

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Abel Campos
Tel: 03 88 41 26 48

Date: 02/05/2013

DH-DD(2013)493

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1172 DH meeting (4-6 June 2013)

Item reference: Action plan (24/04/2013)

Communication from Armenia concerning the case of Gabrielyan against Armenia (Application No. 8088/05).

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1172 réunion DH (4-6 juin 2013)

Référence du point : Plan d'action

Communication de l'Arménie relative à l'affaire Gabrielyan contre Arménie (requête n° 8088/05)
(anglais uniquement)



ACTION PLAN
GABRIELIAN v. ARMENIA
(Application no. 8088/05, Judgment of 10/04/2012)

INTRODUCTORY CASE SUMMARY

The case of *Gabrielyan* concerns a restriction of the applicant's right to examine witnesses against him. The testimonies in question had played a decisive role in securing the applicant's conviction. The applicant was imposed a one year suspended sentence and was released under a written undertaking not to leave his place of residence. In particular the case concerned Article 6§3 (d) taken together with Article 6§1.

I. INDIVIDUAL MEASURES

In its judgment, the European Court of Human Rights held that the Armenian Government was to pay the applicant EUR 4,100 (four thousand and one hundred Euros) for non-pecuniary damages and costs and expenses plus any tax that may be chargeable to be converted into Armenian drams at the rate applicable at the date of settlement.

Payment of just satisfaction

Details of just satisfaction

| | |
|----------------------|-------------|
| Non-pecuniary damage | 2,500 Euros |
| costs and expenses | 1,600 Euros |
| Total | 4,100 Euros |
| Paid on 28/09/2012 | |

The Court considered no other individual measure necessary.

II. GENERAL MEASURES

The Government would like to mention in particular the following general measures that have been introduced:

a) Dissemination of information about the judgment

The judgment was translated into Armenian and published on the official website of the Ministry of Justice on 8 April 2013. The relevant authorities involved in the case were duly informed about the judgment and provided with the translation. It was also respectively disseminated.

A study of the European Court of Human Rights case-law, and the *Gabrielyan* case in particular, is included in the training curriculum of the Police Academy, the Prosecutors' School, and the Judicial School, Public Service Training Courses as well as in the trainings organized for the staff of the detention facilities.

b) Legislative measures

The Government submits that the testimonial proceedings within Criminal Procedure are in the stage of structural improvements. New Draft Criminal Procedural Code has been developed by the working group of the Ministry of Justice with the support of international partners (OSCE ODIHR, GIZ, U.S. Embassy). Some provisions were drafted taking into account the violation found in *Gabrielyan* case. New approaches has been developed which provide more guarantees while taking testimonies and evidence. Relevant legal provisions in details are prescribed in the new draft Code of Criminal Procedure.

Firstly, a new mechanism (Chapter 42 titled "Judicial Deposition of Testimony") is designed to guarantee during pre-trial stage the right to confrontation (cross-examination) under Article 6§3 (d) of the Convention (see Annex 1).

Secondly, a special mechanism is designed for protection of vulnerable witnesses without harming right right to confrontation (cross-examination) under Article 6§3 (d) of the Convention (see Annex 2).

Thirdly, there are certain improvements in regard with disclosure of pre-trial evidence during trial. In particular, Article 336 of the Draft stipulates that pre-trial testimony can be disclosed and used as evidence during trial in very limited occasions, in particular: (a) the person's Testimony was deposited during the Pre-Trial Proceedings in accordance with the requirements of this Code; (b) there is a material inconsistency between the person's Testimony given in Court and his past Testimony; (c) Exercising his constitutional right, the Accused has not declared that he wishes to give Testimony before Court; (d) the Witness or Victim has unlawfully refused to give Testimony before Court; or (e) the person has deceased, and there was no reasonable necessity of depositing such person's Testimony during the Pre-Trial Proceedings due to a grave illness (see Annex 3).

All the relevant amendments have been duly discussed during the drafting procedure and particular attention was given to the case-law of ECtHR and cases v. Armenia. The aim of the relevant provisions was to prevent further possible violations which could be derived because of lack of such legal mechanisms in the Armenian legal system.

The final draft is due to examination by the National Assembly of the Republic of Armenia this year and is planned to enter into force in 2014.

Any further development or amendment concerning these legal provisions would be submitted in due time.

Annex 1

CHAPTER 42. JUDICIAL DEPOSITION OF TESTIMONY

Article 312. Scope of the Judicial Safeguard of Deposition of Testimony

The judicial deposition of Testimony shall be performed:

- a. For the purpose of securing the propriety of the confession Testimony of an, by Petition of an Investigator; or
- b. For the purpose of obtaining proper Testimony from a person who is unable to attend the Court examination or if there is a reasonable presumption that he will lawfully not give Testimony during the Court examination, by Petition of an Investigator or a Private Participant in the Proceedings.

Article 313. Petition on Deposition of Testimony

1. The Petition on deposition of Testimony shall contain the justifications of its necessity, as well as information on such Participants in the Proceedings, whose participation in the deposition is necessary.
2. Materials, which will enable the participants in the deposition to properly exercise their right of cross-questioning, shall be annexed to the Petition.
3. The Court shall render a decision to reject a Petition on deposition of Testimony, if it is not justified, or if its justifications are not convincing.

Article 314. Decision to Perform Deposition of Testimony

1. If the Petition on deposition of Testimony is granted, the Court shall render a decision to perform deposition of Testimony, which shall specify the Participant in the Proceedings, which filed such Petition, the name of the person invited to give Testimony, and the place, date, and time of the deposition.
2. The deposition of Testimony shall be scheduled within a reasonable time period, but not later than 10 days, after the rendering of the decision envisaged by Paragraph 1 of this Article.
3. In case of deposition of the Testimony envisaged by Paragraph 2 of Article 312 of this Code, the Court shall determine the date of deposition taking into consideration the time that the Participants in the Proceedings need to prepare for the cross-questioning.

4. The decision to perform deposition of Testimony shall be immediately sent to the person who filed the Petition, as well as to such Participants in the Proceedings, whose participation in the deposition is necessary. The materials envisaged by Paragraph 2 of Article 313 of this Code, too, shall be sent to such Participants.

Article 315. Procedure of Deposition of Testimony

1. The deposition of Testimony shall be performed in a Court session, in compliance with the requirements of Section 8 of this Code, *mutatis mutandis*.

2. The failure of a Participant in the Proceedings, who was duly notified, to attend shall not be an obstacle to performing judicial deposition.

3. The Court shall ensure compliance with the questioning procedure stipulated by this Code, as well as the exercise of the right of cross-questioning during the deposition of Testimony. The Court may not pose substantive questions during the deposition.

4. If an Accused has no Defender, the Court shall be obliged to explain his rights to him separately, including the right to give Testimony in the presence of a Defender. If the Accused expresses a wish to give Testimony in the presence of a Defender, the Court session shall be postponed for a reasonable time period.

5. As a result of deposition of Testimony, a questioning Protocol shall be prepared in compliance with the relevant requirements of this Code, which shall be signed by the participants in the deposition, and the presiding Judge shall confirm it with his seal.

Annex 2

Article 333. Special Procedure of Questioning

1. In exceptional cases when the presence of the person subject to questioning in Court is impossible or can undermine such person's security or the credibility of the Testimony, or when it is necessary to protect the legitimate interests of a minor Victim or witness, the Court may, based on a Party's Petition or at its initiative, perform the questioning using technical means of telecommunication (video conferencing).

2. The ability of the Participants in the Court Proceedings and the testifying person who is located elsewhere to hear and see each other clearly shall be safeguarded during any questioning performed by video conferencing.

3. At the location of the questioned person, the questioning by video conferencing shall be secured by a person chosen by the Court.

4. Before starting the questioning by video conferencing, the presiding Judge shall announce:

c. The date and time of performing the questioning, as well as information about the proceedings in the framework of which such questioning is performed;

d. The whereabouts of the questioned person, unless disclosing such information can undermine the security of the questioned person;

e. The name, patronymic, surname, status, and whereabouts of the questioned person,

f. The name and surname of the official securing the performance of the questioning; and

g. The technical means used during the questioning.

5. After completing the questioning under a special procedure, the presiding Judge shall ask the Parties whether they have any Objections regarding the course or manner of performing the questioning.

6. An electronic medium of the video recording of the questioning performed by video conferencing shall be annexed to the Court session Protocol.

Annex 3

Article 333. Special Procedure of Questioning

1. Disclosure of Testimony given during the Pre-Trial Proceedings or in Court by Petition of a Party and based upon the Court's decision in compliance with the requirements prescribed by this Code, as well as annexes thereto (drawings, sketches, schemes, photos, audio and video recordings, video shoots, and films) shall be permitted if:

a. The person's Testimony was deposited during the Pre-Trial Proceedings in accordance with the requirements of this Code;

b. There is a material inconsistency between the person's Testimony given in Court and his past Testimony;

c. Exercising his constitutional right, the Accused has not declared that he wishes to give Testimony before Court;

d. The Witness or Victim has unlawfully refused to give Testimony before Court; or

e. The person has deceased, and there was no reasonable necessity of depositing such person's Testimony during the Pre-Trial Proceedings due to a grave illness.

2. A person's past Testimony may be disclosed only after completing his questioning in Court or confirming that such questioning is impossible. Examining annexes to the Testimony shall be prohibited prior to the disclosure of Testimony.

3. Testimony given by the Accused during the Pre-Trial Proceedings outside the deposition procedure may not be disclosed, if it was obtained in the absence of a Defender, and the Accused claimed in Court that it was erroneous.