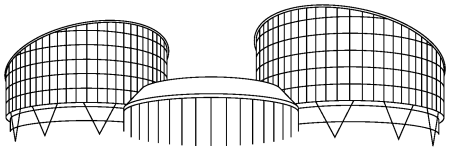

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GAFGAZ MAMMADOV v. AZERBAIJAN

(Application no. 60259/11)

JUDGMENT

STRASBOURG

15 October 2015

FINAL

14/03/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gafgaz Mammadov v. Azerbaijan,

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

András Sajó, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 60259/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Gafgaz Suleyman oglu Mammadov (*Qafqaz Süleyman oğlu Məmmədov* – "the applicant"), on 10 September 2011.

2. The applicant, who had been granted legal aid, was represented by Mr R. Mustafazade and Mr A. Mustafayev, lawyers practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that the dispersal of the demonstration in which he had participated and his arrest and conviction had violated his right to freedom of peaceful assembly. He further complained that the administrative proceedings against him had fallen short of guarantees of a fair hearing, and that his arrest and conviction had been contrary to guarantees of the right to liberty.

4. On 17 February 2014 the complaints concerning Articles 5, 6 and 11 were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Baku.

A. Demonstration of 19 June 2011 and the applicant's "administrative" arrest

6. The opposition group *Ictimai Palata* was planning a demonstration to be held on 19 June 2011 in Baku. On 9 June 2011 the organisers – consisting of several members of that group – gave prior notice to the relevant authority, the Baku City Executive Authority ("the BCEA"), informing it of the date, time, place and purpose of the demonstration. According to the notice, the assembly was scheduled to take place from 5 p.m. to 7 p.m. on 19 June 2011 at the square in front of the Narimanov Cinema in Baku.

7. The BCEA refused to authorise the holding of the demonstration at the place indicated by the organisers and proposed another location on the outskirts of Baku.

8. Nevertheless, the organisers decided to hold the demonstration in one of the central areas of Baku, namely, near the Puppet Theatre on Seaside Boulevard.

9. According to the applicant, the demonstration was intended to be peaceful and was conducted in a peaceful manner. The participants were demanding free and fair elections, democratic reforms, freedom of assembly, and the release of persons arrested during some previous demonstrations.

10. The applicant attended the demonstration, but shortly after it had started the police started to disperse it. The applicant was arrested at around 6.10 p.m. during the dispersal operation. He claimed that he had been arrested and taken to a police car by plain-clothed persons. According to the official records, he was arrested by police officers Z.H. and J.M. He was taken to police station No. 9 of the Sabail District Police Office.

11. Police officers Z.H. and J.M. stated the following in a report (*raport*) submitted to a superior police officer:

> "... at around 6.10 p.m. we were on duty ... when Mammadov Gafgaz Suleyman oglu, whose identity was established later, was attempting to hold an unlawful demonstration. We demanded that he stop his illegal actions, [he] deliberately disobeyed [and] continued his actions, and for that reason we brought him to the [police station] ..."

12. According to the applicant, he was questioned at the police station.

13. At 6.50 p.m. on the day of the arrest, an "administrative-offence report" (*inzibati xəta haqqında protokol*) was issued by police officer H.H. in respect of the applicant. The report stated that by deliberately failing to comply with the lawful order of the police during the demonstration, the applicant had committed an administrative offence under Article 310.1 of the Code of Administrative Offences ("the CAO").

14. The applicant refused to sign the report, which contained a pre-printed text declaring that "[the arrested person] was familiarised with the report, the reasons for his or her arrest and his or her rights under Articles 371, 400.2, 401.1.6, 401.1.7 of the CAO of the Republic of Azerbaijan were explained".

15. Subsequently, police officer H.H. prepared an "administrative-arrest report" (*inzibati qaydada tutma haqqında protokol*), stating that:

> "... the [applicant] was subjected to administrative arrest at 8 p.m. on 19 June 2011 ... in order to ensure issuance of an administrative-offence report, to ensure a correct and timely examination of the case, [and] to ensure the execution of decisions, in accordance with Articles 396.1.2 and 398 of the CAO."

16. According to the applicant, he was never served with a copy of the administrative-offence report or with other documents in his case file. He was not given access to a lawyer after the arrest or while he was kept in police custody.

B. Court proceedings against the applicant

17. On 20 June 2011, the day after his arrest, the applicant was brought before the Sabail District Court.

18. According to the applicant, he refused the assistance of a State-funded lawyer and insisted on hiring a lawyer of his own choice, but the judge disregarded his request. His representation by that lawyer was ineffective and of a formalistic nature. The hearing was very brief and members of the public, including human rights defenders and journalists, were not allowed to attend, even though the court had not taken a formal decision to close the hearing to the public.

19. The applicant stated before the court that he was not guilty of disobeying a lawful order of a police officer and that he had participated in the demonstration because he had a constitutional right to freedom of assembly.

20. According to the record of the hearing provided by the Government, in response to the judge's question whether the police officers, before arresting him, had issued a relevant notice about dispersal of the demonstration, the applicant gave the following answer:

> "There were a lot of police officers and they were demanding that we disperse. But their demand was not lawful because we were exercising our right. Instead of calling

on us to disperse, the responsibility of the police should have been to ensure our security."

21. The only witness questioned during the court hearing was police officer Z.H., who testified as follows:

"At around 6.10 p.m. on 19 June 2011 ... we noticed that [the applicant], together with a group of other people, was attempting to hold an unauthorised demonstration by shouting out slogans, and ... asked them to observe silence. However, [the applicant] continued his actions, disobeying our requests ..."

22. According to the record of the hearing, the State-funded lawyer stated that the applicant was not guilty and asked the court to take into consideration the applicant's age and the fact that he had children.

23. The court found that the applicant had failed to stop participating in the unauthorised demonstration. The court convicted him under Article 310.1 of the CAO and sentenced him to five days' "administrative" detention.

24. The applicant lodged an appeal before the Baku Court of Appeal, arguing that his conviction was in violation of his rights because the demonstration in which he had participated had been peaceful. He also complained that his arrest had been unlawful and that the hearing before the first-instance court had not been fair. He urged the Baku Court of Appeal to quash the first-instance court's decision.

25. The applicant was represented before the Baku Court of Appeal by a lawyer of his own choice.

26. On 24 June 2011 the Baku Court of Appeal dismissed the applicant's appeal and upheld the decision of the first-instance court, stating that its findings had been correct.

II. RELEVANT DOMESTIC LAW

A. 1995 Constitution

27. The relevant part of Article 49 of the Constitution reads as follows:

Article 49
Freedom of assembly

"... II. Everyone has the right, having notified respective governmental bodies in advance, to assemble with other people peacefully and without arms, to organise meetings, demonstrations, protests and marches, and to stage pickets."

B. Law on Freedom of Assembly of 13 November 1998

28. Under Article 5 of the Law, advance written notification is required in order to agree upon the place and time of an assembly and upon the route of a march, with the purpose of enabling the relevant local executive

authority to take necessary measures. The notification has to be done in writing five days before the demonstration.

29. Other provisions of the Law provide the relevant local executive authority with broad powers to issue relevant orders so as to prohibit (Article 8 §§ IV and V) or stop (Article 8 § VI) a public assembly; to restrict or change the place, route and/or time of a public assembly (Article 9 §§ II and VII); and to designate specific areas for public assemblies (Article 9 § VI).

30. At the material time Article 14 of the Law provided as follows:

Article 14
Powers of the police authorities with regard to the holding of an assembly

"I. ... the police authorities have the following powers with regard to the holding of an assembly: ...

2) When necessary, to stop an assembly which has not been notified [to the authorities] beforehand, save for [spontaneous] assemblies ...;

...

4) To apprehend and remove from the place where an event is being held persons who came carrying ... weapons, as well as rocks, pieces of wood and glass, or clubs that may pose a threat to people's life and safety or damage property, [as well as] ... explosives, ... flammables, ... radioactive materials;

...

II. The police authorities have the following powers with regard to the execution of orders specified under Article 8 paragraphs V and VI of this Law:

...

2) To order the organisers and participants of an assembly to use all available opportunities to stop the assembly and to disperse;

3) To warn organisers and participants that physical force or exceptional measures will be used against them if the order to stop the assembly and to disperse is not complied with;

4) To use physical force or exceptional measures in order to stop an assembly and disperse participants, in accordance with the legislation of the Republic of Azerbaijan;

5) To apprehend persons not complying with the order to stop an assembly and disperse. ...

VI. The use of physical force or exceptional measures by police officers in all circumstances must be proportionate to an existing threat."

C. Code of Administrative Offences of 2000 ("the CAO")

31. Article 298 of the CAO provided, at the material time, as follows:

Article 298
Breach of the rules on the organisation and holding of assemblies, demonstrations, protests, marches and pickets

"Any breach of the rules, set forth under the legislation, on the organisation and holding of assemblies, demonstrations, protests, marches and pickets shall be punishable by a reprimand or a fine of seven to thirteen manats [AZN]."

32. Article 310 provided, at the material time, as follows:

Article 310
Deliberate failure to comply with the lawful order of a police officer or military serviceman

"310.1. Deliberate failure [by an individual] to comply with the lawful order of a police officer or military serviceman carrying out their duties to protect public order shall be punishable by a fine of twenty to twenty-five manats [AZN] or, if that sanction is inadequate in the circumstances of the case and taking into account the character of the offender, by administrative detention for a term of up to fifteen days."

33. Article 376 provided, at the material time, as follows:

Article 376
Compulsory participation of a lawyer

"... 376.2. If it is impossible for the lawyer chosen by the person against whom administrative-offence proceedings are being carried out to attend, a judge ... shall appoint a lawyer for that person, in accordance with the legislation of the Republic of Azerbaijan.

376.3. If a person subjected to an administrative arrest has no possibility to hire a lawyer due to [his or her] financial situation, [his or her] legal assistance shall be funded by the State. In this case a lawyer may not refuse to carry out his or her duties."

34. Article 396 provided, at the material time, as follows:

Article 396
Measures to secure administrative-offence proceedings

"396.1. An authorised official may use the following measures in order to prevent administrative offences, to establish the identity of a person, to draw up an administrative-offence report if this cannot be done at the place [of the administrative offence] and if the drawing up of a report is important, to ensure the correct and timely examination of [administrative-offence] cases, and to ensure the implementation of decisions in administrative-offence cases: ...

396.1.2. administrative arrest; ..."

35. Article 398 provided, at the material time, as follows:

Article 398.1
Administrative arrest

"398.1. Administrative arrest, that is the short-term restriction of an individual's liberty, may be applied in exceptional circumstances when deemed necessary for ensuring the correct and timely examination of an administrative-offence case or for

the implementation of a decision in an administrative-offence case, except for instances set out in legislation. ...”

36. Article 410 provided, at the material time, as follows:

Article 410
Administrative-offence report

“... 410.4. ... A copy of the administrative-offence report shall be given to an individual who is subject to the administrative-offence proceedings or to a representative of a legal entity ...”

37. Article 414 provided, at the material time, as follows:

Article 414
Communication of an [administrative-offence] report (a prosecutor’s decision) for examination

“... 414.2. A report ... concerning an administrative offence punishable by administrative detention shall be sent to a judge for examination immediately after it has been drawn up.”

38. Article 422 provided, at the material time, as follows:

Article 422
Time-limits for examination of administrative-offence cases

“422.3. Cases [concerning an administrative offence] punishable by administrative detention shall be examined on the day of receipt [by the court] of an administrative-offence report; cases against persons subjected to administrative arrest shall be examined at the latest within 48 hours of their arrest.”

39. Under Article 368 a public prosecutor has a right to participate in the administrative proceedings. Chapter 28 of the CAO enumerates the participants of administrative proceedings and their rights and obligations. This Chapter does not mention “the prosecution” – a police officer, public prosecutor or any other public official representing the prosecution – as a participant of the proceedings.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. “Observations on the human rights situation in Azerbaijan: Freedom of expression, freedom of association, freedom of peaceful assembly”, by the Commissioner for Human Rights of the Council of Europe, CommDH(2011)33, 29 September 2011

40. The relevant extracts of this document read as follows:

“... [T]he Commissioner’s attention was drawn to the wave of arrests of activists and political opponents in connection with protests held in Baku in March and April 2011. According to the information received, these protests were sometimes dispersed with excessive force, and the work of journalists was hindered. The organisers were denied

permission to demonstrate in a central square and other places in the city centre in Baku, and were instead authorised to hold a demonstration in the outskirts of the city. Several persons were detained on grounds of violating public order. Six opposition activists were sentenced on 25 August 2011 for participating in 'actions causing disturbance of public order', following trials whose conformity with human rights standards has been called into question.

The Commissioner has on various occasions criticised the method of curbing the impact of a demonstration by allowing it to take place only at another time and at a less central location, thereby diminishing significantly the visibility of the rally and its message to the general public. ... The Commissioner ... urges the Azerbaijani authorities to ensure that the right to freedom of peaceful assembly is fully guaranteed in Azerbaijan, in accordance with the Court's case-law."

B. Report by Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 22 to 24 May 2013, CommDH(2013)14, 6 August 2013

41. The relevant extracts of the Report read as follows:

"... 53. The issue of limitations imposed on freedom of assembly has regularly been raised by local and international observers in recent years. The most frequent problems encountered include the banning of demonstrations in central and easily accessible locations and the use of force to disperse the demonstrations which still go ahead, leading to arrests and, in some cases, harsh sentences. ...

61. The Commissioner calls on the authorities to adopt effective measures to prevent the use of force against peaceful protestors by law enforcement officials. In particular, he reiterates the recommendation of the 2010 Report, inviting the authorities to reform the existing system of internal disciplinary investigations of police ill-treatment and to introduce an independent police complaints body. ...

63. Azerbaijan amended its Law on Freedom of Assembly in 2008, following two opinions adopted by the Council of Europe Venice Commission. While the law is thus in line with international standards, undue restrictions of the right to freedom of peaceful assembly are widely reported in practice. The problems mainly stem from the interpretation of Article 5 of the law. This Article provides for a "notification" procedure before convening an assembly. In 2006, the Venice Commission welcomed the confirmation by representatives of the Government that the requirement in the law was for notification and not for a prior permission to hold the assembly, noting that "other provisions of the Law could, as they currently stand, encourage the competent authorities to issue a blanket prohibition as soon as the notification process proves incomplete." In 2007, the Venice Commission added that a system of notification is in itself admissible so long as it is only meant to help the authorities cope more easily with the practical problems involved with the holding of an assembly; it also stressed that it is indeed important that assemblies can be held with a presumption of legality so as to avoid any chilling effect on organisers and participants.

64. The Commissioner notes that the authorities have also confirmed that the legislation does not require permission for rallies. However, the authorities appear to have interpreted it as requiring such permission, and a system of authorisation has in practice replaced the system of notification. Peaceful protesters have for instance been effectively banned from demonstrating in central Baku since 2006, despite advanced notification of the assemblies. Several requests by the political opposition or civil

society to hold demonstrations were allegedly denied or, when allowed, organisers were obliged to have them in areas very remote from the city centre. ...

68. The Commissioner remains concerned by the way the Law on Freedom of Assembly is currently being implemented in Azerbaijan. He therefore calls on the authorities to assess the functioning of that law. In particular, the authorities should ensure that no authorisation is required for the holding of public demonstrations and that the system of notification is applied in accordance with European standards.

69. The Commissioner welcomes the announced publication by the authorities of a list of locations where demonstrations will be made possible, and calls for these to include adequate locations in the centre of Baku and other cities, as a first step towards a better enjoyment of the right to freedom of assembly by the population of Azerbaijan. Given the need for tolerance in a democratic society, the authorities should nevertheless seek to facilitate and protect public assemblies at the organisers' preferred location. ...

75. Another concern relates to the reported non-implementation of due process standards in proceedings brought against participants in "unauthorised" demonstrations. ...

77. The Commissioner is of the view that participants in peaceful assemblies should not be sanctioned for the mere fact of being present at and actively participating in the demonstration in question, provided they do not do anything illegal, violent or obscene in the course of it. The Commissioner therefore urges the authorities to ensure that no disproportionate sanction, which would undermine the fundamental right to peaceful assembly, is imposed.

78. Finally, the Commissioner calls on the Azerbaijani authorities to ensure the full respect of fair trial guarantees for protesters. ..."

C. Report by Human Rights Watch, "Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent", 2013

42. The relevant extracts of the Report read as follows:

"Another manifestation of the government's crackdown has been severe limitations on freedom of assembly. The Baku municipal authorities have implemented a blanket ban on all opposition demonstrations in the city center since early 2006. The authorities have broken up unsanctioned ones – often with violence – and have arrested and imprisoned peaceful protestors, organizers, and participants. Our research shows that the misdemeanor trials of those charged for involvement in unsanctioned protests are perfunctory. ...

While the constitution of Azerbaijan stipulates that groups may peacefully assemble after simply notifying the relevant government body in advance, in practice authorities require that gatherings obtain a permit issued by local municipalities. ...

Municipal authorities have effectively banned all forms of peaceful protest from the center of Baku and instead force all demonstrations into designated zones on the outskirts of the city. Such a blanket ban on freedom of assembly in the central areas of Baku violates Azerbaijan's international obligations to respect freedom of assembly and expression. ...

[F]or several years police have dispersed, at times violently, peaceful protests in Baku's center. In the days before and during the Eurovision Song Contest held in

> Baku in May 2012, police broke up several protests in the city's center and briefly detained dozens of peaceful demonstrators. In 2011 when activists, inspired by the uprisings in the Middle East and North Africa, launched protests in Azerbaijan, the government responded by arresting hundreds of protesters, activists, and journalists. Several were convicted of public order offences and imprisoned for up to three years. ...
>
> The Azerbaijani authorities regularly use administrative, or misdemeanor, charges to lock up people for organizing or participating in unsanctioned rallies, then prosecuting and convicting them in perfunctory trials. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

43. The applicant complained that the dispersal of the demonstration by the police and his arrest and conviction for an administrative offence had been in breach of his freedom of assembly, as provided for in Article 11 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant argued that the domestic legislation regulating freedom of assembly did not comply with principles of foreseeability and precision: while the Constitution required only prior notification about a planned public assembly, the system of prior authorisation, which was

applied in practice and stemmed from certain provisions of the Law on Freedom of Assembly of 13 November 1998, allowed for arbitrary interference with freedom of assembly and permitted abusive banning or dispersal of public gatherings.

46. The applicant also argued that his arrest and conviction under Article 310.1 of the CAO had been arbitrary since he had not disobeyed any order of a police officer.

47. The applicant further submitted that the authorities had not taken into consideration the fact that the organisers had given prior notice of the demonstration to the relevant authorities, and that the demonstration had been intended to be peaceful and had been held in a peaceful manner.

48. The Government submitted that the demonstration had been organised in breach of provisions of national legislation, without specifying which provisions. They argued that the dispersal of the demonstration had pursued the aim of protecting public safety and preventing disorder or crime, and had been proportionate to the aim pursued.

49. The Government also noted that the applicant had not been punished for his participation in the demonstration as such, but for particular behaviour in the course of it, namely for deliberately disobeying the lawful order of police officers. Commenting on the proportionality of the measures, the Government emphasised in particular that the sanction applied to the applicant had been administrative detention.

2. The Court's assessment

(a) Whether there was interference

50. The Court reiterates that interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly and those, such as punitive measures, taken afterwards (see *Ezelin v. France*, 26 April 1991, § 39, Series A no. 202). For instance, a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amount to interference, even if the rally subsequently proceeds without hindrance on the part of the authorities (see *Bączkowski and Others v. Poland*, no. 1543/06, §§ 66-68, 3 May 2007). A refusal to allow an individual to travel for the purpose of attending a meeting amounts to interference as well (see *Djavit An v. Turkey*, no. 20652/92, §§ 59-62, ECHR 2003-III). So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 7 and 30, ECHR 2006-XIII, and *Hyde Park and Others v. Moldova*, no. 33482/06, §§ 9, 13, 16, 41, 44 and 48, 31 March 2009), and penalties imposed for having taken part in a rally (see *Ezelin*, cited above, § 41; *Osmani and*

Others v. the former Yugoslav Republic of Macedonia (dec.), no. 50841/99, ECHR 2001-X; *Mkrtchyan v. Armeni*a, no. 6562/03, § 37, 11 January 2007; *Galstyan v. Armenia*, no. 26986/03, §§ 100-102, 15 November 2007; and *Sergey Kuznetsov v. Russia*, no. 10877/04, § 36, 23 October 2008).

51. In the present case it has not been disputed between the parties that the demonstration in issue was dispersed by the police, and that the applicant who participated in the demonstration was arrested and convicted.

52. The Court takes note of the Government's submission that the applicant was not punished for his participation in the demonstration as such, but for particular behaviour in the course of it, namely, for deliberately disobeying the lawful order of police officers. However, the Court notes that in describing the circumstances of the administrative offence, the police who arrested the applicant and the domestic courts both stated that the applicant had failed to stop participating in the unauthorised demonstration (see paragraphs 11 and 23 above). Accordingly, the impugned "behaviour" of the applicant actually consisted of his participation in the demonstration. In such circumstances, the Court considers that the facts of the case disclose interference directly related to the applicant's exercise of his right to freedom of peaceful assembly under Article 11 of the Convention.

53. The Court concludes that there has been interference with the applicant's right to freedom of peaceful assembly on account of both the dispersal of the demonstration and the applicant's arrest and conviction.

(b) Whether the interference was lawful and pursued a legitimate aim

54. As regards the requirement of lawfulness, the Court notes, firstly, the fact that the demonstration of 19 June 2011 was dispersed because it had not been authorised by the BCEA.

55. The Court observes, however, that Article 49 of the Constitution required only prior notification about a planned public assembly. On the other hand, the Law on Freedom of Assembly provided the relevant local executive authority (in the present case, the BCEA) with broad powers to prohibit or stop a public assembly. Also, the Law vested it with the rights to restrict or change the place, route and/or time of a gathering, and to designate specific areas for public assemblies (see paragraphs 28 and 29 above). A number of international reports have stressed that a system of notification set forth by the Constitution has been replaced in practice by a system of authorisation (see paragraphs 40-42 above). The Commissioner for Human Rights of the Council of Europe in his Report of 6 August 2013 stated, in particular, that "peaceful protesters have ... been effectively banned from demonstrating in central Baku since 2006, despite advanced notification of the assemblies" (see paragraph 41 above). Consequently, the Court has serious concerns about the foreseeability and precision of the

legislation governing public assemblies, and about the possibility of public assemblies being abusively banned or dispersed.

56. The Court notes, secondly, that the authorities invoked Article 310.1 (failure to comply with a lawful order of a police officer) of the CAO as the legal basis for the applicant's arrest and conviction, whereas, as already mentioned, the action (or "behaviour") held against the applicant actually consisted of his participation in the demonstration. In effect, the key circumstance constituting the basis for the administrative proceedings against the applicant was the fact that the demonstration in which he participated was unauthorised (contrast with *Malofeyeva v. Russia*, no. 36673/04, 30 May 2013). In such circumstances the Court has doubts about the credibility of the formal ground invoked by the authorities for the applicant's arrest and conviction.

57. However, given that a more conspicuous problem arises with respect to the necessity of the interference, the Court considers that it is not appropriate to limit its examination under Article 11 of the Convention to the lawfulness of the interference only (compare *Kakabadze and Others v. Georgia*, no. 1484/07, § 86, 2 October 2012, and *Hyde Park and Others v. Moldova* (nos. 5 and 6), nos. 6991/08 and 15084/08, § 48, 14 September 2010). Therefore, the Court will examine whether the dispersal of the demonstration and the applicant's arrest and conviction were necessary in a democratic society, which in the specific circumstances will also take into consideration the issue of whether the interference pursued a legitimate aim.

(c) Whether the interference was necessary in a democratic society

58. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports of Judgments and Decisions* 1998-I, and *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 70, ECHR 2006-II).

59. The Court reiterates that although it is not *a priori* contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to

authorisation, an unlawful situation, such as the staging of a demonstration without prior authorisation, does not justify *per se* an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III, and *Oya Ataman*, cited above, §§ 37-39). While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence, the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Bukta and Others v. Hungary*, no. 25691/04, § 34, ECHR 2007-III; *Fáber v. Hungary*, no. 40721/08, § 49, 24 July 2012; *Malofeyeva v. Russia*, cited above, §§ 136-37; and *Kasparov and Others v. Russia*, no. 21613/07, § 91, 3 October 2013).

60. In the present case the organisers of the demonstration of 19 June 2011 gave prior notice to the BCEA in accordance with Article 49 of the Constitution and Article 5 of the Law on Freedom of Assembly. However, the authorities have not explained why, instead of taking measures to minimise the disruption to traffic and implementing other safety measures, they decided to refuse "authorisation" of the demonstration and subsequently to disperse it. The domestic courts in their turn did not attempt to examine whether the absence of authorisation justified the dispersal. Taking into account that the Constitution required only notification about a public assembly, not its authorisation, the Court considers that the authorities ignored the circumstances that were particularly relevant for assessment of the necessity of the interference.

61. The Court also observes that the authorities dispersed the demonstration shortly after it began, despite the fact that it had been intended to be peaceful and had been conducted in a peaceful manner up to that point. This already calls into question the Government's assertion about the necessity of the dispersal. It has not been argued or demonstrated that it would have been difficult for the police to contain or redirect protestors, or control the situation otherwise, protect public safety and prevent any possible disorder or crime. Nor has it been shown, either at the domestic level or before the Court, that the demonstration posed a high level of disruption of public order. It follows that the authorities have not adduced relevant and sufficient reasons justifying the dispersal of the demonstration.

62. As for the applicant's arrest and conviction, the Court emphasises that none of the documents drawn up by the police indicated whether any order had been specifically addressed to the applicant (apart from a demand addressed to the protesters at large to stop the demonstration). Nor did they specify who had given such an order and when, or indicate its exact

wording. In such circumstances, reference by the authorities to Article 310.1 of the CAO as a ground for the applicant's arrest and conviction appears to be unsubstantiated. Despite being formally charged with failure to comply with a lawful order of a police officer, the applicant in fact was arrested and convicted for his participation in an unauthorised peaceful demonstration. The Court notes that at the material time, no penalty in the form of deprivation of liberty was provided for under the CAO for participating in an unauthorised public assembly or generally for violation of rules on holding public assemblies. Nevertheless, the applicant was sentenced to five days' "administrative" detention on charges that he "had failed to stop participating in the unauthorised demonstration". It follows that the arbitrary reference to Article 310.1 of the CAO as a ground for the applicant's arrest and conviction also made it possible to apply a penalty which was otherwise not applicable to the action held against him.

63. The Court further notes the lack of any acknowledgment that the action imputed to the applicant by the authorities, namely participation in an unauthorised peaceful demonstration, was by itself protected by Article 11 of the Convention. The authorities made no effort to balance the applicant's right to participate in the demonstration against any damage this could cause to other public or private interests.

64. Lastly, the domestic courts' decisions do not contain any findings that the applicant's specific actions during the demonstration necessitated his arrest and conviction. Nothing in the materials before the Court suggests that the applicant committed any reprehensible offence during the demonstration.

65. In such circumstances, it follows that the authorities did not adduce sufficient and relevant reasons justifying the applicant's arrest and conviction. Moreover, the sanction imposed on him was unwarranted by the circumstances of the case and disproportionate within the meaning of Article 11 of the Convention.

(d) Conclusion

66. Having regard to the above considerations, the Court concludes that the authorities failed to act with due tolerance and good faith as regards the applicant's right to freedom of assembly, did not adduce sufficient and relevant reasons justifying the interference, and imposed a sanction which was disproportionate in the circumstances.

67. The dispersal of the demonstration and the applicant's arrest and conviction could not but have the effect of discouraging him from participating in political rallies. Undoubtedly, those measures had a serious potential also to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate.

68. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

69. The applicant complained under Article 6 of the Convention that in the proceedings concerning the alleged administrative offence, he had not had a fair and public hearing. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

A. Admissibility

70. Although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue of its own motion. The Court notes that the applicant was convicted to five days' administrative detention and was locked up in the detention facility for the term of his sentence, the purpose of the sanction being purely punitive. Referring to its findings in *Asadbeyli and Others v. Azerbaijan*, the Court considers that the proceedings in the present case should be classified as determining a criminal charge against the applicant, even though they are characterised as "administrative" under Azerbaijani legislation (see *Asadbeyli and Others v. Azerbaijan*, nos. 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06, §§ 152-55, 11 December 2012; see also *Ziliberberg v. Moldova*, no. 61821/00, §§ 30-35, 1 February 2005, and *Menesheva v. Russia*, no. 59261/00, §§ 95-98, ECHR 2006-III).

71. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

72. The applicant submitted, in particular, that he had not been served, either prior to the hearing before the first-instance court or subsequently, with a copy of the administrative-offence report issued in his respect or with other materials in his case file, and that the hearing before the first-instance court had been very brief. He also argued that the courts had based their findings merely on the administrative-offence report and on the statement of a police officer who had been the sole witness questioned at the first-instance hearing. The applicant further submitted that he had not been represented by a lawyer at the pre-trial stage. He had insisted before the first-instance court on hiring a lawyer of his own choice, but the judge had disregarded his request, and he had been only formalistically represented by a State-funded lawyer. Lastly, the applicant argued that the public had not been allowed to attend the hearing before the first-instance court, even though the court had not issued an official decision to examine his case in a closed hearing.

73. The Government submitted that the administrative proceedings with respect to the applicant had been in line with the national legislation. In particular, the time-limit for lodging an appeal with the Court of Appeal against the decision of the first-instance court was ten days, so the applicant had had adequate time and facilities to prepare his defence. The Government also submitted in general terms that during the court proceedings the principle of equality of arms had been respected.

2. The Court's assessment

74. The Court reiterates that Article 6 of the Convention guarantees the right to a fair hearing, and the Court's task is to ascertain whether the proceedings as a whole, including the way in which evidence was obtained and heard, were fair, in particular, whether the applicant was given the opportunity of challenging the evidence and of opposing its use; and whether the principles of adversarial proceedings and equality of arms between the prosecution and the defence were respected (see *Bykov v. Russia* [GC], no. 4378/02, §§ 88, 90, 10 March 2009, and *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II).

75. The requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010). The Court will therefore examine the complaints under both provisions taken together (see, among many other authorities, *F.C.B. v. Italy*, 28 August 1991, § 29, Series A no. 208-B, and *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A). In so doing, it will examine in turn each of the various

grounds giving rise to the present complaints in order to determine whether the proceedings, considered as a whole, were fair (see, for a similar approach, *Asadbeyli and Others*, cited above, § 130).

(a) Right to adequate time and facilities to prepare one's defence

76. Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence". The accused must have the opportunity to organise his defence in an appropriate way and without restriction of the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings. Furthermore, the facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings (see *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008). The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case (see *Malofeyeva*, cited above, § 112).

77. The present case was examined in an expedited procedure under the CAO: in cases concerning an administrative charge for an offence punishable by administrative detention, the police were to transmit the administrative-offence file to a court immediately after having compiled it, and the court was to examine the case on the same day, or, in the case of persons being held in police custody, no later than forty-eight hours after the arrest (see paragraphs 37 and 38 above). The Court reiterates that recourse to that procedure when a "criminal charge" must be determined is not in itself contrary to Article 6 of the Convention as long as the procedure provides the necessary safeguards and guarantees (see *Borisova v. Bulgaria*, no. 56891/00, § 40, 21 December 2006).

78. Turning to the question of procedural safeguards and guarantees, the Court notes that the pre-trial procedure in the applicant's case was evidently very brief. The applicant was arrested at approximately 6.10 p.m. on 19 June 2011 and at 6.50 p.m. an administrative-offence report was drawn up. After spending the night in police custody, the applicant was brought before the court for the trial hearing, which began at 12 noon on 20 June 2011. During his stay at the police station the applicant was secluded from the outside world. His situation was aggravated by the fact that he was not represented by a lawyer during the pre-trial procedure. It appears from the materials before the Court that the State-funded lawyer joined the proceedings only at the first-instance hearing.

79. The Court further notes that the administrative-offence report contained a pre-printed text stating that the applicant had been familiarised with the report and that he had refused to sign it. By virtue of Article 410.4 of the CAO the applicant was entitled to receive a copy of that report. However, no copy of the report was made available to him. Furthermore,

the appellate court failed to reply to the applicant's request for a copy of the report and of certain other materials in the case file.

80. Even assuming that the applicant's case was not complex, the Court doubts that the circumstances in which the trial was conducted were such as to enable him to familiarise himself properly with and to assess adequately the charge and evidence against him and to develop a viable legal strategy for his defence (compare *Vyerentsov v. Ukraine*, no. 20372/11, § 76, 11 April 2013).

81. Furthermore, the CAO did not require the mandatory participation of a public prosecutor or other public officer representing the prosecution, who would present the case against the defendant before a judge (see paragraph 39 above). It appears that the accusation against the applicant was both presented and examined by the judge of the first-instance court. The Court is not satisfied that such a state of affairs afforded the applicant an opportunity to put forward an adequate defence in adversarial proceedings.

82. Having regard to the above considerations, the Court concludes that the applicant was not afforded adequate time and facilities to prepare his defence.

(b) Right to a reasoned decision

83. The Court's duty, under Article 19 of the Convention, is to ensure observance of the commitments undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Schenk v. Switzerland*, 12 July 1988, § 45-46, Series A no. 140, and *Teixeira de Castro v. Portugal*, 9 June 1998, §34, *Reports* 1998-IV). In that context, regard must also be had, in particular, to whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. The quality of the evidence is also taken into account, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Jalloh v. Germany* [GC], no. 54810/00, § 96, ECHR 2006-IX).

84. According to the Court's established case-law reflecting a principle related to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, with further references).

85. In the present case, the first-instance court examined the applicant's case in an oral hearing where the applicant was given an opportunity to make his submissions. However, the court relied heavily on the administrative-offence report prepared by the police and on the statement of

police officer Z.H, the sole witness questioned at the hearing. The Court notes that that police officer was a supposed "victim" of the alleged administrative offence; moreover, the administrative-offence report in respect of the applicant was based on Z.H.'s report to a superior police officer. The domestic courts failed to provide adequate reasons why they considered the witness statement of the police officer more objective and reliable than that of the applicant. It is also regrettable that the domestic courts did not attempt to summon a witness who was not connected with the police.

86. Furthermore, the applicant's arguments before the domestic courts concerned both the factual circumstances and the legal issues of his case. The applicant consistently argued that he had not disobeyed an order of a police officer, and that he had been arrested for participation in a peaceful demonstration. He also challenged the legality of the police's interference with the demonstration. In particular, in his appeal he argued that the legal basis invoked by the police for his arrest had been arbitrary; that the law, including the Constitution, required advance notification about an intended public assembly and not authorisation for holding one; and that there were no circumstances justifying dispersal of the demonstration since it had been peaceful. In the Court's opinion, those arguments were both important and pertinent. Nevertheless, the domestic courts, in particular the Court of Appeal, which examined the applicant's written arguments on the issue, ignored them altogether.

87. The Court has previously held, in examining the fairness of criminal proceedings, that by ignoring a specific, pertinent and important point made by the accused, the domestic courts had fallen short of their obligations under Article 6 § 1 of the Convention (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011). Considering that in the present case the domestic courts similarly did not meet that requirement, the Court concludes that the domestic courts' decisions lacked adequate reasoning.

(c) Right to legal assistance

88. The Court reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II).

89. The Court emphasises that Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police questioning (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports* 1996-I). Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the

accused under Article 6 (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008).

90. In the present case, the right to legal representation was guaranteed to the applicant by the CAO. However, at the pre-trial stage of the proceedings the applicant was not represented by a lawyer. From the materials before the Court it does not appear that he had expressly waived his right to a lawyer.

91. According to the applicant, after his arrest he was questioned at the police station. However, no record of such questioning was submitted to the Court. Nor is there any evidence that the statements made by the applicant (if any) during the questioning were used during the trial. The Court cannot speculate on the exact impact which the applicant's access to a lawyer during the pre-trial stage of the proceedings would have had on the ensuing proceedings and whether the absence of a lawyer during that period irretrievably affected his defence rights (compare *Huseyn and Others v. Azerbaijan*, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 172, 26 July 2011). Nevertheless, the Court reiterates that the very fact of restricting a detained suspect's access to a lawyer may prejudice the rights of the defence, even where an accused person remained silent, or was not questioned, or no incriminating statements were obtained (see, for example, *Dayanan v. Turkey*, no. 7377/03, §§ 32-33, 13 October 2009).

92. Turning to the applicant's argument that he was not allowed to hire a lawyer of his own choice and about the formalistic nature of the State-funded lawyer's representation before the first-instance court, the Court notes, firstly, that, under Article 376.2 of the CAO a judge must provide a person against whom an administrative case is being examined with a lawyer only if the attendance of a lawyer of his or her own choice is impossible. Nothing in the materials before the Court suggests that the judge gave the applicant an opportunity to appoint a lawyer of his own choice, as required under Article 376.2 of the CAO.

93. Secondly, the Court emphasises that, under Article 6 § 3 (c) of the Convention, an accused is entitled to legal assistance which is practical and effective and not theoretical or illusory. This Convention provision speaks of "assistance" and not of "nomination": mere nomination does not ensure effective assistance, since a lawyer may be prevented from providing such assistance for various practical reasons, or shirk his or her duties. A State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. However, if a failure by legal-aid counsel to provide effective representation is manifest or is sufficiently brought to the authorities' attention in some other way, the authorities must take steps to ensure that the accused effectively enjoys the right to legal assistance (see *Artico v. Italy*, 13 May 1980, §§ 33-37, Series A no. 37, and *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168). Moreover, where it is clear that the lawyer representing the accused before the domestic court

has not had the time and facilities to organise a proper defence, the court should take positive measures to ensure that the lawyer is given an opportunity to fulfil his obligations in the best possible conditions (see, *mutatis mutandis*, *Goddi v. Italy*, 9 April 1984, § 31, Series A no. 76). The Court notes that a State-funded lawyer joined the proceedings at the trial stage; it is not clear whether, before the opening of the first-instance court hearing, he was afforded the time and facilities to organise a proper defence. However, the Court observes that during the hearing the State-funded lawyer did not submit any written objections, complaints or motions on the applicant's behalf. His oral submissions consisted of a brief repetition of the applicant's statement and a request addressed to the court to consider the applicant's age and the fact that he had children. These circumstances give reason to believe that the representation by the State-funded lawyer was of a formalistic nature. Furthermore, the Court of Appeal failed to reply to the applicant's complaints about lack of effective legal assistance both at the pre-trial proceedings and at the first-instance court hearing.

94. In these circumstances the Court concludes that the applicant's right to legal assistance was not respected.

(d) Conclusion

95. Having regard to the above findings, the Court considers that there is no need to examine the applicant's arguments concerning the alleged lack of a public hearing.

96. Furthermore, having regard to the above conclusions, the Court finds that the proceedings, considered as a whole, were not in conformity with the guarantees of a fair hearing under Article 6 §§ 1 and 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

97. The applicant complained that his arrest and five days' administrative detention following his participation in the demonstration had been in breach of Article 5 of the Convention. Article 5 of the Convention, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court; ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

98. The Court considers, in the light of the parties' submissions, that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

99. The applicant argued that his arrest and five days' administrative detention under Article 310.1 (failure to comply with a lawful order of a police officer) of the CAO had been arbitrary since he had not disobeyed any order of a police officer. The opening of administrative proceedings against participants of unauthorised demonstrations under Article 310.1 rather than Article 298 (violation of rules on holding public assemblies) of the CAO was an arbitrary administrative practice aimed at imposing a harsher form of punishment, such as administrative detention for up to fifteen days, which was not available under the latter Article.

100. The applicant further complained that he had not been promptly informed about the reasons for his arrest, and that the arrest had not conformed to domestic procedural rules, in particular because he had not been given an opportunity to contact his relatives; his rights, including the right to have a lawyer, had not been properly explained to him; he had not been served with a copy of the administrative-offence report drawn up in his respect; and he had been arrested and taken to a police car by plain-clothed persons.

101. The Government submitted that the applicant's arrest had been in conformity with Article 399.3 of the CAO. According to this Article, a person in respect of whom proceedings are carried out for an administrative offence punishable by administrative detention may be taken into custody for up to twenty-four hours. The Government further submitted that after the administrative-offence report stating that the applicant had violated Article 310 of the CAO had been drawn up, the applicant had been brought before a court. His administrative detention had resulted from a lawful court

decision by which he had been found guilty of an administrative offence under Article 310.1 of the CAO.

102. The Government also submitted that the applicant had been duly informed about the reasons for his arrest as well as his rights under the relevant provisions of the CAO; however, he had refused to sign the administrative-offence report and a relevant note had accordingly been included in the report.

2. The Court's assessment

103. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).

104. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, 29 January 2008). Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008-...).

105. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67). While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis (see *Mooren v. Germany* [GC], no. 11364/03, § 77, ECHR 2009-...).

106. Furthermore, detention will be considered "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano*, cited above, § 59, and *Saadi*, cited above, § 69) or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports* 1996-III, and *Liu v. Russia*, no. 42086/05, § 82, 6 December 2007).

107. Turning to the present case, the Court observes that the applicant was arrested in the course of the dispersal of an unauthorised demonstration on 19 June 2011. He was taken to a police station where he was kept in police custody overnight, and was brought before a court which sentenced him to five days' administrative detention.

108. The Court reiterates its finding above that the measure to which the applicant was subjected (namely arrest and custody followed by five days' imprisonment) pursued aims unrelated to the formal ground relied on to justify the deprivation of liberty, and implied an element of bad faith on the part of the police officers. While he was formally charged with failure to comply with a lawful order of a police officer, the applicant was in fact detained for his participation in an unauthorised peaceful demonstration (see paragraphs 56 and 62 above). Furthermore, there are sufficient elements to conclude that the domestic courts that imposed the administrative detention also acted arbitrarily in reviewing both the factual and the legal grounds for the applicant's detention. They failed to examine whether the police had invoked the correct legal basis for the applicant's arrest or to examine the legality of the police's interference with the demonstration (see paragraph 86 above). In such circumstances, the Court cannot but conclude that the applicant's deprivation of liberty as a whole was arbitrary and therefore contrary to the requirements of Article 5 § 1 of the Convention.

109. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

110. In view of the nature and the scope of its finding above, the Court does not consider it necessary to examine the applicant's other complaints under Article 5 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicant claimed 16,000 euros (EUR) in respect of non-pecuniary damage.

113. The Government submitted that the applicant's claim was unsubstantiated and unreasonable. They considered that, in any event, an award of EUR 5,000 would constitute sufficient just satisfaction.

114. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a

violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 15,600 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

115. The applicant also claimed EUR 3,300 for the legal fees incurred before the domestic courts and before the Court. In support of his claim, he submitted a contract, dated 20 June 2011, for legal and translation services.

116. The Government considered that the claim was excessive and could not be regarded as reasonable as to quantum. In particular, they argued that the applicant was represented by the same lawyers who were representing a number of other applicants in similar cases and that substantial parts of the submissions in all those cases were identical or very similar.

117. The Government submitted that, taking into account the above considerations, the amount of legal aid already granted to the applicant should be deemed as sufficient reimbursement of costs and expenses.

118. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,300 covering costs under all heads, less EUR 850 already paid in legal aid by the Council of Europe.

C. Default interest

119. 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 11 of the Convention on account of the dispersal of the demonstration and the applicant's arrest and conviction;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 15,600 (fifteen thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,450 (two thousand four hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into his representatives' bank account;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

András Sajó
President