

DEFENDER. ALL THOSE RESPONSIBLE FOR ARMEN MARTIROSYAN INCIDENT MUST BE BROUGHT TO RELEVANT LIABILITY

As a result of the incidents of April 9, 2013 the RA Human Rights Defender distinguished three main legal issues: a) the legitimacy of blocking the Baghramyan Avenue, b) the legitimacy of bringing 16 persons to the police department, and c) full disclosure of incident of Armen Martirosyan. Presented below is the assessment of Defender Karen Adnreasyan on the mentioned issues.

The Incident of Armen Martirosyan

In regards to the incident of Armen Martirosyan, the RA Police informed the Defender that after the rally in “Freedom Square” on April 9 at about 19:00 Armen Martirosyan tried to break the police chain and did not follow the legal demands of the Police officers, thus violating the requirements of the Article 182 of the RA Code “On Administrative Offences”. Hence, there was a clash resulting in the Police, being guided by the Article 258 of the same Code, bringing Armen Martirosyan to the relevant police department.

According to Armen Martirosyan, on April 9 he did not violate the law and the actions of the Police were illegitimate, unconstitutional and illegal.

In the widely disseminated video by Mass Media, it can be seen, that after some resistance to Police officers, Armen Martirosyan is being neutralized by a group of Police officers, nevertheless even after termination of resistance, one of the Police officers continues to kick Armen Martirosyan’s face. Again from the information provided in Mass Media it was revealed, that the Police officer who several times hit the neutralized and no more resistance showing citizen was resident of Mertzavan Arthur Ghazaryan, born in 1990. Meanwhile, in accordance to the Article 29 of the RA Law “On Police” exercising physical force as an exceptional measure can be only in cases when other measures cannot secure the performance of responsibilities of Police officers.

The Police informed the Defender that in this event, by order of the Chief of Police service investigation was instituted in order to discuss the legitimacy and proportionality of the force exercised by the Police officer during the incident. The specific interest of Police in regards to the incident is very appreciated, as one illegitimate activity of one Police officer and can shadow the wide and mainly positive activities of the Police on April 9. RA HRDI expects that all the citizens who violated the law during the incident of Armen Martirosyan, regardless of their position, will be subjected to proportional liability. RA HRDI will continue to follow the investigation and results of the above-mentioned incident.

On a number of people brought to police departments and subjected to liability. .

The RA Police in regards to the 16 persons brought to different police departments of Yerevan informed the Defender, that the latter were brought to Police department from the rally in order to be subjected to liability and within a short period of time were released. In accordance to the Article 262 of the RA law “On Administrative Offences” the duration for detention of an administrative offence implemented person can be no longer than 3 hours. In regards to the mentioned no complaint or alarm-call was received. This was also testified by the Rapid Response Group representatives of the RA Defender who were in different Police

Departments. The fact, that when the persons brought to departments demanded lawyers they were provided with one, is also welcoming.

The Article 258 of the RA Law “On Administrative Offences” defines that the person can be brought to department in order to compile a protocol on administrative offence, if compiling a protocol is mandatory and when it is impossible to compile a report on spot. In accordance to the Part 1 of the Article 32 of the RA Law “On Freedom of Assembly” the Police is obliged to remove the persons from the assembly spot who gravely violate the peaceful and natural flow of the assembly if otherwise it is not possible to provide it.

Among the persons brought to the Police departments, was also Presidential Elections candidate Andreas Ghukasyan, who did not accept his guilt, and in accordance to his public position is not going to pay the fine and is going to appeal the protocol on administrative liability. RA HRDI also notes that in accordance to point “B” part 1 Article 43 of RA law “On Administrative Basis and Administrative Proceedings”, in case of unfair factual circumstances for the person during the relations between the person and the administrative body, the administrative body is responsible for proving, in this case the RA Police.

European Court of Human Rights (ECHR) in a number of its decisions on administrative arrest and limitation of freedom of individuals stated its position. In particular, on the case of Steel and others vs. Great Britain the Court defined, that the detention of the individual and/or limitation of freedom is legitimate, when the person violated the public order or if there are reasonable basis to consider that the person would violate the public order.

Hence, in general in such cases bringing to police departments one by one is itself illegitimate; nevertheless in separate cases the persons who expressed their disagreement in regards to the activities of Police can appeal them in the court.

Blocking Baghramyan Avenue

On April 9, 2013 during the peaceful assembly RA police officers blocked Avenue Baghramyan in Yerevan. On this issue RA police informed the Defender that the route was limited by the decree N70 of the Mayor, dated 04.04.2013 for ensuring the normal course of numerous ceremonial events on the occasion of assuming the post of the Republic of Armenia. In addition, the basis of this action is Paragraph 6 of Article 22, of RA Law “On Police” pursuant to which the police have a right to restrict temporarily or prohibit the traffic and pedestrian flow. The Paragraph 3 of Article 19 (1) of RA Law “On Freedom of Assembly” defines that the assembly is prohibited, unless it is held on such distance from Presidential Residency, which does not threaten the normal course of the latter's activities.

On the issue of restrictions of right to freedom of assembly, the ECHR case law clearly defines the requirements under which it may be considered legitimate – unless prescribed by law in the interests of national security, public order, crime prevention, public health and morality and constitutional rights, freedoms honor and reputation of others (Osman and others vs Macedonia). In this case both RA Law “On Police” and RA Law “On Freedom of Assembly” clearly define the requirements for such restrictions and the argument of Police concerning the actions carried out by them is that they are on the grounds of public order. Besides, concerning this issue the European Court of Human Rights by its position on case of Patyi and Others vs Hungary has clearly defined, that the restriction of right to organize and convey peaceful assembly, as well as the right to freedom of movement is legitimate even

when it is carried out by the participants in such a way that it hinders the traffic and in a place which can hamper the free movement of other pedestrians.

Taking into account the above-mentioned, it can be stated that the police operation of blocking the Baghramyan Avenue has been legitimate, and the Mayor's decree № 70, dated 04.04.2013 could have been appealed by assembly organizers solely in court.