

EHRAC

Bulletin



What has been the effect of the ECHR on Armenia?

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Armenia became a member of the Council of Europe (CoE) in 2001 and ratified the ECHR in 2002.¹ The ECtHR passed its first judgment against Armenia in January 2007 (*Mkrtchyan v Armenia* (No. 6562/03) 11.1.07) and, as of July 2011, had found violations in 25 cases.

Analysis of these judgments shows that the majority (13) included a violation of Art. 6 (right to a fair trial), which is the most frequently violated article not only by Armenia, but also by other member states, with 8,019 of 13,697 judgments in 1959-2010 including a violation of Art. 6 (nearly 59%).²

The second largest group of violations was of Art. 2 of Protocol 7 (right of appeal in crimi-

nal matters – seven cases), all in cases lodged in the aftermath of the 2003 presidential election. In the first of these (*Galshtyan v Armenia* (No. 26986/03) 15.11.07), the ECtHR noted that there was no “clear and accessible right to appeal” in the procedure for review by a higher court, and that it “lacks any clearly defined procedure or time-limits and consistent application in practice” (para. 126). The Court took the same approach in the other six cases, four³ of which had specific regard to the right to adequate time and facilities for the preparation of a defence, since the applicants were convicted a few hours after their arrest without any contact with the outside world. Violations of Art. 3 were also found in these cases.

The third largest group of violations, under Art. 11 (freedom of assembly and association

– six cases), again concern developments following the 2003 election, with the exception of *Mkrtchyan*, in which the applicant had participated in a demonstration in 2002. What unites all these cases is the fact that the applicants were members of opposition parties whose right to peaceful assembly was violated.

There is one more group which is worth mentioning: judgments in four cases against Armenia regarding violations of Art. 1 of Protocol No. 1 (protection of property). Three of these concern the expropriation of property for State purposes. The applicants⁴ all had properties on the same street in Yerevan and their rights to peaceful enjoyment of their property were found to have been infringed by the Government.

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The remaining judgments against Armenia found one more violation of Art. 3 and one violation each regarding Arts. 5, 9, 10 and Art. 3 of Protocol 1. This classification of violations by Article shows that they may be attributable to different factors, such as deficiencies in legislation (for example, the *Mkrichyan* case, the cases regarding Art. 2 of Protocol 7), poor administrative practice (for example, the Art. 3 violations) and lack of sufficient funds.

What has been the effect of these judgments on Armenia, and on its human rights protection system? As of July 2011 the Committee of Ministers (CoM) had 21 judgments pending execution with respect to Armenia.⁵ Eight of these are under the 'enhanced supervision' system, including four with violations of Art. 3, Art. 6 and Art. 2 of Protocol 7 and three concerning the violation of Art. 1 of Protocol 1. The others are being supervised under the 'standard supervision' system.

As of July 2011 the CoM has adopted resolutions to close examination of three cases against Armenia: *Harutyunyan v Armenia* (No. 36549/03) 28.6.07, *Meltex Ltd and Mesrop Movsesyan v Armenia* (No. 32283/04) 17.6.08 and *Mkrichyan*.⁶

In *Mkrichyan*, the ECtHR found a violation of the right to freedom of assembly after the applicant was convicted on the basis of a law – Article 180.1 of the Code of Administrative Offences – which was insufficiently precise for the applicant to foresee, to a reasonable degree, the consequences of his actions. The CoM considered that no individual measures were required by the judgment. As for general measures, the CoM took into account that since this case the Armenian Parliament had adopted a law regulating the procedure for holding assemblies, rallies, street processions and demonstrations, in 2004. It should be mentioned that this act was annulled on 14 April 2011 with the adoption of a new law on freedom of assembly.

Did the law of 2004 provide better protection for freedom of assembly in Armenia? The international community raised concerns over the fact that "some legislative provisions placing restrictions on freedom of assembly remained."⁷ A number of recommendations were made to Armenia in the course of the UN's Universal Periodic Review to ensure that no arbitrary restrictions are imposed on freedom of assembly, in legal acts or in practice.⁸ A report from Armenia's own Human Rights Defender⁹ states that the situation as of 2009 regarding the right to peaceful assembly was in a number of ways incompatible with applicable international standards. The report highlights the deficiencies of the 2004 law, as well as domestic cases of alleged violations.

As for the case of *Harutyunyan*, this concerned a violation of Art. 6(1) regarding the use of statements during the applicant's trial that were obtained from him and two witnesses under duress. The CoM resolution noted that in 2007 the applicant lodged a request to reopen the case at the cassation level. In this process, the applicant's lawyer had to challenge, before the Constitutional Court, the constitutionality of the provisions of the Code of Criminal Procedure concerning the reopening of proceedings. As a result these provisions were amended in 2008. The applicant also lodged a new application with the court of general jurisdiction to reopen the case. The case was re-examined; however, Mr Harutyunyan was not acquitted.

Did Mr Harutyunyan get redress for his violated rights in practice? Although he and his advocate did not make any official statements following the CoM's resolution, his advocate Mr Alamyanyan has stated that they are preparing an application to the ECtHR with further claims, specifically that the reopening of the case and the examination was done only 'formally' and that the court of general jurisdiction of Syunik Marz was not competent to examine the case. Mr Alamyanyan said that he raised these issues before the domestic courts and sent letters regarding these alleged violations and concerns to the CoM before it adopted its resolution.¹⁰

Finally, in the case of *Meltex Ltd and Mesrop Movsesyan*, the ECtHR found that Art. 10 (freedom of expression) had been violated since the National Television and Radio Commission (NTRC) had refused on seven occasions to grant Meltex Ltd a broadcasting licence, without giving reasons for its decisions. The CoM reported that a call for new licensing tenders had been announced in 2010, with the company taking part in one of these. With respect to general measures, amendments and additions to the Television and Radio Broadcasting Act were adopted in 2010. The provision in the legislation concerning the reasoning of NTRC decisions was amended and now requires it to substantiate its decisions.

It should be noted that Meltex Ltd again failed to obtain a licence as a result of the 2010 tender. A report from Thomas Hammarberg, Commissioner for Human Rights of the CoE, following his visit to Armenia in January 2011, states that: "Pluralism within the audiovisual media spectrum is the hallmark of a healthy democracy which attaches importance to the principle of freedom of expression. In this context, the Commissioner regrets to note that the last tender for broadcasting licenses did not contribute to the promotion of this principle." He also found that "the methodology used to assess the bids was problematic and that it affected the credibility of the tender."¹¹ The tender's credibility was also questioned by Human Rights Watch and other international organisations.¹² On 27 June 2011,

15 Armenian NGOs issued a statement regarding the CoM resolution in the case, in which they expressed their dissatisfaction and deep concern.¹³ Meltex Ltd is currently challenging the NTRC's decision in the domestic courts.¹⁴

What has been the impact of these ECtHR judgments on Armenia in practice? Are human rights better protected at the domestic level? The above assessment leaves the reader with several questions as to the extent of the effect of ECtHR judgments on national human rights protection.

1 European Court of Human Rights, 2011. *Country Fact Sheets 1959-2010*. Available at: http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512-034BD3C889B0/0/FICHEPARPAYS_ENG_MAI2010.pdf.

2 European Court of Human Rights, 31.12.10. *Violation by article and by country 1959-2010*. Available at: http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau_de_violations_19592010_ENG.pdf.

3 *Kirakosyan v Armenia* (No. 31237/03) 2.12.08, *Mkhitaryan v Armenia* (No. 22390/05) 2.12.08, *Karapetyan v Armenia* (No. 22387/05) 27.10.09 and *Tadevosyan v Armenia* (No. 41698/04) 2.12.08.

4 *Minasyan & Smerjyan v Armenia* (No. 27651/05) 23.6.09, *Yeranosyan & Others v Armenia* (No. 13916/06) 20.7.10 and *Hovhannisyan & Shiroyan v Armenia* (No. 5065/06) 20.7.10.

5 Council of Europe, updated 16.9.11. *Execution of judgments of the European Court of Human Rights*. Available at: http://www.coe.int/t/dghl/monitoring/execution/Default_en.asp.

6 See CoM resolutions CM/ResDH(2011)40, CM/ResDH(2011)39 and CM/ResDH(2008)2.

7 UN Human Rights Council, 6.7.10. *Report of the Working Group on the Universal Periodic Review, Armenia*, para. 41. Available at: http://www.upr-info.org/IMG/pdf/A_HRC_15_9_E.pdf.

8 *Ibid.* para. 94.26.

9 Human Rights Defender of the Republic of Armenia, 25.5.10. *Human Rights Defender Ad Hoc Report on the Right to Peaceful Assembly in the Republic of Armenia*. Available at: <http://www.ombuds.am/main/en/10/31/0/4/>.

10 Information provided by Mr Hayk Alamyanyan, advocate of Mr Misha Harutyunyan, during a telephone interview with the author of this article held on 3.8.11.

11 Available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1784273&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

12 See, for example: Human Rights Watch, 16.12.10. *Armenia: New Rebuff to Broadcaster*. Available at: <http://www.hrw.org/news/2010/12/16/armenia-new-rebuff-broadcaster>.

13 ePress.am Independent Journalists' Network, 28.6.11. *Armenian NGOs dispute CoE Committee of Ministers' resolution on AI+ case*. Available at: <http://www.epress.am/en/2011/06/28/armenian-ngos-dispute-coe-committee-of-ministers-resolution-on-ai-case.html>.

14 The case is pending before the Administrative Court in Yerevan. Available at: <http://www.datalex.am>.