



## Dispersal of rally in March 2008: violation of former President's right to freedom of assembly and the lack of an effective remedy

In today's **Chamber judgment**<sup>1</sup> in the case of [Ter-Petrosyan v. Armenia](#) (application no. 36469/08) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights, and**

**a violation of Article 13 (right to an effective remedy) in conjunction with Article 11.**

Complaints under **Article 5 § 1 (right to liberty and security) and Article 2 of Protocol No. 4 (freedom of movement)** were rejected as manifestly ill-founded.

The case concerned the applicant's complaint about the dispersal of a protest rally on 1 March 2008, the lack of an effective remedy and his alleged placement under house arrest.

The Court found in particular that the Government, claiming non-exhaustion of domestic remedies, had failed to satisfy it that there had been an effective remedy in the domestic legal system. It further held that the dispersal of the assembly had not been justified.

Although reports had suggested Mr Ter-Petrosyan had been under "house arrest", there was still a dispute about that incident which was primarily one of fact. The Court found that it was not in a position to conclude he had been deprived of his liberty or had had his freedom of movement restricted.

### Principal facts

The applicant, Levon Ter-Petrosyan, is an Armenian national who was born in 1945 and lives in Yerevan. He was the President of Armenia between 1991 and 1998.

On 19 February 2008 Mr Ter-Petrosyan ran in a presidential election as the main opposition candidate. From 20 February 2008 onwards, protests about alleged election irregularities broke out, led by Mr Ter-Petrosyan, and took place in particular on Freedom Square in central Yerevan. At times the rallies attracted tens of thousands of people.

The applicant alleged that on 1 March 2008 the police had arrived at Freedom Square, encircled the demonstrators and, without warning, had begun to attack them and beat them. The protesters had been quickly pushed out of the square and Mr Ter-Petrosyan had also been ordered to leave but had refused. He was then forced into a car and taken to his house, which he had not been allowed to leave. The roads to his house were blocked by the police and all vehicles were checked. No one could go in or out of his dwelling without the permission of the Special Forces.

The rallies continued throughout the city until late at night, involving clashes between protesters and law-enforcement officers and resulting in 10 deaths, many injured and a state of emergency being declared by the President of Armenia.

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](http://www.coe.int/t/dghl/monitoring/execution).

The Government contested these allegations. In particular, it stated that the police forces had been attacked by the demonstrators and that Mr Ter-Petrosyan had got into a police car voluntarily. He had then been taken to his home and had not expressed any wish to go elsewhere.

Police officers had been stationed near his home as part of security measures for all people under State protection. The police forces had neither prohibited anyone from entering the house nor prevented Mr Ter-Petrosyan from leaving. He had expressed the wish at one point to leave but had not gone anywhere when he had been told that the security forces would not accompany him.

On 4 March 2008, Mr Ter-Petrosyan's legal representative filed a request with the Constitutional Court, submitting that the applicant was under *de facto* house arrest. The applicant alleged that he was allowed to attend a hearing at the court on 5 March 2008 for one hour but that otherwise his house arrest had lasted without interruption until 20 March 2008. The Government rejected the applicant's submissions. In particular, it stated that after the hearing he had asked to be taken home and had not wanted to leave his house until the state of emergency was lifted on 20 March 2008.

In March 2008 the Constitutional Court dismissed an application by Mr Ter-Petrosyan against the result of the presidential election.

## Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security), Article 2 of Protocol No. 4 (freedom of movement), Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy), Mr Ter-Petrosyan complained that he had been removed forcibly from Freedom Square, while peacefully assembling, and then placed under house arrest on 1 March 2008 and that he did not have at his disposal an effective remedy in respect of the interference with his freedom of assembly. Relying on Article 14 (prohibition of discrimination), he complained that he had been discriminated against on the grounds of his political opinion.

The application was lodged with the European Court of Human Rights on 30 August 2008.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Ksenija **Turković** (Croatia),  
Aleš **Pejchal** (the Czech Republic),  
Krzysztof **Wojtyczek** (Poland),  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** (North Macedonia, *ad hoc judge*),  
Gilberto **Felici** (San Marino),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 5 § 1 and Article 2 of Protocol No. 4](#)

The Court noted that the parties disagreed on whether Mr Ter-Petrosyan had been deprived of his liberty or had faced a restriction on his liberty of movement following the events of 1 March 2008.

The Court took into account several reports suggesting that he had been placed under "house arrest" as a result of his political activity, including a press release by the Secretary General of the Council of Europe, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Council of Europe Commissioner for Human Rights and Human Rights Watch.

At the same time, the Court did not have strong and unequivocal evidence to corroborate those allegations or which had shown beyond reasonable doubt that the security police had acted in bad faith and had abused its authority by restricting his liberty or freedom of movement. This issue had never been examined by any domestic authority, while the above-mentioned reports, while undoubtedly worrying, were not sufficient fully to accept Mr Ter-Petrosyan's version of events.

The Court found that there was insufficient substantiation for these complaints and that this part of the application had to be rejected as manifestly ill-founded.

### Articles 11 and 13

Firstly, the Court rejected the Government's objection that Article 11 was inapplicable: it had already found that there was insufficient evidence to conclude that the organisers and participants of the assembly at Freedom Square had had violent intentions and that the rally had not been peaceful (*Mushegh Saghatelyan v. Armenia*).

Secondly, the Court examined the Government's argument that Mr Ter-Petrosyan had not exhausted domestic remedies, particularly by initiating proceedings under Article 68 of the Code of Administrative Procedure (CAP).

The Court noted, that, while the Government had produced copies of three judgments in support of their argument, nothing had suggested that those judgments had been rendered by the Administrative Court under the procedure prescribed by Article 68 of the CAP.

One of the judgments had clearly stated that the claim had been lodged under Article 65, while the other two had been silent on that point. More importantly, all three had concerned challenges to administrative acts, such as decisions by the Mayor's Office prohibiting the holding of a rally, as opposed to any interfering actions taken by law-enforcement authorities during a demonstration.

The Government had therefore failed to produce any examples of Article 68 being applied in a situation similar to the present case.

The applicability of that Article to these types of situations had not been obvious from its wording either. In particular, it applied only to an administrative action which "no longer has legal force" and which an applicant had a legitimate interest in having acknowledged as unlawful depending on certain conditions, none of which had appeared to exist in the present case. It was therefore not clear whether Article 68 could apply to police actions such as the dispersal of an assembly. In view of that lack of clarity and the absence of any examples of domestic practice, the Court considered that the Government had failed to demonstrate the existence of an effective remedy for the interference with Mr Ter-Petrosyan's right to freedom of assembly.

Accordingly, the Court found that the applicant had not had an effective domestic remedy for his grievances under Article 11, in breach of Article 13.

Furthermore, the Court had examined the necessity of the interference with the assembly at Freedom Square in *Mushegh Saghatelyan*. It had concluded that its dispersal had not had sufficient justification and had taken place in dubious circumstances, apparently without warnings to disperse and with unjustified and excessive use of force. It had been disproportionate and had gone beyond what was reasonable to expect from the authorities when curtailing freedom of assembly.

There had thus been a violation of Article 11 in Mr Ter-Petrosyan's case.

### Article 14

The Court rejected his complaint of discrimination over his "house arrest" as manifestly ill-founded and thus inadmissible. It also found that it did not need to examine his allegation of discrimination linked to his right to freedom of assembly, having regard to its findings under Article 11.

### Just satisfaction (Article 41)

The Court observed that the applicant had failed to duly submit a claim for just satisfaction.

*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.