



ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՄՇՏԱԿԱՆ ՆԵՐԿԱՅԱՑՈՒՑՈՒԹՅՈՒՆ
 PERMANENT MISSION OF THE REPUBLIC OF ARMENIA

312/273/2013

The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organisations at Geneva presents its compliments to the Secretariat of the Human Rights Committee and has the honour to convey the information on the steps taken by the Republic of Armenia to implement the recommendations contained in paragraphs 12, 14 and 21 of the concluding observations of the Committee (CCPR/C/ARM/CO/2) adopted by the Committee at its 105th session, 9-27 July 2012.

The Permanent Mission of the Republic of Armenia to the United Nations Office and Other International Organisations at Geneva avails itself of this opportunity to renew to the Secretariat of the Human Rights Committee the assurances of its highest consideration.

Attached: 8 pages.

Geneva, 08 August 2013



OHCHR REGISTRY

12 AUG 2013

Recipients : *HR Committee*

Follow-up information in response to the Human Rights Committee's recommendations contained in paragraphs 12, 14 and 21 of the Concluding observations on Armenia (CCPR/C/ARM/CO/2) adopted by the Committee at its 105th session, 9-27 July 2012

12. The Committee is concerned about the ongoing impunity for excessive use of force by the police during the events of 1 March 2008, despite efforts to investigate the fatalities (arts. 6, 7 and 14).

The State party should establish effective investigative procedures to ensure that law enforcement officers found responsible for excessive use of force during the 1 March 2008 events, including those with command responsibility, are held accountable and appropriately sanctioned. The State party should also guarantee that victims of these acts receive adequate compensation, and that they have access to adequate medical and psychological rehabilitation.

On 1-2 March 2008, a criminal case was instituted in the Special Investigation Service of the Republic of Armenia, regarding the fact of instigating and organising mass disorders taken place within the period of 1-2 March of 2008, in Yerevan, accompanied by use of violence, causing riotous damage, arson, destructing, damaging state, public and private property, apparent thefts, showing armed resistance to representatives of the authorities, using firearm, explosive substances, objects adapted for use as a weapon, by elements of crime of Article 225(3) and Article 235(2) of the Criminal Code of the Republic of Armenia.

That is, the criminal case was also instituted with regard to the incident of mass disorders accompanied by murders. From the very first day of instituting the criminal case, full and comprehensive examination was also carried out with regard to the fact of death of 10 persons during the mass disorders.

Later, on 18 March 2009, the Law of the Republic of Armenia "On Making Amendments and Supplements to the Criminal Code of the Republic of Armenia" was adopted by the National Assembly of the Republic of Armenia and was put into effect on 23 March 2009, according to Article 3 of which, Article 225(3) of the Criminal Code of the Republic of Armenia, that is organisation of mass disorders accompanied by murders or the direct execution of such actions, was repealed. According to Article 1 of the same Law, Article 104(2) of the Criminal Code of the Republic of Armenia was supplemented with a new point 10.1, which established criminality for the murder committed by its participants during mass disorders.

On the grounds of the above-mentioned, a new criminal case has already been instituted with regard to the materials of the criminal case by elements of crime of Article 104 of the Criminal Code of the Republic of Armenia; while taking into account the fact that the incidents of causing death occurred during mass disorders on 1 and 2 March 2008, the above-mentioned criminal cases have been joined into a single proceeding.

For the purpose of clarifying the circumstances of death of the above-stated 10 persons, numerous persons were interrogated, complex forensic medical, forensic ballistic, forensic trace, forensic biological and computer technical examinations were ordered, examinations of the scene of incident were carried out, numerous assignments were given with the aim of verifying the identity of the persons found guilty, and a number of operational intelligence measures were undertaken.

The police officers, and military servants of military units of the Police Troops of the Republic of Armenia who participated in the activity aimed at preventing mass disorders on 1 March 2008, were also interrogated. All the acceptance and transfer registers of weapons were taken from the appropriate military units of the Police Troops, all the records made therein were studied, and all the weapons taken out from the arsenals were identified.

All the firearms and special means attached to the police officers and military servants, who carried out service at the site of mass disorders, and the weapons taken out of the arsenals for internal service of appropriate military units of the Police Troops were seized and submitted to forensic ballistic examination. The copies of all the mentioned documents were attached to the materials of the criminal case.

The bullets removed from the bodies of the deceased persons were compared with both the shells detected at the scene of incident and the bullets registered in the republican bullet and cartridge inventory, as well as the bullets shot from the firearms attached to the police officers and the military servants of the military units of the Police Troops of the Republic of Armenia who participated in the activities aimed at preventing mass disorders. No matches have been recorded, and the firearms from which the shots were fired have not been detected yet.

Taking into account the circumstance that pursuant to the conclusion of forensic ballistic examination, the shot traces on the fragments of "Cheremukha-7" type gas grenade removed from the bodies of 3 persons are not useful for identification of the specific weapon, therefore it has not been found out yet the type of the specific weapon due to the shot from which the specified persons were injured and died. For the purpose of receiving clarifications with regard to this and a series of other issues relevant for the case, expert examinations were also ordered in "Special Equipment and Communication" Research and Production Association and "Expert Criminological Centre" of the Ministry of the Interior of the Russian Federation. The conclusions of the stated expert examinations also approved that it was impossible to identify the gas grenades removed from the bodies of the citizens deceased and injured with the weapons from which they had been fired.

The movement of persons having used special means, the number of the shots fired thereby, the section of the scene of incident wherefrom the shots were fired, as well as the directions thereof were found out through interrogations. The specified circumstances are correlated with the scenes where the deceased persons were injured, and the circumstances of death.

By the instruction of the prosecutor exercising procedural governance over the criminal case being examined with regard to the fact of mass disorders taken place in Yerevan on 1 and 2 March 2008, a new criminal case was instituted with regard to the fact of breaching the rules of

handling weapons, i.e. special means of "KS-23" type, in the course of prevention of mass disorders, as a result thereof negligently causing death of 3 persons and bodily injuries of different severities to another 3 persons; the cases have been joined into a single proceeding.

The preliminary investigation conducted with regard to the criminal cases found out that both during the mass disorders and in the course of prevention of mass disorders, weapons of various types and calibre and "KS-23" type carbines considered as a firearm of special significance were used both by the participants of disorder and the military servants of the Police Troops of the Republic of Armenia, various types of explosive devices, including combat grenades, were applied to the police officers and the military servants of the Police Troops.

The bullets and other foreign objects of various types removed from the bodies of the citizens deceased and the citizens having received bodily injuries during the mass disorders underwent forensic ballistic examination. The received expert examination approved that gas grenades fired from "Cheremukha-7" type cartridges and the plastic plugs thereof were removed from bodies of 3 deceased citizens and 3 citizens having received bodily injuries.

In particular, "Cheremukha-7" type gas grenade cartridges with plastic floating heads were removed from the corpses of 2 persons, and "Cheremukha-7" type gas grenade cartridge was removed from one corpse.

At the same time it was found out that on 1 March 2008 on Mashtots, Gr. Lusavorich, Leo and Paronyan streets of Yerevan, "KS-23" type carbines considered as a firearm of special significance were used by 4 non-commissioned officers of the Police Troops of the Republic of Armenia.

The expert examination conducted in "Special Equipment and Communication" Research and Production Association state organisation of the Ministry of the Interior of the Russian Federation found out that application of "Cheremukha-7" type cartridges in open spaces was not prohibited; application of such cartridges against people was prohibited. Fire may be opened against sites or objects around the offenders, taking into account the direction of the wind that provides the spread of the fume cloud over the offenders.

Through the expert examination carried out in the Department of Criminal Expertise of the Police of the Republic of Armenia it was substantiated that there were extraneous traces-distortions, avulsions, traces of contact and touch on the plastic plugs of gas grenades of "Cheremukha-7" type cartridges, removed from the corpses and bodies of wounded citizens, which were caused by colliding with solid bodies or passing through any obstacle.

The same conclusion also recorded that in case of ricochet after having collided with a wall or any other obstacle, as well as after passing through any obstacle, gas grenades of "Cheremukha-7" type cartridges might, depending on the collision angle and characteristics of the material of the obstacle, cause injuries- including lethal - to a human being.

Overall 4 non-commissioned officers of the Police Troops of the Republic of Armenia were charged with breaching the rules of handling weapons- special means of "KS-23" type while preventing the mass disorders occurred in Yerevan city on 1 and 2 March 2008, as a result thereof negligently causing death of 3 persons and bodily injuries of different severities to another 3 persons.

Moreover, Thomas Hammarberg, Council of Europe Human Rights Commissioner, during his visit to Yerevan on 19-24 November 2008— at the meeting with the Prosecutor General of the Republic of Armenia— recommended an Irish expert Colin Burrows as a person possessing respective knowledge and experience in the application of special means and the technical equipment. The latter was invited to Yerevan at the expense of the Armenian side to assist the relevant expert examination for the purpose of identification of gas grenades removed from the corpses with the specific firearms, which applied a special mean of “Cheremukha-7” type, by the military servants of the Police sending through an electronic mail all the necessary information and photocopies of documents. Studying the presented materials and issues in need of clarification Colin Burrows stated that he considered such identification impossible.

Taking into account the interest of the Armenian and international community in the preliminary investigation being conducted with regard to the criminal case instituted in connection with the mass disorders occurred in Yerevan city on 1 and 2 March 2008, and, particularly, in revealing the circumstances of the death of 10 persons, as well as emphasizing the transparency of the preliminary investigation and the rights of the public to receive verified, unbiased and objective information, since 2 March 2008— from the very first day of the preliminary investigation— the investigation findings have always been made available to the public through mass media and the materials have regularly been submitted to Thomas Hammarberg, Council of Europe Human Rights Commissioner, the Human Rights Defender of the Republic of Armenia, NGOs and international organisations. Regularly updated information was placed on the websites of the General Prosecutor’s Office of the Republic of Armenia and the Special Investigation Service of the Republic of Armenia ensuring the availability thereof to all the persons interested in the issue.

The preliminary investigation of the criminal cases instituted with regard to the mass disorders occurred in Yerevan city in the period of 1- 2 March 2008 and cases of death of 10 persons is pending with regard to which the President of the Republic of Armenia has given an instruction to the law enforcement agencies to make the investigation more active. particularly, the actions aimed at revealing the circumstances of the death of 10 persons, review the evidence obtained, consider all the possible versions for revealing the cases.

A conference was convened at the Special Investigation Service of the Republic of Armenia with the participation of the investigation group on fulfilment of requirements of the instruction made by the President of the Republic of Armenia; new actions and extra work to be carried out were planned; the investigation group was assigned to review the evidence obtained with regard to the criminal case, verify— one more time— the sources thereof, review the testimonies of the legal successors of victims, those of the victims, witnesses, examine thoroughly the conclusions of all expert examinations, order additional or new expert examinations as necessary, give new instructions to operational services aimed at revelation of cases.

The investigation group under the instruction was recruited again with new investigators with high professional knowledge with proven experience in investigation of serious and complex cases.

Materials of the criminal case of several hundreds of volumes and exceeding 100 000 sheets of papers, hundreds of conclusions of expert examinations, video materials lasting several dozens of hours, as well as other evidence of the case were examined and reviewed thereby.

The examination results were discussed regularly, the investigation plan was supplemented. Hundreds of new witnesses were interrogated, almost a hundred of additional interrogations were conducted, video recordings, complex video recording and forensic ballistic expert examinations were ordered. More than dozens of instructions were given on carrying out various operational intelligence measures, particularly, aimed at revealing specific circumstances of the 10 cases of death recorded. As a result of examination of video records and photographs it was assigned to establish the identity of a number of persons— who possibly witnessed the causing of bodily injuries dangerous to life, were at the scene of the accident— and present them to the investigation. Motions were filed to the court with a request to receive the detailed bills of phone calls made from numerous phone numbers and— by the leave of the courts— the detailed bills of the mentioned phone numbers were received, studied and worked out.

During the preliminary investigation the Special Investigation Service of the Republic of Armenia repeatedly issued statements through mass media requesting those persons possessing any information concerning crimes committed at the time of the mass disorders occurred in Yerevan city on 1-2 March 2008— and mostly concerning the circumstances of the death of 10 persons— to present themselves to the Special Investigation Service of the Republic of Armenia, however, the preliminary investigation body has not received any responses, including also motions from the representatives of legal successors of victims to supplement the preliminary investigation so far.

Taking into account that experts were unable to provide exhaustive answers— by expert examinations carried out— to a number of questions relevant for the case, in order to get those answers the Prosecutor General of the Republic of Armenia—though the Ministry of Foreign Affairs— addressed his request on involvement of relevant experts to the Ambassador Sergey Kapinos, Head of the OSCE Office in Yerevan, Silvia Zehe, Special Representative of the Secretary General of the Council of Europe to Armenia, John Prescott and Axel Fischer, Co-Rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), Dafina Gercheva, United Nations Resident Coordinator, UNDP Resident Representative in Armenia, Thomas Hammarberg, Council of Europe Human Rights Commissioner assuring that all the conditions necessary for the implementation of activities of experts would be ensured to carry out expert examinations in the Republic of Armenia, as well as abroad. Specialists were not provided by certain international organisations on the grounds of absence of experts with such experience, as well as the lack of similar cooperation practice. Clarifications were provided to the Human Rights Commissioner with regard to the issue. At the request of the latter additional data were sent concerning the issues subject to clarification.

For the purpose of raising the effectiveness of public awareness with regard to the criminal case— instituted in connection with the mass disorders and cases of murders in the central streets of Yerevan city on 1 and 2 March 2008— the Special Investigation Service was seized of, the head of the investigation group and the prosecutors conducting procedural

governance over the criminal case investigated—by the instruction of the Prosecutor General of the Republic of Armenia—met the representatives of mass media twice a month. Separate interviews are also organised, written responses, comments are provided to the written enquiries.

The preliminary investigation is pending, all the necessary investigative actions, operational search activities aimed at detecting the perpetrators of crime are undertaken.

14. The Committee is concerned about the absence of a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment in places of deprivation of liberty, as well as the low number of prosecutions of such cases (arts. 7 and 14).

The State party should establish an independent system for receiving and processing complaints regarding torture or ill-treatment in all places of deprivation of liberty, and should ensure that any act of torture or cruel, inhuman or degrading treatment is prosecuted and punished in a manner commensurate with its gravity.

“The Action plan depriving from the National Strategy for the Protection of Human Rights” has been submitted to the Government for consideration on June 20, 2013. The paragraph 36 whereof envisages an examination of expediency of an independent mechanism’s establishment which will ensure the gathering and further processing of reports concerning incidents of torture and ill-treatment in places of imprisonment. As a result of this action appropriate recommendations will be made to the Government by the Ministry of Justice until 2014.

21. The Committee is concerned about the lack of independence of the judiciary. In particular, the Committee is concerned about the appointment mechanism for judges that exposes them to political pressure and about the lack of an independent disciplinary mechanism (art. 14).

The State party should amend its domestic legal provisions in order to ensure the independence of the judiciary from the executive and legislative branch and consider establishing, in addition to the collegiate corpus of judges, an independent body responsible for the appointment and promotion of judges, as well as for the application of disciplinary regulations.

The Annex 1 of the “2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia”, approved by the Directive NK-96-A of the President of the Republic of Armenia on June 30, 2012, provides for the necessity of:

- improving the procedure for qualification test for inclusion in the list of candidacies for judges;
- introducing objective criteria and procedures for the performance evaluation and promotion of judges;

- introducing a more effective model of self-governance for judges;
- reforming the procedures and grounds for subjecting a judge to disciplinary liability through guaranteeing objectiveness, fairness, efficiency and publicity of the disciplinary proceedings and so on.

Particularly, paragraph 3.1.3 of the Annex 1 provides for developing transparent and objective procedures for nominating candidates to be included in the list of candidacies for judges, as well as reviewing the procedure for interview in the Council of Justice by clarifying the tasks and topic for that stage. Paragraph 3.3.1 provides for reviewing the structure, interrelations, composition and functions of judicial self-government bodies by ensuring the internal independence of judges and contributing to the enhancement of guarantees for self-government of the judicial power. Paragraph 3.4.2 provides for studying the issue of strengthening the legislative guarantees for the independence and protection of judges within the framework of instigated disciplinary proceedings. Paragraph 3.4.4 provides for clarifying the grounds for subjecting a judge to disciplinary liability by revealing, to a possible extent, the content of obvious and gross violations of substantive and procedural laws and so on.

It should be noted that pursuant to Article 94 of the Constitution of the Republic of Armenia Independence of courts shall be guaranteed by the Constitution and laws. The powers, procedure for formation and operation of courts shall be defined by the Constitution and laws.

Article 94.1 of the Constitution stipulates that The Council of Justice shall be formed and shall act as prescribed by the Constitution and by law. The Council of Justice shall comprise nine judges, elected as prescribed by law by the General Assembly of Judges of the Republic of Armenia by a secret vote, for a term of five years; the President of the Republic and the National Assembly shall each appoint two academic lawyers.

According to Article 95 of the Constitution the Council of Justice shall impose disciplinary liability on judges, submit proposal to the President of the Republic for consent on terminating the powers of a judge, detaining him or her, involving him or her as an accused or subjecting him or her to administrative liability through judicial procedure.

Article 97 of the Constitution stipulates that judges and members of the Constitutional Court shall be independent when administering justice, and shall be governed only by the Constitution and by law. Guarantees for the activities of the judges and members of the Constitutional Court as well as the grounds of, and procedure for the liability thereof shall be defined by the Constitution and by law.

Pursuant to Article 11 of the Judicial Code of the Republic of Armenia, judges shall be independent when administering justice or exercising other powers provided for by law. When administering justice and exercising other powers provided for by law, judges shall not be accountable to anyone, which includes being free from the obligation to give any explanations, except for cases authorized by law. Interference with the activities of a judge in a manner not authorized by law shall be prohibited.

In addition, Chapter 15 of the Judicial Code of the Republic of Armenia defines the procedure of compilation and approval of the list of candidates for judges and the procedure of appointing