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Item reference:	Communication from NGOs (Helsinki Citizens Assembly - Vanadzor and Spitak Helsinki Group) (25/09/13) in the cases of Harutyunyan and Virabyan against Armenia (Applications No. 34334/04 and 40094/05) and reply of the authorities (08/10/2013)

Information made available under Rules 9.2 and 9.3 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion :	1186 réunion (3-5 décembre 2013) (DH)
Référence du point :	Communication d'ONG (Helsinki Citizens Assembly - Vanadzor and Spitak Helsinki Group) (25/09/13) dans les affaires Harutyunyan et Virabyan contre Arménie (Requêtes n° 34334/04 et 40094/05) et réponse des autorités (08/10/2013) (***anglais uniquement***)

Informations mises à disposition en vertu des Règles 9.2 et 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

To: Department for the Execution of
The ECtHR Judgments,
DGI-Human Rights and Rule of Law
Council of Europe
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From:
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INDIVIDUAL COMMUNICATION ON THE EXECUTION OF THE JUDGMENTS OF ECtHR

in cases

Ashot Harutyunyan v. Armenia, 34334/04, 15/09/2010

Virabyan v. Armenia, 40094/05, 02/01/2013

Introduction

«Helsinki Citizens Assembly - Vanadzor» NGO, as well as «Spitak Helsinki Group» NGO are non-political, non-religious, non-profit NGOs, which unite individuals who support the supreme principles of democracy, tolerance, pluralism, and human rights as values. In order to achieve their goals, both organizations implement the following activities:

- Monitoring and Data collection
- Legal Consultation, Legislative analysis
- Advocacy (including strategic litigation) and Lobbying

As non-governmental organizations, we are writing pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments to draw your attention to the problem of ill-treatment by the police in Armenia (including failure to provide proper and in-time medical help in police stations provided to detainees), as well as to the problem of the lack of effective and full investigation of ill-treatment by the corresponding bodies.

The aim of the communication is to underline the failure of the Armenian Government to provide proper investigation, as a result of which the problem of ill-treatment still does not receive systematic and complete solution.

By this document we aim to provide information on the steps (and lack of actions), taken by the Armenian Government in order to ensure full and effective implementation of the judgments of 34334/04 **Ashot Harutyunyan v. Armenia**, judgment of 15/06/2010, final on 15/09/2010 and 40094/05 **Virabyan v. Armenia** of 02/10/2012, final on 02/01/2013 in the part of the right to be protected from torture, other inhumane or degrading treatment or punishment, and provide our proposals for recommendations in that regard.

In the judgment of Ashot Harutyunyan v. Armenia, ECtHR found the violation of Article 3 of the Convention and indicated that *"…the applicant was clearly in need of regular medical care and supervision, which was, however, denied to him over a prolonged period of time. All the complaints in this respect lodged by the applicant's counsel either remained unanswered (see paragraph 46 above) or simply received formal replies (see paragraphs 58, 60 and 63 above). The applicant's verbal requests for medical assistance were also to no avail. In the Court's opinion, this must have given rise to considerable anxiety and distress on the part of the applicant, who clearly suffered from the effects of his medical condition, which went beyond the unavoidable level of suffering inherent in detention.*"

In the case of Virabyan v. Armenia, ECtHR has also found the violation of Article 3 of the Convention and stated that "*...the applicant was subjected to a particularly cruel form of ill-treatment which must have caused him severe physical and mental pain and suffering... Having regard to the nature, degree and purpose of the ill-treatment, the Court finds that it may be characterized as acts of torture (see Selmouni, cited above, §§ 96-105, and Salman, cited above, § 115*)".

The RA Government provided the following information about the general measures taken in the case of Ashot Harutyunyan: *«the judgment in the Ashot Harutyunyan case was translated into Armenian, published on the Ministry of Justice's Website and disseminated to the authorities concerned. It was included in the training curriculum of the Police Academy, the Prosecutors' School, the Judicial School and in the trainings of the detention facilities' personnel». No information is still provided regarding the measures taken/envisaged regarding adequate medical care in detention.*

In the case of Virabyan v. Armenia, the action plan from the Government is still awaited and the 6 months period for its submissions has already passed.

Description of the situation on the ground and measures taken by the authorities

- **Effectiveness of Complaints Mechanism**

The problem of ill-treatment is not addressed by systemic solutions as no proper and complete investigation is conducted into such cases, and officers behind ill-treatment still remain unpunished[1].

During the period of 2012 and March 2013, Helsinki Citizens' Assembly Vanadzor received 5 appeals from citizens claiming of a breach of their right to be free from ill-treatment in the police. Because of fear of further pressures, in some cases persons refused to pursue their claims and to submit applications to relevant bodies to avoid further persecution. Nevertheless, in the cases when applications were sent to the Special Investigation Service and to the Prosecutor's Office, either the investigation of criminal case was refused or the criminal case was stopped "because of the absence of *corpurs delicti*."

Improper oversight by the RA Prosecutor's Office is one of the factors, which leads to inadequate investigation of illegal actions committed by police officers. Particularly, no proper oversight is carried out by the prosecutor responsible for direct control regarding the lawfulness of the preliminary investigation and the investigation of cases immediately on site, similarly, improper control is carried out by the Prosecutor General and other authorized prosecutors over the legality of the preliminary investigation further conducted by the Special investigative body.

These problems were also addressed in the Annual report of the RA Ombudsman[2]. The ombudsman particularly mentioned that the problem of efficient supervision over investigation by and the actions of preliminary investigation bodies by the Prosecution still remains unsettled. The limitations and violations of rights of citizens, as well as abuse of authority due to the flaw of the prosecutorial supervision are disturbing.

The issue of ill-treatment usually becomes a matter of disciplinary investigation, instead of the criminal investigation. Pursuant to #1672-N RA Government order dated December 27, 2012 on defining the composition and the working order of the RA Police Disciplinary Committee, 5 representatives from non-governmental organizations are also enrolled in the composition of the RA Police Disciplinary Committee. The disciplinary Committee's aim is to decide on the legality of actions and provide comprehensive, full and objective analysis of investigative documents of investigation of gross violations, committed by police officers responsible for public order during

[1] This problem is also underlined in the Armenian Helsinki Committee's report on the Treatment of Detained Persons in Police Departments, Yerevan 2013.
[2] See` Annual Report On the Activities of the RA Human Rights Defender and on the Violations of Human Rights and Fundamental Freedoms in the Country during 2012, Yerevan 2013. http://www.ombuds.am/en/library/library/page/101/type/3

assemblies. Such a mechanism is expected to make the procedures of subjecting RA Police officers to disciplinary penalties more effective and transparent.

The issue of the absence of a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment in places of deprivation of liberty, as well as the low number of prosecutions of such cases was also addressed by the UN Human Rights Committee and deemed as urgent[3].

In its turn, the UN Committee against Torture singled out routine use of torture and ill-treatment of suspects in police custody, especially to extract confessions to be used in criminal proceedings, failure in practice to afford all detainees all fundamental safeguards from the very outset of their de facto deprivation of liberty, including timely access to a lawyer and a medical doctor and the right to contact family members; the need for mechanisms to conduct fair investigation over cases of torture; the insufficient number of public defenders in the State party, absence of prompt, impartial or effective investigation and prosecution of allegations of torture and/or ill treatment committed by law enforcement officials and military personnel[4].

Adequate medical care in detention

According to the data provided by the Public Observers' Group of the Detention Facilities of the RA Police, «the medical care in detention facilities is the most vulnerable issue and is ignored». The medical examination is not always provided in time, which creates inevitable consequences. The Monitoring group also stipulated that primary medical help and common medical service is provided by the ambulance in 31 regional detention facilities (there is a special medical service in Detention Facility of Yerevan City Police), and some of ambulance doctors usually do not fully discount the importance of proper medical care of a person in the detention place.

In addition, oral statements of a detainee about his/her health condition are ignored. Ambulance doctors do not register health condition of a detainee and the call in the «Journal of detainees' medical care and medical examination», or in case when they make a registration they do it either in a foreign language or illegible handwriting.

At the same time, it is worth to mention that some preventive measures are stipulated in Draft Criminal Procedure Code in order to avoid situations of failure to provide proper medical care. Particularly, according to the Article 295.3.3 of Draft Criminal Procedure Code, as a result of examination of the application about use of the restraint measures, or extension of use of restraint

[3] Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Armenia http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/455/24/PDF/G1245524.pdf?OpenElement
[4] Concluding observations of the Committee against Torture Armenia (Extracts for follow-up of CAT/C/ARM/CO/3) http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT_CAT_FUI_ARM_12361_E.pdf

measures the Court makes a decision to refuse the application if it comes to a conclusion that gross violations of law took place during detention of a person, and the gross violation is: in case of obvious wounds on the detained person's body he was not provided necessary medical help, or reasonable explanation about the origin of these wounds were not submitted to the Court.

According to Article 43.1.5 of Draft Criminal Procedure Code, the defendant has the right to request free medical examination and get medical certificate for free if arrested, as well as to invite a doctor by his choice and to contact freely with him without any audio-visual control.

In any case, the problem of proper medical care in detention facilities and in police still remains on agenda in RA.

Proposed recommendations in order to fully and effectively implement the judgment

• To prepare and publish its action plan in the case of *Virabyan v. Amenia* as soon as possible in order to start the proper execution process of the case.

• To ensure the conduct of comprehensive, proper and fair investigation over the cases of torture and ill-treatment applied on the part of the RA Police officers by the SIS officers, as an independent body.

• To ensure adequate oversight of the preliminary investigation and investigation by the RA Prosecutor's office.

• To provide all investigative departments of the RA Police with interrogation rooms and allow video-recording of interrogations. Recordings in its turn will be attached to interrogation protocols. If impossible, to provide a person under interrogation to enjoy his/her right to video record of interrogation.

• To perform the mandatory entry and exit registration of persons in all investigative departments and stations of the RA Police.

• To provide annual reports on the situation of the prevention from ill-treatments in police stations (including providing medical assistance) and by police officers and the activities taken in order to prevent ill-treatment, by the Special Investigative Service, General Prosecutor's office and RA Police.

• To ensure proper, full and effective implementation of recommendations provided in the concluding observations of the UN Committee against Torture and the UN Human Rights Committee, as well as the recommendations of the UN Committee for the Prevention of Torture.

On behalf of the Helsinki Citizens' Assembly-Vanadzor A. Sakunts

On behalf of the Spitak Helsinki Group A. Babayan

Cc. Ministry of Justice of RA

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Department for the Execution of Judgments of
the European Court of Human rights

Your ref.: DG1/GM/IKM/VD/Ima

8 October 2013

Dear Ms.Mayer,

With reference to the communication received from the Helsinki Citizens' Assembly-Vanadzor and Spitak Helsinki Group NGOs (26 September 2013), concerning the execution of the ***Harutyunyan v. Armenia*** and ***Virabyan v. Armenia*** judgments**,** I would like to inform you that contrary to the allegations submitted in the communication, the Government of Armenia has undertaken a number of general, notably, legislative measures in order to prevent violation of similar nature in the future.

In the *Harutyunyan v. Armenia* judgment (Application no. 34334/04, 15 September 2010) the Court established that there had been a violation of Article 3 of the Convention, stating, *inter alia*, that *"(....) the applicant was clearly in need of regular medical care and supervision, which was, however, denied to him over a prolonged period of time. All the complaints in this respect lodged by the applicant's counsel either remained unanswered (see paragraph 46 above) or simply received formal replies (see paragraphs 58, 60 and 63 above). The applicant's verbal requests for medical assistance were also to no avail. In the Court's opinion, this must have given rise to considerable anxiety and distress on the part of the applicant, who clearly suffered from the effects of his medical condition, which went beyond the unavoidable level of suffering inherent in detention"*.

The NGOs indicate that the Government has presented the following information with regard the execution of the *Harutyunyan* judgment: "*the judgment in the Ashot Harutyunyan case was translated into Armenia, published on the Ministry of Justice's website and disseminated to the authorities concerned. It was included in the training curriculum of the Police Academy, the Prosecutors' School, the Judicial School and in the trainings of the detention facilities' personnel"*. NGOs further claim that no information is still provided regarding the measures taken/envisaged regarding adequate medical care in detention, whereas the Government of Armenia presented complete information on additional general measures undertaken by it. Although the above-mentioned information was included in the action plan submitted by Armenia, the Government will once again recall the changes made in the domestic legislation in order to improve the sufficient safeguards for the effective access to requisite medical assistance in detention. Particularly:

1) by Decision N825 of 26 May 2006 the Government adopted new regulations improving the standard, according to which:

a. while in custody, prisoners would be able, *inter alia,* to have access to a doctor at any time, irrespective of their detention regime, and without undue delay;

b. a prison health care service would provide qualified regular out-patient consultations, emergency treatment and hospital-type unit with beds;

c. in addition to proper medical treatment and nursing care, a prison health care service provides diets, physiotherapy, rehabilitation.

2) The above-cited decision also duly regulates the issue of medial files, which would be complied for each patient, containing diagnostic information as well as ongoing record of the patient's evolution and of any special examinations he has undergone.

3) Moreover, the Draft Code of Criminal Procedure offers additional guarranties. Those measures are aimed at prevention of alleged ill-treatment by entitling those deprived of liberty to adequate and timely medical examination. In particular, according to Article 110 § 2(6) of Draft Criminal Procedure Code, during the early stage of the initial arrest (6 hours at most) the arrested has right to demand medical examination. Article 110 § 2(1) stipulates that this right (among 5 other initial rights) is duly explained to him/her both verbally (at the moment of arrest) and in writing (at the police station). Additionally, according to Article 43 § 1(5), the defendant in detention has the right to request free medical examination, as well as to invite a doctor by his choice.

Thus, it should be mentioned that the Government has been taking the necessary steps towards the solution of systemic and legislative problems concerning the provision of medical treatment to detainees for the purpose of preventing further probable violations of similar character.

In the *Virabyan v. Armenia* judgment (Application no. 40094/05, 2 October 2012) the Court stated, *inter alia*, that *"(....) the applicant was subjected to a particularly cruel form of ill-treatment which must have caused him severe physical and mental pain and suffering. In particular, his testicles were repeatedly kicked and punched and hit with metal objects. These injuries had lasting consequences for his health, as his left testicle was so badly smashed that it had to be removed. He was further beaten up with his hands handcuffed behind his back and received blows to his chest and ribs. Strong inferences can be drawn from the circumstances of the case that the ill-treatment was inflicted on the applicant intentionally in order either to punish or to intimidate him or both. Having regard to the nature, degree and purpose of the ill-treatment, the Court finds that it may be characterized as acts of torture"*.

In this respect the Government would like to stresses out that the legislative measures, namely, the amendments made in the Code of Criminal Procedure of the Republic of Armenia

vest a person with a right to have his case re-opened and re-examined on the ground of existence of a final judgment or a decision of an international tribunal and the issue in its turn has been laid down in the submitted Action Plan as well.

Hereby, the Government asserts that due to the necessary changes in the domestic legislation, namely, by thoroughly determining the grounds, terms and list of persons authorized to lodge appeals for having final judgments re-opened, Applicant was provided with an effective remedy, within the framework of Articles 426^1-426^9 of the CCP, to apply for re-examination of his case and eventually to oblige the authorized state body to re-open the terminated criminal proceedings and carry out effective investigation into the alleged ill-treatment the Applicant was subjected to.

However neither Applicant, nor his lawyers avail themselves of the above-mentioned mechanism envisaged in the domestic legislation.

Yours sincerely,

Ruben Melikyan

Deputy Minister of Justice

Deputy Government Agent