



Government's preventing publication of *Haykakan Zhamanak* newspaper during state of emergency

In today's Chamber judgment¹ in the case of [Dareskizb Ltd v. Armenia](#) (application no. 61737/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression), of the European Convention on Human Rights, and a violation of Article 6 § 1 (right to a fair trial).

The case concerned actions by State authorities during a state of emergency following a presidential election in 2008, during which the applicant company was prevented from publishing its newspaper, *Haykakan Zhamanak*. It also concerned the court proceedings that followed.

The Court found in particular that the restriction on publication had had no purpose other than to limit criticism of the Government and had thus gone against the core of the right to freedom of expression as protected under the Convention.

It furthermore found that the Administrative Court's refusal to hear the applicant company's case, claiming jurisdictional issues, had specifically denied the applicant company access to a court.

Principal facts

The applicant, Dareskizb Ltd, is an Armenian company which was founded in 1999 and has its registered office in Yerevan.

At the material time the applicant company published *Haykakan Zhamanak* ("Armenian Times"), a daily newspaper with leanings towards the then political opposition.

Before the announcement of the presidential election results of 2008, the opposition candidate, Mr Levon Ter-Petrosyan, called on supporters to gather in Freedom Square in central Yerevan. Thousands came, setting up a semi-permanent camp. After nine days of protest, the square was cleared, apparently without warning, and sealed off.

The protest moved to the area of the French embassy and the mayor's office about 2 km away. Violent clashes occurred with law-enforcement officers, leading to ten deaths and scores of injured civilians and police officers. For the applicant company, this had been an attempt to crush dissent that could bring about change; for the Government, this had been mass disorder.

State of emergency

On 1 March 2008 a state of emergency was declared by President Robert Kocharyan. Restrictions were imposed on the media, among other measures. The state of emergency lasted 20 days. Order was eventually restored. During the state of emergency, on the night of 3-4 March national-security officers prevented *Haykakan Zhamanak* from being printed. No reason was given.

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.

No further attempts were made to publish the newspaper until 13 March 2008, when the President of Armenia amended his initial decree, resulting in a “ban on publication or dissemination by mass media outlets of obviously false or destabilising information on State and internal issues, or of calls to participate in unsanctioned (illegal) activities, as well as publication and dissemination of such information and calls by any other means and forms”. An attempt was made to republish the edition of the newspaper, which was prevented by national-security officers.

On 21 March 2008 publication of the newspaper started again following the lifting of the state of emergency.

In April of that year the applicant company went to court to complain of the actions of the national-security officers and to have the enabling provisions – in particular the presidential decree – for the prevention of publication struck down owing to alleged conflicts with the Convention, the Legal Instruments Act and the Mass Media Act. It also claimed pecuniary damage.

The Administrative Court refused to entertain the applicant company’s case for lack of jurisdiction. A subsequent appeal on points of law was declared inadmissible for lack of merit by a panel of three judges as opposed to the customary five. The Constitutional Court initially ruled that the applicant company lacked standing to appeal before it, then refused to entertain the applicant company’s appeal to the President of that court. In particular, the latter court declared that only certain named individuals or groups could contest the constitutionality of a presidential decree.

Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression) and 6 § 1 (right to a fair trial), the applicant complained of the ban on its publications issued as part of the state of emergency, of its inability to access a court and that the court that had examined its appeal had not been a “tribunal established by law”.

The application was lodged with the European Court of Human Rights on 16 December 2008.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands) *and*,
Anna **Margaryan** (Armenia), *ad hoc Judge*,

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

Article 10

Given that the Court was satisfied that the State’s actions had amounted to an interference with the applicant company’s rights, it needed to determine whether that interference had been “prescribed by law”, had had legitimate aims and had been “necessary in a democratic society”. The Court re-emphasised that democracy thrives on freedom of expression.

The applicant company argued that the interference had not been prescribed by law as the President of Armenia had not had the constitutional authority to declare a state of emergency. The Court noted that a law should have been enacted to define that power. It also declared that the interference had had the legitimate aim of preventing disorder.

The Court noted that the publication of the newspaper had been prevented despite its content not having included hate speech or incitement to unrest. It appears that the restrictions had been applied only because *Haykakan Zhamanak* had been critical of the authorities. Those restrictions had gone against the very purpose of Article 10 and had not been necessary in a democratic society.

There had thus been a violation of the Convention under this Article.

Article 6 § 1

Access to a court

The applicant company submitted that it had been denied the opportunity to contest before the courts the measure violating its right to impart information. The Court reiterated that Article 6 § 1 guaranteed the right to have any claim relating to civil rights and obligations brought before a court or tribunal. However, that right was not absolute.

The Court noted that the manner in which the domestic law concerning compliance of presidential decrees with higher law had been interpreted and applied in the applicant company's case, notably by the Administrative Court, which had refused to examine the applicant company's claim, had denied the applicant company access to a court, in violation of the Convention.

Tribunal established by law

The applicant company submitted that the Administrative Court, which had examined its appeal against the decision refusing to entertain its application of 17 April 2008, had had more judges sitting on its panel than provided for by law (specifically Articles 9 and 125 § 1(1) of the Code of Administrative Procedure).

Given its findings already under this Article, the Court did not consider it necessary to examine the issue of the make-up of the appellate bench.

Just satisfaction (Article 41)

The Court held that Armenia was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage.

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.