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Meeting: 1377th meeting (June 2020) (DH)

Item reference: Action Report (21/02/2020)

Communication from Armenia concerning the case of Mirzoyan v. Armenia (Application No. 57129/10)

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Communication de l'Arménie concernant l'affaire Mirzoyan c. Arménie (requête n° 57129/10) (**anglais uniquement**)

DGI

21 FEV. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

ACTION REPORT CONCERNING THE CASE OF MIRZOYAN V.

ARMENIA¹

Office of the Representative of the Republic of Armenia
before the European Court of Human Rights

21 February 2020

¹ Case no 57129/10, final on 23/08/2019, supervised by the Committee of Ministers under the standard procedure

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SERVICE DE L'EXECUTION
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EXECUTION OF THE CASE OF MIRZOYAN v. ARMENIA

INTRODUCTORY CASE SUMMARY

The case concerns the killing of the applicant's son, a military conscript, in 2007 by a duty officer in charge of the military unit and the failure by the authorities to give compensation to the applicant for non-pecuniary damage.

The Court noted that the perpetrator was subjected to criminal responsibility for having killed the applicant's son, as well as the commanding officers of the military unit were found to have been responsible for the incident in question for failing to properly assess the perpetrator's personality which constituted an admission by the domestic authorities of the breach of the State's positive obligation to protect the right to life (violation of Article 2).

The Court also considered that since no possibility to apply for compensation for non-pecuniary damage had been available to the applicant under the law at the material time, the applicant was deprived of an effective remedy (violation of Article 13).

INDIVIDUAL MEASURES

In the case of *Mirzoyan v. Armenia* the just satisfaction was paid within the deadline. As indicated in the judgment, the perpetrator was subjected to criminal responsibility for having killed the applicant's son and sentenced to fifteen years' imprisonment. The results of the investigation have not been disputed by the applicant. Furthermore, as a result of the internal investigation into the incident carried out by the Ministry of Defence the commanding officers of the military unit were found to have been responsible for the incident in question in so far as they had failed to assess properly H.G.'s personality, moral characteristics and professional competencies. Against this background, the Government considers that no other individual measures appear necessary.

GENERAL MEASURES

Publication and Dissemination of the Judgment

The case was translated into Armenian and published on the official websites of the Ministry of Justice (www.moj.am), the Armenian Government Representation before the European Court of Human Rights (www.echr.am) and the Armenian Legal Informational System (www.arlis.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.

In addition, the respective training curricula of the Justice Academy², the Police Academy³ as well as the Centre for Legal Education and Implementation of Rehabilitation Programmes⁴ have training courses on the Convention and the Court's case-law in general, and judgments delivered in respect of Armenia, in particular. It is also worth mentioning that relevant courses on both the Convention and the Court's case law are included in the academic programmes of higher education institutions of Armenia.

Legislative and Practical Measures

Violation of Article 2

Extensive information regarding the general measures, and more specifically the army-related reforms, has been presented to the Committee of Ministers by the Government in the submissions regarding the *Muradyan v. Armenia* case (no. 11275/07, final on 24 February 2017). Therefore, for the measures adopted to remedy the violations found and prevent further similar violations, reference is made to the action plans submitted by the Government of Armenia on 27 August 2017 and 12 July 2019 on the case of *Muradyan v Armenia*⁵.

Violation of Article 13

As detailed in the action report submitted by the Government of Armenia on the case of *Poghosyan and Baghdasaryan* on 23 March 2016 based on which the Committee of Ministers closed the examination of the case by its Resolution [CM/ResDH \(2016\)184](#) adopted on 6 September 2016, compensation for non-pecuniary damage in case of a number of violations of fundamental rights and freedoms, including the right to life, is prescribed by the Civil Code of Armenia.

Additionally, although the existing legislation stipulates benchmark amounts, domestic courts enjoy certain margin of appreciation. According to the Civil Code the court shall determine the amount of compensation of non-pecuniary damage in accordance with the principle of reasonableness, equitableness and proportionality (Article 1087.2 § 5). When determining the amount of non-pecuniary damage, the court shall consider the nature, degree and duration of physical or psychological suffering, the consequences of the damage caused, the presence of guilt at the time of causing the damage, personal features of the person who has suffered the non-pecuniary damage as well as other relevant circumstances (Article 1087.2 § 6). Non-pecuniary damage shall be subject to

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

³ 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 Qualification of the Police Academy in the framework of subjects "Human Rights and the Police", "The Major Problems of the Theory of Human Rights".

⁴ The Centre for Legal Education and Implementation of Rehabilitation Programmes provides trainings for penitentiary officials and civil servants.

⁵ [http://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)909E](http://hudoc.exec.coe.int/eng?i=DH-DD(2017)909E); [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)794E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)794E)

compensation regardless of the guilt of the official at the time of causing the damage (Article 1087.2 § 3). The amount of compensation may, in exceptional cases, exceed the maximum amount provided, where grave consequences have been emerged as a result of the damage caused (Article 1087.2 § 8).

Lastly, the State or the Community that provided compensation are entitled to file a regressive action against the state or local self-government authority or the official whose decision, action or inaction resulted in violation of person's fundamental rights and freedoms, and thus, compensation. The ground for this action is the presence of guilt. The preventive policy behind this provision is to increase the responsibility of competent state bodies, local self-government authorities and officials in passing decisions, taking actions or inactions concerning a person's fundamental rights and freedoms (Article 1087.2 § 10).

As to the statistical data regarding the practical application of the compensatory remedies provided, reference is made to the action plan submitted by the Government of Armenia on the *Ashot Harutyunyan group of cases*⁶ on 18 January 2019.

STATE OF EXECUTION

In the light of the above mentioned and recalling the nature of the case, the Government of the Republic of Armenia considers that measures adopted have fully remedied the consequences of the violation of the Convention found by the Court in this case and that Armenia has complied with its obligations under Article 46 § 1 of the Convention.

⁶ [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)75E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)75E)