CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF SAPEYAN v. ARMENIA

(Application no. 35738/03)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Sapeyan v. Armenia,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele, *judges,*

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 35738/03) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Zhora Sapeyan ("the applicant"), on 28 August 2003.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz, Ms A. Stock and Ms L. Claridge, lawyers of the Kurdish Human Rights Project (KHRP) based in London, Mr T. Ter-Yesayan and Mr A. Zohrabyan, lawyers practising in Yerevan, and Mr A. Ghazaryan. 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. On 23 June 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Ashtarak, Armenia. He is the chairman of a regional branch of the Republic Party (*«Հանրապետություն» կուսակցություն*).

A. The demonstration of 20 February 2003

5. In 2003 a presidential election was held in Armenia with its first and second rounds taking place on 19 February and 5 March respectively. Following the first and second rounds, a series of protest rallies were organised in Yerevan by the opposition parties.

6. On 20 February 2003 the applicant participated in a demonstration held in Yerevan which was apparently followed by a march.

7. On 26 February 2003, when another demonstration was apparently supposed to take place in Yerevan, the applicant and two other members of his party set off by car from Ashnak village to Yerevan.

8. The applicant alleged that on the road to Yerevan their car was stopped by several individuals in civilian clothes who introduced themselves as officers of the Aragatsotn Regional Police Department. The applicant and his colleagues were taken to the Regional Police Department. From there the applicant was transferred to the Central District Police Department of Yerevan where an administrative case was initiated against him on account of his participation in the demonstration of 20 February 2003.

9. On the same date, several hours later, the applicant was taken to the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքներկ առաջին ատյանի դատարան*). There he was brought before Judge A. who, having heard the applicant and his lawyer, after a brief hearing sentenced the applicant under Article 180.1 of the Code of Administrative Offences (*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք* – "the CAO") to ten days of administrative detention, finding that:

> "On 20 February 2003 [the applicant] participated in an unauthorised march, thus violating the prescribed rules for organising and holding street marches and demonstrations.
>
> For this act [the applicant] was brought to the Central District Police Department on 26 February 2003.

> The fact of [the applicant's] participation in an unauthorised march was confirmed by the explanation given by [the applicant] in court and the examination of the materials of the administrative case file."

10. The decision stated that it was not subject to appeal and could be protested against only by the prosecutor.

11. On 27 February 2003 the applicant's lawyer lodged both an appeal with the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարան*) and an application with the General Prosecutor (*ՀՀ գլխավոր դատախազ*) requesting him to initiate an appeal against the decision of the District Court. The lawyer argued at the outset, relying on various domestic provisions, that he was entitled to lodge an appeal against the decision of the District Court. As to the merits, he submitted that the interference with the applicant's right to freedom of peaceful assembly was in violation of the Constitution and was not prescribed by law, and the penalty imposed was excessive. The lawyer attached a copy of the contested decision to the appeal.

12. On 2 March 2003 the President of the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարանի նախագահ*) reviewed the applicant's conviction, finding that:

> "[The applicant, according to the decision of the District Court, was subjected to administrative detention] ... for violating the prescribed rules for organising and holding assemblies, demonstrations, street marches and rallies, by participating in an unauthorised demonstration and street march on 20 February 2003.
>
> Having familiarised myself with [the applicant's] appeal and the materials concerning the administrative offence, I find that the penalty imposed on [the applicant] must be changed."

13. The President changed the penalty to an administrative fine of 1,000 Armenian drams (AMD) (approximately 1.5 euros (EUR) at the material time) and ordered the applicant's release. On the same date the applicant was released from detention, after he had served about four days of his sentence.

14. By a letter of 4 March 2003 the applicant's lawyer was informed by the General Prosecutor's Office (*ՀՀ գլխավոր դատախազություն*) that, on the basis of the applicant's appeal, the penalty had been changed and the applicant had been released by decision of the Court of Appeal.

B. The demonstration of 14 May 2003

15. On 3 December 2003 the applicant supplemented his initial application, complaining about the following events.

16. On 14 May 2003 he participated in a demonstration held in Yerevan.

17. On 21 May 2003 he was taken to a police station and then transported to the Kentron and Nork-Marash District Court of Yerevan where an administrative fine of AMD 1,000 was imposed on him for having organised the participation of a group of people from his region in an unauthorised demonstration on 14 May 2003.

II. RELEVANT DOMESTIC LAW

18. For a summary of the relevant provisions concerning administrative proceedings see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, § 26, 15 November 2007).

19. For a summary of the relevant legislation invoked by the parties in connection with Article 180.1 of the CAO (see paragraphs 33 and 34 below) see the judgment in the case of *Mkrtchyan v. Armenia* (no. 6562/03, §§ 20-28, 11 January 2007).

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH RULE AS REGARDS THE DECISION OF 26 FEBRUARY 2003

20. The applicant raised a number of complaints under Article 5 §§ 1, 2, 3 and 4, Article 6 §§ 1 and 3 (a-d), Article 10, Article 11, Article 13 and Article 14 of the Convention and Article 3 of Protocol No. 1 thereto in connection with his conviction of 26 February 2003.

21. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter where it has been introduced within six months from the date of the final decision in the process of exhaustion of domestic remedies (see, among other authorities, *Danov v. Bulgaria*, no. 56796/00, § 56, 26 October 2006). However, the obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-III). Where no effective remedy is available to the applicant, the time-limit expires six months after the date of the acts or measures complained of, or after the date of knowledge of that act or its effect or prejudice on the applicant (see *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I). Thus, the pursuit of remedies which fall short of the above requirements will have consequences for the identification of the "final decision" and, correspondingly, for the calculation of the starting point for

the running of the six-month rule (see *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002).

22. Turning to the circumstances of the present case, the Court notes that the applicant raised a number of complaints in his application in connection with the decision of the Kentron and Nork-Marash District Court of Yerevan of 26 February 2003. This decision, however, was final and there were no further sufficiently accessible and effective remedies to exhaust, including the extraordinary remedies which could be initiated under Article 294 of the CAO with a prosecutor or the president of a higher court (see *Galstyan*, cited above, §§ 40-42). The applicant nevertheless tried this avenue for review by submitting both an appeal to the Criminal and Military Court of Appeal and a request for appeal to the General Prosecutor (see paragraph 11 above). On 2 March 2003 the President of the Criminal and Military Court of Appeal decided to review the final decision of the District Court of 26 February 2003, on the basis of the applicant's extraordinary appeal. The applicant lodged his application with the Court on 28 August 2003, which is more than six months from the date of the District Court's decision but less than six months from the date of the decision of the Court of Appeal. It is therefore necessary to determine whether the decision of the Court of Appeal taken on the basis of the applicant's extraordinary appeal restarted the running of the six-month period as far as the final decision of the District Court is concerned.

23. The Court observes that it has consistently rejected applications in which the applicants have submitted their complaints within six months from the decisions rejecting their requests for reopening of the proceedings on the ground that such decisions could not be considered "final decisions" for the purpose of Article 35 § 1 of the Convention (see, among other authorities, *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II; *Riedl-Riedenstein and Others v. Germany* (dec.), no. 48662/99, 22 January 2002; and *Babinsky v. Slovakia* (dec.), no. 35833/97, 11 January 2000). However, the Court has also accepted that situations in which a request to reopen the proceedings is successful and actually results in a reopening may be an exception to this rule (see *Pufler v. France*, no. 23949/94, Commission decision of 18 May 1994, Decisions and Reports 77-B, p. 140; *Korkmaz v. Turkey* (dec.), no. 42576/98, 17 January 2006; and *Atkın v. Turkey*, no. 39977/98, § 33, 21 February 2006).

24. It appears that the situation in the present case may be regarded as falling into the category of exceptional cases, given that the applicant's extraordinary remedy actually led to a review of the final decision on his administrative case. The Court, however, does not consider that the mere fact of reopening proceedings will restart the running of the six month period. It cannot be excluded that a case may be reopened on grounds unrelated to the Convention complaints which an applicant may later lodge with the Court and the Court doubts that such a reopening will affect the

calculation of the six month period. Since Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court before his position in connection with his complaint has been finally settled at the domestic level (see *Petrie and Others v. the United Kingdom* (dec.), no. 29703/05, 6 February 2007), it means that an applicant is required under that Article to seize the Court once his position in connection with his complaint has been finally settled and the reopening of a case on unrelated grounds will not affect the finality of the settlement in respect of that particular issue. The Court therefore considers that, in cases where proceedings are reopened or a final decision is reviewed, the running of the six month period in respect of the initial set of proceedings or the final decision will be interrupted only in relation to those Convention issues which served as a ground for such a review or reopening and were the object of examination before the extraordinary appeal body. A different approach would also be contrary to the principle of subsidiarity, on which the Convention machinery is founded and which requires that the complaints intended to be made at the international level should first be aired in substance before the domestic courts (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

25. In the present case, the Court notes that the applicant did not raise in his extraordinary appeal to the Court of Appeal, either explicitly or in substance, almost all of the complaints which he is currently raising before the Court (see paragraph 20 above). The only issue raised in that appeal concerned the alleged unlawfulness of the interference with his right to freedom of assembly. The Court further notes that the Court of Appeal did not address of its own motion any of those issues either, apart from upholding the applicant's conviction under Article 180.1 of the CAO and modifying the penalty imposed by the District Court. Thus, the complaints raised by the applicant before the Court in connection with the decision of the District Court, apart from the one concerning the alleged unlawfulness of the interference with his right to freedom of peaceful assembly, were not the object of examination before the Court of Appeal and the grounds on which the Court of Appeal decided to review the final decision of the District Court cannot be seen as being in any way related to those complaints. The Court therefore concludes that the review of the final decision of the District Court by the Court of Appeal upon the applicant's extraordinary appeal did not re-start the running of the six-month period in respect of those complaints.

26. It follows that the applicant's complaints concerning the decision of 26 February 2003, other than the one under Article 11, were lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

27. The Court considers, however, that different considerations apply to the applicant's complaint under Article 11. It reiterates that the six-month

rule is autonomous and must be construed and applied according to the facts of each individual case, so as to ensure the effective exercise of the right to individual application (see *Fernandez-Molina Gonzalez and Others v. Spain* (dec.), no. 64359/01, ECHR 2002-IX (extracts)). The Court notes that, even if the applicant pursued his complaint under Article 11 through an extraordinary remedy which has been already found by the Court to be ineffective (see *Galstyan*, cited above), this actually led to the re-examination of his case on that particular ground and a new decision on the merits. In such circumstances, and bearing in mind that Article 35 must be interpreted with some flexibility (see *Ahtinen v. Finland* (dec.), no. 48907/99, 31 May 2005), the Court does not consider that this complaint was introduced out of time.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

28. The applicant complained that his conviction had unlawfully interfered with his rights guaranteed by Article 11 of the Convention which, in so far as relevant, provides:

> "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

29. The Court notes that, as already indicated above, this complaint was lodged within six months from the date of the final decision (see paragraph 27 above).

30. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. It was not in dispute between the parties whether there had been an interference with the applicant's right to freedom of peaceful assembly. The Court considers that the applicant's conviction for participation in an unauthorised march undoubtedly interfered with his right to freedom of peaceful assembly.

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

33. The Government submitted that the interference was prescribed by law. In particular, the applicant was convicted under Article 180.1 of the CAO for "violation of the prescribed rules for organising or holding assemblies, rallies, street marches and demonstrations". These rules were prescribed by the USSR Law on Approving Decrees of the Chairmanship of the Supreme Soviet of the USSR on Making Amendments and Supplements to Certain USSR Legal Acts of 28 October 1988 and were accessible and formulated with sufficient precision.

34. The applicant submitted that the USSR Law of 28 October 1988 was not applicable in Armenia at the material time and therefore the interference was not prescribed by law.

35. The Court recalls that an identical complaint was examined in the case of *Mkrtchyan v. Armenia* where the Court found that Article 180.1 of the CAO was not formulated with such precision as to enable the applicant to foresee, to a degree that was reasonable in the circumstances, the consequences of his actions, since there was no legal act applicable in Armenia which contained the "prescribed rules" referred to in that provision. The USSR Law of 28 October 1988 was no longer applicable and a new law on assemblies and rallies was adopted only on 28 April 2004. The Court concluded that the interference was not prescribed by law (see *Mkrtchyan*, cited above, § 43).

36. The Court notes that the interference in the present case similarly took place before the enactment of a new law on assemblies and rallies. It therefore does not see any reasons to depart from its finding reached in the case of *Mkrtchyan*. It follows that the interference with the applicant's right to freedom of peaceful assembly was not prescribed by law.

37. Having reached this conclusion, the Court does not need to verify whether the other two requirements (legitimate aim and necessity of the interference) set forth in paragraph 2 of Article 11 have been complied with.

38. Accordingly, there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE DECISION OF 2 MARCH 2003

39. The applicant complained that the Criminal and Military Court of Appeal failed to adopt a reasoned decision. He invoked Article 6 § 1 of the Convention which, in so far as relevant, provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Admissibility

40. The Court points out at the outset that Article 6 of the Convention applies to proceedings where a person is charged with a criminal offence until that charge is finally determined. It further reiterates that Article 6 does not apply to proceedings concerning a failed request to reopen a case. Only the new proceedings, after the reopening has been granted, can be regarded as concerning the determination of a criminal charge (see *Vanyan v. Russia*, no. 53203/99, § 56, 15 December 2005). The Court does not, however, consider it necessary to determine this issue in the present case, since the applicant's complaint under Article 6 about the proceedings before the Criminal and Military Court of Appeal is, in any event, inadmissible for the following reasons.

41. The Court reiterates that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the court and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question of whether a court has failed to fulfil the obligation to state reasons can only be determined in the light of the circumstances of the case (see, among other authorities, *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B).

42. In the present case, the applicant was convicted under Article 180.1 of the CAO for his participation in an unauthorised demonstration and street march. This reason was stated in the Court of Appeal's decision. In such circumstances, even if this decision was not detailed, it cannot be said that the Court of Appeal failed to indicate the reasons for the applicant's conviction.

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

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION AS REGARDS THE DECISION OF 2 MARCH 2003

44. The applicant alleged discrimination on political grounds also in connection with the decision of the Court of Appeal of 2 March 2003. He invoked Article 14 of the Convention which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Admissibility

45. The Court notes that all the materials in its possession indicate that the applicant was penalised for his participation in an unauthorised demonstration. There is nothing in the case file to suggest that he was subjected to a penalty because of his political opinion.

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

V. ALLEGED VIOLATION OF THE CONVENTION AND PROTOCOL NO. 1 TO THE CONVENTION AS REGARDS THE DECISION OF 21 MAY 2003

47. Lastly, the applicant also raised all the above complaints in connection with the decision of 21 May 2003. The Court notes, however, that the applicant lodged this part of the application only on 3 December 2003 (see paragraph 15 above).

48. It follows that this part of the application was similarly lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

51. The Government claimed that a finding of a violation of the Convention should be sufficient compensation for any non-pecuniary damage allegedly suffered by the applicant. In any event, the amount claimed was excessive.

52. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of being unlawfully sanctioned for his

participation in a demonstration and a march. Ruling on an equitable basis, it awards him EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed 5,850 United States dollars (USD) (approximately EUR 4,916) and 6,332.50 pounds sterling (GBP) (approximately EUR 9,312) for the costs and expenses incurred before the Court. These claims comprised:

(a) USD 5,850 for the fees of his two domestic representatives (totals of 25 and 21 hours at USD 150 and 100 per hour respectively);

(b) GBP 6,237.50 for the fees of his three United Kingdom-based lawyers, including two KHRP lawyers and one barrister (totals of about 15 and 40 hours at GBP 150 and 100 per hour respectively); and

(c) GBP 95 for administrative costs incurred by the KHRP.

54. The Government submitted that these claims were not duly substantiated with documentary proof, since the applicant had failed to produce any contract certifying that there was an agreement with the lawyers to provide legal services at the alleged rate. Furthermore, the applicant 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. Finally, the rates allegedly charged by the domestic representatives were excessive.

55. 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 were reasonable as to quantum. In the present case, the Court 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 representatives, as set out in the relevant time sheets. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* [GC], no. 33202/96, § 27, ECHR 2000-I). The Court notes that only a violation of Article 11 was found in the present case while the entirety of the written pleadings, including the initial application and the subsequent observations, concerned numerous Articles of the Convention and Protocol No. 1. Therefore the claim cannot be allowed in full and a considerable reduction must be applied. Making its assessment on an equitable basis, the Court awards the applicant a total sum of EUR 2,000 for costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

C. Default interest

56. 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 complaint under Article 11 of the Convention in respect of the proceedings which terminated with the decision of the Criminal and Military Court of Appeal of 2 March 2003 admissible, and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
   (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, 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 his 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President