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**Date:** 29/08/2017

**DH-DD(2017)910**

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Meeting: 1294<sup>th</sup> meeting (September 2017) (DH)

Item reference: Action plan (22/08/2017)

Communication from Armenia concerning the case of GABRIELIAN v. Armenia (Application No. 8088/05)

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Réunion : 1294<sup>e</sup> réunion (septembre 2017) (DH)

Référence du point : Plan d'action

Communication de l'Arménie concernant l'affaire GABRIELIAN c. Arménie (Requête n° 8088/05)  
**(anglais uniquement)**

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DGI

22/08/2017

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**The Government of the Republic of Armenia  
Action Plan**

**GABRIELYAN GROUP OF CASES**

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

Department for Relations with the European Court of Human Rights  
Ministry of Justice of the Republic of Armenia  
16 August 2017

## EXECUTION OF THE GABRIELYAN GROUP JUDGMENTS

Case of Gabrielyan v. Armenia	(no. 8088/05, judgment of 10/04/2012, final on 10/07/2012)
Case of Ter-Sargsyan v. Armenia	(no. 27866/10, judgment of 27/10/2016, final on 27/01/2017)
Case of Avetisyan v. Armenia	(no. 13476/11, judgment of 10/11/2016, final on 10/02/2017)
Case of Manucharyan v. Armenia	(no. 35688/11, judgment of 24/11/2016, final on 24/02/2017)

### I. INTRODUCTORY CASE SUMMARY

1. The Gabrielyan group of cases concerns unreasonable restriction of the applicants' right to examine witnesses whose testimony played a decisive role in securing their conviction in court proceedings (violation of Article 6 § 3 (d) taken together with Article 6 § 1 of the Convention. The case of **Ter-Sargsyan** also concerns the failure of the domestic courts to examine the video recordings that were relied on as evidence substantiating the applicant's guilt (violation of Article 6 § 1).

### II. INDIVIDUAL MEASURES

(i) Payment of Just Satisfaction

Case of	Pecuniary Damage	Non-Pecuniary Damage	Costs and Expenses	Total
<i>Gabrielyan</i>	---	EUR 2,500	EUR 1,600	EUR 4,100
<b>Paid within time limit</b>				
<i>Ter-Sargyan</i>	---	EUR 3,100	---	EUR 3,100
<b>Paid within time limit</b>				

<i>Avetisyan</i>	---	EUR 2,400	EUR 500	EUR 2,900
<b>Paid within time limit</b>				
<b>Manucharyan</b>	---	EUR 2,400	---	EUR 2,400
<b>Paid within time limit</b>				

(ii) Other Individual Measures

2. According to the information provided by the Judicial Department of Armenia all the applicants appealed to the Court of Cassation of Armenia for the reopening of their cases at domestic level on the grounds of new circumstance. The appeal of **Gabrielyan** was granted by the Court of Cassation and the case was sent to the first instance court for re-examination, as a result of which the applicant Artak Gabrielyan was acquitted<sup>1</sup>. In the cases of **Ter-Sargsyan**, **Avetisyan** and **Manucharyan** the Court of Cassation initiated proceeding for the reopening of the cases.

The Government will periodically update the Committee of Ministers about the progress of the proceedings.

### III. GENERAL MEASURES

#### A. *Publication and Dissemination of the Judgments*

3. All the judgments of this group were translated into Armenian and published on the official websites of the Ministry of Justice ([www.moj.am](http://www.moj.am)) and the Armenian Government Representation before the European Court of Human Rights ([agent.echr.am](http://agent.echr.am)). Considering the importance of preventing further similar violations, as well as of effectively implementing the Court's judgments, the relevant authorities involved were duly informed about the judgments and provided with the corresponding translation.

4. In addition, the respective training curricula of the Justice Academy<sup>2</sup>, the Police Academy<sup>3</sup> as well as the Law Institute of the Ministry of Justice<sup>4</sup> have training courses on the Convention and

<sup>1</sup> For more details see [http://datalex.am/?app=AppCaseSearch&case\\_id=1125899906872986](http://datalex.am/?app=AppCaseSearch&case_id=1125899906872986)

<sup>2</sup> The Justice Academy provides trainings for acting judges and candidates for judges, prosecutors and candidates for prosecutors, investigators as well as other public officials.

<sup>3</sup>The relevant materials are taught at the Police Academy, particularly within the Bachelor's, Master's and Distance Learning Programmes of the Faculty of Law, as well as in the College and the Faculty of Trainings and

the Court's case-law in general, and judgments delivered in respect of Armenia, in particular. Furthermore, special courses are dedicated to the right to a fair trial including the requirements of article 6 § 3 (d) in the context of criminal proceedings. It is also worth mentioning that relevant courses on both the Convention and the Court's jurisprudence are included in the academic programmes of higher education institutions of Armenia. A new course on "Contemporary issues of international legal assistance during criminal procedure" has been elaborated and is currently taught at the Justice Academy. This course is aimed at raising the awareness of acting judges and candidates for judges about the practical implementation of international conventions and agreements about international legal assistance and the process of seeking that assistance, *inter alia*, regarding the examination of the witnesses at trial.

### ***B. Legislative and Practical Measures***

5. The Government would like to emphasise that although the violations found by the Court are mostly derived from the practice, both legal and practical developments have taken place to ensure effective application of the guarantees of Article 6 § 3 (d) and to prevent similar violations in the future.

6. The Constitution of the Republic of Armenia amended as of 6 December 2015, in contrast to the previous edition regulates the right to a fair trial in more details. In particular, Article 67 of the Constitution reads as follows: "*Everyone accused of a crime shall have (...) the right to question persons testifying against him or her, or have these persons questioned, as well as have the persons testifying in his or her favour to be summoned and interrogated under the same conditions as those for the persons having testified against him or her*".

7. Code of Criminal Procedure in force guarantees the right of an accused to examine a person who has testified against him in both pre-trial and trial stages. Firstly, CCP stipulates the obligation of the investigator to carry out a confrontation if there are substantial contradictions between the statements of an accused and some other person<sup>5</sup>. It is to be mentioned that confrontation is the sole procedural measure, which enables the investigator not only to discover the circumstances of the case during the investigation, but also is a procedural guarantee for the right to protection of the accused. Secondly, the Code enables investigative authorities as well as domestic courts to compel a witness by a reasoned decision to attend proceedings on issue if he/she fails to appear upon summons without valid reasons. Furthermore, a witness is obliged (a) to notify the investigative authority about the change of his/her residence, (b) to inform the

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Qualification of the Police Academy in the framework of subjects "Human Rights and the Police", "The Major Problems of the Theory of Human Rights".

<sup>4</sup> The Law Institute provides trainings for penitentiary officials and civil servants.

<sup>5</sup> Article 216 of CCP

summoning authority about the reasons of his/her failure to appear within time-limit set in the summons.<sup>6</sup>

8. Turning to the steps taken to improve the practice, it is important to note, that the Court of Cassation exercising its constitutional power on insuring uniform application of law since 2011 has systematically touched upon the issues of confrontation by gradually developing its case-law and establishing new guarantees for ensuring the right of the accused to examine a person testifying against him in compliance with the Court's standards. Guided by the case-law of the Court, the Court of Cassation by its decision of 20 October 2011<sup>7</sup> held that the requirements of the criminal procedural legislation would be considered to be breached if a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined.

9. The Court of Cassation during re-examination of the **Gabrielyan's** case (dated 13 September 2013<sup>8</sup>), reiterating the Court's established case-law, stated that even where the evidence of an absent witness was not sole or decisive, it still could bring to a violation of the right to confrontation when no good reason was shown for the failure to have the witness examined.

10. Further developing its case-law, the Court of Cassation in its decision of 31 May 2014<sup>9</sup> concluded that the criminal procedure legislation, in general, contains the required legislative mechanisms to guarantee the right of the defence to confrontation also during the pre-trial stage of the proceedings. Based on this conclusion it strictly defined that: (i) in all the cases when an accused refuses to testify, making use of his/her respective constitutional right, the investigator is obliged to hold a confrontation; (ii) in any stage of the proceedings the defence should be given a proper opportunity to examine a person who has testified against the accused.

11. While according to the CCP in force the judges are free to assess the evidence upon their personal conviction which in fact means to decide whether the judgment can be based on some evidence or not, the Court of Cassation in its recently adopted decision (dated 27 February 2015) directly determined that conviction can never be based on untested evidence<sup>10</sup>.

12. In the light of the Court's assessments and taking into consideration the judgments of the Court of Cassation, new draft Code of Criminal Procedure (draft CCP)<sup>11</sup> is aimed at further

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<sup>6</sup> Article 153 of CCP

<sup>7</sup> Decision no. LD/0212/01/10 (ԼԴ/0212/01/10)

<sup>8</sup> Decision no. VB-04/13(ՎԲ-04/13)

<sup>9</sup> Decision no. EAQD/0189/01/12 (ԵԱԳԴ/0189/01/12)

<sup>10</sup> Decision no. SHD/0172/01/12 (ՇԴ/0172/01/12)

<sup>11</sup> 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. According to "2017-2022 Programme of the

clarifications of legislation and provides several new mechanisms for securing the right to confrontation both during pre-trial and judicial stages<sup>12</sup>. Furthermore, in contrast to the existing code, which only defines the obligation of investigator to carry out a confrontation if there are substantial contradictions between the statements of the accused and some other person, the draft CCP establishes completely new principle of criminal proceedings – “Proper proof”, according to which the conviction of the accused cannot be solely or predominantly based on the testimony of a person whom the accused or his defender or representative had no possibility of cross-examining<sup>13</sup>.

13. Another step forward in the draft CCP is the establishment of special procedure of questioning, according to which in exceptional cases when the presence of a person subject to questioning in court is impossible or can undermine such person’s security or the credibility of his/her testimonies, or when it is necessary to protect the legitimate interests of a minor victim or witness, the court may, based on a motion of a party to the proceedings or at its initiative, perform the questioning using technical means of telecommunication (video conferencing). For this purpose the draft CCP obligates witnesses when travelling to another place, give the body conducting the criminal proceedings prior notice of his new whereabouts and the means of communication with him/her.

14. The Government emphasise that given the violations found by the Court, the shortcomings identified are in the spotlight of the Armenian authorities. In this context, having regard to the increasing number of Court’s judgments against Armenia concerning this issue and realising the necessity of taking active steps in improving the investigative authorities’ practice, a special working group was organised upon the instruction of the Prosecutor General aimed at examining the existing situation and revealing its shortcomings. On 4 August 2017 the Collegium of the Prosecutor’s Office, with the participation of other state stakeholders, discussed the results of the survey implemented by the working group and summarised the possibilities of practical implementation of the instructions of the Prosecutor General derived from that survey. Updates in this respect would be provided to the Committee of Ministers during later communications.

15. Further to the targeted dissemination of the judgments at issue, the Judicial Department of the Republic of Armenia upon the request of the Ministry of Justice, with the ultimate objective to summarise the existing practice, identify shortcomings and come up with solutions on the situations when it was not possible to identify the place of residence of the witness and to secure his/her attendance at the court hearing, undertook examination of this issue by requesting practical information on the actions of all the domestic courts.

Information on the results of this research is pending.

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Government of the Republic of Armenia”, it is planned to submit the revised draft CCP to the National Assembly for consideration by the end of 2017 (Approved by Government Decree No 646-A of 19 June 2017).

<sup>12</sup> See Action Plan on *Gabrielyan* case, submitted on 23 April 2013 – Reference Document: [DH-DD\(2013\)493E](#).

<sup>13</sup> Article 22 of draft CCP

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### ***C. Conclusion***

16. In view of the above-mentioned, the Government would like to reiterate that different types of measures have been undertaken for addressing the problems identified in the Court's judgments under consideration: among the others continuous improvement of practice through the Court of Cassation's case-law, constant seminars and trainings for raising the awareness of relevant state authorities, as well as legislative amendments and other measures aimed at improving the existing practice. The Government will keep the Committee of Ministers duly informed of any further developments.

17. At the same time the Government would like to note, that measures adopted have fully remedied the consequences of the violation of the Convention found by the Court in the case of ***Gabrielyan v. Armenia (application no. 8088/05)*** and that the Government has thus complied with their obligations under article 46 §1 of the Convention.