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Meeting: 1273 meeting (6-8 December 2016) (DH)

Item reference: Updated action plan (14/10/2016)

Communication from Armenia concerning the Virabyan group of cases against Armenia (Application No. 40094/05)

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Réunion : 1273 réunion (6-8 décembre 2016) (DH)

Référence du point : Plan d'action mis à jour

Communication de l'Arménie concernant le groupe d'affaires Virabyan contre Arménie (Requête n° 40094/05) (**anglais uniquement**)

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THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

ACTION PLAN¹

VIRABYAN GROUP OF CASES

(Supervised by the Committee of Ministers under the enhanced procedure)

Department for Relations with the European Court of Human Rights
Ministry of Justice of the Republic of Armenia
14 October 2016

¹ The present Action Plan is the updated version of the one submitted on 16 February 2015.

EXECUTION OF VIRABYAN GROUP JUDGMENTS

Case of Virabyan v. Armenia (no. 40094/05, judgment of 02/10/2012, final on 02/01/2013)

Case of Nalbandyan v. Armenia (nos. 9935/06 and 23339/06, judgment of 31/03/2015, final on 30/06/2015)

I. INTRODUCTORY CASE SUMMARY

Substantive violations of Article 3 of the European Convention on Human Rights (hereinafter, the Convention)

1. In the *Virabyan* case the applicant (a member of one of the main opposition parties at the material time in Armenia) was subjected to ill-treatment characterised as torture by the European Court of Human Rights (hereinafter, the Court), while in police custody on 23 April 2004.
2. In the *Nalbandyan* case two of three applicants' (husband, wife and daughter) were subjected to ill-treatment (on suspicion of murdering third applicant's classmate) in police custody in June and July 2004 characterised as torture by the Court.

Procedural violations of Article 3

3. No effective investigations were carried out into the applicants' allegations of ill-treatment.
4. In the *Virabyan* case the motion of the applicant to start criminal proceedings into his ill-treatment was dismissed by the Erebuni and Nubarashen District Prosecutor. That decision was upheld by the Court of Appeal and the Court of Cassation.
5. In the *Nalbandyan* case, the Court criticised the investigation as neither independent, nor impartial and objective due to the fact that the authorities were called upon to investigate the actions of employees of the same prosecutor's office and their subordinates. The authorities also failed to secure a proper and objective collection and assessment of medical and other evidence vital for the effective outcome of the investigation.

Violation of Article 14 taken in conjunction with Article 3 in its procedural limb

6. In the *Virabyan* case the applicant alleged that his ill-treatment was politically motivated. Despite the existence of plausible information sufficient to alert the authorities to the need to

carry out an initial verification, and - depending on the outcome - investigate, no effective investigation was carried out by the authorities.

Violation of Article 6 § 2

7. In the *Virabyan* case the applicant was formally charged with inflicting violence on a public official. The grounds on which the criminal proceedings against the applicant were terminated violated the presumption of innocence. The prosecutor's decision of 30 August 2004 on termination of the proceedings taken at the pre-trial stage and up-held by the courts was couched in terms leaving no doubt that the applicant had committed an offence.

Violation of Article 6 §§ 1 and 3 (c)

8. In the *Nalbandyan* case the Court found that the hearings in July and August 2005 in the criminal case of the applicants before both the Regional Court and the Court of Appeal were held in an atmosphere of constant threats and verbal and physical abuse, addressed at the applicants, their family members and lawyers (violation of Article 6 § 1, taken together with Article 6 § 3 (c) of the Convention, in that the first and second applicants were deprived of effective legal assistance). It also found that the Court of Cassation acted with excessive formalism and lack of due diligence in refusing to admit the appeal filed by lawyer, which resulted in a disproportionate limitation on the first applicant's access to that court.

II. INDIVIDUAL MEASURES

A. *Payment of just satisfaction*²

<i>Case of</i>	<i>Pecuniary Damage</i>	<i>Non-Pecuniary Damage</i>	<i>Costs and Expenses</i>	<i>Total</i>
<i>Virabyan</i>	---	EUR 25,000	EUR 6,000	EUR 31,000
<i>Paid on: 22 March 2013</i>				
<i>Nalbandyan</i>	---	EUR 62,000	EUR 100	EUR 62,100
<i>Paid on: 24 September 2015</i>				

² The payment receipt in respect of *Virabyan's* case has been annexed to the *Virabyan* Action Plan of 29 November 2013. The just satisfaction form in respect of *Nalbandyans'* payment was submitted to the Just Satisfaction Unit of the Department for the Execution of Judgments of the European Court of Human Rights in September 2015.

B. Other individual measures

a) Reopening of the Virabyan's case

*With reference to the Committee of Ministers Decision to keep the Committee updated on the progress of the re-opened proceedings and investigation*³

9. Pursuant to Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the Court, State authorities ensure the possibility of re-examination of the *Virabyan* case, including reopening of proceedings in order to grant at domestic level a measure as close to *restitutio in integrum* as possible.

10. As mentioned in the previous Action Plan, referring to the Court's judgment on *Virabyan v. Armenia* case as a new circumstance, the representative of Mr. Virabyan has filed an appeal on the review of the Court of Cassation's decision of 13 May 2005. Based on that appeal, the Court of Cassation, *inter alia*, decided to send the case to the First Instance Court for re-examination.

11. In the framework of re-opened proceedings, the criminal case no. 27203404 was transmitted to the Special Investigation Service (hereinafter, the SIS)⁴ to conduct investigation. It is to be noted that the following facts confirmed by the Court were specifically mentioned in the decision:

- ❖ *in the framework of the discussed criminal case the applicant was subjected to torture;*
- ❖ *the State authorities did not carry out effective investigation in regard to applicant's complaints on being subjected to torture;*
- ❖ *the applicant's right to the presumption of innocence was violated;*
- ❖ *an effective investigation was not carried out in regard to the applicant's complaints on being subjected to ill-treatment based on his political opinion.*⁵

12. As mentioned in the previous Action Plan, in line with other investigative activities, after the re-examination of the shortcomings of the previous forensic examinations, a new forensic examination was assigned by the investigating authorities of the SIS on 28 November 2014. Furthermore, in addition to mentioned, the following developments must be noted as well.

³ Reference document: [CM/Del/Dec\(2015\)1230/2](#)

⁴ The SIS is an independent body in charge of investigations of cases against the state, law enforcement and penitentiary officials (including allegations of ill-treatment). For more details, see §§ 36-42 of the present document.

⁵ For more details, see Action Plan of 16 February 2015, §§ 26-34. Reference document: [DH-DD \(2015\)206](#).

13. To ensure a thorough investigation, apart from the new forensic examination assigned, 22 witnesses (including the Police officers concerned) have been interrogated. Furthermore, 4 confrontations have been organised with the participation of Mr. Virabyan.

14. On 10 May 2016, an investigation was opened⁶ based on the ground prescribed by Article 309 § 2 of the Criminal Code (hereinafter, the CC) for inflicting a very serious injury to testicle of Mr. Virabyan on 23 April 2004 at around 6.30 pm by Artashat Police Division officers as a result of exceeding official authorities.⁷ In the course of these proceedings Police officers have been interrogated, the body of inquiry was instructed to carry out effective investigation, a victim status was given to Mr. Virabyan and the latter gave a testimony regarding the incident. The investigation is in process and the Armenian authorities take all the reasonable steps to ensure that thorough, comprehensive and objective investigation is conducted.

15. On 20 May 2016 a decision was made to terminate criminal proceedings no. 27203404 and discontinue the criminal prosecution in respect of Mr. Virabyan for the lack of *corpus delicti*. This is a major step forward in the investigation of the reopened case mainly in terms of remedying the violation found in respect of Article 6 § 2 of the Convention. The reason is that in the *Virabyan* case the applicant was formally charged with inflicting violence on a public official. The grounds on which the criminal proceedings against the applicant were terminated violated the presumption of innocence. In particular, the prosecutor's decision of 30 August 2004⁸ on termination of the proceedings taken at the pre-trial stage and up-held by the courts was couched in terms that left no doubt that the applicant had committed an offence. Hence, in the light of the decision of 20 May 2016 on terminating criminal proceedings no. 27203404 and discontinuing the criminal prosecution in respect of Mr. Virabyan for the lack of *corpus delicti*, as well as taking into consideration that Article 37 of the Code of Criminal Procedure (hereinafter, the CCP) was amended and its sub-paragraph 2(2) was removed⁹, the Government consider that the respective violation found by the Court has been fully remedied.

b) Re-examination of the Nalbandyan's case

16. Making reference to the Court's judgment on *Nalbandyan v. Armenia* case as a new circumstance, the case has been reopened at national level.

⁶ Criminal case no. 62212316

⁷ **Article 309 Exceeding official authorities**

“(…)

2. [Acts wilfully committed by an official which obviously exceed his authorities and caused essential damage to the legal interests and rights of citizens, organizations, as well as to the public or state interests (in case of property loss, the amount (value) exceeding 500 minimal salaries)], accompanied with violence, use of fire-arms or special means, shall be punished with imprisonment for the term of 2 to 6 years accompanied with deprivation of the right to hold certain posts or practice certain activities for up to 3 years.”

⁸On 30 August 2004 the proceedings were terminated, because in the prosecutor's opinion, the accused had redeemed the committed act through suffering and other privations which he had suffered in connection with the committed act. It is to be recalled that this decision was made on the ground prescribed by former Article 37 § 2(2) of the Code of Criminal Procedure.

⁹ For more details, see Action Plan of 16 February 2015, §§ 10-12: Reference document: [DH-DD \(2015\)206](#).

i. In particular, in its decision of 24 June 2016¹⁰ the Court of Cassation decided:

- ❖ *to satisfy the claim brought by the lawyer of the first and second applicants - Mr. B. and Ms. N. Nalbandyans - on 11 September 2015; to review the decision of 12 August 2005 of the Court of Cassation in regard to them;*¹¹
- ❖ *to quash the decision of the Gegharkunik Regional Court dated 4 February 2005;*¹²
- ❖ *to quash the decision of the Criminal and Military Court of Appeal dated 2 July 2005;*¹³
- ❖ *to send the case to the Gegharkunik Regional First Instance Court for re-examination.*

17. At the same time the Court of Cassation left the detention as a means of preventive measure applied to Ms. N. Nalbandyan unaltered.

ii. In its decision of 24 June 2016¹⁴, the Court of Cassation decided:

- ❖ *to partially satisfy the claim brought by the lawyer of the first and second applicants on 24 September 2015; to review the decision of 10 November 2005 of the Criminal and Military Court of Appeal¹⁵ in regard to Mr. B. Nalbandyan, Ms. N. Nalbandyan and Ms. A. Nalbandyan;*
- ❖ *to quash the decision of 25 March 2005 of the Kentron and Nork-Marash District Court;*¹⁶
- ❖ *to quash the decision of 10 November 2005 of the Criminal and Military Court of Appeal;*
- ❖ *to send the case to the Kentron and Nork-Marash District Court of Yerevan for re-examination.*

18. In two weeks' time the above-cited decisions will be sent to the parties and delivered to the respective first instance courts to proceed to further stage of the re-examination.

19. The authorities highlight the importance of the reopening of this case. More specifically, the reopening of proceedings will be effective means of redressing the violations of fundamental human rights found by the Court and encrypted in the Convention.

¹⁰ VB-04/15 (N ՎԲ-04/15)

¹¹ See, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 51, 31 March 2015.

¹² See, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 35, 31 March 2015.

¹³ See, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 45, 31 March 2015.

¹⁴ VB-06/15 (N ՎԲ-06/15)

¹⁵ See, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 76, 31 March 2015.

¹⁶ See, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 68, 31 March 2015.

III. GENERAL MEASURES

A. Legislative measures

a) Substantive violations of Article 3 (case of Virabyan; case of Nalbandyan)

With reference to the Committee of Ministers Decision regarding the next steps and time-table for the adoption of the draft amendments to the CC¹⁷

20. In order to prevent similar violations in future, structural legislative reforms have been undertaken to bring national legislation in line with international best standards and practice. ***The package of laws amending legislation criminalising torture was adopted by the Parliament on 9 June 2015 and the amendments entered into force on 18 July 2015.*** It should be recalled that following these legislative reforms the national legislation criminalising torture was brought in line with international best practice and obligations of Armenia. Taking into account that former legislation criminalising torture did not include crimes committed by public officials, as well as it lacked the purposive element recognised in the UN Convention against Torture (hereinafter, the UNCAT), the article defining torture was totally changed and brought in full conformity with Article 1 of the UNCAT. In addition, it is guaranteed that all public officials engaged in conduct constituting torture are charged accordingly, and that the penalty for this crime reflects the gravity of the act of torture as required by Article 4 of the UNCAT. In particular, the amended article imposes suitable penalty for such acts (from four to eight years of imprisonment, as well as deprivation of the right to hold certain posts or practice certain activities for up to three years; from seven to twelve years of imprisonment, as well as deprivation of the right to hold certain posts or practice certain activities for up to three years), which is in conformity with the international best practice.¹⁸

21. Moreover, in contrast with the former legislation - according to which the sole ground for initiating criminal proceedings was the victim's complaint (private criminal prosecution) - following the amendments made to the CCP the cases of torture are subject to public criminal prosecution. Furthermore, according to the amendments the acts of torture committed by private actors¹⁹ are also subject to public prosecution. Therefore, this can be considered as an additional guarantee for ensuring the initiation of criminal proceedings in each such case.

b) Procedural violations of Article 3 (case of Virabyan; case of Nalbandyan)

¹⁷ Reference document: [CM/Del/Dec\(2015\)1230/2](#)

¹⁸ Article 309.1 of the CC

¹⁹ Article 119 of the CC

With reference to the Committee of Ministers Decision regarding the next steps and time-table for the adoption of the draft Code of Criminal Procedure (hereinafter, the draft CCP)²⁰

22. The draft CCP has been finalised and submitted to the National Assembly. Discussions were held at the Standing Committee on State and Legal Affairs of the Parliament, and all the proposals made were incorporated in the text of the draft. Furthermore, from 15 to 17 April 2016 second consultation meetings were held with international experts on the draft CCP. The proposals made were incorporated in the text of the draft. It was further harmonised with the Constitution amended on 6 December 2015 and submitted to the Council of Europe expertise.²¹ ***On 11 October 2016 the finalised draft was sent to the Government of Armenia to further submit it to the National Assembly for consideration.***

23. It should be reiterated that for the increase of the procedural safeguards, the draft CCP, in particular Article 110, secures basis for comprehensive and effective investigation into acts of torture. The Government consider that Article 110, which, *inter alia*, stipulates the minimum rights²² of the arrested person can be considered as a fundamental safeguard against any form of ill-treatment. It is worth to mention that the minimum rights prescribed in this article are totally in conformity with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter, the CPT). The aim of this article, among the others, is to create a clear system of mechanisms and procedures through which allegations, indications and evidence of ill-treatment can be communicated. In particular, the rights to have the fact of one's detention notified to a third party, to have an access to a lawyer, and to have an access to a doctor (as well as to invite a doctor of his choice²³) are crucial for the gathering of evidence and communication of information relating to torture. The Government would like to note that these rights are applied from the very outset of factual deprivation of liberty and can secure the evidence concerning the incident. Any evidential deficiency in that respect can undermine the ability of conducting thorough, comprehensive and objective investigation.

24. Furthermore, highlighting the importance of introducing an adequate complaint mechanism against possible abuses and pressures towards persons subjected to ill-treatment, the draft CCP provides that immediately after bringing a person before the inquiry body a protocol

²⁰ Reference document: [CM/Del/Dec\(2015\)1230/2](#)

²¹ The consultations and further working process (incorporating the proposals made in the text of the draft, harmonising it with the Constitution amended in 2015 and submitting the finalised text to the Council of Europe expertise) were organised in the framework of the EU/CoE joint project *Supporting the Criminal Justice Reform and Combating Ill-treatment and Impunity in Armenia*.

²² To be informed about minimum rights and obligations stipulated by this Article orally from the moment of becoming *de facto* deprived of liberty and in writing at the time of entry into the administrative building of the Inquiry Body or of a body that has the power to conduct the proceedings; to know the reason for depriving him of liberty; to remain silent; to inform a person of his choosing about his whereabouts; to invite an attorney; and to undergo a medical examination if he so demands.

²³ According to Article 43(5) of the draft CCP, in case of arrest or detention, a person have the right to demand a medical examination at no cost and to receive a report at no cost, as well as to invite a doctor of his choosing and to communicate with him without any obstacles, including without any visual or auditory surveillance.

should be filed. The latter shall, among the others, include information on the injuries (if any) visible on the body or on the clothes of the arrested person, and his/her noticeable physical and mental state.²⁴ Moreover, as an additional guarantee, for ensuring proper medical recording of injuries the draft CCP strictly stipulates that if in the presence of evident bodily harm the court finds that the accused was denied requisite medical care or the investigator failed to present the court reasonable justification as to the causes of the harm, the court will reach the conclusion that grave violations of law were committed when arresting the person, which is the ground for rejection of the motion to apply or to prolong the term of detention as a measure of restraint.²⁵

*With reference to the Committee of Ministers recommendation to give consideration to recording police interrogations*²⁶

25. As foreseen in point 36 of the *2014-2016 Action Plan deriving from the National Strategy on Human Rights Protection*²⁷ the existing international experience of **audiovisual recording of police interrogations** was studied. Based on the results achieved, the **proposal regarding the appropriateness of introducing the system of audio-visual recording in the Republic of Armenia has been submitted to the Government of Armenia.**

26. In line with point 112 of the same *Action Plan*, a study was carried out on international practice of **drawing up an electronic record regarding the deprivation of person's liberty from the very outset of deprivation**. In this case as well, **the proposal regarding the appropriateness of introducing such a system has been presented to the Government for consideration**. Whether it is decided to introduce appropriate mechanisms of recording police interrogations, as well as drawing up an electronic record regarding the deprivation of person's liberty, it will be an additional safeguard against ill-treatment.

27. The Government would like to stress that all the procedural safeguards mentioned hereinabove, in conjunction with other legislative guarantees measuring the effectiveness of the investigation of torture, are aimed at creation of real mechanisms capable of leading to the establishment of the facts of the case, and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible.

c) Violation of Article 6 § 2 (case of Virabyan)

28. Based on the facts of the case the criminal proceedings against the applicant were terminated at the pre-trial stage by the prosecutor's decision of 30 August 2004 on the ground prescribed by former Article 37 § 2(2) of the CCP, which allowed termination of proceedings if, in the prosecutor's opinion, the accused had redeemed the committed act through suffering and

²⁴ Article 109 of the draft CCP

²⁵ Article 295 of the draft CCP

²⁶ Reference document: [CM/Del/Dec\(2015\)1230/2](#)

²⁷ Approved by Government Decree No. 303-N (N 303-Ն) of 27 February 2014

other privations which he had suffered in connection with the committed act. As it was mentioned in the previous *Virabyan* Action Plan, on 25 May 2006 Article 37 of the CCP was amended and its sub-paragraph 2(2) was removed.²⁸ It is to be emphasised that the Committee of Ministers noted with satisfaction the abolition of the relevant provisions of the CCP that led to the violation of the principle of the presumption of innocence and considered that no further measures appear to be necessary in this respect.²⁹

d) Violation of Article 14 in conjunction with Article 3 in its procedural limb (case of Virabyan)

29. It is worth to mention at the outset that the authorities failure in their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to investigate whether or not discrimination may have played a role in the applicant's ill-treatment more related to the concrete practical flaw than legislative deficiency. That is why no specific legislative measures were taken in that respect. At the same time, stressing the importance of enhancing the protection against discrimination, in *contrario* to the existing legislation, the newly drafted article of the draft CCP on equality of all without **discrimination** has been accorded a force of a principle.

30. As mentioned in the previous Action Plan, the adoption of comprehensive anti-discrimination legislation is a priority policy issue for Armenia. It is worth to inform that upon the request of the Ministry of Justice of the Republic of Armenia, for the purpose of a thorough legislative gap analysis as well as aiming at further legislative developments, the Eurasia Partnership Foundation carried out a study on the issues of discrimination and intolerance in Armenia, both from legal and societal points of view. The outcomes of the study process have already been summarized. At present, new comprehensive legislation on anti-discrimination, which will address the notion and types of discrimination, as well as the proof mechanisms and other considerable issues, is in the drafting process.

31. In line with what was said above about the new definition of torture, the Government reiterate that upon the amendments made to the CC, the new definition of torture, among the other elements, fully covers the purposive elements as recognized under international best practice. In particular, under the new definition, torture conducted on any discriminative basis is considered as a separate purposive element. Inclusion of the discrimination based purposive element of torture in the definition aims, among the others, at widening the scope of situations where the incident can be qualified as torture, and, which is more important, at stressing the importance of criminalization and adequate sanctioning of discrimination based torture acts.

B. Practical measures

²⁸ For more details, see Action Plan of 16 February 2015, §§ 10-12: Reference document: [DH-DD \(2015\)206](#).

²⁹ Reference document: [CM/Del/Dec\(2015\)1230/2](#)

*With reference to the Committee of Ministers Decision to take further practical steps to eliminate torture and ill-treatment*³⁰

a) Measures taken to combat ill-treatment in the Police

32. It should be recalled that on 27 November 2013 the Head of the Police gave a specific Instruction³¹ on *Ensuring the Application of Legal Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.³²

33. Apart from the mentioned, the Police deliver - at regular intervals - a firm message of unacceptability of ill-treatment to all Police officers during the service trainings. In this context, it is planned to conduct additional activities to guarantee that while interacting with individuals, the Police officers respect the principle of lawfulness and strictly comply with the rules of ethics, as well as to ensure that no more force than is strictly necessary is used by the Police officers and deliver a firm message of inevitable liability for any such act.

34. It is to be noted as well that instructions are periodically³³ given to the Police officers by their hierarchy to strictly comply with the CPT standards whenever apprehending an individual and conducting medical examination of persons deprived of liberty, as well as recording the results thereof. In this context, it is worth mentioning that in its Report on the visit carried out to Armenia in 2015 (hereinafter, the CPT Report (2015))³⁴, the CPT indicated that the delegation received a small number of allegations of Police ill-treatment. Based on the findings of the visit, the CPT stated that the above-mentioned would suggest that there had indeed been an improvement in this area since the CPT's 2010 periodic visit and 2013 ad hoc visit (as also expressly stated by several of the remand prisoners interviewed by the delegation).

35. In the light of the above-mentioned, the Government note that it is a matter of high priority for the Armenian authorities to continue delivering, at regular intervals and from the highest level, a firm message of “zero tolerance” of ill-treatment to all Police officers.

b) Structural changes

*With reference to the Committee of Ministers Decision to indicate measures taken or envisaged to ensure that the SIS is fully effective*³⁵

³⁰ Ibid.

³¹ Instruction No. 20 of the Head of the Police dated 27 November 2013

³² For more details, see Action Plan of 16 February 2015, § 25: Reference document: [DH-DD \(2015\)206](#).

³³ E.g. Instruction No. 2/2-1-3589 given by the Chief of Staff of the Police on 21 October 2015; Instruction No. 2/2-1-441 given by the Chief of Staff of the Police on 10 February 2016

³⁴ At present the CPT Report is secret. However, on 12 October 2016 the Armenian authorities requested for the publication of the Report together with the Government Response pursuant to Article 11 § 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

³⁵ Reference document: [CM/Del/Dec\(2015\)1230/2](#)

36. It should be reiterated that as it was acknowledged in the CTP/Inf (2015)8 Report on the visit to Armenia from 4 to 10 April 2013, in the recent years the Armenian authorities have made commendable efforts to render the processing of cases of possible Police ill-treatment more effective. In particular, as of 28 November 2007 according to the RA Law on “Special Investigation Service”, the SIS has been established in line with Council of Europe recommendations. It is an independent state body and exercises its powers independently. Among the others, it conducts preliminary investigation of the cases related to the crimes committed by the officials of legislative, executive and judicial bodies, employees implementing state special services. Moreover, the Department for Investigation of Torture cases is a specialised unit of the SIS, which conducts preliminary investigation of the cases of ill-treatment.

37. As mentioned in the CPT Report (2015), the delegation noted that some steps had been taken recently to bolster the independence of the SIS and to strengthen its capacity to investigate cases involving allegations of ill-treatment. More specifically, as mentioned in the Report, in 2014, the SIS was relocated from the premises it had shared with the Public Prosecutor to headquarters of its own and a new unit of eight investigators (the Department for Investigation of Torture) was created to investigate cases of alleged ill-treatment. Action had also been taken to make the SIS more directly accessible to members of the public; complaints could be submitted in person at its headquarters, as well as by telephone, e-mail and via the SIS website.

38. In the CPT Report (2015), reference was also made to the new guidance material³⁶ produced by the SIS in 2014 and 2015 that includes detailed reference to the standards of the CPT and the procedural obligation requirements of the Court in the relation to the investigation of cases including allegations of ill-treatment.

39. The delegation examined in detail a number of cases involving allegations of ill-treatment under active investigation by the SIS. In each of the cases reviewed, comprehensive case files demonstrated that the available evidence (e.g. records of medical examinations, duty rosters and operational orders) had been swiftly secured, complainants promptly interviewed and police officers robustly questioned based on the evidence gathered by the SIS. The delegation formed a positive view of the professionalism with which SIS investigators carried out their tasks.

40. In addition to the CPT findings, Armenian authorities make continues efforts to raise the effectiveness of the SIS. In this context, to guarantee that this independent body is given the possibility to promptly investigate into cases of alleged ill-treatment, based on the Instruction of the General Prosecutor issued to the structural divisions of the Prosecutor’s Office, the complaints of ill-treatment received by the bodies of preliminary investigation and Prosecutor’s Office shall be immediately transferred to the SIS. Similarly, based on the Instruction of the *Head of the Police on Ensuring the Application of Legal Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* it was instructed to report to the administration of the Police on any case of detecting violation of the

³⁶ Guidebook for Organisation and Fulfilment of Investigation into Cases over Torture (2014) and Methodology of Investigation of Crimes (2015)

CPT standards, as well as on any *prima facie* similar complaint and send the relevant materials together with the complaint to the SIS immediately.

41. Furthermore, Armenian authorities are closely cooperating with the European and international organisations to promote democracy, strengthen the rule of law and human rights protection in Armenia. In particular, the Council of Europe Action Plan for Armenia 2015-2018 - a document that takes into account Armenia's continuing and newly emerged priorities in its democratic reforms and focuses on key areas of importance for cooperation - gives particular value to the reform of the criminal justice system and the fight against ill-treatment and impunity. In this context emphasis is given to the consolidation of the independence and capacities of the SIS, as well as the training of investigators on human rights issues. In particular, in the context of the multi-year joint project *Supporting the Criminal Justice Reform and Combating Ill-treatment and Impunity in Armenia training materials have been elaborated by national and international experts on 4 courses*³⁷. It should be specifically highlighted that the course on *Investigation of Cases of Torture and Other Forms of Ill-treatment and of Right to Life* is specifically designed to the strengthen both the academic knowledge and practical skills of the investigators of the SIS, thus, contributing to better investigation into cases of alleged ill-treatment.

42. In the light of the said, it is to be noted that Armenian authorities make continues efforts to ensure that the SIS is in a position to conduct effective investigation of the cases of alleged ill-treatment.

c) Measures taken to increase awareness of the Convention standards

i. Publication and dissemination of the judgments

43. The *Virabyan v. Armenia* and *Nalbandyan v. Armenia* judgments were translated into Armenian and published on the official website of the Ministry of Justice (<http://moj.am/>) and on that of the Armenian Government Representation before the European Court of Human Rights (agent.echr.am) on 21 June 2013 and on 21 July 2015, respectively. Considering the importance of the prevention of the further possible violations, as well effective implementation of the judgments, the Government ensured the dissemination thereof. Relevant authorities involved have been provided with respective information about the obligations assumed by the Republic of Armenia under the Convention (in particular, judges, prosecutors, civil servants, police officers).

ii. Education and professional trainings

44. The Government stress the importance of appropriate university education and professional training programmes as an effective and preventive mechanism for ensuring the

³⁷ A detailed information regarding the project and the courses is provided in §§ 47-49 of the present document.

Convention standards awareness-raising.³⁸ Therefore, in addition to the information provided in the previous Action Plan³⁹, the following must be mentioned. Both at the Police Academy and Academy of Justice a particular importance is given to the trainings on more advanced crime investigation methods and interview techniques.

45. Police Academy:⁴⁰ the Faculty of Trainings and Qualification of the Police Academy, *inter alia*, provides trainings on crime investigation methods and interview techniques.⁴¹ In particular, training in advanced, recognised and acceptable interviewing techniques is in the spotlight taking into consideration the peculiarities of the interviewee (such as age, views, etc.) as well as his/her procedural status (victim, witness, suspect, accused).

46. Furthermore, based on the proposals made by the Office of the Government Agent before the European Court of Human Rights, as well as by the Ministry of Justice, separate mandatory subjects (*The CPT and the UNCAT Standards, The European Court of Human Rights Judgments Finding Violation of Article 3 of the Convention delivered in respect of Armenia*) have been included in the academic curriculum of the Police Academy. Specific topics such as safeguards against ill-treatment of persons detained by the Police, specificities on holding detained persons at the Police, the standards of record keeping, standards of investigation of alleged ill-treatment cases at the Police, the standards on material conditions of places of holding arrestees and/or detainees, etc., will be taught in the framework of these subjects with the purpose of increasing both the academic knowledge and the professionalism of the Police staff in the respective field.

47. Academy of Justice:⁴² It is to be noted that the training curriculum of the Academy of Justice includes a number of courses in the framework of which more advanced crime investigation methods and interview techniques are touched upon.⁴³

48. Furthermore, in the context of the multi-year joint project *Supporting the Criminal Justice Reform and Combating Ill-treatment and Impunity in Armenia*⁴⁴ training materials have been elaborated by national and international experts on 4 courses: 1) *Investigation of Cases of Torture and Other Forms of Ill-treatment and of Right to Life*, 2) *General Methodology for Investigation of a Criminal Case*, 3) *Investigation of Cases Involving Vulnerable*

³⁸ Professional European Convention on Human Rights education and trainings are a component of the curricula of law degree programmes in Armenian universities, as well as qualification-based training programmes organised for public officials; in addition, they are offered as optional discipline to those who wish to specialise.

³⁹ For more details, see Action Plan of 16 February 2015, §§ 18-23: Reference document: [DH-DD \(2015\)206](#).

⁴⁰ In the Police Academy, the courses are provided for police officers and students who study at the Academy.

⁴¹ Beneficiaries: the operational officers of crime intelligence, the officers responsible for the cases regarding minors, the officers of inquiry of the Police.

⁴² The Academy of Justice provides trainings for acting judges and candidates for judges, prosecutors and candidates for prosecutors, investigators, as well as other public officials.

⁴³ For detailed information regarding the curricula, see Annex.

⁴⁴ This 24-month-long project is aimed at strengthening the implementation of European human rights standards in Armenia. In particular, it is expected to improve the legislation on criminal matters and institutional mechanisms for combating ill-treatment in line with European human rights standards, to strengthen the capacity of the Academy of Justice to train prosecutors and investigators on criminal justice and human rights and to improve the knowledge and skills of investigators on criminal justice and human rights, including effective investigations of ill-treatment cases.

<http://pjp-eu.coe.int/en/web/eap-pcf/press>

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Victims/Witnesses and Suspects and 4) Pre-trial Detention and Related Matters of Investigation of a Criminal Case.

49. In this framework 4 sets of training-of-trainers were organised in June 2016. During the trainings both the national and international experts introduced to the participants the study materials regarding these 4 courses, as well as the specific teaching methodology thereof. It is to be noted the study materials regarding 4 courses have already been published and the courses started in October of this year at the Justice Academy.⁴⁵

IV. STATE OF EXECUTION

50. The Government will periodically update the Committee of Ministers as to the progress of the execution of the Court's judgments under consideration.

⁴⁵ Beneficiaries: investigators of the Investigative Committee of the Republic of Armenia and investigators of the SIS in relation to the course on *Investigation of Cases of Torture and Other Forms of Ill-treatment and of Right to Life*. In respect of other 3 courses the beneficiaries are investigators of Investigative Committee of the Republic of Armenia.



TRAINING CURRICULA (2014-2016)

THE ACADEMY OF JUSTICE OF THE REPUBLIC OF ARMENIA

1. The training curriculum of the Academy of Justice includes a number of courses in the framework of which more advanced crime investigation methods are touched upon. In particular:

❖ The syllabus of the course on *Contemporary Issues of the Criminal Procedure in the Republic of Armenia* included in the training curricula of the Academy of Justice for 2014-2016 covered the topic on *Legal Positions of the Constitutional Court and the Court of Cassation of the Republic of Armenia regarding the Conditions of Lawfulness of Conducting Separate Investigative Operations*. The discussions held during the course covered the key issues on search and seizure, in particular, the issues related to seizure of information containing bank secret, key issues related to examination of crime scene, seizure, packaging and sealing of items detected during search operations, assignment, as well as conduct of expert examinations and evaluation of findings.¹

❖ Furthermore, the syllabus of the course on *Contemporary Issues on Tactics and Methodology of Criminalistics* included in the training programmes for 2014-2016 covered the topics on *Tactics of Examination of the Crime Scene* and *Tactics of Search and Seizure, Investigative Experiment and Other Investigative Operations*, and on the *Peculiarities of Investigative Tactics regarding Separate Types of Crimes*. The discussions held during the course covered tactical techniques and the peculiarities of carrying out the abovementioned investigative operations, including issues related to detection, seizure of material evidence and other issues.²

❖ The syllabus of the course on *Contemporary Issues regarding the Tactics of Criminalistics* included in the training programmes for 2015-2016 covered the topics on *Tactics of Examination of the Crime Scene, Tactics of Search and Seizure*. The discussions held during the course focused on the tactical techniques and peculiarities of carrying out the abovementioned investigative operations, including issues related to detection, seizure, custody and handling of physical evidence.³

❖ The syllabus of the course on *Contemporary Issues of Methodology of Criminalistics* included in the training programmes for 2015-2016 covered the topics on *Methodology for Investigating into Crimes against Life and Health*, as well as *Methodology for Investigating into Crimes against Public Order and Morality*. The discussions held during the courses

¹ Beneficiaries: prosecutors, investigators, as well as persons included in the list of candidates for prosecutors and investigators.

² Beneficiaries: persons included in the list of candidates for prosecutors.

³ Beneficiaries: persons included in the list of candidates for investigators.

covered issues related to the methodology of investigation of separate types of crimes, including those related to physical evidence.⁴

❖ The syllabus of the course on *Contemporary Issues on Assigning Expert Examinations and Evaluation of their Findings* included in the training programmes for 2015-2016 covered the topics on *Key Issues of Forensic Medical Examinations, Key Issues of Forensic Ballistic Examination*. The discussions held during the course covered key issues related to assigning, conduct and evaluation of findings of both the mentioned and other types of expert examinations.⁵

2. Turning to the trainings that, among the others, cover the interview techniques, the following is to be mentioned:

a) The syllabus of the course on *ECtHR Case-law in Criminal Matters* included in the training programmes for 2014-2016 covered the topics on *Right to Confrontation of Witnesses, Presumption of Innocence: the Concept and Elements, Right to Remain Silent, Transferring the Burden of Proof, Procedural Guarantees on Avoiding the Use of Impermissible Evidence*. These topics covered the issues regarding the interrogation of the accused in the light of the rights guaranteed by Article 6 § 2 and § 3 (d) of the ECHR, including advanced, recognised and acceptable techniques of confrontation. During the training, the ECtHR case-law and that of the Court of Cassation of Armenia were applied.⁶

b) The syllabus of the course on *Contemporary Issues of the Criminal Procedure in the Republic of Armenia* included in the training programmes for 2014-2016 covered the topic on *Legal Positions of the Constitutional Court and the Court of Cassation of the Republic of Armenia regarding the Conditions of Lawfulness of Conducting Separate Investigative Operations*. The discussions held during the course covered the key issues on interrogations, in particular, those of confrontation.⁷

c) The syllabus of the course on *Contemporary Issues on Tactics and Methodology of Criminalistics* included in the training programmes for 2014-2016 covered the topics on *Tactics of Interrogation, Tactics of Interrogation and Submission for Identification and Tactics of Search and Seizure, Investigative Experiment and Other Investigative Operations*. The discussions held during the

⁴ Beneficiaries: persons included in the list of candidates for investigators.

⁵ Beneficiaries: judges, prosecutors and investigators, as well as persons included in the list of candidates for judges, prosecutors and investigators.

⁶ Beneficiaries: judges, prosecutors, investigators, investigators of the Special Investigation Service, persons included in the list of candidates for judges, prosecutors and investigators.

⁷ Beneficiaries: prosecutors, investigators, as well as persons included in the list of candidates for prosecutors and investigators.

course covered the tactical techniques and peculiarities of carrying out the above-mentioned investigative operations.⁸

d) The syllabus of the course on *Contemporary Issues on Methodology of Criminalistics* included in the training programmes for 2015-2016 covered the topics on *Methodology for Investigating into Crimes against Life and Health*, as well as *Methodology for Investigating into Crimes against Public Order and Morality*. The discussions held during the courses covered issues pertaining to the methodology for investigation into separate types of crimes, including issues related to the methodology for the interrogation of the victim, suspect, accused and witnesses.⁹

⁸ Beneficiaries: persons included in the list of candidates for investigators.

⁹ Beneficiaries: persons included in the list of candidates for investigators.