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Contact: Anna AUSTIN
Tel: 03 88 41 22 29

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Meeting: 1214 meeting (2-4 December 2014) (DH)

Item reference: Communication from NGOs (Helsinki Citizens' Assembly-Vanadzor and Spitak Helsinki Group) (26/09/2014) in the case of Tadevosyan against Armenia (Application No. 41698/04)

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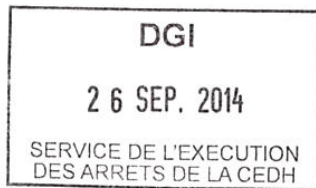
Réunion : 1214 réunion (2-4 décembre 2014) (DH)

Référence du point : Communication d'ONG (Helsinki Citizens' Assembly-Vanadzor et Spitak Helsinki Group) (26/09/2014) dans l'affaire Tadevosyan contre Arménie (Requête n° 41698/04) (**anglais uniquement**)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2014)1232 : Communication from NGOs in Tadevosyan against Armenia.

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To: Department for the Execution of
The ECtHR Judgments,
DGI-Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex
France

From:
Helsinki Citizens' Assembly-Vanadzor
59 Tigran Mets, 2001, Vanadzor, Armenia

Spitak Helsinki Group
Torosyan 23/2, Spitak, Lori Region, Armenia

SUBMISSION OF HELSINKI CITIZENS' ASSEMBLY – VANADZOR and SPITAK HELSINKI GROUP
in case

Tadevosyan v. Armenia, application no. 41698/04, judgment of 2 December 2008

I. Introduction

"Helsinki Citizens Assembly - Vanadzor" NGO, as well as "Spitak Helsinki Group" NGO are non-political, non-religious, non-profit NGOs, which unite individuals who support the supreme principles of democracy and human rights as values. In order to achieve their goals, both organizations implement the following activities: (1) monitoring and data collection, (2) legal consultation and legislative analysis, (3) advocacy and strategic litigations. For years, the HCA Vanadzor has been engaged in the protection of a person's right to be free from ill-treatment, issues related to the protection of human rights within the activities of the police, monitoring of the ongoing police reforms and strengthening of human rights protection mechanisms. A representative from the Spitak Helsinki Group NGO is a member of the Public Monitoring Group at the detention facilities of the Police system of the Republic of Armenia (RA), and in its capacity of a member of such group regularly visits such facilities.

We hereby submit our communication pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments, to draw your attention to the need of full and proper implementation of the ECtHR Judgment in the case of Tadevosyan v. Armenia. The case concerns the

enhanced supervision procedure and is considered by the Committee of Ministers in the same group with the judgments on the cases on ill-treatment of *Kirakosyan v. Armenia*, *Mkhitaryan v. Armenia* and *Karapetyan v. Armenia*. On April 9, 2010, the RA Government presented an action report on the execution of the judgments in the cases of *Kirakosyan v. Armenia*, *Mkhitaryan v. Armenia* and *Tadevosyan v. Armenia*.

As general measures, the action report mentions the repair works performed at the detention facilities of the RA Police system in compliance with the RA Presidential Order № NK-328-NG dated December 28, 2004 and the amendment of July 8, 2005 to the RA Law on Conditions for Holding Arrested and Detained Persons stipulating that the living space allocated to each inmate shall not be less than four square meters. The Government of Armenia has failed until now to produce any further information on the implementation of this judgment.

In that regard, we provide information about several aspects of conditions in the RA police detention facilities and on the lack of effective mechanisms for lodging complaints on poor conditions in such facilities. We also provide recommendations for a proper implementation of the judgment.

In its judgment on the case *Tadevosyan v. Armenia*, the Court held that there had been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention. Moreover, the Court found that there is a lack of effective complaint mechanism against poor detention conditions. In terms of the mechanisms for complaint against poor conditions in detention facilities, the Court stated as follows: "In the present case, the Government claimed that the applicant had had a remedy at his disposal, namely that he could have lodged a complaint under Article 13 of the RA Law on Conditions for Holding Arrested and Detained Persons. The Court observes, however, that the Government did not produce any evidence to demonstrate that the remedy relied on was sufficient and effective".

II. Detention conditions in police detention facilities

1. General remarks

While the detention facilities of the RA police system have been refurbished since 2004, and according to the information provided by the Police, almost all the detention facilities of the Police system have undergone facelift renovation¹, they still face unsolved problems identified both by the entities responsible for public control at the national level and by the Committee for the Prevention of Torture (CPT).

¹ Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 60, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

The 2013 Interim Report of the RA Ombudsman produced within the scope of Independent National Prevention Mechanism² stated: “The conditions at detention facilities remain deplorable and consequently affect the health of the detainees. Particularly, the cells at the detention facilities lack lavatories and laundries. As a result, along with the difficulties for the employees of the detention facilities, the coordination of such processes entails corruption risks, since they usually do the laundry at their own expense (e.g. at the police detention facilities of Abovyan, Vagharshapat and Spitak). Furthermore, even the investigators of the detention facilities complain that it is fairly cold at the facilities since the interrogation room lacks both heating and natural light.”

2. Lack of natural light

The issue of lighting was raised by the Public Monitoring Group of detention facilities of the RA Police (hereinafter the Monitoring Group). In its report of 2013, the Group mentioned the poor natural and artificial lighting at 11 detention facilities (RA Police detention facilities of Aparan, Artashat, Dilijan, Ijevan, Yeghegnadzor, Tchambarak, Kotayk, Martuni, Tumanyan, Vardenis and Noyemberyan)³. In the Annual Report of 2012, both the artificial and natural lighting of all the 32 detention facilities were considered poor⁴. According to the Monitoring Group, artificial lighting is obstructed by the security metal netting and poor lamps. As stated in the Annual Report of 2012, it is impossible to read or write any documents with artificial light during late hours at any of the detention facilities.

During its visit in 2010, the CPT also noted that the access to natural light was limited. Particularly, the Committee stated: “The delegation observed that access to natural light was somewhat limited in the cells of many detention facilities visited (e.g. in Yerevan, Charentsavan, Martuni, Sevan and Vardenis), due to the small size of the windows, which were sometimes covered by several layers of metal netting.”⁵

3. Food provision

The RA Government Decree N° 587-N of May 15, 2003 established the minimum free food portions for the inmates of the detention facilities of the RA Police system; however, the studies showed that the allocated

²RA Ombudsman as Independent National Prevention Mechanism (Interim Report, 2013), Yerevan, 2013, file:///C:/Users/LENOVO/Documents/Downloads/pdf_7752511044_arm_AKM_REPORT_2013.pdf

³Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 56, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

⁴Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2012, Yerevan, 2013, p. 20, http://policemonitoring.org/DownloadFile/4072arm-Report_2012.pdf

⁵ Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2010, Strasbourg, 17 August 2011, Para. 39: <http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.pdf>

funds appeared insufficient to provide the detainees with three meals a day.⁶ Thus, the inmates of detention facilities usually have 1 and in some cases 2 meals a day.⁷ According to the information provided by the RA Police in 2013, the minimum per diem allocation per inmate of detention facilities was increased to provide the inmates with free food;⁸ yet, it should be noted that since the increase is quite small, the allocated amount still appears not enough to cover 3 adequate daily meals per inmate. Such state of affairs may also entail corruption risks.

4. Sanitary conditions

Among its major concerns, the Monitoring Group also pinpointed the ventilation, and inadequate sanitary conditions at detention facilities.⁹ In particular, the group has observed that the ventilation is mostly provided by opening windows, whereas the RA Police detention facilities in Sisian, Tchambarak and Tavush have only fixed windows, and windows in some other detention facilities can be opened only by using a ladder.¹⁰

As for the sanitary conditions, the Monitoring Group mentioned that the lavatories at 7 detention facilities (RA Police detention facilities of Goris, Ararat, Ashtarak, Ijevan, Talin, Tavush and Noyemberyan) were not disinfected and were in anti-sanitary conditions. The group also found that the water taps in some of the cells, in 8 detention facilities (RA Police detention facilities of Goris, Yerevan, Ararat, Artashat, Akhuryan, Ijevan, Nairi and Talin) did not function.¹¹

III. Departmental control mechanisms for redress for alleged violations of Article 3 due to detention conditions

Under Article 13(1)(3) of the RA Law on Conditions for Holding Arrested and Detained Persons, the detained or arrested persons are entitled to lodge, both personally and through their advocates or legal representatives, applications and complaints on violations of their rights and freedoms to the administration or superior authorities of detention or penitentiary facilities, courts, prosecutor's office, the ombudsman,

⁶ Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 55.

http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

⁷ RA Ombudsman as Independent National Prevention Mechanism (Interim Report, 2013), Yerevan, 2013, p. 25

file:///C:/Users/LENOVO/Documents/Downloads/pdf_7752511044_arm_AKM_REPORT_2013.pdf

⁸ Ibid, p. 57

⁹ Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

¹⁰ Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 55, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

¹¹ Ibid.

national and local government bodies, public associations and political parties, mass media, as well as international institutions or organizations for the protection of human rights and freedoms.

Paragraph 46 of the Internal Regulation of RA Police System Detention Facilities approved by RA Government Decree № 574-N dated June 5, 2008 sets the procedure for filing complaints by detainees under the departmental control. The Regulation states particularly that the officers of the detention facilities are obliged to receive both written and verbal recommendations, applications and complaints from the detainees during their daily inspection tours. All the recommendations, applications and complaints addressed to the administration of the detention facilities are recorded in the relevant register and reported to the chief of the territorial police department (as for the detention facilities of Yerevan police department, such recommendations and complaints must be reported immediately to the chiefs of such detention facilities) who must take measures to address them. Paragraph 52 of the document prohibits any persecution of detainees for their recommendations, applications and complaints on violation of their rights and legal interests. The officials responsible for the persecution are legally liable for such conduct.

While the legal regulations described above generally prescribe the right to complain against the violations of the rights of the detainees, at least at the departmental control level, the mechanism for exercising this right cannot be considered efficient. According to the official information obtained by our organization, no complaints and recommendations were received in 2012-2013 from detainees held at the detention facilities of Yerevan Police Department and the detention facilities at the police precinct of Taron Police Department of Vanadzor. In this respect, another noteworthy fact is that a person may be detained at a detention facility for a maximum of up to 72 hours and any complaint or recommendation on detention should be reported in the shortest possible time as otherwise, it will become of no use for the person in question.

From our observations, we can conclude that the arrested persons are reluctant to complain against their detention conditions and consistently follow up on their complaints and possibly avoid doing so, or are merely unaware of their rights. The involvement of an advocate could serve as a positive stimulus and additional guarantee. Nevertheless, the timely access to advocate's services is also of intrinsic importance. In this respect, it should be noted that if the advocate is engaged only after the arrest of the person, the investigative agency may delay the meeting of the advocate with the client. According to Article 71 of the RA Criminal Procedure Code, to prove his/her status, the advocate must present his/her identification document as well as 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 decree of the competent authority under the Criminal Procedure Code on appointing him/her advocate to the criminal investigative agency. In practice, the advocate is unable to meet his/her client until he/she is "authorized" to do so by the criminal investigative agency. This process often delays the first meeting of an

advocate and a client and has an adverse impact on the effective protection of the rights of detainees. It also substantially hinders the detainee's right to file complaints.

Hence, despite the implementation of relevant measures on detention facilities of the RA Police system under a number of police reforms (2011-2012 Police Reforms Program and 2013-2014 Police Reforms Program) and the refurbishment works in the Police system completed in accordance with the RA Presidential Order of 2004 referred to by the RA Government, it should be noted that a number of problems remain with ensuring both adequate conditions of detention, and effective mechanisms for complaining against such conditions.

IV. Recommendations:

Taking into account the above mentioned, we would like to propose the following recommendations:

1. Given the fact that the cases have been attributed to the enhanced procedure, the Government of Armenia should present the updated action plan of implementation of the judgments in the issues above without further delay.
2. Ensure mechanisms for the full, effective and systematic implementation of the recommendations of the CPT, of the RA Ombudsman in his capacity of the independent national preventive mechanism as prescribed by the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the Public Monitoring Group at RA police system detention facilities;
3. Provide the arrested persons with an unrestricted access to their advocates since the very first minutes of their arrest by reducing to zero any interference of the investigative agency.

On behalf of the Helsinki Citizens' Assembly-Vanadzor

A. Sakunts

On behalf of the Spitak Helsinki Group

A. Babayan

Copy sent to:

Ministry of Justice of RA
41a Halabyan, 0079, Yerevan, Armenia

