



## FOURTH SECTION

### **CASE OF DARESKIZB LTD v. ARMENIA**

*(Application no. 61737/08)*

## JUDGMENT

Art 15 • Derogation in time of emergency • Government's failure to demonstrate convincingly that opposition demonstrations after 2008 presidential election constituted a public emergency "threatening the life of the nation" • Conditions for derogation not satisfied

Art 10 • Freedom of expression • Freedom to impart information • Unjustified ban on publication of opposition newspaper as a result of state of emergency declared in the context of massive post-election protests • Restriction resulting in stifling political debate and silencing dissenting opinions • Existence of a "public emergency threatening the life of the nation" could not serve as a pretext for limiting freedom of political debate

Art 6 (administrative) • Access to court • Administrative court's refusal to examine application against presidential decree on jurisdictional grounds impaired very essence of right of access to court

STRASBOURG

21 September 2021

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Dareskizb Ltd v. Armenia,**

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

Yonko Grozev, *President*,  
Tim Eicke,  
Faris Vehabović,  
Gabriele Kucsko-Stadlmayer,  
Pere Pastor Vilanova,  
Jolien Schukking, *judges*,  
Anna Margaryan, *ad hoc judge*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application 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 company, Dareskizb Ltd (“the applicant company”), on 16 December 2008;

the decision to give notice to the Armenian Government (“the Government”) of the complaints concerning the denial of access to court, the tribunal examining the applicant company’s appeal allegedly not being established by law and an alleged violation of the applicant company’s right to receive and impart information;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant company;

the comments submitted by a London-based non-governmental organisation, Media Legal Defence Initiative, who were granted leave to intervene by the President of the Section;

the decision by the President of the Chamber to appoint Mrs Anna Margaryan to sit as an *ad hoc* judge (Rule 29 of the Rules of Court), Mr Armen Harutyunyan, the judge elected in respect of Armenia, being unable to sit in the case (Rule 28);

Having deliberated in private on 31 August 2021,

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

## INTRODUCTION

1. The present case concerns a ban on publication of a newspaper published by the applicant company as a result of a state of emergency declared in Yerevan on 1 March 2008 for a period of 20 days, including the derogation made by Armenia in that regard (Articles 10 and 15 of the Convention). It further concerns denial to the applicant company of access to a court in order to contest the presidential decree declaring the state of emergency and the allegedly unlawful composition of the tribunal which examined the applicant company’s appeal against the decision denying access to court (Article 6 § 1 of the Convention).

## THE FACTS

2. The applicant company is a private company, which at the material time published *Haykakan Zhamanak* (“Armenian Times”), a daily opposition newspaper, and had its registered office in Yerevan. The applicant company was represented by Mr T. Atanesyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

### I. EVENTS PRECEDING THE DECLARATION OF A STATE OF EMERGENCY IN YEREVAN

5. On 19 February 2008 a presidential election was held in Armenia. The main contenders were the then Prime Minister, Mr Serzh Sargsyan, representing the ruling party, and the main opposition candidate, Mr Levon Ter-Petrosyan.

6. Immediately after the announcement of the preliminary results of the election, Mr Ter-Petrosyan called on his supporters to gather at Freedom Square in central Yerevan in order to protest against the irregularities which had allegedly occurred in the election process, asserting that the election had not been free and fair. From 20 February 2008 onwards, nationwide daily protest rallies were held by Mr Ter-Petrosyan’s supporters, their main meeting place being Freedom Square and the surrounding park. It appears that the rallies at Freedom Square attracted at times tens of thousands of people, while several hundred demonstrators set up a camp in the area and stayed there around the clock.

7. On 1 March 2008 in the early morning, after nine days of protest, a police operation was conducted at Freedom Square as a result of which the square was cleared of all the demonstrators and sealed off. In the case of *Mushegh Saghatelyan v. Armenia* (no. 23086/08, § 248, 20 September 2018) the Court concluded that this was done apparently without any prior warnings to disperse and with unjustified and excessive use of force.

8. It appears that after Freedom Square was cleared of demonstrators some of them relocated to the area near the French Embassy, the Yerevan Mayor’s Office and the Myasnikyan monument, situated at Grigor Lusavorich Street, no more than 2 km from Freedom Square, where there was a large opening. They were later joined by thousands of others who poured into the streets of Yerevan apparently in response to the events of the early morning. Around noon there was already a major concentration of people in that area, including police officers. Many leaders of the opposition

were also present and occasionally addressed the crowd using a loudspeaker. Tensions had continued to rise and an already tense situation gradually deteriorated into more frequent and violent clashes between some of the demonstrators and the law-enforcement officers, mostly taking place on a number of streets close to the above-mentioned area, including Leo Street, Paronyan Street and Mashtots Avenue, all situated about within 1 km from the Myasnikyan monument. It appears that various crowd-control measures were used by the police, including stun grenades, tear gas and rubber bullets, while some demonstrators built barricades, burned public and private vehicles, and used stones, iron rods, wooden clubs, Molotov cocktails and similar other objects as weapons. As a result, ten individuals, including eight civilians, lost their lives, dozens of demonstrators and police officers were injured, and significant damage to property was done, including the looting of a number of nearby shops.

9. The applicant company alleged that the authorities, by brutally dispersing the assembly at Freedom Square and later brutalising its own citizens in the area of the Myasnikyan monument and adjacent streets, had aimed to crush the popular protest movement, realising that it could bring about democratic change and cause them to lose their grip on power.

10. The Government referred mostly to the description of the relevant events as presented in a number of official documents (see paragraphs 43 and 46 below), alleging that the demonstrators had been illegally armed and had been the first to attack the police. They argued that the situation in Yerevan had descended into mass disorder which it had been possible to quell only through declaration of a state of emergency (see paragraph 11 below).

## II. DECLARATION OF A STATE OF EMERGENCY AND A BAN ON PUBLICATION OF THE APPLICANT COMPANY'S NEWSPAPER

11. At around 10.30 p.m., on 1 March 2008, the incumbent President of Armenia, Robert Kocharyan, adopted a decree declaring a state of emergency in Yerevan. The decree, *inter alia*, stated as follows:

“In order to prevent the threat of danger to the constitutional order in the Republic of Armenia and to protect the rights and legal interests of the population, guided by point 14 of Article 55 and point 6 of Article 117 of the Constitution of the Republic of Armenia, I decree:

1. To declare a state of emergency in Yerevan from 1 March 2008 for 20 days;  
...
4. To establish the following temporary limitations in the area under state of emergency:  
...

- 4) Mass media outlets can provide information on State and internal affairs exclusively within the perimeters of official information provided by State bodies;

...

5. The Decree comes into force from the moment of its announcement.”

12. It appears that the disorder in the streets of Yerevan stopped in the early hours of 2 March 2008.

13. In the night of 3 to 4 March 2008 the applicant company submitted a mock-up of its newspaper’s next edition to the printers. The national-security officers who were at the printers read the mock-up of the newspaper and, without giving any reason, prohibited it from being printed.

14. No further attempts to publish the newspaper were made by the applicant company until, on 13 March 2008, the President of Armenia adopted another decree by which he made amendments to the decree of 1 March 2008. The relevant parts of that decree stated as follows:

“Guided by paragraph 14 of Article 55 and paragraph 6 of Article 117 of the Constitution of the Republic of Armenia, I decree: ...

- 1) that subparagraph 4 of paragraph 4 be revised to read as follows:

“4) 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.”

...

The Decree comes into force from 14 March 2008.”

15. In the night of 13 to 14 March 2008 the applicant company, having found out about the amendments made to the decree of 1 March 2008, re-submitted the mock-up of the newspaper’s edition to the printers. However, the national security officers, as in the previous case, read the entire mock-up of the newspaper and, without giving any reason, prohibited it from being printed.

16. On 20 March 2008 at midnight the presidential decree ceased to have legal force and the state of emergency was lifted.

17. On 21 March 2008 the applicant company restarted publishing its newspaper.

18. On 17 April 2008 the applicant company lodged an application with the Administrative Court, complaining of the national security officers preventing it from printing issues of its newspaper. It furthermore sought to have subparagraph 4 of paragraph 4 of the presidential decree of 1 March 2008, which had served as a ground for publication being prevented, in the version both before and after the amendment (see paragraphs 11 and 14 above), found to have been in breach of a number of pieces of higher law and to have it declared invalid. The applicant company argued, in particular,

that the limitations imposed on it had violated the requirements of Article 10 of the Convention, sections 13 and 68 of the Legal Instruments Act and sections 2 and 4 of the Mass Media Act (see paragraphs 39-42 below). It contended, *inter alia*, that there had been no domestic legal provision authorising the President to declare a state of emergency. The applicant company lastly argued that, as a consequence of it being prevented from publishing, it had sustained pecuniary damage from loss of sales of the newspaper.

19. On 6 May 2008 the Administrative Court refused to entertain the applicant company's application for lack of jurisdiction. The Administrative Court held, with reference to Articles 43, 44, 55 § 14, 100 § 1 and 117 § 6 of the Constitution (see paragraphs 29-31, 34 and 33 below), that since no statute regulating the legal framework of a state of emergency had yet been adopted in Armenia the President of Armenia had declared a state of emergency based on the power conferred on him directly by the Constitution. Thus, the lawfulness of the presidential decree of 1 March 2008 could be tested only at the level of the Constitution, since no statute had been adopted with which the decree had had to comply. Hence, in its application the applicant company was in essence challenging the constitutionality of the presidential decree, which, in accordance with Article 135 § 2 of the Code of Administrative Procedure (see paragraph 36 below), fell outside the jurisdiction of the Administrative Court and within the exclusive jurisdiction of the Constitutional Court.

20. On 12 May 2008 the applicant company lodged an appeal, arguing, *inter alia*, that the decision of 6 May 2008 had violated its right of access to court as guaranteed by Article 6 of the Convention. In cases where presidential decrees were incompatible with higher law apart from the Constitution, the obligation to protect the rights breached by those decrees rested with the Administrative Court. A decree was required to comply with any higher law and not only the specific Law regulating the legal framework of a state of emergency, which, moreover, did not exist. Thus, the decree was subject to judicial examination even in the absence of such a Law. The attempt to divert the applicant company's case towards the Constitutional Court completely ignored the fact that, in the circumstances of the case, it lacked standing before that court under Article 101 § 6 of the Constitution (see paragraph 35 *in fine* below).

21. On 19 May 2008 the Administrative Court, sitting as a panel of five judges, dismissed the applicant company's appeal and endorsed the reasoning provided in the decision of 6 May 2008.

22. The applicant company lodged an appeal on points of law, raising similar arguments. It also complained that the Administrative Court's composition had been unlawful as it had examined its appeal sitting as a panel of five judges, not three judges, as required by law.

23. On 20 June 2008 the Court of Cassation declared the applicant company's appeal inadmissible for lack of merit.

24. On 6 October 2008 the applicant company lodged an application with the Constitutional Court seeking to have subparagraph 4 of paragraph 4 of the presidential decree of 1 March 2008 struck down as incompatible with Articles 27, 44, 55 § 14 and 117 § 6 of the Constitution (see paragraphs 28, 30, 31 and 33 below). The applicant company acknowledged that, from the formal point of view, its application did not comply with the admissibility criteria applicable to individual applications lodged with the Constitutional Court, which was why it had first been submitted to the Administrative Court. However, that court had reasoned that the contested issue was subject to examination only by the Constitutional Court.

25. On 8 October 2008 the Registry of the Constitutional Court returned the applicant company's application without examination on the grounds that the applicant company lacked standing before the Constitutional Court in accordance with, *inter alia*, Article 101 § 6 of the Constitution (see paragraph 35 *in fine* below).

26. The applicant company lodged a complaint in this regard with the President of the Constitutional Court, seeking to have its application examined.

27. On 30 October 2008 the Constitutional Court examined the complaint and refused to entertain the applicant company's application, reasoning that, in accordance with Article 101 of the Constitution, individuals entitled to lodge applications concerning the compatibility of decrees of the President of Armenia with the Constitution included only the President of Armenia, at least one fifth of the deputies of the National Assembly, the Government, the courts, the Prosecutor General and the Ombudsman. Individual applications might be lodged under Article 101 § 6 only when the constitutionality of a statute was being contested. The applicant company therefore lacked standing to contest the constitutionality of the disputed presidential decree.

## RELEVANT LEGAL FRAMEWORK

### I. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

#### **A. The Constitution of 1995 (following the amendments introduced on 27 November 2005)**

##### *1. Freedom of expression*

28. Article 27 of the Constitution provides that everyone has the right to freedom of speech, including freedom to seek, receive and impart information and ideas by any means of communication and regardless of State frontiers.



29. Article 43 provides that the fundamental rights and freedoms of a person and a citizen provided by, *inter alia*, Article 27 of the Constitution, may be restricted only by law if necessary in a democratic society in the interests of national security and public order, for the prevention of crime, or for the protection of public health, morals or constitutional rights and freedoms, honour and reputation of others.

## 2. *State of emergency*

30. Article 44 provides that certain fundamental rights and freedoms of a person and a citizen, with the exception of those provided by Articles 15, 17-22 and 42 of the Constitution, may be temporarily restricted in accordance with the procedure prescribed by law in the event of martial law or a state of emergency, within the limits of international commitments undertaken by Armenia concerning derogation from commitments in emergency situations.

31. Article 55 § 14 provides that, if there is an imminent danger threatening the constitutional order, the President of Armenia, after having consulted the President of the National Assembly and the Prime Minister, declares a state of emergency and takes measures as required by the exigencies of the situation. The legal framework of a state of emergency must be set out in law.

32. Article 56 provides that the President of Armenia adopts decrees which must not contradict the Constitution and the Laws.

33. Article 117 § 6 provides that, until the enactment of a bill regulating the legal framework of a state of emergency, if there is an imminent danger threatening the constitutional order, the President of Armenia, after having consulted the President of the National Assembly and the Prime Minister, takes measures as required by the exigencies of the situation.

## 3. *Jurisdiction of the Constitutional Court*

34. Article 100 § 1 provides that the Constitutional Court, in accordance with the procedure prescribed by law, decides on the compatibility of, *inter alia*, decrees of the President of Armenia with the Constitution.

35. Article 101 lists persons who may apply to the Constitutional Court. Under paragraphs 1, 3, 4, 7 and 8, applications concerning the compatibility of decrees of the President of Armenia with the Constitution may be lodged with the Constitutional Court by the President of Armenia, at least one fifth of the deputies of the National Assembly, the Government, the courts, the Prosecutor General and the Ombudsman. Otherwise, under Article 101 § 6, anyone can lodge an application with the Constitutional Court in connection with a specific case, if there has been a final judicial decision, all the judicial remedies have been exhausted and if that person contests the



**E. Conclusion of the Ad Hoc Committee of the National Assembly of the Republic of Armenia on Investigation of the Events Which Took Place in the City of Yerevan on 1-2 March 2008 and the Reasons Thereof**

43. On 16 June 2008 the National Assembly of Armenia set up an Ad Hoc Committee to investigate the events which had taken place in Yerevan on 1-2 March 2008 and the circumstances which had led to them. On 17 September 2009 the Ad Hoc Committee adopted its Conclusion, a document spanning over 128 pages, which also contained a brief chapter concerning the declaration of a state of emergency whose relevant extracts provide as follows:

**“6.1 Examination of the Circumstances of Adopting the Decree on Declaring a State of Emergency**

...

In accordance with Article 55 § 17 of the Constitution ... following the declaration of a state of emergency a special sitting of the National Assembly was immediately convened in accordance with the law. ...

During the sitting there were numerous speeches expressing serious concern in connection with the situation that had arisen.

The members of the National Assembly assessed the decree of the President ... as a forced but at the same time a necessary step and the only way out of the situation that had arisen. According to them, the stability and the international reputation of Armenia are endangered, and everyone should do their best to resolve the unprecedented situation that has arisen.

...

**6.2 Findings of the Committee**

The Committee finds that each country in the course of its history experiences moments which impede the development of the country; we, unfortunately, have experienced such moments. Regardless of what resolution we arrive at, it is a fact that mutual hatred and enmity has already arisen within a part of the society. That is why the Decree of the President of Armenia on Declaring a State of Emergency was not the solution of the situation but a forced and also a necessary step, as well as the only way to overcome the situation that has arisen. Delay in taking this measure would mean allowing a part of our people to continue illegal action – provoked by a group of people – in our country, particularly in the city of Yerevan.

Considering that especially from the afternoon of [1 March] the mob around the [Yerevan Mayor’s Office] was gradually getting uncontrollable, and in the evening their actions ultimately changed to carnage and looting; they burned and smashed about 100 private and police vehicles, as well as ambulance vehicles, buses and trolleybuses; smashed and looted the ‘Moscow House’, and nearby shops and offices; smashed the windows of the administrative buildings of the [mayor’s office] and the VivaCell offices; the demonstrators attacked police officers and servicemen of the Police Troops. Imposing a state of emergency was a necessity.

Meanwhile, the Committee finds that if the Decree of the President of the Republic of Armenia on Declaring a State of Emergency had been announced earlier, when the first explosions shots and cases of death had occurred, it might have been possible to avoid such grave consequences.”

**F. Ad Hoc Public Report of Armenia’s Human Rights Defender (Ombudsman): On the 2008 February 19 Presidential Election and the Post-Electoral Developments**

44. The Armenian Ombudsman carried out a comprehensive and in-depth analysis of the post-election events in Armenia, some relevant parts of which were cited in the cases of *Mushegh Saghatelyan v. Armenia* (cited above, § 124) and *Myasnik Malkhasyan v. Armenia* (no. 49020/08, § 49, 15 October 2020). A number of relevant extracts from the Report not cited in those judgments provide as follows:

**“3.2.3 The State of Emergency**

In a press conference related to his enactment of a Decree to impose a state of emergency on [1 March], President Robert Kocharyan mentioned that the measure was aimed at maintaining the constitutional order in Armenia and ensuring the security of the population of Armenia. The Decree was signed when they reported to the President that eight officers had been wounded. Under such circumstances, it was necessary to introduce a state of emergency.

Under [Article 55 of the Constitution], the President of the Republic has the power to declare a state of emergency. The state of emergency legal regime is defined by law. The Republic of Armenia still does not have a Law on the legal regime of a state of emergency, which would define all the rights that may be restricted, the scope of restrictions, the mechanisms for supervising them and other related matters. In this situation, the introduction of a state of emergency gave rise to the following practical issues:

1. Under Article 44 of the ... Constitution, ‘certain fundamental human and civil rights ... may be temporarily restricted in accordance with the procedure prescribed by law in the event of martial law or a state of emergency’. Although Article 117 § 6 of the ... Constitution permits the President, in the event of imminent danger to the constitutional order prior to the definition of the legal regime of a state of emergency by law, to carry out measures appropriate in the given circumstances, the absence of a law defining the legal regime of a state of emergency created further controversy over the restriction of rights.
2. The practical enforcement of the Decree was accompanied by a number of violations:
  - ...
  - Under paragraph 4(4) of the decree, reporting on State and domestic political matters by the mass media was to be limited exclusively to official information provided by the state bodies. As mentioned in the information disseminated by the [Human Rights] Defender, the news websites of A1+ and *Lragir* were shut down; and
  - Though the restrictions imposed under the Decree did not allow for censorship (censorship is also prohibited under Article 4 of the ... [Mass

Media Act]), there was de facto censorship during the period in question. As a consequence, the printing of some nationwide newspapers was prohibited on account of their content. A number of newspapers, citing the regime imposed under the Decree, refused to operate, because they were unable to present critical opinions or the opposition viewpoint, whereas certain other newspaper and television stations faced no restrictions in publishing information that dishonoured and insulted the opposition, and was frequently aggressive. ...”

## II. NOTICE OF DEROGATION OF 2 MARCH 2008 AND SUBSEQUENT DECLARATIONS MADE BY ARMENIA TO THE COUNCIL OF EUROPE

### **A. Derogation contained in a Note verbale from the Ministry of Foreign Affairs of Armenia, dated 2 March 2008, transmitted by the Permanent Representation of Armenia and registered by the Secretariat General of the Council of Europe on 4 March 2008**

45. The text of the derogation of 2 March 2008 reads as follows:

“The ministry of Foreign Affairs of the Republic of Armenia presents its compliments to H.E. Mr. Terry Davis, Secretary General of the Council of Europe, and, pursuant to Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (ETS No. 5), has the honor to forward, herewith, the Decree of the President of the Republic of Armenia on Declaration of State of Emergency in Yerevan, Armenia.

#### **Decree of the President of the Republic of Armenia on Declaration of the State of Emergency (No. NH-35-N)**

**1 March 2008**

In order to prevent the threat of danger to the constitutional order in the Republic of Armenia and to protect the rights and legal interests of the population, guided by point 14 of Article 55 and point 6 of Article 117 of the Constitution of the Republic of Armenia, I decree:

1. To declare the state of emergency in Yerevan from 1 March 2008 for 20 days;
2. To entrust the President of Armenia with the supervision of the regulation and implementation of the [measures aimed at] elimination of circumstances that served as grounds for declaring the state of emergency, and of other urgent issues;
3. To entrust the Police of the Republic of Armenia and the Defense Ministry of the Republic of Armenia with ensuring the legal regime of the state of emergency;
4. To establish the following temporary limitations in the area under state of emergency:
  - 1) Banning meetings, rallies, demonstrations, marches and other mass events;
  - 2) Banning strikes and other actions that could stop or suspend the activities of organizations;
  - 3) Limiting the movement of individuals and the means for transportation and carrying out inspections by the law-enforcement bodies, as necessary;

4) Mass media outlets can provide information on State and internal affairs exclusively within the perimeters of official information provided by State bodies;

5) Banning political propaganda through leaflets or other means without due permission from relevant State bodies;

6) Temporary suspension of the activity of political parties and other public organizations that impede the elimination of the circumstances that served as the grounds for declaring a state of emergency;

7) Removing from a given area those who violate the legal state of emergency regime and do not reside there, doing so at their own expense, or, in case of absence of these means, using the State budget resources to be refunded afterwards.

The Government of the Republic of Armenia must undertake necessary measures for ensuring the implementation of this decree.

The decree comes into force from the moment of its announcement.”

**B. Declaration contained in a Note verbale from the Ministry of Foreign Affairs of Armenia, dated 6 March 2008, transmitted by the Permanent Representative of Armenia and registered by the Secretariat General of the Council of Europe on 6 March 2008**

46. The text of the declaration of 6 March 2008 reads as follows:

“The Ministry of Foreign Affairs of the Republic of Armenia [(RA)] presents its compliments to Secretary General of the Council of Europe, and, in addition to the No. 14/02627 of 2 March 2008 has the honour to inform him that the Republic of Armenia, a Party to the Convention for the Protection of Human Rights and Fundamental Freedoms, in connection with the Decree of the President of the Republic of Armenia on the Declaration of State of Emergency in conformity with Article 55, paragraph 14, and Article 117, paragraph 6, of the Constitution of the Republic of Armenia, dated 1 March 2008, and pursuant to Article 15, paragraph 3, of the Convention, avails itself of the right of derogation from or limitation of application of the following provisions: Article 8, paragraph 1, Article 10, paragraph 1, Article 11, paragraph 1, of the Convention and Article 2, paragraph 1, of Protocol No. 4 of the Convention.

The above decree extends the state of emergency to the city of Yerevan for a period of 20 days in order to prevent the threat of danger to the constitutional order in the Republic of Armenia, and protect the rights and legal interests of the population, following the mass disorders, personal injury and considerable material damage, which took place in Yerevan on 1 March 2008 (see below).

The Ministry of Foreign Affairs of the Republic of Armenia requests the Secretary General of the Council of Europe to inform the State Parties about this derogation.

**The March 1-2 Events: a Description**

After the presidential elections, on February 20, [L. Ter-Petrosyan] and his team started a sit-in on the Opera square and embarked on (illegal) daily rallies and marches without advising the authorized body aimed at the destabilization of the situation in the capital. At the same time, the political leadership stated time and again that it would not object to the rallies, and if notified by [L. Ter-Petrosyan] and his

cohorts, and would allocate reasonable time and venue. [L. Ter-Petrosyan] evaded such notification so that he would not be held liable for the actions of the mob.

Inciting statements and appeals were made at the rally. Despite numerous warnings of the police as to the illegal nature of these actions, the latter continued to grossly violate public order and endanger public security. Tents were installed at the Opera square, loud music was played all night long, the demonstrators used to sing through loud speakers, and danced, violating calm in the areas adjacent to the square. In addition, the demonstrators reduced the vicinity to anti-sanitary condition.

In late February, numerous weapons and ammunition were discovered as a result of searches of some of [L. Ter-Petrosyan's] active supporters; this was covered by the mass media, arrests followed and confiscation minutes were compiled.

As far back as February 26, the Prime Minister and President-elect [Serge Sargsyan] offered co-operation to all the political forces including the establishment of a coalition government. On February 29, [S. Sargsyan] and former presidential candidate [Arthur Bagdasaryan] signed a coalition co-operation agreement, as a result of which [L. Ter-Petrosyan] and his team realized that there were no other political forces supporting them, and devised the destabilization of the situation in the country.

In late February, various police units obtained intelligence about the distribution of firearms, explosives, iron rods and clubs to the demonstrators for the organization of some events. There was intelligence about provocations and mass disorders to be organized on March 1 in the capital. Similar intelligence was obtained by the National Security Service. In the context of the previously discovered weapons and ammunition, this information was particularly alarming. This intelligence was reported to the RA President. After having analyzed the situation, the RA President instructed to take measures adequate to the intelligence as prescribed by law, to verify the intelligence, to seize the material and to defuse the situation.

About 7.00 a.m. on the 1<sup>st</sup> of March 2008, unarmed police forces without shields and helmets approached the demonstrations in order to verify the intelligence and neutralize the danger by means of a search and appealed to them to enable the police to conduct the search. At that moment the police noticed that the demonstrators had built barricades out of local benches and other items. At that time there was no rally at the Opera square; there were about 900 people there. The police at that moment did not intend to remove the participants of the action from the square.

The demand to conduct a search was suddenly followed by the assault of the sit-in participants and the police. The demonstrators started to throw stones, pieces of wood, iron rods, Molotov cocktails, etc. Appeals were made to overthrow the authorities, and the self-esteem of the police was insulted. "Hedgehogs" made out of iron rods were used, etc. Owing to the unpredictability and the nature of offences, the Chief of RA Police decided to support the unprotected policemen, as prescribed by law, and to deploy police forces armed with rubber batons, shields and helmets in the vicinity of the Opera in order to contain the riotous offences.

Owing to the unpredictability and the nature of offences, a decision was made to take adequate measures as prescribed by law. The offenders started to offer resistance with clubs, sharp cutting and puncturing instruments and metal rods. As a result of the clashes, police officers were wounded and taken to hospital. Police performed its duties, only using rubber batons. No other special means were used during the action. As a result, the participants of the action were forced out of the square, a search was made, which confirmed the intelligence about weapons and ammunition. Also,

## DARESKIZB LTD v. ARMENIA JUDGMENT

explosives, Molotov cocktails, iron rods and wooden clubs and iron “hedgehogs” were found.

Some organizers and participants of the turmoil were taken to police stations, others fled and gathered at the Yerevan City Hall and the French Embassy. National Assembly members, the Ombudsman, and the representatives of city authorities met organizers of the demonstrators, particularly with [D. Shahnazaryan]. They suggested to the organizers and demonstrators to hold the rally at the “Dinamo” stadium, then at the Rail Station square. Some other venues were also offered. However, after a consent given for a while, when the police retreated, the organizers, particularly [D. Shahnazaryan] and [N. Pashinyan], having contacted [L. Ter-Petrosyan], received instructions from the latter not to go anywhere, but continue the prohibited gathering at the same place in violation of the law. To stabilize the situation and establish accord, the Catholicos of All Armenians and neutral politician [P. Hairikyan] decided to meet [L. Ter-Petrosyan], but all attempts to meet were rejected by [L. Ter-Petrosyan].

Moreover, the organizers of the demonstrators, particularly, [N. Pashinyan], [H. Hakobyan], [K. Sukiasyan], [M. Malkhasyan], and [S. Mikaelyan] were instructed by [L. Ter-Petrosyan] to build barricades at the Yerevan City Hall, the French and Russian Federation Embassies out of buses, trolleybuses and cars, to get armed with stones, iron rods, wooden clubs and Molotov Cocktails. The organizers also recruited their cohorts who possessed firearms and ammunition in order to attack the police forces and to spread the turmoil over the other sections of the capital.

The crowd around the Yerevan City Hall in the afternoon of March 1 was gradually getting uncontrollable and in the evening their actions were finally reduced to looting and pogroms.

The mob attacked the police forces equipped exclusively with rubber batons, shields and helmets with gun fire series, Molotov cocktails, iron rods, iron “hedgehogs”, improvised fragmentation explosive devices and hand grenades. All this is documented by video footage.

It is important to point out that the clashes with the police took place 400-1000 meters from the venue of the rally at the Yerevan City Hall and the French Embassy. The police did not intend to use force or disperse the rally, but rather was at the site in order to maintain public order and to prevent the spreading of the turmoil by the rioters over other parts of the capital.

For hours, small gangs of thugs separated from the 7000-strong crowd and burnt over two dozen private and police vehicles, and even ambulances in the nearby streets during mass turmoil. They destroyed buses and trolleybuses, devastated and looted the Moscow House [cultural centre], and nearby shops and offices. The windows of the City Hall and VivaCell offices were smashed. Gangs of intoxicated thugs assaulted the police forces and police officers.

Sabotage continued, and at 21.00 RA President was advised about the wounded among the police forces. To prevent further uncontrollable developments and unpredictable consequences, RA President, based on the right reserved to him under Article 55, paragraph 14, of the Constitution, after consulting the Prime Minister and the Speaker of the National Assembly, on March 1, at 22:30 local time, announced emergency situation in Yerevan for the duration of 20 days. The National Assembly, on March 2, at 1.30 a.m., immediately convened as special session and approved the RA President’s Decree. According to the decree, the emergency situation is confined to Yerevan; the restrictions are minimal to not hamper the regular life in the city.”



**C. Declaration contained in a Note verbale from the Ministry of Foreign Affairs of Armenia, dated 13 March 2008, transmitted by the Permanent Representation of Armenia and registered by the Secretariat General of the Council of Europe on 14 March 2008**

47. The text of the declaration of 13 March 2008 reads as follows:

“The Ministry of Foreign Affairs of the Republic of Armenia presents its compliments to H.E. Mr Terry Davis, Secretary General of the Council of Europe, and, pursuant to Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (ETS No. 5), has the honor to forward, herewith, the Decree of the President of the Republic of Armenia on Amendments in NH-35 Decree of 1 March 2008.

**Decree of the President of the Republic of Armenia On Amendments to the Decree No. NH-35-N of 1 March 2008**

Guided by paragraph 14 of Article 55 and paragraph 6 of Article 117 of the Constitution of the Republic of Armenia, I decree:

1. In paragraph 4 of the NH-35-N Decree of the President of the Republic of Armenia on Declaration of the State of Emergency of 1 March 2008:

1) To revise point 4 of paragraph 4 to read as follows:

“4) 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.”

...

2. The decree comes into force from 14 March 2008.”

**D. Withdrawal of derogation contained in a Note verbale from the Ministry of Foreign Affairs of Armenia, dated 21 March 2008, transmitted by the Permanent Representation of Armenia and registered by the Secretariat General of the Council of Europe on 21 March 2008**

48. The text of the withdrawal of derogation reads as follows:

“The Ministry of Foreign Affairs of the Republic of Armenia presents its compliments to H.H. Mr Terry Davis, Secretary General of the Council of Europe, and, referring to its Notes Verbale of 2, 10 and 13 March 2008, has the honour to inform him that, in accordance with paragraph 1 of the Decree NH-35-N of the President of the Republic of Armenia, dated 1 March 2008, the state of emergency in the city of Yerevan has been lifted as of 24:00, on 20 March 2008.

The Republic of Armenia declares the termination of all derogations from the provision of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (ETS No. 5).”

### III. RELEVANT INTERNATIONAL MATERIALS

49. For the relevant Council of Europe and other international documents concerning the presidential election of 19 February 2008 and the events of 1 March 2008, see *Mushegh Saghatelyan* (cited above, §§ 125-134) and *Myasnik Malkhasyan* (cited above, §§ 50-57). A number of extracts of international materials which were not quoted in those judgments provide as follows.

#### **A. Report by the Council of Europe Commissioner for Human Rights on his Special Mission to Armenia on 12-15 March 2008 (CommDH(2008)11REV, 20 March 2008)**

50. The relevant extracts from the Report provide:

##### **“The actual scope and implementation of the State of Emergency**

The Commissioner found in his discussions with different interlocutors that a number of restrictions enacted by the State of emergency affected the whole country and they were not limited to the boundaries of the capital. The restrictions on rallies and demonstrations have been applied also outside of the capital, in other major cities of Armenia.

The representatives of the Government argued forcefully that the State of Emergency was a necessary measure in order to restore law and order in the capital and the country as a whole. However, the Commissioner is of the view that some of the imposed restrictions have not contributed to stabilizing and defusing the tensions in the society post-elections and 1 March event, nor have they strengthened the democratic institutions and processes.

The restrictions on the media have had a nationwide effect in practice. A number of radio and TV stations have ceased to operate either by their own decision or forced to by National Security Service. Web news services have been closed after intervention of the National Security Service. Access to information has been severely affected.

The censorship contributed to rumours and anxiety among the population about what was happening, at a time when measures to rebuild trust should have been promoted. The fact that some pro-government media tended to demonize the opposition while opposition papers were out of circulation did not contribute to a constructive atmosphere.

The President decided on 12 March to gradually amend the provisions regarding media reporting. These amendments seem to the Commissioner to have little practical effect on the information flow and the plurality of sources. The current level of censorship seems to be *de facto* maintained, which is not conducive to rebuilding the much needed trust.”

**B. Human Rights Watch Report: Democracy on Rocky [Ground], Armenia’s Disputed 2008 Presidential Election, Post-Election Violence, and the One-Sided Pursuit of Accountability, February 2009**

51. The relevant extracts from the Report provide as follows:

**“State of Emergency**

At approximately 10.30 p.m. on [1 March], President Robert Kocharyan signed a decree ... declaring a state of emergency in Armenia. The National Assembly formally approved the state of emergency on [2 March]. The decree remained in force for 20 days and imposed severe restrictions, including a ban on all mass gatherings and a requirement that all news media use only official information in their domestic coverage. Radio Free Europe/Radio Liberty’s (RFE/RL) Armenian language broadcasting was taken off the air and their website blocked. Several other online news publications, including *AI+*, *Haykakan Zhamanak* and *Aravot*, were blocked by internet service providers on the orders of the security services. During the state of emergency all pro-opposition newspapers were banned from publishing, after they went through prescreening by security service representatives at the publishing houses. The Editor-in-chief of *Chorrord Ishkhanutyun* told Human Rights Watch that twice, on [4 and 13 March], she and her staff attempted to publish the newspaper, but were refused by the publishing house without any explanation after the editions were checked by the security officials. Although media restrictions were lifted on [13 March], security service representatives continued interfering with the opposition newspapers’ printing, allowing them to publish only on [21 March].”

**THE LAW**

**I. PRELIMINARY QUESTION CONCERNING THE DEROGATION BY ARMENIA**

52. The Court notes at the outset that on 4 March 2008 the Armenian Government notified the Secretary General of the Council of Europe of their derogation under Article 15 of the Convention from a number of rights guaranteed by the Convention, including those protected by Article 10 of the Convention (see paragraphs 45 and 46 above). The Court must therefore first address the question whether the conditions laid down in Article 15 of the Convention for the exercise of the right of derogation were satisfied in the present case. Article 15 of the Convention reads as follows:

“1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”

#### **A. The parties’ submissions**

53. The Government submitted that Armenia’s derogation from the rights guaranteed under Article 10 of the Convention had been compatible with the requirements of Article 15 of the Convention. The Government had followed the prescribed procedure by duly notifying the Secretary General of the Council of Europe of the measures taken and the reasons for them. Referring to the case of *Lawless v. Ireland (no. 3)* (1 July 1961, § 28, Series A no. 3), the Government argued that there had been a “public emergency threatening the life of the nation” in Yerevan on 1 March 2008 since there had been an exceptional emergency which had affected the population and constituted a threat to the organised life of the nation. The circumstances which had given rise to the declaration of a state of emergency had been illustrated in the official description of the events of 1-2 March 2008 provided to the Secretary General in the Note Verbale of 6 March 2008 (see paragraph 46 above), as well as in the Conclusion of the Ad Hoc Committee of the National Assembly (see paragraph 43 above). In particular, on the morning of 1 March 2008 clashes had taken place at Freedom Square between the police and the demonstrators, a number of whom had been in illegal possession of and had in fact been carrying weapons and ammunition. From the afternoon the mob around the area of the Yerevan mayor’s office had started gradually becoming uncontrollable and the evening had been marred by carnage and looting. The demonstrators had burned and smashed about a 100 private and public vehicles, smashed and looted the “Moscow House” and nearby shops and offices, smashed windows of administrative buildings and private offices, and attacked the police. Ten people had died as a result of the riots. The only way to overcome that situation had been to declare a state of emergency, as had also been confirmed by the findings of the Ad Hoc Committee. The Government reminded the Court that under the latter’s case-law the Contracting Parties enjoyed a wide margin of appreciation in determining whether there was a public emergency and the measures necessary to overcome it.

54. The applicant company submitted that there had been a violation of Article 10 of the Convention without explicitly stating a position on the applicability of Article 15 of the Convention.

## B. The Court's assessment

55. The Court notes at the outset that it has not been disputed in the present case that the notice of derogation by Armenia satisfied the formal requirements laid down in Article 15 § 3 of the Convention, namely to keep the Secretary General of the Council of Europe fully informed of the measures taken by way of derogation from the Convention and the reasons for them. Accordingly, it is prepared to accept that this formal requirement has been satisfied (see, *mutatis mutandis*, *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 89, 20 March 2018).

56. The Court further notes that under Article 15 of the Convention, any High Contracting Party has the right, in time of war or public emergency threatening the life of the nation, to take measures derogating from its obligations under the Convention, other than those listed in paragraph 2 of that Article, provided that such measures are strictly proportionate to the exigencies of the situation and that they do not conflict with other obligations under international law (see *Lawless*, cited above, § 22, and *Mehmet Hasan Altan*, cited above, § 90).

57. The Court reiterates that it falls to each Contracting State, with its responsibility for “the life of [its] nation”, to determine whether that life is threatened by a “public emergency” and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities. Nevertheless, Contracting Parties do not enjoy unlimited discretion. It is for the Court to rule whether, *inter alia*, the States have gone beyond the “extent strictly required by the exigencies” of the crisis. The domestic margin of appreciation is thus accompanied by European supervision. In exercising this supervision, the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation (see *Brannigan and McBride v. the United Kingdom*, 26 May 1993, § 43, Series A no. 258-B; *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 173, ECHR 2009; and *Mehmet Hasan Altan*, cited above, § 91).

58. In the present case, the Government argued – and the applicant company did not explicitly dispute – that the situation in Yerevan on 1 March 2008, as described in the declaration of 6 March 2008, had been such as to pose a serious threat to the life of the nation within the meaning of Article 15 of the Convention (see paragraph 53 above). The necessity of the introduced measures was also confirmed by a parliamentary inquiry (see paragraph 43 above). While accepting that weight must be attached to the

judgment of Armenia's executive and Parliament on this question, the Court notes, however, that the necessity of declaring a state of emergency and the particular measures involved were apparently never subjected to any judicial scrutiny at the domestic level (contrast *A. and Others*, cited above, § 177, and *Mehmet Hasan Altan*, cited above, § 93).

59. In this connection, the Court reiterates that in the context of Article 15 the natural and customary meaning of the words "other public emergency threatening the life of the nation" refers to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed" (see *Lawless*, cited above, § 28). The Commission has previously held that, in order to justify a derogation, the emergency should be actual or imminent; that it should affect the whole nation to the extent that the continuance of the organised life of the community was threatened; and that the crisis or danger should be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate (see *Denmark, Norway, Sweden and the Netherlands v. Greece*, nos. 3321/67, 3322/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12, p. 70, § 113).

60. Turning to the situation in Yerevan on 1 March 2008, the Court notes, at the outset, that the events in question were a culmination of ten days of peaceful protest which had taken place in the capital of Armenia following a presidential election that many believed to have been flawed. The Court has already examined the circumstances of the protests at Freedom Square and the police operation conducted there in the early morning of 1 March 2008 and found that there was no evidence to suggest that weapons were to be distributed among the demonstrators on that day in order to instigate riots or that the demonstrators were the first to attack the police. Furthermore, the Court has previously noted the existence of a number of credible reports from which it appears that the police used unjustified and excessive force against the demonstrators gathered at Freedom Square and that no prior order was given by the police for the demonstrators to disperse (see *Mushegh Saghatelyan*, cited above, §§ 230-33 and 247). The Court notes that the Government have failed to produce any evidence in the present case which would prompt it to doubt the above reports or the findings reached in the *Mushegh Saghatelyan* case.

61. The Court further notes that after the dispersal of the assembly at Freedom Square a large crowd gathered in a different location, namely the area around the Myasnikyan monument and the Yerevan mayor's office (see paragraphs 7 and 8 above). While it appears that tensions were running high between the demonstrators and the law enforcement authorities at that point, the Court does not have at its disposal sufficient material to establish how the situation evolved and eventually got out of hand so as to lead to an

armed confrontation, damage of property and deaths. It is, however, mindful of its findings reached in another case against Armenia where it held that the dispersal of the assembly at Freedom Square in the early morning of 1 March 2008, as well as a number of other similar or uncontrollable events which happened later that day, may have played a role in the eventual escalation of violence, as opposed to it being a planned and organised disorder or an attempt of coup (see *Myasnik Malkhasyan v. Armenia*, no. 49020/08, § 80, 15 October 2020). Furthermore, it appears from the Government's declaration of 6 March 2008 (see paragraph 46 above) and a number of reports, including the Armenian Ombudsman's report (see *Myasnik Malkhasyan*, cited above, §§ 49 and 57), that the large crowd of several thousand people gathered at the Myasnikyan monument remained peaceful throughout that period, while the violence was committed by small groups of protesters in a number of adjacent streets. No evidence has been submitted to demonstrate that the protesters who committed violence were armed with anything but improvised objects as opposed to firearms or similar weapons as alleged by the Government (see also *Mushegh Saghatelyan*, cited above, § 129, and *Myasnik Malkhasyan*, cited above, § 80). Nor is there any evidence to suggest that any of the deaths occurred as a result of deliberate or even unintentional actions of the protesters.

62. Thus, while accepting that the situation in Yerevan on 1 March 2008 was undoubtedly very tense and could be considered a serious public order situation, the Court, nevertheless, considers that the Government failed to demonstrate convincingly and to support with evidence their assertion that the opposition demonstrations, which, moreover, were apparently confronted with a heavy-handed police intervention, could be characterised as a public emergency "threatening the life of the nation" within the meaning of Article 15 of the Convention (compare with *Lawless*, cited above, §§ 28-29; *Ireland v. the United Kingdom*, 18 January 1978, § 205, Series A no. 25; *Brannigan and McBride*, cited above, § 47; *Aksoy v. Turkey*, 18 December 1996, § 70, *Reports of Judgments and Decisions* 1996-VI; *A. and Others*, cited above, §§ 177-81; and *Mehmet Hasan Altan*, cited above, § 93). The Court, therefore, does not have sufficient evidence to conclude that the opposition protests, protected under Article 11 of the Convention, even if massive and at times accompanied by violence (see *Frumkin v. Russia*, no. 74568/12, § 99, 5 January 2016, and the authorities cited therein, and, most recently, *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, §§ 490-52, 21 January 2021) represented a situation justifying a derogation.

63. Having reached this conclusion, the Court does not find it necessary to determine whether the measures taken in the present case were strictly required by the exigencies of the situation and consistent with the other obligations under international law, and concludes that Armenia's

derogation failed to satisfy the requirements of Article 15 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

64. The applicant company complained that the ban on its publications as a result of the restrictions imposed by the presidential decree declaring a state of emergency constituted an unjustified interference with its right to receive and impart information. The applicant company relied on Article 10 of the Convention, which in so far as relevant reads as follows:

“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.”

### A. Admissibility

65. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### B. Merits

#### 1. *The parties' submissions*

##### (a) **The applicant company**

66. The applicant company submitted that it was an opposition newspaper which had collected and disseminated information in essence very different from the official version of events and at the material time it had published a daily newspaper with the highest print count in Armenia. During the pre-election campaign and the election itself it had been one of the few media outlets which had covered the pre-election campaign of the opposition leader, Mr Ter-Petrosyan, and had allowed other candidates to present their manifestos. From 20 to 29 February 2008 the newspaper had reported on the daily protest rallies, in contrast to the official media which had ignored the popular protest. The authorities had seen a threat to their authoritarian regime in every free expression of opinion and the declaration of a state of emergency on 1 March 2008 had been the only way for them to save themselves from the looming democratic changes. So they had



“unleashed carnage”, brutalised dissidents and carried out widespread repression against them. A number of other opposition and neutral daily newspapers had been similarly shut down. Only pro-government newspapers had been allowed to publish; they had presented the protest movement as a “foreign invasion”. Thus, the presidential decree had prevented the newspaper’s editions’ publication between 1 and 20 March 2008 and had interfered with its right to collect and impart information.

67. According to the applicant company, the interference with its Article 10 rights had not been provided for by law. Article 44 of the Constitution (see paragraph 30 above) could not be construed as allowing restrictions on freedom of expression when a state of emergency was declared. Furthermore, that constitutional provision ordinarily should have been supplemented by a more detailed and specialised statute regulating the legal framework of a state of emergency, as clearly stated in Article 55 § 14 of the Constitution (see paragraph 31 above). Therefore, a declaration of a state of emergency with reference only to the constitutional provisions had been unacceptable. By doing so, the President of Armenia had himself prescribed the legal framework of a state of emergency.

68. Furthermore, the presidential decree declaring a state of emergency had not pursued any legitimate aim because the only aim pursued by the authorities had been to hold onto power at any cost. Nor had it been necessary in a democratic society, because Armenia was a country where all the elections since 1995 had been rigged, there were no independent courts or media and there were political prisoners, and which could therefore not be considered as a “democratic society”. The Government had failed to justify the necessity of the interference and had referred in this connection only to the Conclusion of the relevant Ad Hoc Committee of the National Assembly (see paragraph 43 above), which, however, had contained no reasonable arguments in favour of the restrictions imposed on freedom of expression during the state of emergency. Moreover, the Committee in question had not been independent from the executive and its conclusions had been detached from reality, which had also been confirmed by how different those conclusions had been from those reached by the Ombudsman (see paragraph 44 above).

**(b) The Government**

69. The Government submitted that there had been no violation of the applicant company’s Article 10 rights. In particular, the interference with the applicant company’s rights had been prescribed by law, specifically a decree of the President of Armenia adopted under Article 55 § 14 of the Constitution, which had been formulated with sufficient precision and had been accessible to the public. The interference had pursued a legitimate aim, namely the prevention of a threat to the constitutional order of Armenia and the protection of the rights and lawful interests of the population. As regards

the necessity of the interference, the Government referred once again to the specific situation that had arisen in Yerevan on 1 March 2008 and argued that there had been a pressing social need for the restrictions imposed. Furthermore, the starting point in the Court's case-law was that the protection of the right of journalists to impart information on issues of general interest required them to act in good faith using an accurate factual basis and to provide reliable and precise information in accordance with the ethics of journalism, which also included the duty to verify any information before publishing it. Bearing this in mind, and in order to prevent further grave consequences, which could have arisen as a result of false and hostile information and narrative provided by the press that encouraged violence, armed resistance, insurrection and incitement to public disorder, the decree imposed restrictions with the aim of taking the situation under control, including a limitation on publication by the mass media, which should be considered a lawful measure based on reasonable grounds.

*2. The third-party intervener's observations*

70. The third-party intervener, Media Legal Defence Initiative, submitted that the restrictions imposed on publication by mass media by both the decrees of 1 and 13 March 2008 (see paragraphs 11 and 14 above) had been unacceptably wide in their restrictive effects. The initial ban had failed to meet the basic requirements of freedom of expression and any necessity threshold, while the subsequent ban on publication of false or destabilising information had been similarly vague and unlikely to serve any legitimate aim and had borne no connection to any aim one might posit for it. The right to freedom of expression extended to the protection of dissemination of all information and opinions, including "false" information. Falsity was difficult to define and thus laws which banned false news were both inherently unjust and open to abuse by State authorities. Such laws also had a serious chilling effect on the work of reporters as they inevitably lead to self-censorship. That was why laws banning false news had been rejected by all true democracies. The third-party intervener called on the Court to be particularly wary of accepting restrictions on freedom of expression where there was a particularly high risk of an incumbent regime seeking to control media outlets and repress opposition. The existence of a state of emergency could not justify laws banning false news since they were unlikely to be of any material use in preventing public disorder and were more likely to be used by the authorities to repress dissent, particularly close to elections. States had at their disposal a wide variety of other effective means to protect public order, including provisions governing incitement to violence. If anything, the need for unrestricted freedom of expression was greater in states of emergency than at other times. Thus, the relevant question for the purpose of restricting information in order to protect national security was

not truth or falsity but whether the restriction was strictly necessary to achieve that purpose. The Court should therefore follow the approach adopted by national supreme courts in numerous jurisdictions, including Canada, Uganda, Zimbabwe, the United States of America, and Antigua and Barbuda, as well as the United Nations Human Rights Committee, and hold that laws banning false news were incompatible with Article 10 and that no derogation from the Convention could render them lawful.

### 3. *The Court's assessment*

#### (a) **Whether there has been an interference with the applicant company's rights guaranteed by Article 10 of the Convention**

71. It is not in dispute between the parties that there has been an interference with the applicant company's rights guaranteed by Article 10 of the Convention. The Court considers that the restrictions imposed on the applicant company's publications undoubtedly amounted to an interference with its freedom of expression, including its right to impart information within the meaning of Article 10.

#### (b) **Whether the interference was justified**

72. The Court reiterates that an interference will breach Article 10 of the Convention unless it satisfies the requirements of the second paragraph of that Article. It therefore remains to be determined whether the interference observed in the present case was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 and was "necessary in a democratic society" in order to achieve them (see *Şahin Alpay*, cited above, § 172).

73. In this connection, the Court reiterates that the expression "prescribed by law", within the meaning of Article 10 § 2, requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences, and that it should be compatible with the rule of law (*ibid.*, § 173).

74. In the present case, the parties disputed whether the interference had been prescribed by law. The Court notes that the applicant company was prevented from publishing on the basis of the decree of the President of Armenia of 1 March 2008 declaring a state of emergency in Yerevan (see paragraph 11 above). The applicant company argued, however, that the President had not had authority under the Constitution to declare a state of emergency (see paragraph 67 above).

75. Having regard to the relevant domestic provisions, the Court notes that Article 55 § 14 of the Constitution authorised the President to declare a state of emergency if there was an imminent danger to the constitutional

order of Armenia (see paragraph 31 above). According to the same Article, the legal framework of a state of emergency was to be detailed in a separate statute. It appears, however, from the wording of Article 117 § 6 of the Constitution that, until such a law was enacted, the President was only authorised to take unspecified measures as required by the exigencies of a particular threat to the constitutional order (see paragraph 33 above). The Court notes that no such law had been adopted at the material time. A question therefore arises as to whether the declaration of a state of emergency was lawful. The Court, however, is prepared to leave that question open in the circumstances of the case in view of its findings below regarding the necessity of the restrictions imposed. It is also prepared to accept that the measure interfering with the applicant company's Article 10 rights pursued the "legitimate aim" of preventing disorder and crime.

76. As regards the necessity of the interference, the Court stresses that the "duties and responsibilities" which accompany the exercise of the right to freedom of expression by media professionals assume special significance in situations of conflict and tension. It has consistently held that where the views expressed do not constitute hate speech or incitement to violence the Contracting States cannot restrict the right of the public to be informed of them, even with reference to the aims set out in Article 10 § 2, namely the protection of territorial integrity or national security or the prevention of disorder or crime (see *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 60, 8 July 1999, and *Mehmet Hasan Altan*, cited above, § 209).

77. The Court further reiterates that one of the principal characteristics of democracy is the possibility it offers of resolving problems through public debate. It has emphasised on many occasions that democracy thrives on freedom of expression (see, among other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 57, Reports 1998-I, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 129, ECHR 2012). In this context, the existence of a "public emergency threatening the life of the nation" must not serve as a pretext for limiting freedom of political debate, which is at the very core of the concept of a democratic society. In the Court's view, even in a state of emergency the Contracting States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness (see *Mehmet Hasan Altan*, cited above, § 210, and *Şahin Alpay*, cited above, § 180).

78. In the present case, the applicant company was prevented from publishing its newspaper during the state of emergency, with the national security officers prohibiting the printing of the newspaper's edition on two occasions without providing any reasons for the prohibition (see paragraphs 13 and 15 above). The Court notes that nothing suggests that the material

which the applicant company intended to print contained any hate speech or incitement to violence or unrest. The Government did not argue this either. In fact, from the entirety of the materials before the Court it appears that the only reason for the prohibition was the fact that the applicant company was an opposition newspaper which was known to publish material critical of the authorities. The Court considers that such restrictions, which had the effect of stifling political debate and silencing dissenting opinions, go against the very purpose of Article 10, and were not necessary in a democratic society.

79. There has accordingly been a violation of Article 10 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

80. The applicant company complained that (a) its right of access to court had been violated; and (b) the Administrative Court which had examined the appeal against the decision of 6 May 2008 could not be considered to have been a “tribunal established by law”. The applicant company relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law.”

#### **A. Admissibility**

81. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

#### **B. Merits**

##### *1. Access to court*

##### **(a) The parties’ submissions**

82. 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 Administrative Court had refused to entertain its application against the presidential decree with an odd and unlawful reasoning, according to which, since the decree in question had been adopted on the basis of the Constitution, the lawfulness of that decree could be examined only as a matter of its constitutionality, a matter which fell within the exclusive competence of the Constitutional Court. However, in its application the applicant company had not contested the constitutionality of that decree but only its compliance with a number of laws, such as the

Legal Instruments Act and the Mass Media Act, as well as Article 10 of the Convention, and it was for the Administrative Court to examine that issue, regardless of the grounds on which the decree was based. In any event, the applicant company had tried to contest the presidential decree also before the Constitutional Court but, as confirmed by that court's decision (see paragraph 27 above), it had lacked standing to do so. As a result, no domestic court had ever examined its application against the presidential decree in the light of the interference with its right to impart information.

83. The Government submitted that the non-examination of the applicant company's application lodged with the Administrative Court had not violated its right of access to court. In particular, since at the material time there had been no statute regulating the legal framework for declaring a state of emergency, the President had exercised his power to do so as conferred on him directly by the Constitution, namely Articles 55 and 117 (see paragraphs 31 and 33 above). As a consequence, the applicant company's application lodged with the Administrative Court would have resulted in examination of compatibility of the presidential decree with the Constitution, a matter which fell within the exclusive competence of the Constitutional Court. Similarly, the part of its application contesting the compatibility of the decree with certain laws could not have been examined by the Administrative Court without encroaching on the exclusive competence of the Constitutional Court.

**(b) The Court's assessment**

84. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. This "right to a court", of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see, among other authorities, *Stanev v. Bulgaria* [GC], no. 36760/06, § 229, ECHR 2012).

85. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with

Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018, with further references).

86. The Court notes that, under Article 135 § 2 of the Code of Administrative Procedure, jurisdiction over cases concerning compliance of normative legal acts, including presidential decrees, with higher law, except for the Constitution, was conferred on the Administrative Court (see paragraph 36 above). The applicant company applied to that court, contesting compliance of the presidential decree declaring a state of emergency and interfering with its right to impart information with a number of higher laws, such as the Legal Instruments Act and the Mass Media Act, as well as Article 10 of the Convention (see paragraph 18 above). The Administrative Court refused to examine the applicant company's application, stating that it lacked jurisdiction to do so because the issues raised in it were those of constitutionality of the contested decree and fell within the exclusive jurisdiction of the Constitutional Court (see paragraph 19 above). The applicant company's appeals to the Administrative Court and the Court of Cassation were of no avail (see paragraphs 20-23 above).

87. The Court notes that it has already examined a similar situation in a number of cases against Armenia, finding a violation of the right of access to court (see *Melikyan v. Armenia*, no. 9737/06, §§ 46-49, 19 February 2013, and *Saghatelyan v. Armenia*, no. 7984/06, §§ 46-51, 20 October 2015). As noted in those judgments with reference to the decision of the Constitutional Court of 16 November 2006, there existed a judicial practice in Armenia in accordance with which the courts would systematically refuse to entertain claims against the acts of certain public bodies and officials, including decrees of the President of Armenia, regardless of whether the applicants contested the legality of those acts as opposed to their constitutionality (see *Melikyan*, cited above, § 47, and *Saghatelyan*, cited above, § 49).

88. It appears that something similar happened in the present case. The applicant company explicitly contested the legality of the presidential decree, indicating, *inter alia*, the laws that it believed the decree had failed to comply with, but the Administrative Court disregarded the applicant company's specific submissions and proceeded on the assumption that the application lodged by it was a constitutional rather than an administrative complaint. As a result, the applicant company was prevented from contesting the presidential decree and the interference with its Article 10 rights before any domestic judicial authority, since, as confirmed by the Constitutional Court itself (see paragraph 27 above), the applicant company lacked standing to bring a constitutional complaint to contest the presidential decree in question (compare, *Saghatelyan*, cited above, § 48).

89. Based on the above, the Court concludes that the refusal to examine the applicant company's application against the presidential decree declaring a state of emergency on the grounds provided by the Administrative Court impaired the very essence of the applicant company's right of access to court.

90. There has accordingly been a violation of Article 6 § 1 of the Convention.

*2. Tribunal established by law*

91. 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 (see paragraph 21 above), had had more judges sitting on its panel than provided for by law, namely Articles 9 and 125 § 1(1) of the Code of Administrative Procedure (see paragraphs 37 and 38 above). It therefore could not be considered to have been a "tribunal established by law" within the meaning of Article 6 § 1 of the Convention.

92. The Government contested that argument.

93. Having regard to its findings under Article 6 § 1 of the Convention regarding denial to the applicant company of access to the Administrative Court (see paragraphs 86-90 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of that Article also as regards the composition of that court.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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**

95. The applicant company claimed 18,000 euros (EUR) in respect of pecuniary damage due to its loss of income as a result of not being able to print the newspaper during the state of emergency. In that period thirteen issues should have been printed. The average daily print run in February 2008 amounted to 9,500 copies, each copy earning the applicant company 70 Armenian drams (AMD) in gross income. The resulting amount, if exchanged into euros at the rate applicable on 20 March 2008 (AMD 480 to EUR 1), would be EUR 18,000 ( $13 \times 9,500 \times 70 = \text{AMD } 8,645,000$ ). The applicant company also claimed EUR 20,000 in respect of non-pecuniary damage, which included the mental suffering caused to its staff as a result of the effective ban on professional activity.



96. The Government submitted that the applicant company had failed to support with evidence its claim for pecuniary damage, including its claims regarding the amount of average daily print run and the sum earned from each copy. It was therefore unsubstantiated. As regards the claim for non-pecuniary damage, the Government submitted that only the applicant company could claim such damage and not its staff, since there had not been any interference with the rights of the staff members, who were thus not victims. In any event, the finding of a violation would in itself constitute sufficient just satisfaction.

97. The Court observes that the applicant company's claim for pecuniary damage is not supported with any documents or other kind of evidence; it therefore rejects this claim. As regards the claim for non-pecuniary damage, the Court reiterates that, if the rights guaranteed by the Convention are to be effective, it must necessarily be empowered to award pecuniary compensation for non-pecuniary damage also to commercial companies. In such cases, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly the anxiety and inconvenience caused to the members of the management team (see *Meltex Ltd and Movsesyan v. Armenia*, no. 32283/04, § 105, 17 June 2008). The Court considers that the violations found in the present case call for an award of compensation and, ruling on an equitable basis, awards the applicant company EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

## **B. Costs and expenses**

98. The applicant company also claimed EUR 10,000 for the legal costs incurred before the Court, explaining that its lawyer had provided services *pro bono* but asking the Court to award that sum as a bonus.

99. The Government submitted that, given that the applicant company had accepted that it had not paid anything for the work of its representative, there was no doubt that the applicant company had not actually incurred any legal costs and its claim for costs and expenses was unjustified.

100. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant company did not pay any money to its representative, who worked *pro bono*, nor is there any evidence that the applicant company is under the obligation to pay any sum of money to the lawyer. In such circumstances, these costs cannot be claimed since they have not been actually incurred and this claim must be rejected (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 221, Series A no. 324).

**C. Default interest**

101. The Court considers it appropriate that the default interest rate 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 application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of denial of access to court;
4. *Holds* that it is not necessary to examine the complaint under Article 6 § 1 of the Convention regarding the composition of the Administrative Court upon appeal;
5. *Holds*
  - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (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;
6. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature\_p\_2}

Ilse Freiwirth  
Deputy Registrar

Yonko Grozev  
President