



Police break-up of protest against 2008 presidential election and prosecution of opposition activist breached the European Convention

The case of [Mushegh Saghatelyan v. Armenia](#) (application no. 23086/08) concerned an opposition activist's allegation of a politically motivated crackdown on 1 March 2008 following a wide-scale protest against the presidential elections. He complained in particular that he had been ill-treated by the police, that his arrest had been unlawful and that the entire criminal case then brought against him had been fabricated. He had eventually been convicted for assaulting two police officers and illegally carrying a knife.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 3 (prohibition of inhuman or degrading treatment/investigation) of the European Convention on Human Rights. The Court was not convinced that the injuries recorded on Mr Saghatelyan's head and body had occurred during clashes between the police and protestors, which was the official explanation, and concluded that they had been the result of ill-treatment. Moreover, there had never been an official investigation to specifically look into Mr Saghatelyan's allegations that his injuries had been caused by police brutality;

a violation of Article 5 § 1 (right to liberty and security) of the European Convention concerning Mr Saghatelyan's arrest, which had not been lawful because it had not been formally acknowledged for the first 16 hours and had gone 12 hours over the time-limit under domestic law for bringing a suspect before a judge;

a violation of Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial) as concerned the authorities' failure to properly justify Mr Saghatelyan's detention;

a violation of Article 6 § 1 (right to a fair trial) because the criminal proceedings against him, taken as a whole, had been unfair. In particular, the courts had relied on police testimony to convict him, while summarily rejecting both his allegations of inconsistencies in the case and his requests to call defence witnesses; and,

a violation of Article 11 (freedom of assembly and association). The Court found that the dispersal of the protest, which had been peaceful, and the subsequent rounding-up and detention of activists, such as Mr Saghatelyan, had been disproportionate and unnecessary. In fact, it seemed that he had been initially detained and prosecuted simply because he had participated in the protest, while his eventual conviction had been handed down without a proper examination by the domestic courts. Not only had this breached his Convention right to freedom of peaceful assembly, but it could also discourage him and others from participating in demonstrations in the future.

Principal facts

The applicant, Mushegh Saghatelyan, is an Armenian national who was born in 1950 and lives in Yerevan.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Nationwide rallies, alleging election irregularities, broke out after the February 2008 presidential election. Protesters set up a camp in the centre of Yerevan, however, on 1 March in the early hours, the police broke it up. Along with other protesters, Mr Saghatelyan, an active supporter of the opposition and a senior official for the former ruling party, fled the camp and was taken into custody.

The operation triggered clashes between protestors and the police later in the day. Ten died, numerous people were injured and a state of emergency was declared.

Mr Saghatelyan was formally arrested later in the evening and charged on 3 March with planning the violent overthrow of the Government and publicly insulting officials. On 4 March he was brought before a judge who ordered his detention for two months. His appeals against his detention were dismissed.

Five months later the charges against him were dropped, mostly for lack of evidence. New charges were, however, brought, accusing him of assaulting two police officers and illegally carrying a knife.

He was convicted as charged in October 2008. The courts accepted the police's account that they had gone to the protest camp to carry out an inspection for weapons following intelligence they had received that demonstrators had been planning to instigate mass disorder. As concerned Mr Saghatelyan in particular, they relied on police testimony that he had attacked two police officers and illegally carried a knife. His appeal was dismissed in December 2008. He was sentenced to five years' imprisonment, of which he served half before being released in November 2010.

Throughout the proceedings, Mr Saghatelyan alleged before the courts that the case against him had been fabricated, and that he was being prosecuted for his active participation in the demonstrations rather than for committing any criminal offence. He also testified that the police had kicked, punched and hit him with rubber batons when he was apprehended and that the beating had then continued at the police station. The authorities never officially investigated his complaints, considering that he must have been injured during the clashes.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Saghatelyan alleged that he had been ill-treated by the police and that those responsible had never been identified and punished.

Further relying on Article 5 §§ 1 (c), 2 and 3 (right to liberty and security), he alleged that his arrest had been unlawful and arbitrary, that he had not been informed promptly of the reasons for his arrest and that his arrest and continued detention had not been based on a reasonable suspicion or properly justified.

He also complained under Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) that the criminal case against him had been fabricated and based solely on contradictory police testimony, while he had not been allowed to call any witnesses on his behalf and all his submissions in his defence had been ignored.

Lastly, he complained that the dispersal of the demonstration and his subsequent prosecution and conviction had breached in particular Article 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 22 April 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre Sicilianos (Greece), *President*,
Kristina Pardalos (San Marino),
Aleš Pejchal (the Czech Republic),

Ksenija Turković (Croatia),
Pauliine Koskelo (Finland),
Tim Eicke (the United Kingdom) and,
Siranush Sahakyan (Armenia), *ad hoc Judge*,

and also Renata Degener, *Deputy Section Registrar*.

Decision of the Court

Article 3 (inhuman and degrading treatment)

Injuries to Mr Saghatelyan's head and body had been recorded at different points of his detention between 2 and 10 March, in particular when he had been transferred from the police station to a holding cell, admitted to the remand prison and examined by a forensic medical expert in the context of the criminal investigation instituted into the clashes between police and protestors.

However, there had been no official inquiry into the causes of those injuries. Therefore, the Government's allegation that they had to have occurred during the clashes was purely speculative. Mr Saghatelyan, on the other hand, had consistently and repeatedly raised his allegations of ill-treatment before various domestic authorities.

Because the Government had failed to provide a satisfactory explanation for the injuries, the Court concluded that Mr Saghatelyan must have been ill-treated by the police. Given the nature and severity of those injuries as well as his description of the ill-treatment, the Court held that he had suffered inhuman and degrading treatment, in violation of Article 3.

The Court also held that there had been a further violation of Article 3 as concerned the ineffectiveness of the investigation into Mr Saghatelyan's allegations. The sole purpose of the investigation into the clashes seemed to have been to collect evidence so as to prosecute demonstrators, including the applicant, without ever specifically looking into his allegations.

Article 5 §§ 1 (c), 2 and 3 (right to liberty and security)

The Court examined two short periods of Mr Saghatelyan's arrest, and found them unlawful, in violation of Article 5 § 1.

The first period was from 1 March 2008 at 6.30 a.m., when he was taken to the police station by force, to 10.30 p.m., when his arrest had been recorded. His status as an arrested suspect had thus only been formalised, indeed acknowledged, after 16 hours. This was not only in breach of domestic law that an arrest record had to be drawn up within three hours of someone being brought before the relevant authority, but it had also left Mr Saghatelyan in a state of uncertainty and deprived him of his rights as an arrested suspect, including the right to immediately inform a lawyer and his family.

Nor was there anything in the law or in the particular circumstances of Mr Saghatelyan's case to support the Government's explanation that, during those first 16 hours, he had had the status of a "brought-in-person". That was an arrest procedure reserved for a different type of situation, not for a person taken into custody on suspicion of having committed an offence, such as Mr Saghatelyan. Moreover, the concept of a "brought-in person" had been developed for the first time by the Court of Cassation in 2009, after the present case.

The second period under consideration, the 84 hours from his being taken into custody, at 6.30 a.m. on 1 March, to the time when he was brought before a judge, at 7 p.m. on 4 March 2008, had exceeded the maximum 72-hour period permitted by domestic law. Mr Saghatelyan had thus been detained 12 hours beyond the time-limit, without the required court order.

It also found a violation of Article 5 § 3 regarding the courts' failure to justify Mr Saghatelyan's detention. That complaint concerned a repetitive situation already examined in a number of other cases against Armenia and the Court saw no reason to reach a different finding in this case.

It considered that it was not necessary to examine his complaints under Article 5 §§ 1 (c) and 2 of a lack of a reasonable suspicion for his arrest and continued detention and of his not being informed promptly of the reasons for his arrest, finding that they were linked to his other complaints.

Article 6 (right to a fair trial)

The only direct evidence for Mr Saghatelyan's involvement in the crimes of which he had been convicted had been police statements, everything else had been circumstantial. The courts had thus unreservedly endorsed a version of events given by those who had been actively involved in the conflict, without checking the facts or calling any other witnesses.

Mr Saghatelyan's arguments, on the other hand, had been rejected as unreliable without any analysis. In particular, he had pointed to inconsistencies in the case against him, such as the fact that the new charges had been based on police officers identifying him from a chaotic incident five months earlier, involving hundreds of demonstrators and police officers at a time when it had not been quite light. Furthermore, the pre-trial statements against him by three police officers had been identical.

Similarly, all of Mr Saghatelyan's requests to call witnesses had been dismissed with only very brief or unconvincing reasons.

Such a limitation on the rights of the defence was incompatible with the guarantees of a fair hearing protected under the European Convention. The criminal proceedings against Mr Saghatelyan, taken as a whole, had therefore not been fair, in violation of Article 6 § 1. The Court held that there was no need to examine separately the complaint under Article 6 § 3 (d), which concerned the same facts.

Article 11 (freedom of association)

The Court found that the protest of 1 March 2008 had been peaceful. The Government had not provided any evidence to prove their allegations that the demonstrators had planned to arm themselves to instigate mass disorder. The courts examining Mr Saghatelyan's case had not dealt with the question of who had been the first to attack, which would have proved any violent intentions. Moreover, various international and domestic bodies had produced credible reports casting doubt on the official account of events.

Therefore the dispersal of the demonstration and Mr Saghatelyan's prosecution, detention and conviction had interfered with his right to freedom of peaceful assembly.

Even assuming that those measures had complied with domestic law and had been justified by the need to prevent disorder and crime, they had not been necessary in a democratic society.

Overall, the police operation had been disproportionate. It had lacked transparency as to its planning, organisation and command. Indeed, there had been striking contradictions in the purpose of the operation, the authorities first explaining that it had been to disperse the protest, then that it had been necessary to carry out an inspection for weapons. According to credible reports, the police had given no warnings to disperse and had used unjustified and excessive force.

For Mr Saghatelyan, the charges against him, drafted in very general terms, had not been backed up by any evidence. He had therefore apparently been prosecuted and detained for simply having actively participated in, and possibly organised, the assembly. The courts had then failed to establish the facts thoroughly and objectively, basing their judgments entirely on police testimony.

Undoubtedly, such measures could only have discouraged the applicant, other opposition supporters and the public at large from participating in demonstrations in the future.

There had therefore been a violation of Article 11 of the Convention.

[Article 41 \(just satisfaction\)](#)

The Court held that Armenia was to pay Mr Saghatelyan 15,600 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.