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Meeting: 1310th meeting (March 2018) (DH)

Item reference: Action report (22/02/2018)

Communication from Armenia concerning the case of VIRABYAN v. Armenia (Application No. 40094/05)

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Réunion : 1310e réunion (mars 2018) (DH)

Référence du point : Bilan d'action

Communication de l'Arménie concernant l'affaire VIRABYAN c. Arménie (requête n° 40094/05)
(anglais uniquement)

THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

ACTION REPORT

CASE OF VIRABYAN v ARMENIA

Application no. 40094/05, Judgment of 2 October 2012, Final on 2 January 2013

(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
22 February 2018

EXECUTION OF VIRABYAN CASE

I. INTRODUCTORY CASE SUMMARY

1. In the *Virabyan* case the applicant at the material time (a member of one of the main opposition parties) was, while in police custody on 23 April 2004, subjected to ill-treatment characterised as torture by the Court *(substantive violation of Article 3).*

2. No effective investigation was carried out into the applicant's allegations of ill-treatment. The motion of the applicant to start criminal proceedings regarding his ill-treatment was dismissed by the Erebuni and Nubarashen district prosecutor; that decision was upheld by the Appeal Court and the Court of Cassation on 22 July 2004 (*procedural violation of Article 3).*

3. The applicant alleged that his ill-treatment was politically motivated. Despite the existence of plausible information which was sufficient to alert the authorities to the need to carry out an initial verification and, depending on the outcome, investigate, no steps were taken to investigate whether or not discrimination may have played a role in the applicant's ill-treatment. He was formally charged with inflicting violence on a public official (*violation of Article 14 taken in conjunction with Article 3 in its procedural limb).*

4. 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 § 2).*

II. INDIVIDUAL MEASURES

Payment of just satisfaction

5. The just satisfaction was paid within the deadline.[1]

Re-opened investigation

6. It has to be recalled that in the framework of the re-opened proceedings 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* (exculpatory

[1] The payment receipt in respect of *Virabyan's* case has been annexed to the *Virabyan* Action Plan of 29 November 2013.

reasons) in compliance with the principle of presumption of innocence, which was welcomed by the Committee of Ministers.[2]

7. On 10 May 2016, based on the materials of case no. 27203404, a new criminal case was instituted and a fresh investigation (no. 62212316) was launched in relation to inflicting violence on Mr.Virabyan by exceeding official authority by police officers on 23 April 2004.

8. With reference to the Committee of Ministers Decision to keep the Committee updated on the progress of the re-opened proceedings and investigation[3], in addition to the information already presented in the Action Plan of 14 October 2016 (DH-DD(2016)1142), the Government would like to provide information on investigative steps carried out and the results achieved in that respect.

Information on the investigative measures carried out reagarding the allegations of ill-treatment

9. The new investigation was launched and implemented in compliance with the Court's case-law, and the Committee of Ministers' practice. Independence and impartiality of the investigation was ensured to the fullest extent, none of the investigation team members or decision-makers were involved in the previous case or had any direct or indirect links with it. The investigation has been renewed and conducted by the independent body – Special Investigation Service (SIS) (more detailed, §§ 38-41 below).

10. At the outset, on 13 May 2016 victim status was granted to Mr. Virabyan and he gave testimony regarding the facts of his ill-treatment. In contrast to criminal proceedings no. 27203404, were the circumstances of the criminal case were based on the version of events provided by the police officer, including the alleged perpetrators (one of the main shortcomings identified by the Court), within the course of renewed investigation (no. 62212316) the credibility of police officers' testimonies were challenged by the testimonies given both by the applicant and other evidence obtained during the investigation, including the confrontation of the applicant with the alleged perpetrators (namely A.A. and H.M.). Mr. Virabyan, being recognised as a victim, was fully involved in the investigation procedure – actively participated in the investigative activities, was acquainted with the criminal case materials, was duly informed about the progress of the case and about the right to submit motions, as well as appeal before superior prosecutor and domestic court, which he successfully benefited from.

11. The investigative authorities did their utmost to accomplish a set of activities, such as identification and questioning of all relevant accessible witnesses, as well as comprehensive analysis of the events which could be obtained from the relevant state authorities. Throughout the renewed investigation all relevant witnesses, including those who have not been interrogated during the original investigation - police officers implicated in the incident, first aid doctors,

[2] Reference document: http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1273/H46-2
[3] Ibid.

forensic doctor, applicant's lawyer, as well as the applicant have been questioned and confronted with police officers. In particular, more than 30 persons have been interrogated. Some of them have been interrogated more than once to clarify the inconsistencies between the testimonies given as well as to collect new information needed. More than 8 confrontations have been held with the participation of the applicant (including upon his motion) which gave the possibility to reveal the inconsistencies between the testimonies given both during the original and renewed investigations with the prospect of confirming the applicant's allegations of ill-treatment.

Other steps taken to address shortcomings indicated by the Court

12. The Government would like to mention that the renewed investigation, which was wholly aimed at addressing the deficiencies identified, was as comprehensive as possible and consisted of all reasonable investigative activities and steps that could have been taken considering the time elapsed.

13. In particular, *as regards the shortcomings concerning the preference given to the evidence provided by the police officers and perfunctory attitude towards the applicant's allegations of ill-treatment* (see §§ 165-168 of the judgment), the Government recall at the outset the that applicant was granted the victim status (whereas in the course of the original investigation he had the procedural status of an accused person) and actively participated in the investigation – he gave testimonies regarding ill-treatment in his respect, submitted motions and challenged investigators decisions which were properly examined and addressed. All the information provided by the police officers at issues, as well as their colleges were checked and challenged in the light of the information provided by the applicant and other evidence gathered; new confrontations were conducted. As a result, charges were brought against two police officers involved (more detailed, §§ 12-17 above).

14. *As for the shortcomings in the initial investigation connected to* the failure to secure timely, proper and objective collection and assessment of medical evidence (§§ 170-174 of the judgment), it should be mentioned that despite a considerable lapse of time and the fact that some key witnesses had passed away (for instance, the doctor Ts.L. who first examined the applicant at the hospital), nevertheless, all possible investigative activities in that respect were conducted.

15. In particular, ambulance doctors of the Artashat Hospital, as well as forensic expert gave detailed testimonies about inconsistence between the hospital records and the conclusions of forensic expert opinion regarding the alleged injures on the applicant's chest and ribs. The ambulance doctors A.G. and V.H. in their testimonies clarified that the initial diagnosis at the material time was solely based on the applicant's complaints and that was the reason for them to have had noted in the report the diagnosis which had not been final and thus had been subject to further confirmation. Forensic expert A.G. mentioned that the conclusion of the expert examination certainly had been based on the results of X-ray examinations conducted at the

material time, which had not shown the injuries mentioned, thus they had not been included in the conclusion.

16. In order to clarify mentioned contradictions, it was decided to order new forensic medical examination with the participation of the applicant. Neither the new X-ray examination nor the ones conducted on 24 April and 29 April 2004 showed that there were any traces of injuries on the applicant's chest and ribs which could prove that at the material time the applicant sustained the injuries described. Moreover, during the examination the applicant made statements that prior to this examination he had also underwent X-ray examination in Belgium and the results were the same – no traces of injuries sustained were identified. Thus, it was evident that he had not sustained any injury of such kind at the material time. It is worth to mention that both the applicant and his lawyer have been duly provided with the conclusions of the mentioned forensic medical examination. After having familiarised themselves with the content of the conclusion, they made no objections or motions in that respect.

The outcome of investigation

17. Basing on the assessment of all possible evidence obtained through the above mentioned investigative measures, it was possible to establish the following

> *...while at police station police officer H.M. (head of the criminal investigation unit) entered the room where the applicant was brought and started swearing at him and asking questions about the firearm which he allegedly carried while attending the demonstration. The police officer then approached him and kicked him. The applicant grabbed the mobile phone charger which was on the desk and hit police officer H.M., injuring his eye. Having heard the noise of the scuffle, police officers entered the office and took him to another room. About ten minutes later police officer H.M. and another officer A.A. came to that room. With the motive to seek revenge for injuries sustained H.M. and A.A. having no authority to use force and clearly exceeding their authority, started brutally beating him. They threw him on the floor, punched him and kicked him on the testicle and other body areas with the intention to cause bodily harm.*

18. The investigative authorities came to a conclusion that as a result of H.M.'s and A.A.'s above mentioned actions physical damage was caused to G. Virabyan by inflicting serious injuries with lasting deterioration of his health. His rights and legal interests were damaged; in particular, the right of not to be subject torture and inhuman treatment guaranteed by the Constitution of RA has been violated. Damage was inflicted also to the state's legal interests since the Police of RA was dishonoured. On 17 and 20 February 2017 A.A. and H.M.

respectively were formally charged under Article 309 § 2 of the Criminal Code for exceeding official authority accompanied by violence[4].

Abstention from application of the statute of limitation in respect to the alleged perpetrators

19. On 10 March 2017, a decision was made to stop the prosecution against A.A. and H.M., due to the fact that statutory time limits have already passed for the crime envisaged. The applicant contested this decision. This application was dismissed by the Prosecutor's Office as it was brought belatedly. He contested the prosecutor's refusal before the court and after certain judicial proceedings, on 8 November 2017 the Criminal Court of Appeal restored the time limit and remitted the application to the Prosecutor's Office for examination on merits[5].

20. *Noting* the existence of certain practical and procedural difficulties in performing investigation years after the Court's judgment and many more years after the events which gave rise to the need for such an investigation, at the same time, *guided* by the Committee of Ministers' main position that state authorities have a continuing obligation to carry out an effective investigation and that this is part of their obligation to take appropriate individual measures to execute the Court's judgment, thus *acknowledging* that in certain cases general measures must first be adopted to allow individual measures to be fully implemented, the Prosecutor's Office made an extraordinary (for its domestic criminal procedural legislation and practice) decision, to:

- grant the applicant's motion and disregard the prescribed domestic statutory limitation ban,
- consider the issue of application of limitation period in the light of the relevant international law requirements[6], thus directly applying the latter at domestic level.

21. Hence, in order to remedy the shortcomings identified by the Court, as well under no circumstance be prepared to allow assaults on individuals' physical and moral integrity to go unpunished, within the framework of this case, the relevant authorities made a decision that criminal proceedings ought not to be discontinued on account of a limitation period, and that the

[4] It was both legally and practically impossible to qualify the actions of those two officers as torture due to the fact that at the material time Armenian legislation lacked definition of torture, otherwise it would have resulted in violation of the well established principle – "*No punishment without law*".
[5] On 23 November 2017 the applicant sent a letter to the Committee of Ministers, where in its concluding part he contested the effectiveness of appeal proceedings regarding his motion mentioned above. It is quite unclear for the Government why the applicant did not provide the Committee of Ministers with full information regarding the appeal proceedings, as it was more than obvious that while sending the letter on **23 November 2017**, he could not be unaware of the decision on granting the out of time appeal made on **8 November 2017**. It seems that he was trying to make wrong impressions about the effectiveness of domestic proceedings.
[6] Reference document: CAT/C/GC/2, § 5; *among the others*, *Case of Okkali v Turkey*, no. 52067/99, judgment of 17 October 2006, § 76; *Case of Abdulsamet Yaman v. Turkey*, no. 32446/96, judgment of 2 November 2004, §§ 53, 55, 59; *Case of Cestaro v Italy*, no. 6884/11, judgment of 7 April 2015, §§ 206-209.

renewed investigation must comply with the imperatives of the prohibition set out in Article 3. The Government consider this measure essential for both maintenance of public confidence and prevention of appearance of tolerance in unlawful acts.

22. As a result, on 15 December 2017 the decision of 10 March 2017 on termination of criminal proceedings on the ground of expiration of prescribed time limitations was annulled. On 16 February 2018 the indictment in respect of criminal charges brought against two police officers, namely H.M. (at the material time head of the criminal investigation unit) and A.A. (police officer) who were directly involved in unlawful actions was finalised. On 20 February 2018 the case was sent to the court. Thus, the investigation which was conducted within the reopened criminal case no. 62212316 has been finalised.

What can no longer be done for practical or legal reasons and what means have been deployed to overcome the existing obstacles

23. The Government consider it important also to make some clarifications in respect of the part of investigation which, due to the encountered objective obstacles, resulted in termination of criminal proceedings. In particular, regarding another police officer, A.K., who according to the applicant, right after those two police officers (H.M. and A.A.) left the room entered and started swearing at him and allegedly also hit him on his testicles with his keys, it should be mentioned that it was not possible to rectify this episode within the reopened investigation due to the following reasons: (i) according to the applicant's testimonies, he was alone with A.K. in the room, when the events described by him allegedly took place, with no other witness present; (ii) upon the applicant's motion new confrontation with A.K. was made, where A.K. merely restated the testimonies given during the confrontation conducted in the framework of original investigation on 25 April 2004; (iii) the clothes worn by the applicant were not seized and sent to the expert examination at the material time; (iv) albeit the key at issue was sent to the expert examination during the reopened investigation, the clothes at issue were not kept which excludes the possibility to find out whether the injury to his testicle could have been caused in the manner described above; (iv) the concluding part of the forensic examination made at the material time contained a phrase – "the injury to the left testicle has a traumatic origin and could have been caused by *any type of blow*", which, as it was mentioned in the judgment at issue, could be seen as suggesting a broad spectrum of possible causes.

24. The Government note with regret that the original investigation was conducted with significant omissions and discrepancies capable of further undermining its reliability and effectiveness. Given that almost 14 years elapsed after the facts complained of took place, within the renewed investigation it was impossible to establish the clear mechanism of injuries through implementation of a forensic examination. No other person except the applicant and A.K. were in the room, no other witnesses could testify or testified in that respect. The time passed rendered it also impossible to obtain other evidence. In that respect, there is a clear lack of satisfactory evidence in order to establish beyond reasonable doubt the guilt of A.K. and bring charges against him.

Results of examination of possible political motives for the applicant's ill-treatment

25. Within the framework of renewed examination all necessary and possible investigative activities (including instructions to carry out operative activities to collect information) were conducted in order to investigate a possible causal link between alleged political motives and the abuse suffered by the applicant. Almost all witnesses – Artashat Hospital doctors, forensic experts, applicant's lawyer, Artashat police station officers, investigators, prosecutors supervising the investigation at the material time, as well as other state authorities have been interrogated in that respect (overall 19 persons). The persons interrogated either stated that they had had no information regarding his political affiliation or denied the existence of a possible causal link between the alleged political motives and the abuse suffered by the applicant. G. Virabyan admitted himself that while at Artashat police station he was questioned regarding carrying firearms.

26. During the renewed investigation it was not established that the applicant's ill-treatment *per se* had been linked to his alleged participation in the demonstrations and had been politically motivated. Political motives played no role in the applicant's ill-treatment, as it was established beyond reasonable doubt that the police officers acted with the motive to seek revenge for injuries sustained by the police officer (more detailed see, §§ 12-13).

27. At the same time, all possible actions were made to investigate the circumstances of the applicant's arrest, including the anonymous telephone call (received at the Police department alleging that the applicant, while attending the demonstration, had been carrying a firearm). Within the renewed investigation due to the time lapsed it was impossible to find the records of such conversations, as the decryptions of incoming and outgoing calls have been destroyed according to the prescribed procedure.

28. Considering the fact that establishment of political motivation for certain illegal activities will often be extremely difficult in practice, the Government recall the Court's case-law according to which the respondent state's obligation to investigate possible political overtones to a violent act is an obligation to use best endeavours and not absolute.

29. In that respect state authorities made all reasonable steps to collect evidence and explore all practical means of discovering the truth and delivering objective decision. The Government consider it important to note that it is for the first time where the Court found such kind of violation in respect of Armenia. The state authorities complied with their duty to take all reasonable steps to unmask any political motive and to establish whether or not intolerance towards a dissenting political opinion may have played a role in the events.

30. To conclude, the Government of Armenia underline that as demonstrated above the individual measures undertaken in terms of *Virabyan* case encompassed a number of significant initiatives: (i) new investigation has been implemented in compliance with the Court's case-law and the Committee of Ministers practice; (ii) independence and impartiality of investigators and prosecutors was ensured to the fullest extent; (iii) the investigation was comprehensive,

consisting of all reasonable steps that could have been taken to bring charges in respect of those responsible.

III. GENERAL MEASURES

Policy Papers

31. In order to effectively execute the judgments of the Court regarding ill-treatment cases, the Government continuingly carry out a wide range of general measures which have been thoroughly submitted in its previous action plans/reports and noted with interest by the Committee of Ministers in its relevant decisions. In that respect, the Government is mindful that ill-treatment reforms could be effectively derived from clear and targeted mid-term and long-term actions. Being under both the Council of Europe (CoE) and the United Nations (UN) human rights treaty bodies permanent monitoring cycle, the State - through effective execution of the Court's judgments and reporting on the implementation of the relevant recommendations - make its constant and continuous commitment to ensure respect, protection and fulfilment of the rights set out in the treaties to which the State is party.

32. Considering that it as a long-term process, at the same time Armenian authorities constantly broaden and accelerate these reforms. Main priorities (among the others, improvement of the application of the Court's standards, criminal justice reforms, fight against ill-treatment) identified by the Armenian authorities and the CoE, as well as UN treaty bodies, are included in the Armenia's Strategy on Human Rights Protection and its Human Rights Action Plan 2017-2019 (NHRAP). According to the *Programme of the Government of Armenia for 2017-2022*[7], the Government plans to consistently implement the new NHRAP in close co-operation with the CSO representatives, as well as to develop, by the end of 2019, NHRAP for 2020-2022.

33. Being specifically targeted at strengthening the fight against any form of ill-treatment, NHRAP provides for the necessity to develop sample forms for documenting torture and ill-treatment in compliance with the standards of Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul protocol), to conduct a research to ensure consistent application of the right to redress of alleged victims of torture, to organise trainings for law-enforcement officers and advocates on prohibition of torture and ill-treatment, as well as to conduct a study with a view of revealing potential deficiencies in the referral mechanisms of the allegations of torture and ill-treatment.

34. Acknowledging the fact that Armenia made considerable progress in advancing democratic reforms and the political will demonstrated by the Armenian authorities to this effect, [8] the CoE expresses its commitment to continue supporting Armenia through the possibilities offered by the CoE Action Plan for Armenia 2015-2018. Continuing and newly emerged priorities presented in the CoE Action Plan for Armenia were synchronized with the national Human Rights Action Plan, and its implementation would be jointly assessed by the

[7] Approved by Government Decree No. 646-A (N 646 - Ա) of 19 June 2017
[8] **GR-DEM(2013)3**; also referred in the CoE Action Plan for Armenia 2015-2018, page 4.

CoE and Armenian authorities. In both documents the emphasis is given to effective prevention and investigation of ill-treatment cases.

35. Guided both by the CoE Action Plan for Armenia and national Human Rights Action Plan, among the others, the project "*Supporting the Criminal Justice Reform and Combating Ill-treatment and Impunity in Armenia"* have been launched by the CoE , and aims at strengthening the implementation of the Convention standards in Armenia in the context of fight against torture, ill-treatment and impunity, with specific objectives to support the alignment of human rights policies and practice in the field by ensuring compliance of legislative and regulatory frameworks with European standards and build the capacity of legal professionals and law enforcement officers.

36. For continuous development of judicial system an important document, namely the *draft Government Decree on Approving 2018-2023 Strategy on Judicial and Legal Reforms in the Republic of Armenia and the Action Plan deriving thereof* has been developed, which provides for new solutions or new methods of solution for the issues still existing in the field. Taking into consideration the necessity to further strengthen the mechanisms of fight against any form of ill-treatment, and bearing in mind the international obligations undertaken by Armenia, a specific strategic objective was included in the mentioned paper, which aims to improve the legislation on fight against impunity for acts of torture. In this context, according to the draft action plan, ***it is envisaged to elaborate draft amendments to repeal the statute of limitations for the crime of torture, as well as to ensure that amnesty and any other similar measures leading to impunity for acts of torture are prohibited by the end of the fourth trimester of 2018.***[9]

Measures taken to address the violations found

37. Constant measures are undertaken to guarantee the main requirements – independence, legislative and administrative framework, promptness, public scrutiny - of effective investigation established by the Court.

38. *Independence:* Guided by the requirement of the Court concerning the effectiveness of the investigation, according to which the persons responsible for carrying out the investigation should be independent from those implicated in the events, structural changes were made in the investigative system to guarantee hierarchical and operational independence.

39. Due to the legislative reforms, Police does not conduct preliminary investigation anymore. Criminal procedure legislation strictly defines and separates the functions of the bodies authorized to conduct investigation of, *inter alia*, torture cases. According to Article 190 of the Criminal Procedure Code, the cases of torture committed by public officials are investigated by the investigators of the SIS. As to the investigation of ill-treatment cases within the military,

[9] https://www.e-draft.am/projects/594/about, accessed on 17 December 2017

these crimes are investigated by the Investigative Committee of the Republic of Armenia (the Committee).

40. The Government find it essential to point out that the Committee, among the other crimes, deals with the investigation of torture cases allegedly committed during military service; all other torture cases are investigated by the SIS (more detailed about the SIS and the Committee in the previous Action plans of *Virabyan v. Armenia, Zalyan and others v Armenia*, as well as *Muradyan v. Armenia*).

41. With reference to the Committee of Ministers Decision adopted in 1273rd Human Rights meeting in December 2016, where it was (referring to latest CPT report) noted with interest that, allegations of police ill-treatment had decreased and that the CPT had made positive assessment of the SIS's activities, the Government would like to mention that they continue their efforts in that respect. Specifically, it should be recalled that NHRAP provides for the necessity to conduct a study with a view of revealing potential deficiencies in the referral mechanisms of the allegations of torture and ill-treatment to SIS. It aims at furthering the guarantees that all formal complaints about ill-treatment as well as all cases in which other information indicative of ill-treatment has emerged, are promptly forwarded to and processed by the SIS.

42. *Legislative and Administrative framework:* In order to fulfil the convention obligations, legislative framework has been introduced with both a preventive and investigative dimension. Amending the definition of torture was taken as a starting point which entailed other related comprehensive legislative reforms as well. In particular, considering that the cases of torture - either committed by private actors or public officials - are subject to public criminal prosecution, authorities are obligated to investigate into such acts regardless of assertions of reconciliation between the alleged perpetrator(s) and the victim(s). Therefore, this can be considered as an additional guarantee for ensuring the initiation of criminal proceedings in each such case (more detailed in the Action Plan of the *Virabyan* group of cases, updated on 14/10/2016).

43. It should be noted that according to new regulations envisaged in the Draft CCP[10], whenever a report of a prima-facie crime is received the prosecutor or investigator shall immediately prepare a protocol on initiating criminal proceedings (Article 178).Thus, it can be concluded that the investigative bodies would be under the obligation to start official proceedings each time they receive "credible assertions".

44. Comprehensive steps are taken to increase the effectiveness of investigation and punishment of those who are involved in torture cases. In this context, highlighting the

[10] With reference to the Committee of Ministers Decision adopted in 1273rd Human Rights meeting in December 2016, concerning the time-table for adopting the draft CCP, development and enactment of a new code is itself a comprehensive and time-consuming process which was also objectively delayed due to the major legislative (constitutional referendum of 2015) and structural reforms (parliamentary elections of 2017) taken place in the country in the course of the last few years. Consequently, the draft CCP was harmonised with the amended text of the Constitution and submitted to the Council of Europe expertise. At present, it is being revised and finalised in the light of the opinion of the European experts communicated to the Working Group in January 2017.

importance of introducing an adequate complaint mechanism against possible abuses and pressures towards persons subjected to torture, the Draft CCP provides that immediately after bringing before the inquiry body a protocol should be filed which, among the others, includes information on the injuries (if any) visible on the body or on the clothes of the arrested person, and his noticeable physical and mental state (Article 109). Furthermore, in contrast to the existing CCP, the Draft ensures that the victim of torture is eligible independently to apply to an expert for opinion and use the expert's opinion as evidence (Articles 86 and 92).

45. Considering the importance of taking immediate steps to verify the allegations raised, and acknowledging the fact that any delay would have potentially resulted in loss of evidence, the Government, in its national human rights protection policy, among the others, prioritise the following measures: (i) introduction of audio or video recording equipment in interrogation rooms; and (ii) the implementation of Istanbul Protocol.[11] The implementation of proper medical examination and documentation standards are also under the monitoring cycle of both CPT (para 82) and UNCAT (para 44).

46. *Promptness and Reasonable expedition:* Recalling the Court's case-law, Government highlight the importance of conducting prompt investigation in all ill-treatment cases, which is essential for, *inter alia*, maintenance of public confidence in the State's adherence to the rule of law and prevention of any appearance of tolerance of unlawful act. In that respect both practical and legislative measures are taken.

47. To exclude any unjustified delays and extensions, the Collegium of the Prosecutor's Office of the Republic of Armenia, as well as the Prosecutor General himself, among the others, instructed and ordered to the corresponding subdivisions of the Prosecutor's Office to:

- guarantee that the prosecutors are duly informed and guided by the relevant case-law of the Court, the Court of Cassation and Constitutional Court on ensuring the promptness and reasonable expedition of the investigation into ill-treatment cases;

- ensure that prompt, objective and thorough investigation in practice is carried out by the investigating authorities without undue delays.

48. In creation of a legislative framework for guaranteeing undue delays of investigation, the Draft CCP can be considered as a step forward. Among the others, it defines strict time-limits for pre-trial proceedings[12]. In each and every case, when the body conducting the criminal

[11] For medical evaluation and proper documentation of torture and ill-treatment cases templates were drafted in line with the Istanbul Protocol and circulated among relevant state authorities on 22 June 2017; On 1st August 2017 the Ministry of Justice made a written proposal to the Justice Academy to develop a mandatory course on effective investigation and documentation of torture in accordance with the Istanbul Protocol.

[12] According to Article 192 of the Draft CCP, in the pre-trial proceedings, public criminal prosecution may not last longer than: 1) two months from the moment of its initiation - in case of proceedings related to a non-grave crime; 2) four months from the moment of its initiation - in case of proceedings related to a medium-gravity crime; 3) eight months from the moment of its initiation - in case of proceedings related to a grave crime; 4) 10 months from the moment of its initiation - in case of proceedings related to a particularly grave crime. In exceptional cases, when the

proceedings applies for extension of detention term, it should justified before the court that, *inter alia*, all the possible procedural activities for revealing the circumstances essential for the proceedings have been conducted in due time without unreasonable delays.

49. *Public Scrutiny:* The Government would like to inform that it sustains a policy of openness and extensive cooperation with the civil society and media regarding the human rights protection and prevention of violations.

50. As to the effectiveness of investigation, the Government note that measures are taken to secure accountability, as well as to ensure both in practice and in theory sufficient element of public scrutiny of the investigation or its results. Acknowledging that the degree of public scrutiny required by the Court may vary from case to case, the Government take all necessary measures to secure that in all cases at issue, the victim (or his next of kin) be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. This element was also fully guaranteed in the framework of renewed examination (more detailed see §10).

Other important developments in respect of combating ill-treatment

51. *The Collegium of the Prosecutor's Office:* As a general information, the Government would like to inform that recently the Prosecutor's Office has adopted a policy of periodic and article-by-article analysis of the Court's case-law in general, and of the cases with respect to Armenia in particular, by revealing the main shortcomings and giving operational instructions and orders to the corresponding subdivisions of the Prosecutor's Office. Relevant case-law of the Court, the Court of Cassation and Constitutional Court is regularly distributed among the corresponding subdivisions of the Prosecutor's Office to ensure that the prosecutors are guided by them in their day-to-day activities.

52. The General Prosecutor established a follow-up and evaluation mechanism for controlling the level of knowledge concerning the Court's relevant cases, as well as the guidelines and instructions given during the Collegium of the Prosecutor's Office in that respect by: (i) including the mentioned information in the in-service attestations of investigators and prosecutors; (ii) including those questions in the final graduation exams at the Justice Academy; (iii) organising periodic prosecutorial visits to all subdivisions for controlling the practical implementation of the given instructions.

53. On 23 June 2017 the issue of raising the effectiveness of the investigation and proper documentation of ill-treatment cases was discussed during the Collegium of the Prosecutor's Office of the Republic of Armenia. Based on the detailed analysis of the Court's assessments made, *inter alia*, in the cases of *Virabyan v Armenia, Zalyan and others v Armenia, Nalbandyan v Armenia, and Muradyan v Armenia*, as well as relevant recommendations made by the CPT

interest of justice so requires, the time periods stipulated by this Article may be prolonged by a maximum of two months by a higher-ranking Prosecutor.

and CAT in respect of Armenia, Collegium of the Prosecutor's Office of the Republic of Armenia gave specific instructions identical to the assessments and recommendations mentioned above.

54. According to the information provided by the Prosecutor's Office, the Court's relevant judgments, as well as those of the Court of Cassation, including the decisions on cases of death and ill-treatment are regularly sent from the General Prosecutor's Office to various subdivisions of the Prosecutor's Office in the prescribed manner. These decisions are discussed at operational consultations, as well as within the framework of annual regular trainings of prosecutors at the Justice Academy, and the prosecutors of the Prosecutor's Office are guided by the requirements of these decisions in their everyday activities. The case of *Virabyan v. Armenia* was also duly disseminated to all subdivisions of the Prosecutor's Office.

55. The SIS and the Investigative Committee, have also established a practice of organising operational meetings and discussions of assessments made by the Court in its relevant judgments in respect of Armenia. Violations found by the Court in the *Virabyan* case have been discussed by the subordinate subdivisions as well, and relevant assignments have been given.

56. *Inter-Governmental Commission:* At the end of this year it is planned to establish an Inter-Governmental Commission on combating torture and ill-treatment in Armenia, with its anti-torture action plan including short, mid and long-term targeted activities. Its ultimate objective is to articulate unified vision on torture prevention and effective investigation in line with international obligations undertaken by Armenia (both before the CoE and UN).

57. *Workshop on the Execution of Torture related Judgments:* In March 2018, in close cooperation with CoE, it is envisaged to organise a meeting with the participation of relevant domestic authorities and the representatives from the CoE. The main objective is to create a platform for discussing the issue of furthering the effectiveness of torture prevention and investigation in the light of the Court's judgments against Armenia supervised by the Committee of Ministers.

58. To conclude, the information submitted clearly demonstrates that overall situation reveals progress and the steps taken by the Government will contribute to further prevention of violations similar to those identified by the Court.

IV. CONCLUTION

59. **The relevant authorities made genuine efforts and demonstrate necessary diligence required for effective and prompt investigation in respect of all episodes of the case. The main challenge of the renewed investigation was met, namely charges were brought against responsible police officers.**

60. **In the light of the aforementioned, the Government kindly invites the Committee of Ministers to close the supervision of the individual measures in the *Virabyan case*, and continue the supervision of general measures regarding ill-treatment and effective investigation within the framework of *Nalbandyan v Armenia and Ayvazyan v Armenia.***