reached this conclusion, the Court does not find it necessary to resolve the question of whether the applicants were released from detention following the expiry of their first sentences and, if not, whether this amounted to a violation of their right to liberty.

124. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

2. Article 5 §§ 2 and 4 of the Convention

125. The applicants submitted that they were unaware of the alleged reasons for their second arrest, in breach of Article 5 § 2, because in reality they were never released from detention following the expiry of their first sentences. They further submitted that the failure of the authorities to provide them with access to a lawyer was in breach of the guarantees of Article 5 § 4. The third applicant lastly submitted that, in breach of Article 5 § 2, no reasons were given to him by the police officers at the time of his first arrest and he was not informed about its legal and factual grounds until three hours after he had been taken to the police station.

126. The Government contested the applicants' allegations. They claimed that the applicants had been immediately released from detention following the expiry of their first sentences but some time after their release they had committed new offences and were re-arrested. The Government further submitted that, since the applicants' administrative detention sentences were imposed under Article 5 § 1 (a), the judicial supervision required by Article 5 § 4 was incorporated in the decisions of the first instance court. The Government lastly submitted that the third applicant was informed orally by the police officers of the reasons for his arrest and, in

any event, a delay of three hours could not be considered incompatible with the requirements of Article 5 § 2.

127. The Court does not find it necessary to rule on these issues separately in view of its finding above that the applicants' deprivation of liberty as a whole was arbitrary and unlawful (see paragraph 123 above).

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

128. The applicants made several complaints about both sets of administrative proceedings against them under Article 6 §§ 1 and 3 (a)-(d) of the Convention, which, in so far as relevant, provide:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

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

B. Merits

130. The Government submitted that the applicants had had a fair and public hearing. They had failed to submit any proof in support of their allegations that the judges examining their cases were not impartial. The courts had not based their findings solely on the materials prepared by the police but also on the applicants' own submissions made in court. The applicants had been provided with an opportunity to call and examine witnesses, submit evidence and file motions and challenges, which they had

failed to do. Furthermore, they had been informed of their right to have a lawyer both by the police officers and during the court proceedings, but they had not wish to do so. The applicants had had sufficient time and facilities for the preparation of their defence.

131. The applicants contested the Government's submissions, claiming that the Government were simply citing domestic law and making bare statements that this law had been adhered to. The records of the court hearings were practically identical templates and did not provide a true version of events. In reality they had been denied access to a lawyer on each occasion, both before and during the trials. The judges had failed to examine the evidence and the merits of their cases. The judgments adopted as a result of this procedure were arbitrary and unreasoned.

132. The Court notes from the outset that similar facts and complaints have already been examined in a number of cases against Armenia, in which the Court found a violation of Article 6 § 3 (b) taken together with Article 6 § 1 (see *Galstyan*, cited above, §§ 86-88; *Ashughyan v. Armenia*, no. 33268/03, §§ 66-67, 17 July 2008; *Kirakosyan*, cited above, §§ 78-79; *Mkhitaryan*, cited above, §§ 78-79; *Tadevosyan*, cited above, §§ 72-73; *Gasparyan (no. 2)*, cited above, §§ 29-30; and *Karapetyan*, cited above, §§ 66-67). The circumstances of the present case are practically identical. It is true that the applicants in the present case were subjected to two almost consecutive terms of administrative detention instead of just one and were allegedly never released from detention following the expiry of their first terms. The Court, however, does not find it necessary to establish whether the applicants were indeed not released from detention since, regardless of that fact, both sets of proceedings against them were conducted in a very similar manner and fell short of the fair trial requirements of Article 6.

133. In particular, both administrative cases against the applicants were examined in an expedited procedure under Article 277 of the CAO. Similar to other administrative detention cases, the applicants were presented with a charge – while being in police custody without any contact with the outside world – from one to several hours before being taken to a court and being convicted. The Court therefore does not see any reason to reach a different finding in the present case and concludes that in both sets of administrative proceedings each applicant did not have a fair hearing, in particular on account of not being afforded adequate time and facilities for the preparation of his defence.

134. There has accordingly been a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention in respect of both sets of administrative proceedings conducted against each of the applicants.

135. In view of the finding made in the preceding paragraph, the Court does not consider it necessary to examine also the other alleged violations of Article 6 (see *Ashughyan*, cited above, § 68, and other cases cited in paragraph 91 above).

VI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7

136. The applicants complained under Article 13 of the Convention that they had no right to appeal against their convictions. The Court considers it necessary to examine this issue under Article 2 of Protocol No. 7 which, in so far as relevant, reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

A. Admissibility

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

B. Merits

138. The Government submitted that the applicants had the right to have their convictions reviewed, this right being prescribed by Article 294 of the CAO.

139. The applicants submitted that all the legal provisions regarding the right to appeal were inadequate and confused.

140. The Court notes that the applicants in the present case on both occasions were convicted under the same procedure as in the above-mentioned case of *Galstyan*, in which the Court concluded that the applicant did not have at his disposal an appeal procedure which would satisfy the requirements of Article 2 of Protocol No. 7 (see *Galstyan*, cited above, §§ 124-27, and other cases cited in paragraph 91 above). The Court does not see any reason to depart from that finding in the present case.

141. Accordingly, there has been a violation of Article 2 of Protocol No. 7 in respect of each conviction imposed on each of the applicants.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ALL THE ABOVE ARTICLES

142. The applicants alleged that they fell victim to discrimination on the basis of political opinion since all the breaches of the Convention which had taken place in their case were due to the fact that they were members of the political opposition. They invoked Article 14 of the Convention which reads as follows:

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

143. The Government contested this allegation.

144. The Court does not find it necessary to examine separately the question of the alleged political discrimination, in view of its findings under other Articles of the Convention.

VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

145. Lastly, the applicants complained that they were not allowed any contact with their families or lawyers while in detention, in violation of the guarantees of Article 8 of the Convention.

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The applicants claimed totals of 4,400 US dollars (USD), USD 9,570 and USD 9,120 respectively in respect of pecuniary damage. In particular, the applicants submitted that because of their sentences, they were allegedly not able to tend to their farming, which resulted in loss of income. The second and the third applicants also submitted that their families had provided food and cigarettes for them whilst in detention. The applicants also claimed compensation for non-pecuniary damage in the amount of EUR 20,000 each.

149. The Government submitted that the applicants had failed to provide relevant documentary proof of their pecuniary claims. Furthermore, there was no causal link between these claims and the violations alleged. As to the claims for non-pecuniary damage, the Government submitted that, if the

Court were to find a violation, that would be sufficient just satisfaction. In any event, the amounts claimed were excessive.

150. The Court notes that the applicants have failed to substantiate their claims for pecuniary damage with any documentary proof; it therefore rejects these claims. On the other hand, the Court considers that the applicants have undoubtedly suffered non-pecuniary damage. Ruling on an equitable basis, it awards each applicant EUR 7,000 in respect of such damage.

B. Costs and expenses

151. The applicants also claimed USD 21,650 and 3,319.99 pounds sterling (GBP) for the costs and expenses incurred before the Court. The applicants submitted detailed time sheets stating hourly rates in support of their claims.

152. The Government submitted that the claims in respect of the domestic and foreign lawyers were not duly substantiated by documentary proof, since the applicants had failed to produce any contracts certifying that there was an agreement with those lawyers to provide legal services at the alleged hourly rate. No documentary proof of the administrative costs had been provided either. Furthermore, the applicants had used the services of an excessive number of lawyers, despite the fact that the case was not so complex as to justify such a need. Moreover, the hourly rates allegedly charged by the domestic lawyers were excessive. As to the cost of translating the application form and the enclosed documents, these expenses were not necessary since it was open to the applicants to submit such documents in Armenian.

153. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes at the outset that no invoice has been submitted to substantiate the translation costs. As regards the lawyers' fees, it considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the foreign and the domestic lawyers, as set out in the relevant time sheets. Making its own estimate based on the information available, the Court awards the applicants jointly EUR 7,000 in respect of costs and expenses, to be paid in pounds sterling into their representatives' bank account in the United Kingdom.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 10, Article 11, Article 5 §§ 1, 2 and 4, Article 6 §§ 1 and 3 (a)-(d) and Article 14 of the Convention and Article 2 of Protocol No. 7 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 of the Convention on account of the applicants' administrative detention;

3. *Holds* that there is no need to examine separately the complaint under Article 10 of the Convention;

4. Holds that there has been a violation of Article 5 § 1 of the Convention in that the applicants' deprivation of liberty was arbitrary and unlawful;

5. Holds that there is no need to examine separately the complaints under Article 5 §§ 2 and 4 of the Convention;

6. Holds that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) of the Convention in that the applicants did not have a fair hearing, in particular on account of the fact that they were not afforded adequate time and facilities for the preparation of their defence in both sets of administrative proceedings against them;

7. Holds that there is no need to examine the other complaints under Article 6 of the Convention;

8. *Holds* that there has been a violation of Article 2 of Protocol No. 7 in respect of each of the applicants' convictions;

9. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention;

10. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 7,000 (seven thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Armenian drams at the rate applicable at the date of settlement;

(ii) EUR 7,000 (seven thousand euros) jointly to the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into their representatives' bank account in the United Kingdom;

(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;

11. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President