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Date: 20/11/2014

DH-DD(2014)1424

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Meeting: 1214 meeting (2-4 December 2014) (DH)
Item reference: Communication from the authorities (19/11/2014) in reply to DH-DD(2014)1232 concerning the case of Tadevosyan against Armenia (Application No. 41698/04)

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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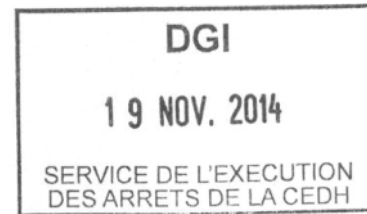
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Réunion : 1214 réunion (2-4 décembre 2014) (DH)
Référence du point : Communication des autorités (19/11/2014) en réponse au DH-DD(2014)1232 concernant l'affaire Tadevosyan contre Arménie (requête n° 41698/04) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**GOVERNMENT RESPONSE TO THE SUBMISSION OF HELSINKI CITIZENS'
ASSEMBLY – VANADZOR AND SPITAK HELSINKI GROUP**

Case of Tadevosyan v. Armenia

(no. 41698/04, final on 04/05/2009)

Department for Relations with the European Court of Human Rights

Ministry of Justice of the Republic of Armenia

18 November 2014

RESPONSE TO THE SUBMISSIONS IN RESPECT OF TADEVOSYAN CASE

Introduction

1. With reference to the communication (“Submissions of Helsinki citizens Assembly – Vanadzor and Spitak Helsinki Group in case of *Tadevosyan v. Armenia*, no. 41698/04, final on 04/05/2009”) received from the national NGO, and appreciating the cooperation with national human rights institutions, as well as other relevant national and international bodies, the Government submits the following comments.

2. The communication was submitted pursuant to the Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments for the implementation of *Tadevosyan v. Armenia* judgment, which is under enhanced supervision and is considered by the Committee of Ministers in the *Kirakosyan Group of cases (Kirakosyan v. Armenia, Mkhitaryan v. Armenia, Karapetyan v. Armenia and Tadevosyan v. Armenia)* of ill-treatment of detained persons.

3. With regard to the need of full and proper implementation of the European Court of Human Rights (hereinafter, the Court) judgment in the case of *Tadevosyan v. Armenia* the NGO presented its submissions and recommendations which are as follows: (i) *to communicate the updated action plan of the execution of the judgments in question*; (ii) *to ensure mechanisms for the full, effective and systemic implementation of the recommendations of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (hereinafter, the CPT), the RA Ombudsman as a National Preventive Mechanism (hereinafter, the NPM) as prescribed by the Optional Protocol of the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter, the OPCAT), as well as Public Monitoring Group at the RA Police system detention facilities (hereinafter, the Public Monitoring Group)*; (iii) *to provide the arrested persons with an unrestricted access to their advocates from the very first moment of their arrest.*

(i) **Recommendation to communicate an updated action plan of the execution of the judgments in question**

4. In this respect, the Government would like to stress that the above-mentioned cases raised systemic issues, which demand long-term structural reforms for the effective implementation of the judgments and prevention of further possible violations. Improvement of the penitentiary system is under the permanent attention of the Armenian authorities. Moreover, information concerning the process of the execution of the judgments in question is periodically sent to the Committee of Ministers (the last communication on *Kirakosyan Group of cases* is dated on 9 April 2010). An updated Action Report covering all the measures taken for the full execution of the *Kirakosyan group* judgments has been drafted to communicate to the Committee of Ministers. The revised and consolidated Action Report was submitted for consideration on 18 November 2014.

(ii) **Recommendation to ensure mechanisms for the full, effective and systemic implementation of the recommendations provided by the CPT, the NPM, the Public Monitoring Group**

5. With regard to this, the representatives of the NGO have raised the issues concerning the material conditions in police detention facilities (*among the others*, lack of natural light, food provision, sanitary conditions), as well as the lack of effective mechanisms for lodging complaints with regard to the poor conditions in detention facilities.

a) *Material conditions in police detention facilities.*

6. ***Access to natural light:*** The accessibility to natural light depends mainly on the facility conditions of the establishments which, in some extent, do not allow fully resolving the given issue. However, measures have been undertaken to minimize the inconveniences connected to the access to the natural light. It can be stated that, currently, the detention facilities specifically mentioned in the submissions presented by the NGO (namely, RA Police detention facilities of Aparan, Artashat, Dilijan, Ijevan, Yeghegnadzor, Tchambarak, Kotayk, Martuni, Tumanyan, Vardenis and Noyemberyan), as well as all the other detention facilities of the RA Police, have access to natural light and are equipped with the artificial lighting at the maximum extent possible at the moment.

7. ***Food Provision:*** The Government would like to note that Armenian authorities make continuous efforts to bring food provision standards in line with the basic requirements set out in the reports of monitoring bodies (*among the others*, the CPT, the NPM, the Public Monitoring Group). In addition to the existing regulations¹ governing the food provision in detention facilities, “Internal Regulations of the RA Police Detention Facilities” (hereinafter, the Internal Regulations) was adopted by the Government Decree No. 574-N of 5 June 2008. According to the requirements of § 30 of the Internal Regulations, the detainees are provided with sufficient free food and, in compliance with Form 6 confirmed by the same Decree, the meals consist of breakfast, lunch and dinner. In this respect the Government stresses that the provision of 3 adequate daily meals per inmate is conducted on mandatory basis and is not subject to any discretion. Furthermore, since 2013 the minimum per diem allocated per inmate of detention facilities for the food provision has continuously and dynamically increased (in 2013 the number increased for 15%, and for pregnant women, nursing mothers, juveniles and ill persons it was increased for 12%; in 2014 these numbers increased for 20% and 24%, respectively – the recent increased allocations will come into force starting from 01 January of 2015). Thus from 2013 to 2014 allocated amounts have had an increase of 38% and for pregnant women, nursing mothers, juveniles and ill persons of 39%.

8. ***Sanitary Conditions:*** It has to be stressed that according to § 183 of the Internal Regulations, wet cleaning is carried out in solitary and other cells of the detention facilities every day by using disinfectants. In all the cells and solitaries of the detention facilities main cleaning is carried out not later than once a month. Pursuant to the requirements of § 185 of the Internal Regulations, Medical Facility of the RA Police and the State Sanitary Controlling Bodies exercise systemic supervision over the proper conduct of the mentioned obligations of administrations of detention facilities.

It is also worth to mention that the above-mentioned improvements have been highlighted during the visit carried out by the CPT in 2010. In its Report the CPT noted with satisfaction that the refurbishment of police detention facilities has been pursued over the last few years. The detention facilities visited had been renovated and generally offered good material conditions of detention. Cells were of an adequate size (e.g. single cells measured at least 6 m² and double-occupancy cells measured from 9 to 13.5 m²) and properly equipped (e.g. beds, table, stools, sink). The CPT also noted that detainees were provided with proper bedding for overnight stays, had ready access to a toilet, could take a shower at regular intervals and were provided with basic personal hygiene items.²

9. ***Ventilation:*** Since most of police detention facilities were constructed during the Soviet Union where central ventilation system had not been installed, this raised certain issues for its proper provision: the full elimination of such kind of systemic problems has a long-term perspective and absorbs a significant amount of financial resources available. Nevertheless, the Government

¹ Government Decree No. 587-N of 15 May 2003

² CPT (info) 2011 – 24, §39

notes that all the necessary measures are taken to ensure the provision of ventilation in all detention facilities mostly by using electric conditioning. As to the ventilation of Sisian detention facility, specifically mentioned in the NGO submissions, the Government acknowledges that because of the absence of electric ventilation certain inconveniences connected to the air conditioning exist. Nevertheless, the ventilation is carried out on regular basis. Moreover, at the moment construction works in Sisian detention facility are being carried out aimed at solving the problems in question fully. With regard to the detention facility of Tavush, the Government would like to note that, according to the information provided as a result of the conducted inquiries, the newly constructed building was examined by the officers of the Police Headquarters, Medical and Economic Departments, positive conclusion was given and it was exploited by the Order of the Head of the Police on 3 June 2013.

10. **Water Supply:** There are water tanks located in the detention facilities, specifically mentioned in the NGO submissions (i.e. Goris, Yerevan, Ararat, Artashat, Akuryan, Nairi and Talin detention facilities), as well as in all the others. Thus, in case of failure of the water supply it is provided through the above mentioned tanks. It should be noted, although no water tanks are located in Ijevan detention facility, water containers are situated for the cases of water supply suspension.

11. **Periodical Construction Works/Cosmetic Refurbishment:** During 2013-2014, cosmetic renovation works were conducted almost in all the detention facilities upon the instruction of the Head of the RA Police. Furthermore, if the existing sanitary conditions of the examined detention facilities are found not to be in compliance with the fixed standards, there is a practice of temporary suspension of the functioning of the facility. For example, based on the results of complex-inspections carried out by the Police Headquarters in Masis custody of Ararat Regional Department of the Police, its functioning was temporarily suspended because of the high level of humidity till the end of the construction works. The construction works are at the process at the moment. As to the Mush detention facility, capital construction works have been carried out. At the material time it is being furnished and will be exploited as soon as these works are completed. In addition to the information provided hereinabove the Government states that, the construction works are aimed not only at improving the existing materials conditions, but also at providing the detention facilities with some technical equipment. In this framework, *among the others*, cameras were installed in all corridors of detention facilities pursuant to § 124 of the Internal Regulations.

b) Lack of effective mechanisms for lodging complaints with regard to the poor conditions in detention facilities

12. In reference to the arguments brought by the representatives of the NGO about the lack of effective mechanisms for lodging complaints with regard to the poor conditions in detention facilities, the Government would like to note that in addition to the existing regulations prescribing the right of detained persons to file complaints under departmental control³, an “Order on Ensuring the Application of Legal Standards of the CPT” has been signed by the Head of the RA Police on 27 November 2013. This document is aimed at strengthening the existing protective guaranties and mechanisms. According to the Order proper record of cases of ill treatment and complaints against such treatment, as well as the mechanisms of presenting reports to the management of the RA Police on any case of detecting violation of CPT standards and on any *prima facie* similar complaint should be ensured. Moreover, it’s provided that the relevant materials together with the complaint should be sent immediately, as prescribed by law, to the RA Special Investigation Service.

³ *Among the others*, Article 13 §1 (3) of the Law on Holding Arrested and Detained Persons; §§46, 52 of the Internal Regulations of the Police Detention Facilities” confirmed by the Government Decree No. 574-N of 5 June 2008

c) *Other steps taken*

13. ***Trainings and Assistance:*** The Government would like to underline that provision of continuous assistance to the administration of detention facilities, as well as organization of periodical professional trainings and seminars, aimed at preparing adequately trained and proficient team in the respective field, are in the center of attention of Armenian authorities. The Police Headquarter gives periodic assistance to the staff of the RA Police System, by providing practical and methodological guidelines in respect of the implementation of the CPT standards and recommendations. For example, in 2013 and 2014 consultation workshops have been organized by the Headquarter of the Police during which the heads of subordinate headquarters and operative divisions, as well as the officers of detention facilities participated. A number of major problems regarding detention facilities were discussed. Methodological guidelines and Q&A Handbooks were provided to the subordinate headquarters containing legal acts regulating the activity of detention facilities.⁴ The aforementioned is of continuous nature and is in the spotlight of the administration of the Police. Furthermore, for the purposes of improvement of the academic knowledge in that field, relevant materials are included in both the academic and professional training curricula of the Police Academy.⁵

(iii) ***Recommendation to provide the arrested persons with an unrestricted access to their advocates from the very first moment of their arrest***

14. In its submissions, the NGO mentioned that existing regulations under the Article 71 of the RA Criminal Procedure Code⁶ create certain delay for the access to the defence attorney. In this respect, the Government would like to express its disagreement by the following:

First of all, both the national legislation and the case-law ensure the right to legal aid from the very moment of the factual deprivation of liberty. In that respect, the RA Court of Cassation stated in its decision⁷ that from the very moment of the factual deprivation of liberty a person should have a preliminary legal status of “a brought person”, which grants him/her, *among the others*, a right to have an access to an attorney. Additionally, the Inquiry Body is obliged to guarantee the implementation of the rights of the “brought person” which includes an obligation not to hinder the access of the attorney to the Inquiry Body.

Secondly, it is a well-adopted practice that defence attorneys prove their identity, as well as provide the attorney license before communicating with the person deprived of liberty. According to the NGO submissions due to this process, the advocate is unable to meet his/her client until getting an “authorization” to do so by the investigative body. With reference to this, it is to be mentioned, that

⁴ Methodological guidelines and Q&A Handbooks contain articles from the Law of the Republic of Armenia “On Protection of Human Rights”, extracts from the CPT Reports made after their visits to Armenia, articles of the OPCAT, the list of the members of the Ombudsman’s Administration and the members of the Council of Experts on prevention of torture at the Ombudsman’s office, the procedure of the activity of the Council of experts, confirmed by the Head of Police on 14 January 2005, as well as video recordings.

⁵ The relevant materials are taught at the Police Academy, particularly within the Bachelors, Masters and Distance Learning Programmes of the Faculty of Law, as well as in the College and the Faculty of Trainings and Qualification of the Police Academy, in the framework of subjects “Human Rights and the Police”, “The Major Problems of the Theory of Human Rights”.

⁶ To prove his/her status, the advocate must present his/her identification document, a document issued by the Chamber of Advocates in support of the fact that he/she is an advocate and a signed document by the suspect or the accused approving his/her acting as an advocate or the authorization of the competent authority under the Criminal Procedure Code on appointing him/her as an advocate to the investigative agency

⁷ The RA Court of Cassation, Decision on the Criminal Case No. EADD/0085/06/09 (ԵԱԴԴ/0085/06/09) in respect of Gagik Melikyan, dated on 18.12.2009

the existing practice is not aimed at giving “authorization” which can create additional obstacles for the defence attorneys, but merely at checking whether the advocate presented all the documents required by law.

15. Moreover, the Government indicates that even more simplified procedure is stipulated by Article 110 of the Draft Code of Criminal Procedure, which provides the minimum rights of the arrested person. Accordingly, an attorney is not required to present a signed document by the suspect or the accused approving his/her acting as an advocate.

Conclusion

16. Appreciating the cooperation with the national human rights institutions, other relevant national and international bodies, as well as the recommendations provided by them, the Government would like to emphasize that the human rights protection and implementation of the best international standards in respect of the material detention conditions are in the center of permanent attention of Armenian authorities. In this respect, continuous efforts are made to bring the field in compliance with the existing best international standards.