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Communication from Armenia concerning the case of Stepanyan against Armenia (Application No. 45081/04)

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

Référence du point : Bilan d'action

Communication de l'Arménie concernant l'affaire Stepanyan contre Arménie (requête n° 45081/04) (***anglais uniquement***)

ACTION REPORT

STEPANYAN v. ARMENIA

(Application no. 45081/04, Judgment of 27/10/2009, final on 27/01/2010)

I. CASE SUMMARY

The case of *Stepanyan v. Armenia* concerned a violation of Article 6 § 1 of the Convention. The applicant was arrested, and, within the same day, was taken to the local police station, charged, brought before a court and convicted under Article 182 of the Code of Administrative Offences to administrative detention of 8 days. The European Court of Human Rights (hereinafter referred to as "the Court") found that his right to a fair trial was breached before the Criminal and Military Court of Appeal on account of the lack of an oral hearing.

In particular, the Court held that the applicant's conviction was based on the evidence given by the two arresting police officers, who acted as the main and only witnesses in the case. The applicant, in his extraordinary appeal, denied in detail the account of events as presented by the police officers in question. However, the president of the Criminal and Military Court of Appeal upheld the applicant's conviction without having heard him and the above-mentioned police officers.

The Court considered that, in the particular circumstances of the case, the applicant's guilt or innocence could not, as a matter of fair trial, be properly determined without a direct assessment of the evidence given in person by the applicant and the two police officers in question.

II. INDIVIDUAL MEASURES

(i) Just Satisfaction

In its judgment, the Court held that the Government is to pay the applicant EUR 1,200 (one thousand two hundred) in respect of non-pecuniary damage and EUR 1,000 (one thousand), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom.

Non-pecuniary damage	1,200 Euros
Costs and expenses	1,000 Euros
Total	2,200 Euros

The just satisfaction award was paid on 26 April 2010.

(ii) Other individual measures

The applicant is no longer detained. Furthermore, after the final judgment of the Court, there was no claim brought by the applicant for the reopening of the case. Thus, the Government considers

that no other individual measures seem necessary with respect to this case, aside from the just satisfaction already paid.

III. GENERAL MEASURES

(i) Dissemination of information about the judgment

The judgment was translated into Armenian and published on the official website of the Ministry of Justice on 27 January 2010 (http://moj.am).[1] The judgment was also published in the Official Gazette No. 50(784), 2010. 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 *Stepanyan* case, in particular, is included in the training curricula 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 detention facilities. Moreover, this judgment, among the other judgments against Armenia, has been included in the respective training curriculum of the newly established Justice Academy of Armenia.

(ii) Legislative measures

At the outset, the Government would like to stress that, starting from 2005 Constitutional reforms, it has become a high priority for the Armenian authorities to make systemic reforms in the field of Administrative justice. As a result post-reform legislation has been amended and put in full compliance with Convention standards.

With respect to the case in question, even before the judgment was held by the Court, the Armenian authorities had considered the developing case-law of the Court, and as a result the relevant Article regulating *"Administrative Detention"* of the Code of Administrative Offences of the Republic of Armenia was recognized incompatible with the Convention standards and was consequently abolished on 16 December 2005, by Law no. HO-32-N. This means that, starting from 2005, no administrative detention may be applied for any administrative offence.

In order to have more precise and effective administrative proceedings, specialized Administrative Courts were created in 2007, by the Judicial Code of 21 February 2007. Administrative Courts function as from 1 January 2008 and they act as courts of the first instance.

With the view to have the process more comprehensively regulated, an Administrative Court of Appeal was created in 2010. The judicial acts of the Administrative Court of Appeal may be challenged in the Chamber of Civil and Administrative Cases of the Court of Cassation. This is to say that a full and effectively operating system of administrative justice has been established in Armenia in the recent decade that is effective not only in theory, but also in practice.

Moreover, on 5 December 2013, a new comprehensive Code of Administrative Procedure (hereinafter referred to as "the CAP") was adopted. This code regulates all the legal relations that arise during administrative proceedings.

According to the CAP, the parties of administrative proceedings have all the fundamental procedural rights. In particular, they enjoy the rights:

- To have their case heard;

[1] http://moj.am/storage/files/legal_acts/legal_acts_9298434_8.pdf

- To submit evidence in their own defense;
- To make motions of self-challenge;
- To present evidence and to take part in their examination;
- To question each other, the other participants of the trial, witnesses, experts and interpreters, to make motions, as well as give explanations to the court;
- To present their position, proposals, objections and arguments in respect of all the issues arising during the process of case examination […].

a) Right to an oral hearing (violation of Article 6 §1)

The Government would like to note that all the proper measures have been undertaken to meet the requirements of Article 6 and to create enough legislative guaranties for the protection of the person's right to an oral hearing in the administrative proceedings.

According to the CAP, the examination of administrative case is conducted orally. The examination of case may be conducted in written order, only in the cases stipulated by the CAP: the only case is the mutual agreement of parties to have the case examined in the written procedure.

According to the CAP, the parties may question each other, the other participants of the trial, witnesses, experts and interpreters, to make motions, as well as give explanations to the court.

Moreover, in the CAP, it has been stipulated the whole chapter consisted of 24 extensive articles to regulate the issue of examination of evidences, including the testimonies of witnesses.

As the violation of Article 6 § 1 was found by the Court regarding the Court of Appeal, the Government would like to highlight that according to Article 142 of the CAP:

> ***"…the Court of Appeal shall examine the administrative case under the same rules that are stipulated in the given code for the first instance court, taking into account the peculiarities foreseen in the given article.***"

This means that all the guarantees that are stipulated for the examination of the case in the first instance court are equally applicable for the Court of Appeal.

The above mentioned provisions of the CAP exclude the risk of repetition of similar violation in future, as they clearly guarantee the right to an oral hearing in administrative proceedings and the right to adversarial proceedings. These rights were not sufficiently clear, and precisely guaranteed, in the previous domestic law, which in the case at issue brought to the violation of Article 6 of the Convention.

b) Jurisdiction of the Court of Appeal

In paragraph 45 of its judgment, the Court mentioned as follows:

> ***"… it is not clear from the relevant provisions of the Code of Administrative Offences whether the jurisdiction of the President of the Criminal and Military Court of Appeal was limited only to questions of law or also fact[.]"***

In this connection, the Government presents that Criminal and Military Court of Appeal was liquidated and a Criminal Court of Appeal is created instead. Moreover, as stated above, all the administrative cases are now examined by the specialized Administrative Court of Appeal.

According to Article 144 of the CAP, the Administrative Court of Appeal shall review the judicial act of the first instance Administrative Court within the frames of the appeal. It shall take appropriate measures to examine the case in substance.

Besides, according to the same provision, the Administrative Court of Appeal is entitled to accept the evidence that were not presented and examined during the proceedings in the first instance court. This means that the Administrative Court of Appeal shall examine both the questions of law and the questions of fact.

The above mentioned and other provisions of the CAP do remedy the situation and clearly regulate the jurisdiction of the Administrative Court of Appeal in administrative proceedings.

c) Other substantive issues: right to access to a court and right to appeal (non-violation)

Although the mentioned complaint was presented out of six-month period and thereby was rejected by the Court, the Government anyway would like to note that several commitments have been undertaken to create effective and adequate remedies to provide a direct access to a court. In conjunction with this issue, it is worth mentioning that the previously existing confusing and inadequate procedure of appeal under Article 294 of the Code of Administrative Offences has been totally abolished.

As presented above, a new Code of Administrative Proceedings has been adopted that clearly regulates the whole mechanism of appeal. Thus, the Government would also like to underline that all legislative measures have been taken to prevent further possible violations in that respect (see also Appendix).

IV. STATE OF EXECUTION

The Government considers that all necessary measures have been taken and the case can be closed.

Appendix

Constitution of the Republic of Armenia

(adopted by referendum 05/07/1995, amended 27/11/2005)

Article 18: Everyone shall be entitled to effective legal remedies to protect his rights and freedoms before judicial as well as other public bodies.

Everyone shall have the right to protect his rights and freedoms by any means not prohibited by the law.

Everyone shall be entitled to receive the support of the Human Rights Defender for the protection of his rights and freedoms on the grounds and in conformity with the procedure prescribed by the law.

[…]

Article 19: Everyone shall have a right to restore his violated rights, and to reveal the grounds of the charge against him in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice by an independent and impartial court within reasonable time.

Judicial Code of the Republic of Armenia

(adopted by National Assembly 21/02/2007)

Article 3: The Courts

[…]

4. The Courts of Appeal [*acting within the territory of the Republic of Armenia*] are the following:

1) Criminal Court of Appeal;

2) Civil Court of Appeal;

3) Administrative Court of Appeal.

5. The Administrative Court and the Administrative Court of Appeal are specialized courts.

Code of Administrative Procedure of the Republic of Armenia

(adopted by National Assembly 05/12/2013)

Article 3: Right to apply to Administrative Court

1. Every natural or legal person is entitled to apply to Administrative Court, by the procedure prescribed by this Code if he/she considers that by the administrative decision, action or omission of a public authority or a local self-governmental body or their officials:

1) Have been violated or could have been directly violated person's rights and freedoms stipulated by the Constitution of the Republic of Armenia (hereinafter, referred as the Constitution), international treaties, laws or other legal acts, including if:

a) obstacles were created for fulfillment of those rights and freedoms;

b) the necessary conditions for the fulfillment of those rights were not provided, although they should have been insured by the force of the Constitution, international treaties, laws or other legal acts;

2) An obligation was set on him/her unlawfully;

3) He/she has been subjected to an administrative responsibility upon an unlawful administrative order.

Article 127: Entering into force of the judgments of the Administrative Court

1. The judgments of the Administrative Court on the merits of the case shall enter into force after a month since publication unless otherwise provided by this Code.

Article 130: Right to appeal

1. Persons who are entitled to bring an appeal against the judgment on merits as well as intermediate judicial acts stipulated under Article 131 of this Code of the Administrative Court are:

1) Participants of judicial proceedings;

2) Those non-participants of the judicial proceedings about the rights and obligations of whom was held a judicial act on merits […]

Article 141: The procedure of considering the case in the Court of Appeal

1. The appeals brought against the judgment on the merits of the case shall be considered and decisions shall be held collegially, by three judges [...]