SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

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Date: 06/05/2020

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

Communication from an NGO (Open Society Foundations - Armenia) (21/04/2020) in the case of Mushegh Saghatelyan v. Armenia (Application No. 23086/08) and response from the authorities (05/05/2020) (appendices in Armenian are available at the Secretariat upon request)

Information made available under Rules 9.2 and 9.6 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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Réunion : 1377e réunion (juin 2020) (DH)

Communication d'une ONG (Open Society Foundations - Armenia) (21/04/2020) relative à l'affaire Mushegh Saghatelyan c. Arménie (requête n° 23086/08) et réponse des autorités (05/05/2020) (des annexes en arménien sont disponibles auprès du Secrétariat sur demande) ***[anglais uniquement]***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

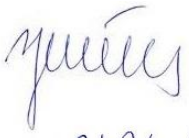
DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int

20 April 2020

No. 23086/08
Mushegh Saghatelyan group of cases v. Armenia

Dear Madam/Sir,

This message is sent to you in the context of consideration by the Committee of Ministers of the execution by the Republic of Armenia of the Mushegh Saghatelyan group of cases no. 23086/08. Please find enclosed a Communication prepared by the below listed organisations pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, as well as 6 Annexes.
Should you need any further clarifications, please do not hesitate to contact us (contact person: Arpi Harutyunyan, Open Society Foundations-Armenia, e-mail: arpi@osi.am).

On behalf of Open Society Foundations-Armenia  D.Amiryan

On behalf of Helsinki Citizens' Assembly Vanadzor  A. Sakunts

On behalf of Transparency International Anti-Corruption Center  S. Ayvazyan

On behalf of Protection of Rights without Borders NGO  A. Melkonyan

On behalf of Law Development and Protection Foundation  G. Petrosyan

On behalf of Helsinki Committee of Armenia  A. Ishkanyan

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20 April 2020

COMMUNICATION
In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Open Society Foundations-Armenia, Helsinki Citizens' Assembly Vanadzor, Transparency International Anti-Corruption Center, Protection of Rights without Borders NGO, Law Development and Protection Foundation, Helsinki Committee of Armenia,

MUSHEGH SAGHATELYAN GROUP OF CASES V. ARMENIA (no. 23086/08)

Introduction

1. This group of cases concerns various violations of Articles 3, 5, 6 and 11 of the European Convention on Human Rights ('the Convention') in the context of the dispersal by the authorities of the wide-scale opposition protests against the outcome of the 2008 presidential elections in Armenia, summarised in the Government's Action Plan of April 2020. Suffice it to provide here an overview of the violations found by the Court in this group of cases:

   - **ill-treatment** of the applicant, an opposition activist, **at the hands of the police** after the dispersal of the protests of 2008 and the **absence of any official investigation** into his allegations that his injuries had been caused by police brutality (substantive and procedural violations of Article 3) (*Mushegh Saghatelyan* case *v. Armenia*)
   - **unlawful arrest and detention**, with the arrest not having been formally acknowledged for the first 16 hours and going 12 hours over the time-limit under domestic law for bringing a suspect before a judge (violation of Article 5 § 1) (*Mushegh Saghatelyan* case)
   - **unlawful detention** of the applicant between 1 and 13 May 2008 **not authorised by a court** as required by law (violation of Article 5 § 1). (*Ayvazyan* case)
   - **failure of the domestic courts to provide relevant and sufficient reasons for the applicants' subsequent detention** (violations of Article 5 § 3) (in all cases of this group)
   - **disproportionate and unnecessary dispersal of the protests**, which had been peaceful, **and subsequent rounding-up and detention of activists** (violation of Article 11) (*Mushegh Saghatelyan* case, *Ter-Petrosyan* case, and *Matevosyan* case)
   - reliance, by the domestic courts, on police testimony to convict the applicants, while summarily rejecting their allegations of inconsistencies in the case and their requests to call

defense witnesses, resulting in the **criminal proceedings against the applicants**, taken as a whole, having been **conducted in violation their right to a fair hearing** (violation of Article 6 § 1). (*Mushegh Saghatelyan* and *Matevosyan* cases)

- **conditions of the detention amounting to degrading treatment** due to lack of personal space, natural light, fresh air and unsanitary situation (violation of Article 3) (*Gaspari* case)
- **lack of an effective domestic remedy** for grievances under Article 11 (violation of Article 13 in conjunction with Article 11). (*Ter-Petrosyan* case)

2. This submission is made in response to the Action Plan of April 2020 concerning the *Mushegh Saghatelyan* group of cases submitted by the Armenian Government. It provides information regarding the progress made and prevailing challenges in Armenia concerning the issues raised by the European Court of Human Rights ('the Court') (listed above), and the adequacy of the steps made or envisaged by the authorities for the effective implementation of these judgments. In anticipation of the Committee of Ministers' first examination of this group in June 2020, we include a series of recommendations which we hope will assist the Committee in determining the scope of its supervision of the execution of these judgments.

3. About the co-signing organisations:

4. Since 1997 *the Open Society Foundations-Armenia* supports individuals and organizations in fight for human rights, accountable and transparent governance, justice and equality. The Foundation has had a direct and irreplaceable contribution to the advancement of the civil society in Armenia and dissemination of human rights and democratic values. The Foundation's work, among other fields, includes human rights protection, promotion of the rule of law and democracy in Armenia, fight against torture and ill-treatment, improvement of conditions in closed institutions, legal reforms, ensuring the accessibility of legal aid for vulnerable strata of the society, etc.

5. *Helsinki Citizens' Assembly-Vanadzor* is a non-governmental human rights organization that unites individuals who value democracy, tolerance, pluralism and principles of human rights supremacy.
   In order to achieve its goal, the organization implements the following activities: monitoring and data collection, legal consultation and legislative analysis, advocacy and strategic litigation. A target group of the NGO includes victims of torture.

6. *Transparency International Anticorruption Center's* goal is to promote good governance in Armenia through reducing corruption and strengthening democracy. The objectives of the organization are a) to support effective anti-corruption policy and transparent and accountable governance; b) to support holding free, fair and transparent elections and the establishment of electoral institute; c) to promote reasonable, transparent and accountable public resource management, including the management of state and community property and financial resources; d) to foster democratic processes, including protection of human rights and public participation in the governance processes of the country.

7. *"Protection of Rights without Borders" NGO*, established in 2009, is aiming to promote protection of human rights, to foster the principles of the rule of law and good governance in Armenia. The Organization is specialized in judicial and human rights monitoring, legal research and evaluation, advocacy and strategic litigation. The activities of the PRWB include representation and protection of victims of torture and police abuse during peaceful assemblies.

8. *Law Development and Protection Foundation* is a non-governmental organization, the goals of which, amongst others, include: Promotion of democracy and rule of law in Armenia; Promotion and protection of human rights in Armenia; Improvement of the legislation and law-enforcement practice in compliance with the international commitments of Armenia; Promotion of human rights education; Figuring out and solution of systemic problems in legislation and law enforcement practice, including through strategic litigation; development of educational and analytical materials.
9. *The Helsinki Committee of Armenia* is a human rights organization founded in 1995. Since the day of its foundation the Helsinki Committee of Armenia continuously monitors the human rights situation in Armenia and presents annual report, protects the rights of vulnerable groups. One of the directions of the organisation's work is the right to be free from torture, with regard to which the organization has a number of researches and publications.

Individual measures

10. In its Action Plan of April 2020 and Action Report concerning the case of *Ayvazyan v. Armenia* and *Voskerchyan v. Armenia* of October 2019, the Government provides information regarding the execution of the individual measures in the cases under this group. Stating that no additional individual measures are required in the *Ayvazyan*, *Voskerchyan*, *Gaspari* and *Ter-Petrosyan* cases, the Government calls for these cases to be closed.
11. This submission will focus on the individual measures taken or envisaged with regards to the applicant in the *Mushegh Saghatelyan* case. The co-signing organisations are of the strong opinion that the instant case shall not be closed at this stage due to reasons described below.

MUSHEGH SAGHATELYAN v. Armenia (no. 23086/08)

Re-opening of criminal proceedings against the Applicant

12. Following the Court's judgment, the criminal case against Mr Saghatelyan was overturned and sent to new examination to the first instance court by decision of the Court of Cassation of 12 June 2019. According to the judgment of the First Instance Court of General Jurisdiction of Yerevan of 25 November 2019, Mr Saghatelyan was acquitted after trial as national court stated that the applicant's actions lacked *corpus delicti*.[1]

Criminal proceedings into allegations of torture

13. According to the information provided by the General Prosecutor's office of the Republic of Armenia, following the judgment of the ECHR, on 09 August 2019 a criminal case was initiated by the Special Investigative Service under Article 309 of the RA Criminal Code for exceeding

[1] The criminal case against Mushegh Saghatelyan no.ԵԴՄԴ/0396/01/08, available at: http://datalex.am/?app=AppCaseSearch&case_id=37717646879228300

official authority associated with violence. On the same day the criminal case was joined to the general criminal case related to the events of 1-2 March 2008. As of 1 April 2020 no person has been charged for criminal acts against Mr Saghatelyan.[2]

14. It is noted with concern that the investigation of ill-treatment of the applicant within the general criminal case related to the events of 1-2 March 2008 cannot be effective due to the volume and instances of human rights violations and the victims involved in the case, due to lapse of time, as well as the material and human resources of the Special Investigative Service. The effectiveness of the investigation and insurance of criminal liability of perpetrators of crimes against the applicant might be affected also by legislative obstacles, such as statute of limitations provided by the RA Criminal Code (also discussed below). The Government's Action Plan does not take into consideration any of these concerns or provide any information on what steps are being taken to ensure the effectiveness of the investigation.

General Measures

Developments regarding Article 3 of the Convention

15. The Armenian Government continuously commits to amend the legal framework in order to combat torture however no proper steps have been taken to address a number of identified gaps both in law and in practice.

Legislative and practical measures

16. Although the Criminal Code of Armenia was amended on 9 June 2015 and Article 309.1 criminalizes torture in compliance with the definition of torture under Article 1 of the UN Convention against Torture it does not criminalize inhuman and degrading treatment as crime. Article 309 of the Criminal Code criminalizes exceeding official authorities by public officials and cases related to torture and other ill-treatment are qualified under this heading as "exceeding official authorities associated with violence".

17. Criminal cases are often not initiated, and the initiated cases are often suspended based on the reasoning that an official's actions did not reach the level of ill-treatment that would allow the action to be qualified as torture. In the best scenario, the official is held criminally liable for exceeding official authorities, which fails to account for the gravity of the crime and does not reflect the current standards in the field of human rights protection.

18. Armenia's weak legislative framework in respect of the prohibition of torture and inhuman or degrading treatment or punishment has been subject to criticism by numerous international and national organizations. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment strongly recommends the responsible bodies to immediately take the following measures in order to ensure full compliance with international standards on the prohibition of torture and other cruel, inhuman or degrading treatment: a) Amend the Criminal Code and criminalize the full spectrum of actions envisaged under Article

[2] Information letter of RA General Prosecutor office of 1 April 2020, no. 2-2-20.

1 and Article 16 of the Convention against torture, b) Significantly increase the maximum punishment for crimes and c) Eliminate statute of limitation for such crimes.[3]

19. The co-signing organisations express regret about a recent development that appears to run counter the Government's stated commitment to strengthen legal protections against torture and ill-treatment. Thus, the Draft Human Rights Strategy and Action Plan for 2020-2022 foresaw the criminalization of inhuman or degrading treatment as an action to bring domestic law into conformity with international standards.[4] However, the mentioned action was removed from the Draft before the adoption of the Strategy by the RA Government's decision N 1978-L made on December 26, 2019.[5]

20. We sent inquiries to the RA Prosecutor General's Office, RA Special Investigation Service and RA Police in order to present, in a more complete way, the issue of effective investigation of torture.

21. The comprehensive analysis of statistical data shows that there is an increase in the official investigations into torture cases. Nevertheless, there is also an increase of suspended criminal cases (on acquittal grounds) initiated on torture. This applies to a considerable number of investigated criminal cases. During 2015-2016 no criminal case was sent to court with an indictment. One case was sent to court with indictment in 2017 and one in 2018[6] (also see the Annexes attached).

22. According to the official court statistics as for 31 December 2019, only 5 criminal cases were sent to the first instance courts with indictment related to torture under Article 309.1 of the Criminal Code.[7] Two judgments were issued by first instance courts in 2019, but not a single public official was convicted for torture.

23. Based on the first judgment the accused was acquitted and by the second judgment the charge was requalified and the accused was convicted for exceeding official authority associated with violence under Article 309 part 2. Thus, investigation into torture cases cannot be considered effective in the RA, given the fact that crime reports and investigated criminal cases are mostly suspended on justifying grounds and that there is a very small number of cases sent to court with indictment.[8]

24. The Criminal Code of Armenia provides for statute of limitations for the crime of torture. The co-signing organisations are of the strong belief that to put an end to impunity for acts (inaction) of torture and to comply with its international obligations, the Armenian government shall amend the Criminal Code to ensure that statute of limitations does not apply for the crime of torture under any circumstances. This issue has been flagged by the United Nations Committee against Torture (UN CAT) in 2012 and 2017,[9] as well as in the decisions and notes of the Committee of Ministers of the Council of Europe.[10]

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[3] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/019/20/PDF/G1901920.pdf?OpenElement
[4] See Strategy of Protection of Human Rights and Draft Action Plan for 2020-2022 Stemming from it, action14, 21.10.2019.
[5] See https://www.e-gov.am/sessions/archive/2019/12/26/
[6] Official court statistics, available at: http://court.am/hy/statistic-inner/3 for 2018 and http://court.am/hy/statistic-type/1 for 2017.
[7] Official court statistics available at http://court.am/hy/statistic-inner-by/185/1.
[8] Enclosed inquiries.
[9] Concluding observations on the fourth periodic report of Armenia, 26 January 2017, CAT/C/ARM/CO/4, paras.7-8, available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiz2h%2fRs7Wsu8%2feBy9Sh53xzTb9oMILhzi1Cvt3D8bP6U7WVa87PjauSC1TjtSllEo2YXxTMp6xfpRxPnqE0GKW3p%2f1PTA%2b%2fZnpmuAVGv1MZ, last accessed on 31 March 2020.
[10] 1369th meeting decision, CM/Del/Dec(2020)1369/H46-2, 1318th meeting (05-07 June 2018) – Notes.

25. It is not the first time that the Armenian Government assures in its Action Plan that it is envisaged to repeal the statute of limitations for the crime of torture, as well as to ensure that amnesty and any other similar measures leading to impunity for acts of torture are prohibited by incorporating relevant legal provisions. In a number of action plans[11] submitted to the Committee of Ministers in the period from 2018 to 2020 the Government has repeatedly stated its intention to ensure that the statute of limitations is not applicable to the crime of torture. However, much to the concern of the co-signing organisations, the authorities have repeatedly postponed the implementation of this measure.

26. Elimination of the statute of limitation for the crime of torture was also envisaged by the 2018-2023 Strategy on Judicial and Legal Reforms and its Action Plan.[12] However, the Government failed to implement it, and the measure was copied into the new National Strategy on Human Rights Protection for 2020-2022 and its Action Plan. According to the latter, the Government has scheduled to amend the legislation aimed at elimination of statute of limitations for the crime of torture by the end of 2020.[13]

27. In practice police officers accused or found guilty of torture continue to benefit from the statute of limitations, including in cases supervised by the Committee of Ministers.[14]

28. It is commendable that on 7 March 2018 a **new law on pardons** was adopted, according to which a pardon cannot be granted in respect of torture as an absolutely prohibited act. However, similar measures should be taken to ensure that no perpetrator of torture benefits from amnesties and any other form of escaping from criminal responsibility and/or punishment.

Ill-treatment of participants of peaceful assemblies

29. As the case of *Mushegh Saghatelyan v. Armenia* concerns the police misconduct and ill-treatment of the applicant as a participant of the peaceful assembly, we invite the Committee of Ministers, in its supervision of the execution of this group of cases, to devote special attention to such practices, which have been widespread in Armenia for years.

30. It is well documented by the national and international organizations and media that the peaceful assemblies in June 2015, July 2016 and April 2018 have resulted in widespread police violence.[15] There have been situations of using the disproportionate force upon apprehension, beatings during their transfer to and in the police departments, as well as cases of inhuman and degrading treatment by police officers. There were threats by gun and threats for subjecting individuals to physical abuse, with some claiming that there were demands to stop participation in the demonstrations and rallies. On some occasions the apprehended individuals, especially those refusing to identify themselves, were not provided with food, water and were not

[11] See more at ACTION REPORT CASE OF VIRABYAN v ARMENIA dated 22 February 2018,
UPDATED ACTION PLAN CONCERNING VIRABYAN GROUP OF CASES, dated 24 January 2020
[12] Government Decree on Approving the 2018-2023 Strategy on Judicial and Legal Reforms and its Action Plan, this measure was supposed to be implemented by the end of 2018,
[13] Action Plan of the National Strategy of Human Rights Protection 2020-2022, point 14, available at:
http://www.justice.am/storage/uploads/1Razmavarutyun.Mijocarumner.pdf
[14] See more at UPDATED ACTION PLAN CONCERNING VIRABYAN GROUP OF CASES, submitted on 2
4 January 2020, available at https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD%282020%2990E%22]}
15 PRWB, Union of Informed Citizens, Helsinki Committee of Armenia, Asparez, and Helsinki Citizens' Assembly of Vanadzor, Report on Human Rights Violations in Armenia During July 17-30 2016, Summarized version, available at: http://prwb.am/wp-content/uploads/2017/06/Report-on-Human-rights-violations-in-Armenia-during-july-17-30-of-2016-Summerized-version.pdf, Human Rights Watch, World Report 2016-Armenia, available at: https://www.hrw.org/world-report/2016/country-chapters/armenia

permitted to use toilets.[16]For illustrating these issues in a case example, the co-signing organisations refer to one example of many, where a participant of mass demonstrations of July 2016, D.S. was captured by police, handcuffed, forcibly taken into the police car and was severely beaten in the car in head and in different parts of the body. He received more than 15 blows on his head while in police car. Moreover, one of the policemen spat at him. The beatings were continued in the police base, including in head and in different parts of the body. Due to the severe pain from the beatings, he lost consciousness while police officers mocked at him, that he was simulating his situation. He was left handcuffed all time with his hands tightly fastened in his back.

Effective investigation of allegations of torture

31. Despite the adoption of amendments to the Criminal Code (art. 309.1), providing for a definition and criminalization of torture, in accordance with Article 1 of the Convention on 9 June 2015 and the amendments entered into force on 18 July 2015, to date there are instances when the relevant authorities fail to adequately qualify acts of torture which leads to impunity for perpetrators, as evidenced by the discrepancy between the number of recorded complaints of torture and the particularly low number of resulting investigations and prosecutions. As mentioned above (paragraph 22), only 5 criminal cases reached the court although there were significantly higher number of complaints alleging torture and other forms of ill-treatment. Only two cases resulted in judgment and only one public official was convicted for exceeding official authority associated with violence under Article 309 part 2.
32. Apart from this, the Manual on effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (Istanbul Protocol) envisages a number of standards for effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. In the Draft Strategy of Protection of Human Rights and Draft Action Plan for 2020-2022 stemming from it, an action was envisaged on developing sample templates for documenting torture and other cruel, inhuman or degrading treatment or punishment, in accordance with the standards of the Istanbul Protocol.[17] However, the RA Government removed this action when approving the Strategy of Protection of Human Rights and Action Plan for 2020-2022.[18]

Institutional developments

33. Although as it was mentioned in the Action plan of the Government, the Special Investigation Service (SIS) and the special department for investigation of Torture was established to increase the independence and effectiveness of investigation of torture cases, in practice the SIS fails to achieve the assumed goals.
34. Initially it should be noted that considering the issues set before the Special Investigation Service and its functions, it is logical that the Head of the Special Investigation Service be appointed by the legislative body, since the Special Investigation Service has the legal

16 PRWB, Report on Human Rights Vioaltions During Peaceful Assemblies of 13-22 April 2018, available at: https://prwb.am/2018/04/20/2018-13-20/
17 See RA Human Rights Protection Strategy 2020-2022 the Draft Action Plan stemming from it, action 18, 21.10.2019.
18 https://www.e-gov.am/sessions/archive/2019/12/26/

obligation to conduct the preliminary investigation of criminal cases on electoral processes, and criminal cases on the crimes committed by the head officials of legislative, executive and judicial authorities and persons conducting special state service, or crimes committed with their complicity in terms of their official position. This means that this body should particularly be free from the direct influence of the executive body. It is the belief of the co-signing organisations that the appointment of the head of the Special Investigation Service by the executive body makes the Service dependent on the executive body and the Prime Minister, which will, in its turn, entail a conflict of interest and generate a real risk of the breach of the principle of independence.

35. The same principle can be extended to the Investigative Committee and the Police: it is necessary to provide independence from the executive body and opt for accountability to the National Assembly.

36. Among the major problems contributing to the ineffectiveness of investigation of torture cases by the SIS the following are to mention:
    - *SIS has poor capacities (jurisdiction)*: it considers in accordance with the law all cases involving public officials (not only torture cases). Therefore, they receive a lot of complaints from across Armenia, although they only have 35 full-time officers in Yerevan. The SIS does not have branches in the regions of Armenia.
    - *SIS is not authorized to conduct operative activities*: everything must be commissioned to the police, meaning that collecting and securing of evidence is in the hands of the institution whose employees may be the perpetrators of torture. Moreover, the SIS is dependent on the information provided by police, which raises problems where the latter has an interest in not conducting an effective investigation. It should be noted that although the draft of amendments to the law in the Special Investigative Service provides of establishment of operative-search unit within the SIS,[19] the law has not been adopted yet.
    - *Very few cases handled by SIS result in an indictment.* There is discrepancy between the numbers of recorded complaints of torture and the particularly low number of resulting investigations and prosecutions.[20] In a number of cases the persons allegedly being subjected to torture or to other form of ill-treatment were accused in false crime reporting or false testimony under the respective Articles of the RA Criminal Code.[21]
    - *SIS often discontinues cases due to the lack of corpus delicti*, stating in the justification that it is not proven that torture was used nor is it proven that there was no torture. It is then concluded that the police officers did not use torture, so their testimonies should be believed.[22]
    - *Failure to secure evidence promptly*: Evidence is secured by the investigators with much delay, e.g. securing video footage immediately or conducting forensic examination. Delayed interrogation of witnesses, as well as victims in cases related to ill-treatment is a common phenomenon. E.g. the scene of public gathering in Sari Tagh where stun grenades were used against the demonstrators on 29 July 2016 was cleaned after the

[20] UN CAT, Concluding Observations on 4th Periodic Report of Armenia, UN Doc. CAT/C/ARM/CO/4, 26 January 2017.

[21] Response of the Armenian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Armenia from 5 to 15 October 2015, CPT/Inf (2016) 32, p. 16, available at: https://rm.coe.int/16806bf470.

[22] Ibid, p. 15.

events without conducting scene inspections of the territory. Moreover, the damaged property in the neighborhood was repaired and no investigation was carried out in this regard[23].

- *Failure to apply the Istanbul Protocol* (see paragraph 32 above) *to document torture cases*: professionals (doctors, investigators, judges, etc.) do not recourse to the Istanbul Protocol for documentation of injuries of torture victims in practice.
- *Psychologic and psychiatric expertise is missing in criminal proceedings*: In practice, torture can be of a psychological nature and not leave any visible traces. Lack of possibility to seek such expertise which would confirm that a person has been subjected to psychological torture considerably reduces the chances of an effective investigation in torture cases. Also, there are too few experts – the psychiatric expertise remains a huge problem due to the lack of independent specialists.

37. Moreover, cases were reported that the allegations on torture and ill-treatment by police officers were directed to the Internal Security Department of Police for internal disciplinary examination[24]. This leads to the examination of the police misconduct by the police itself which is not an official criminal investigation, lacks independence and in practice leads to the loss of vital evidence, including recovery of caused injuries and other material evidence leading to failure of conduct an effective criminal investigation even if the case would later be transferred to the Special Investigative Service.

38. Special attention should be paid to the lack of effective investigation of allegations of ill-treatment made by participants of mass demonstrations and assemblies. To date, no effective investigation has been conducted into the cases of illegal and disproportionate use of force and special measures by police, beatings and other form of ill-treatment of participants of peaceful assemblies of the events of "Electric Yerevan" in June 2015, the events of July 2016, as well as the events of April 2018 (discussed below).

39. In 2019 the Special Investigative Service suspended all three criminal proceedings with justification as it was not possible to identify the perpetrator.[25] Although the criminal case related to July 2016 events was restarted in August 2019, to date no effective investigation has been carried out able to lead for criminal charges of the perpetrators and no police officer or civilians affiliated to the Police has been charged for ill-treatment of protestors. According to the media reports and witness statements, the bulk of the violations against the protesters were carried out by the plain-clothes police officers or by the people under the sponsorship of police. The investigative body failed to carry out comprehensive and objective investigation on those events, including the legality of police actions to disperse the gatherings, on use of special measures and force, as well as arbitrary deprivation of liberty of hundreds of peaceful protesters.

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[23] PRWB, Union of Informed Citizens, Helsinki Committee of Armenia, Asparez, and Helsinki Citizens' Assembly of Vanadzor, *Report on Human Rights Violations in Armenia During July 17-30 2016*, Summarized version, available at: http://prwb.am/wp-content/uploads/2017/06/Report-on-Human-rights-violations-in-Armenia-during-july-17-30-of-2016-Summerized-version.pdf,

[24] PRWB, Violence at the police station, https://prwb.am/2019/12/16/%D5%B0%D5%A5%D6%80%D5%A9%D5%A1%D5%AF%D5%A1%D5%B6-%D5%A2%D5%BC%D5%B6%D5%B8%D6%82%D5%A9%D5%B5%D5%A1%D5%B6-%D5%A4%D5%A5%D5%BA%D6%84-%D5%B8%D5%BD%D5%BF%D5%AB%D5%AF%D5%A1%D5%B6%D5%B8%D6%82%D5%A9%D5%B5/

25 PRWB, the SIS suspended the criminal case related to 29 July 2016, http://prwb.am/new/2018/09/24/the-special-investigation-service-suspended-the-criminal-case-instituted-in-regard-to-people-who-suffered-the-police-activities-on-july-29-of-2016/, PRWB, the SIS suspended the Restarted Criminal Case on "Electric Yerevan", https://prwb.am/2019/11/06/electric-yerevan/

Administrative and Practical Measures

40. The Armenian Government, in its Action Plan, refer to a series of administrative and practical measures adopted to address the problem of ill-treatment by law enforcement officials. The co-signing organisations strongly believe that these cannot be considered adequate, since there is a lack of a requirement enshrined by legislation, which would envisage that during the conduction of investigation into a torture case, a police officer's powers are suspended. A guarantee of an effective investigation into cases of torture can be suspension of a police officer (maintaining the salary), when an allegation of torture directly mentions the name of the law enforcement officer who is at the time in service.

41. It is also necessary to introduce mechanisms of psychological rehabilitation for persons subjected to violence, and if necessary, guarantees of providing effective safety measures for victims and witnesses, their family members. It is worth noting that according to the CAT's recommendation to Armenia "The State party should provide for adequately funded specialized rehabilitation services for victims of torture and ill-treatment, including medical, psychological, social and legal services for the victims."

42. We recommend that the Government present information on the steps taken in terms of these issues.

Observations regarding Article 5

Legal Safeguards for Persons Deprived of Liberty

43. Although the national legislation and case law provides for the minimum legal safeguards for persons deprived of liberty, there are reported cases that persons deprived of liberty do not always enjoy in practice all the fundamental legal safeguards from the very outset of their detention.

44. There are numerous accounts of persons who were apprehended and taken to, and persons "invited" to report to the police in Armenia often write a self-denunciation that he or she committed a serious crime. In the majority of cases, they are not informed about their rights, including the right to remain silent, and deprived of legal safeguards, such as legal counsel, opportunity to inform about their whereabouts, prompt access to a doctor (including a doctor of their own choice) and medical examinations, etc.

45. In the Saghatelyan judgment the Court noted that from the moment of taking the applicant into custody until drawing up of the record of arrest, the applicant did not have an official status of arrestee/suspect. He only received that status after 16 hours. During that period, he was questioned as a witness, which kept him in a state of uncertainty and deprived him of all the rights enjoyed by an arrested suspect, including the right to have a lawyer and to inform his family immediately (para. 173 of the judgment). Such practice continues to date.

46. According to the Armenian legislation, a person is granted the status of a suspect as a result of or after a formal documentation (from the moment the person is accused or formal charges are brought). Although the national legislation was amended and the Criminal Procedural Code Article 129 provides with minimum legal safeguards of persons de facto deprived of liberty, in

practice these safeguards are not respected. The co-signing organisations have encountered numerous examples in their practice of individuals being kept in police custody for longer hours without proper documentation of their deprivation of liberty, without legal and medical assistance, and without being allowed to inform their family about their whereabouts[26]. The co-signing organisations submit that this practice is not in conformity with the Convention and the Court's case law.

47. It is further submitted that these shortcomings in the practice of the police stem from weak safeguards in the legislation, which fails to establish, in line with the Court's case law, that persons who have not formally been charged with a crime but who are *de facto* treated as suspects, enjoy all the minimum rights attributed to individuals accused of having committed a crime.[27]

    The Court also noted that the Government did not point to any procedure capable of providing redress *post factum*, that is after the expiry of the applicant's short-term arrest, such as an acknowledgement of a violation of the applicant's rights and, if necessary, payment of compensation. This is because articles 103 and 290 of the Code of Criminal Procedure did not prescribe a procedure capable of providing redress of a post hoc nature in respect of the applicant's particular complaints.

48. Although the specific articles invoked by the Government do not provide for the possibility of claiming/granting compensation in the case of unlawful arrest, this possibility is enshrined in the Civil Code (art. 1063), but not fully. In particular, there is an obligation to compensate for the damage caused by the State as a result of unlawful interventions if the guilt of respective officials is confirmed. As to the compensation of non-pecuniary damage, it can be granted on precondition (article 162.1). It should be noted that, for example, in the case of unlawful detention, the same Code provides for the possibility of demanding compensation regardless of the guilt of officials (art. 1064). Thus, the current legislation does not provide for the possibility of holding the State accountable for cases of torture and unlawful arrest (de facto unlawful deprivation of liberty) if the guilt of particular officials had not been proved.

49. The Government submits that the domestic legislation provides for monetary compensation to anyone who has been subjected to torture, inhuman or degrading treatment or punishment and who made an application to that effect. It also notes that, as a result of amendments to the Civil Code of December 2016, the latter now guarantees the right to rehabilitation (medical and psychological care as well as legal services) for anyone who has suffered harm as a result of torture. However, the prerequisite for obtaining compensation is closing of the case with a sentence/conviction/ or non-prosecution based on non-acquittal grounds, i.e. it does not cover cases which were closed because of insufficiency of evidence (absence of composition of crime) or cases suspended based on non-identification of perpetrators.

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[26] Protection of Rights without Borders NGO, Union of Informed Citizens, Helsinki Committee of Armenia, Asparez, and Helsinki Citizens' Assembly of Vanadzor, *Report on Human Rights Violations in Armenia During July 17-30 2016*, Summarized version, p.20, available at: http://prwb.am/wp-content/uploads/2017/06/Report-on-Human-rights-violations-in-Armenia-during-july-17-30-of-2016-Summerized-version.pdf,

[27] According to the case-law of the Court, the Court takes a "substantive", rather than a "formal" conception of the notion of "criminal charges" (Deweer v. Belgium, § 44). Thus, taking such measures that assume suspicion of a crime by that person, as well as measures that significantly affect the situation of the person, can certify about the existence of "charges" against this person (Eckle v. Germany, § 73, Ibrahim and Others v. the United Kingdom [GC], § 249; Simeonovi v. Bulgaria [GC], § 110). In other words, charge may be defined as the notification given to an individual by the competent authority of an allegation that he has committed a criminal offence. This is the autonomous meaning and the content of the charge.

50. The Government rightly states that Article 132.2 (2) of the RA Civil Code provides for the payment of compensation for non-pecuniary damage suffered as a result of a Convention violation resulting from a decision, action or inaction of a state or local self-government body or official. The effectiveness of the right to claim compensation under this provision is, however, hampered in practice by the fact that the person claiming compensation bears the burden of proving the facts invoked by them, even where the perpetrator of the violation in question has already been found guilty.

51. The burden this puts on individuals seeking compensation for moral damages suffered as a result of a Convention violation are illustrated by the case of Karen Kyuelyan, who sought compensation for non-pecuniary damage. In a judgment dated February 2019,[28] the competent administrative court in Yerevan dismissed his claim. Even though it was established that as a result of the actions of the official of the National Security Service of the Republic of Armenia, Karen Kyupelyan's right to personal liberty and inviolability was violated, since he continued to be held in the administrative building of the National Security Service of the Republic of Armenia after the expiration of the period established by law, he was unlawfully detained for a period of 12 hours, nevertheless this already established fact was not sufficient for the court to award him compensation for non-pecuniary damage. More evidence of was required to confirm the existence of suffering for awarding compensation. According to the legislation of Armenia, the burden of proof for securing evidence concerning mental suffering is put on the claimant.

52. In case of arrest, the State itself interferes with the right to liberty of an individual regardless of the guilt of respective persons, and in case of ill-treatment/torture, again, the State interferes (violates) with rights of a person under its jurisdiction through actions or inactions of its agent (in case of instituted proceedings it can be due to the inefficiency of investigation). In light of this, as a general measure, it is recommended that Civil Code be amended to provide for the responsibility of the State for violations of the foregoing rights, regardless of the guilt or the fact of establishment of the guilt of respective officials (in case of ill-treatment/torture, if the fact has been established but the perpetrators have not been identified).

53. Finally, the co-signing organisations submit that the measures taken and envisaged by the Armenian Government to prevent violations of Article 5 similar to those in the *Mushegh Saghatelyan* group of cases are inadequate in the absence of additional safeguards regarding two problematic spheres: the effective access of persons deprived of their liberty to legal assistance on the one hand, and to medical examinations on the other.

54. It shall also be noted that police officers discourage detainees from requesting legal assistance, advising them that this may have a negative impact during the investigation.

55. As regards access to a medical examination, Article 129 of the current Criminal Procedure Code and Article 110 of the Draft generally guarantee a detainee's right to undergo a medical examination. However, there exist no binding guidelines setting out the frequency of the medical examination, the need to carry out the medical examination free of charge, and the detainee's right to choose a doctor who would conduct his/her medical examination. Additional problems that the co-signing organisations have frequently encountered in their work are linked

[28] Civil case EKD/2623/02/17, judgment of 15 February 2019 of the Court of General Jurisdiction of Kentron & Nork-Marash Administrative Districts of Yerevan.

to medical examinations taking place in the presence of police officers, undermining the independence of the medical staff and accurate recording and reporting of the attested injuries of the arrested person. Apart from that, there is no adequate medical staff in all police temporary detention facilities, and medical examination takes place only if an ambulance is called in.

Imposition of Detention

56. Although the case law of the Court of Cassation of RA requires relevant and sufficient reasoning by the national courts deciding on detention or its extension as it is provided by the Government in the Action Plan, the ECHR had found in numerous cases that the use of the stereotyped formulae when imposing and extending detention by national courts was recognized continues to be a recurring problem in Armenia as was recognized by the Court[29].

57. Imposition of a lengthy pre-trial detention still remains a chronic problem in Armenia as in the case of Mushegh Saghatelyan. In accordance with data from the Ombudsman of Armenia, in January 2018, 37.4 percent of the entire prison population was made up of detained persons awaiting trial or a verdict to enter into force.[30]

58. During 2019, the investigative bodies submitted 1981 motions of detention to the courts, 1802 of which (90.8 percent) was satisfied by the courts. 1284 motions were submitted to extend the length of detention and 1197 were satisfied.[31]

59. Substantiating detention decisions by formal citation of the legal provisions and reference to the gravity of offence continues to persist as a widespread issue in judicial practice today. As a rule, domestic courts fail to provide any factual reasoning to the "existing" grounds of detention. Decisions on imposing or extending detention are usually made up of lengthy citations of general principles from the judgments of the Court and the Cassation Court of the Republic of Armenia on Article 5 of the Convention, as well as provisions of the RA Criminal Procedure Code with the reference to the gravity of the alleged crime. However, the decisions lack factual reasoning and evidence regarding the specific facts of the applicant's case capable of justifying the imposition or extension of pre-trial detention[32].

60. The Human Rights Defender (Ombudsman) of the RA regularly addressed the issue of detention practice in his annual reports. In the Annual Report on Human Rights Defender's activities in 2018 and the state of protection of human rights and freedoms[33] the Defender underlined that the use of detention, along with others, is conditioned by the absence of other efficient preventive measures. According to the Annual Report, the General Prosecutor's office provided the following statistical data on detention practice for 2018: In 2018 1866 motions on applying detention as a preventive measure were lodged with the court, 1799 out of which were satisfied (i.e. 96.4 % of the submitted motions were granted).

61. The Defender stressed the need for taking steps for bringing into compliance the continuous detention practice with the case law of the European Court of Human Rights[34]. In his annual report on 2017 the Defender stated that the general judicial practice on imposing detention had

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[29] *Ara Harutyunyan v. Armenia*, no. 629/11, para. 58, 20 October 2016
[30] Annual Report on Human Rights Defender's activities in 2017, p. 232; available at: https://www.ombuds.am/images/files/b5220dd0b83b420a5ab8bb037a1e02ca.pdf
[31] Official court statistics, available at: http://court.am/hy/statistic-inner/185
[32] PRWB, Issues of application of detention in the context of 17-30 July 2016 events, 2017.
33 https://www.ombuds.am/images/files/8f03a4f279d0491fd510fca443f8f269.pdf
34 Ibid.

not changed. Therefore, the Defender reaffirmed that the issue should be resolved through the review of legislation aimed at adopting new conceptual approaches, in particular, by speedy introduction of flexible legislative regulations for applying alternative preventive measures and developing constant judicial practice in accordance with it[35].

62. Nevertheless, no amendments and changes have been made to the Criminal Procedure Code of the RA so far, while the judicial practice still follows the same pattern. The new draft Criminal procedure Code provides for all the necessary regulations in the field of introduction of alternative preventive measures and limiting the use of detention, however, the adoption of the Code as well as its proper implementation may require significant time.

Other issues concerning deprivation of liberty

63. In many cases police officers continue using torture and other forms of ill-treatment in securing evidence for the criminal cases due to lack of skills. Lack of forensic methodology or training in crime investigation techniques both increase the risk of law enforcement officials resorting to torture and ill-treatment in order to close an investigation with a confession. Although the Law on Police was amended on 13 December 2019 envisaging that all entry points and interrogation rooms to be equipped with audio-video recording equipment the Action Plan on the National Strategy on Human Rights Protection envisages that police divisions will be equipped with video and audio recording equipment by the end of 2020 – 12 police divisions, by the end of the first semester of 2022- 22 police divisions).[36]

Analysis of the national legislation in light of violations of Article 11 of the Convention

64. The adoption of the new RA Law "On Freedom of Assemblies" has been consistently presented by RA Government among the general measures adopted in the execution of a number of judgments against the Republic of Armenia.[37] However, despite the fact that the new law complies with international standards and has received the approval of the Venice Commission,[38] issues regarding the protection and fulfilment of the right to freedom of assembly still persist in practice. The law enforcement activities specifically in relation to mass demonstrations during (1) the events of "Electric Yerevan" in June 2015 ("**events of June 2015**"), (2) the events of July 2016 ("**events of July 2016**"), (3) the so-called "Velvet Revolution" of April 2018 ("**events of April 2018**") confirm that some of the problems outlined by the Court in its analysis regarding Article 11 in *Saghatelyan's* case have not been resolved

35 https://www.ombuds.am/images/files/b5220dd0b83b420a5ab8bb037a1e02ca.pdf

36 http://moj.am/storage/uploads/02Appendix_2.pdf
37 See, among others, 1265 meeting (20-22 September 2016) (DH) - Revised action report (09/06/2016) - Communication from Armenia in the Galstyan group of cases against Armenia (Application No. 26986/03) (available at: <http://hudoc.exec.coe.int/eng?i=DH-DD(2016)745E>).
38 Interim joint opinion on the draft law on assemblies of the Republic of Armenia by the Venice commission and OSCE/ODIHR - Adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010) (available at: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)049-e>).

despite the adoption of the new law and other legislative amendments, including the amendments in the Code on Administrative Offences.

65. The present submission outlines a number of issues in light of the above-mentioned mass demonstrations which reveal that the shortcomings identified by the Court in *Mushegh Saghatelyan*'s case have not been properly addressed and eliminated by the authorities.

Use of special measures to disperse gatherings

66. The Armenian legislation prohibits use of special measures against peaceful demonstrators.[39] However, such measures were used by the Police against peaceful demonstrators for dispersing the mass demonstrations and rallies of 2015, 2016 and 2018. Moreover, the use of special measures had not been properly reported by police officers and there had not been effective investigations in relation to the use by police officers of special measures.

67. During the events of July 2016, special measures were used on 20 July and 29 July as a result of which over one hundred persons, including journalists, incurred such injuries as hearing loss, eye loss, burns of different degrees, etc.[40] Admittedly, during the demonstrations at Khorenatsi Street on 20 July 2016, there had been sporadic violence against the police. However, the special measures were used not against the participants acting violently, but against peaceful demonstrators standing more than 35-40 meters away from the police barricades. Although a criminal case was initiated by the RA Special Investigative Service, no police officer was charged in relation to the use of special measures.

68. On 16 April 2018 and on 22 April 2018 the police used special measures respectively at Baghramyan avenue and at Artsakh street in Yerevan. According to the information provided by the police, the following special measures were used: 4 non-fragmented stun grenades "Zarya-2", 2 stun grenades "Svirel" on 16 April 2018, and 5 stun grenades "Svirel" on 22 April 2018.[41] On 16 and 22 April 2018 respectively, 55 and 22 persons were transferred to medical centres,[42] with 46 persons injured as a result of use of stun grenades. A criminal case was initiated by the Special Investigative Service under Article 309 of the Criminal Code of Armenia. On 25 September 2018 the former Chief of Police Troops was engaged in the criminal case as an accused for using special measures against the demonstrators, and the criminal case is currently pending.

69. The utilization of stun grenades as special measures are regulated by the Law on Police and Law on Police troops, as well as the decree of the Minister of Health on Criteria of Use of Special Means against Human Beings. The letter, however, does not regulate the criteria for the use of grenades "Zarya-3" and "Svirel" against human beings. Moreover, the Armenian

[39] Article 31 of the Law on Police: "*...it is prohibited to use special measures ... to stop peaceful gatherings, as well as gatherings that are held in violation of the procedure established by the law*".
[40] Information based on 129 forensic medical reports of victims examined by the Protection of Rights without Borders NGO.
[41] Radio Liberty, Police: 11 Special Measures have been used since 13 April, (available at: <https://www.azatutyun.am/a/29214771.html>).
[42] Lragir.am, During April events an unprecedented number of 1236 persons were apprehended by police, https://www.lragir.am/2018/06/21/357986/>)

legislation lacks any specific provision for the use of stun grenades during demonstration and public order policing environments and does not provide instructions for their utilization. [43]

70. Issues regarding the use of special measures were also documented by the Human Rights Defender of Armenia, who confirmed violations regarding the use of special measures during the July events, including: (1) resort to non-targeted special means with a large area of impact, thus violating the provisions of the Guide on the procedure of application of special means, specifically in the context of safeguarding the rights of peaceful participants of demonstrations; (2) failure by the Police to inform the demonstrators about the use of special means.[44]

Apprehensions of participants of gatherings and rallies

71. Following the February-March events of 2008, mass apprehension of demonstrators still continued to be applied as a method of dispersing rallies and gathering on numerous occasions, and such measures were aimed at and had the effect of discouraging people from participating in social and political rallies. It is to be noted that despite the fact that RA authorities present abolition of administrative detention against participants of mass demonstrations and rallies as a positive development within the general measures for the execution of the Court's judgments, the authorities resorted to administrative arrest as a way of justifying the participants' deprivation of liberty under the Article 182 of the RA Code on Administrative Offences.

72. During the events of June 2015, only on 23 June 2015, 237 persons were apprehended and taken to police departments.[45] During the mass demonstrations, which took place on 17 July 2016 and 4 August 2016, 775 persons were apprehended and brought to police departments, with 207 persons having been apprehended only on 29 July 2016.[46] During the events of April 2018, 1236 persons were apprehended by the police and brought to police departments.[47]

73. Moreover, the report of the Protection of Rights without Borders NGO documented violations of the rights of those apprehended during the demonstrations, including administrative arrest for longer than three hours, failure to provide reasons for the apprehension or the administrative arrest, obstruction of the lawyers' access to police department, use of disproportionate force by police officers against the apprehended individuals, failure to inform the relatives of the apprehended individuals about their whereabouts.[48]

74. Moreover, criminal charges were used against the participants of mass demonstrations for their active participation in gatherings. Charges against the participants of peaceful assemblies were brought predominantly under Articles 225 (Organization of and participation in mass disorders) and 225.1 (Organization and participation in assemblies held in violation of the law). The criminal persecutions targeted the individuals, especially the prominent figures leading and coordinating the demonstrations, for their political views and activism with the effect of discouraging them from further participation in the demonstrations and rallies.

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[43] Ad Hoc Report by the Human Rights Defender, pages 63-64 (available at: <https://ombuds.am/images/files/cfb112ea4b2204524da639b06f2105a9.pdf>).
[44] Ad Hoc Report by the Human Rights Defender, pages 61-61 (available at: <https://ombuds.am/images/files/cfb112ea4b2204524da639b06f2105a9.pdf>).
[45] Civilnet.am, Police: 237 persons were apprehended, https://www.civilnet.am/news/2015/06/23/police-comment-electricityprotest/272702
[46] The Armenian Times, Police against citizens: 775 were apprehended, http://www.armtimes.com/hy/article/91748
[47] Lragir.am, During April events an unprecedented number of 1236 persons were apprehended by police (available at: <https://www.lragir.am/2018/06/21/357986/>)
[48] PRWB, *Report on Human Rights Violations during the Peaceful Assemblies of 13-20 April 2018*, https://prwb.am/2018/04/20/2018-13-20/;

75. The HCA Vanadzor information paper on cases of human rights violations by the Police indicated that in 2019, during assemblies or as a result of participating in the assemblies, there were 49 cases entailing human rights violations during the reporting period. 29 cases of the violation of the right to freedom of peaceful assembly without weapon were recorded, 24 cases of violation of the right to liberty and security, 22 cases of violation of the right to be free from physical violence both separately and along with other rights. Moreover, the right to freedom of movement, the right to an effective remedy, the right to legal aid, the right to freedom of expression, the right to be free from inhuman or degrading treatment, the right to health, the right to property, the right to be free from discrimination, as well as journalists' right to conduct legal professional activity were violated. 36 cases of human rights violations during assemblies or as a result of participating in assemblies were recorded in Yerevan, 8 were recorded in Tavush region, city of Ijevan, 2 cases were recorded in Armavir region and 2 were recorded in Kotayk region, 1 case was recorded in Aragatsotn region.[49]

76. The current attestation system and the entailing accumulated problems regarding illegal actions (inaction) of the Police obviously indicate the necessity to introduce a new assessment system. Assessment of the goodwill, including qualification of professional skills, should be conducted based on the principles of transparency, professionalism and continuity.

Recommendations

For the reasons above, the co-signing organisations respectfully recommends that the Committee of Ministers continue examining the execution of the judgments in the *Mushegh Saghatelyan* group of cases under enhanced supervision, and to call on the Government of Armenia to:

1. ensure a thorough and effective investigation into Mr Saghatelyan's allegations of ill-treatment, conducted separately from the master criminal case related to the 1-2 March events;
2. as a matter of urgency, adopt legislation criminalizing of all forms of ill-treatment;
3. eliminate the statute of limitations as well as amnesties for the crime of torture and for other forms of ill-treatment in law and practice;
4. put in place adequate safeguards to ensure the immediate medical examination of persons alleging to have been subjected to torture or other forms of ill-treatment and the proper recording of their injuries, in line with the standards set out in the Istanbul Protocol;
5. Put in place guarantees relating to the frequency of medical examinations, ensuring that medical examinations are free of charge and in cases of necessity conducted by a doctor of the detainee's choosing.
6. Develop sample templates for documenting torture and other inhuman or degrading treatment or punishment, in accordance with the standards of the Istanbul Protocol.
7. Ensure that the Special Investigative Service is provided with sufficient material and human resources to guarantee the effectiveness of investigations, including establishment of professional and independent operative-search unit;
8. establish an anonymous complaint mechanism of torture in short periods;

[49] https://drive.google.com/file/d/1PJezztT5M5JN80av0nQzQHqLTC6ZYTv7/view

9. amend the legislation with such formulations and mechanisms, so that any person who appears under the jurisdiction of the State (brought, invited, suspected or accused, etc.) has all the minimum rights that are attributed to the accused ;
10. amend the Civil Code to provide for the responsibility of the State for unlawful arrest and torture, regardless of the guilt or the fact of establishment of the guilt of respective officials;
11. Call for amendments to the RA Code of Criminal Procedure to
    - provide for other alternative preventive measures /for instance, house arrest/.
    - accelerate the adoption of the new Criminal Procedure Code of RA and ensure its proper implementation.
12. conduct a thorough and effective investigation into abuses by police and other actors during public assemblies, including effective investigation of violations that happened previously, irrespective of the status of the case, by restoring rights and providing fair compensation;
13. present statistical data on how many complaints were filed against the police officers regarding violations of the right to assembly, how many criminal proceedings were instituted, how many charges were brought, how many cases were sent to trial, how many of them resulted in convictions.
14. present statistical data on the number of persons apprehended during assemblies, including the number of persons who received the status of a detainee, arrestee, suspect or accused.
15. ensure effective access o compensation for torture victims regardless of the crime commitment time and criminal responsibility of perpetrators.

On behalf of Open Society Foundations-Armenia D.Amiryan

On behalf of Helsinki Citizens' Assembly Vanadzor A. Sakunts

On behalf of Transparency International Anti-Corruption Center S. Ayvazyan

On behalf of Protection of Rights without Borders NGO A. Melkonyan

On behalf of Law Development and Protection Foundation G. Petrosyan

On behalf of Helsinki Committee of Armenia A. Ishkanyan

List of Annexes

1. Reply to the information request – Special Investigation Service - English
2. Reply to the information request – General Prosecutor's Office – English
3. Reply to the information request – Police – English
4. Reply to the information request – Special Investigative Service – Armenian
5. Reply to the information request – General Prosecutor's Office – Armenian
6. Reply to the information request – Police - Armenian

Republic of Armenia

Special Investigation Service

0012, Yerevan city, V. Vagharshyan 13[a], tel.(fax)' 011 90 00 02

№18-624 m/d-19

24.12.2019

To A. Sakunts, Chairman of Helsinki Citizens' Assembly-Vanadzor

Dear Mr. Sakunts,

In response to your letter No. E/2019-16.12/863, dated 16.12.2019, I would like to inform that **during 2015**, the RA Special Investigation Service investigators investigated **8** criminal cases initiated on features envisaged under Article 309.1 of the RA Criminal Code (*the mentioned Article entered into force on 18.07.2015*), of which

- **1** criminal case was discontinued on an acquittal ground,
- Decisions on initiating **2** criminal cases were annulled,
- Preliminary investigation of **5** criminal cases continued in 2016.

In 2016, 17 criminal cases were investigated, of which

- **14** criminal cases were discontinued on an acquittal ground,
- Preliminary investigation of **3** criminal cases continued in 2017.

In 2017, 47 criminal cases were investigated, of which

- **1** criminal case was sent to Court with indictment on 1 person,
- **31** criminal cases were discontinued on acquittal grounds**,**
- **3** criminal cases were suspended based on the circumstance that the person having committed the alleged crime was unknown,
- **6** criminal cases were attached to other criminal cases,
- Preliminary investigation of **6** criminal cases continued in 2018.

In 2018, 50 criminal cases were investigated, of which

- **1** criminal case was sent to Court with indictment on 1 person,
- **33** criminal cases were discontinued on acquittal grounds,
- **4** criminal cases were suspended based on the circumstance that the person having committed the alleged crime was unknown,
- **1** criminal case was attached to another criminal case,
- **2** criminal cases were sent in accordance with investigative subordination,
- Preliminary investigation of **9** criminal cases continued in 2019.

During January 1 – December 24, 2019, 55 criminal cases were investigated, of which

- **4** criminal cases were sent to Court with indictment on **10** persons**,**
- **30** criminal cases were discontinued on acquittal grounds,
- **5** criminal cases were suspended based on the circumstance that the person having committed the alleged crime was unknown,
- **1** criminal case was sent in accordance with investigative subordination,
- Preliminary investigation of **10** criminal cases continue.

At the same time, I inform that there no registration is conducted in regard to the submitted reports and judicial acts in the RA Special Investigation Service.

Sincerely,
Deputy Head,
Third Class State Counselor of Justice V.P. Hovhannisyan

RA Prosecutor General's Office

0010 Yerevan city, V. Sargsyan street, email: info@prosecutor.am

12/12/18184-19

25.12.2019 *To Artur Sakunts, Chairman of Helsinki Citizens' Assembly-Vanadzor*

Dear Mr. Sakunts,

In response to your inquiry dated December 16, 2019 (the Prosecutor's Office received it on December 20, 2019), I would like to state that the RA Criminal Code was amended with the crime of torture by HO-60-N law which was adopted on June 9, 2015 and entered into force on July 18, 2015, therefore, the inquired information may be provided only starting from July 18, 2015.

In the Special Investigation Service, based on crime features envisaged under Article 309.1 of the RA Criminal Code

In 2015, 8 criminal cases were investigated.

- 1 of them was discontinued based on an acquittal ground,
- Decisions on initiating 2 criminal cases were annulled,
- Preliminary investigations of 5 criminal cases continued in 2016.

In 2016, 17 criminal cases were investigated.

- 14 of them were discontinued on acquittal grounds,
- Preliminary investigation of 3 criminal cases continued in 2017.

In 2017, 47 criminal cases were investigated.

- 1 of the criminal cases was sent to court with indictment on 1 person,
- 31criminal cases were discontinued on acquittal grounds,
- 3 criminal cases were suspended based on the circumstance that the person having committed the alleged crime was unknown,
- 6 criminal cases were attached to other criminal cases,
- Preliminary investigation of 6 criminal cases continued in 2018.

In 2018, 50 criminal cases were investigated.

- 1 criminal case was sent to court with indictment on 1 person,
- 33 criminal cases were discontinued on acquittal grounds,
- 4 criminal cases were suspended based on the circumstance that the person having committed the alleged crime was unknown,
- 1 criminal case was attached to another criminal case,
- 2 criminal cases were sent in accordance with investigative subordination,
- Preliminary investigations of 9 criminal cases continued in 2019.

During January 1 – December 24, 2019, 55 criminal cases were investigated.

- 4 criminal cases were sent to court with indictment on 10 persons,
- 30 criminal cases were discontinued on acquittal grounds,
- 5 criminal cases were suspended based on the circumstance that the person having committed the alleged crime was unknown,
- 5 criminal cases were attached to other criminal cases,
- 1 criminal case was sent in accordance with the investigative subordination,
- Preliminary investigations of 10 criminal cases continue.

Sincerely Yours,
V.Dolmazyan
Senior Prosecutor at the Department of Supervision over Legality of Pre-trial Proceedings in the RA SIS, Second Class Counselor of Justice

RA POLICE HEADQUARTERS

0025 Yerevan city, Nalbandyan street, 130 tel. number 010 596594 fax 010596311 staff@police.am

5/2/1571-20

21.01.20 ***To Mr. Artur Sakunts, Chairman of Helsinki Citizens' Assembly-Vanadzor***

Dear Mr. Sakunts,

In response to Your inquiry No. 862, dated 16.12.2019:

Taking into account that "torture" crime was envisaged in Article 309.1 of the RA Criminal Code by the RA Law HO-69-N "On making amendments and addenda to the RA Criminal Code", the required information can be provided only since 2015.

It should be mentioned that the criminal cases initiated on the features of Article 309.1 of the RA Criminal Code are registered in the RA Police Information Center. Thus, we are presenting the statistics of criminal cases initiated on cases registered in the Republic of Armenia, as provided by the Information Center.

Year	Registered criminal cases	Discontinued		Suspended RA Criminal Procedure Code Article 31 (1) point 1	Sent to Court	In process in the mentioned year
		RA Criminal Procedure Code Article 35 (1) point 1	RA Criminal Procedure Code Article 35 (1) point 2			
2015	3					3
2016	10		5			5
2017	36	8	12	2	1	13
2018	39	4	20	4	1	10
2019	39	7	17	3	2	10

Sincerely Yours,
Head,
Police Colonel
A.Ghukasyan

**REPRESENTATIVE OF THE REPUBLIC OF ARMENIA
BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS**

RA, Yerevan, 0010, Republic square, Government house 1

Mr. Christos Giakoumopoulos

Director General of Human Rights and Rule of Law
of the Council of Europe

Yerevan, 5 May 2020

Subject: Mushegh Saghatelyan group of cases (application no. 23086/08, judgment of 20.09.2018, final on 20.12.2018)

Dear Mr. Giakoumopoulos,

With reference to the 20.04.2020 joint communication submitted by 6 NGO-s with regard to the execution of *Mushegh Saghatelyan* group of cases, the Government of the Republic of Armenia brings to the attention of the Committee of Ministers the following comments.

The Government appreciates the role of civil society organisations for protection and promotion of human rights and emphasises the importance of cooperation with them. At the same time, the Government strongly believes that Rule 9.2 of the *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements* should serve the purpose of ensuring the execution of judgement(s) in question, and should not adversely affect the process of the execution. The assessment that the domestic authorities fail to guarantee full and effective execution of a specific judgment cannot be grounded on the presumption that certain situation or facts may lead to violation of person's fundamental rights and freedoms, unless the violation is established by the judgment of the Court. The conclusions of the Court are based on the particular circumstances of each case and under Article 46 § 2 of the Convention the Committee of Ministers shall supervise the execution of the final judgments of the Court.

To avoid any uncertainties the Government reiterates that it is mindful of the fact that the field of human rights protection requires continuous effort and attention, as well as time to assess the effectiveness of the measures already undertaken. The Government is decisive and committed to bringing the field in line with the international standards. Some challenges remain, but one should not disregard the results already achieved. In this context, the multifaceted and targeted measures already implemented and those still in progress (detailed in the Action Plan[1]) provide sufficient basis to believe that the deficiencies of

[1] Reference document: DH-DD(2020)301, last accessed on 30 April 2020

the field will be eliminated in the foreseeable future, thus, remedying the violations found and preventing similar violations in the future.

Whether the Government considered that the measures adopted have fully remedied the consequences of the violations of the Convention found by the Court in the *Mushegh Saghatelyan* group, an action report instead of an action plan would have been submitted with an indication that Armenia has fully complied with its obligations under Article 46 § 1 of the Convention and invitation to close the supervision thereof. Meanwhile, the Government invited only to close those repetitive cases, where no individual measures are required any more.

Turning to the data and recommendations submitted by the co-signing organisations, the Government, having an aim to avoid any unnecessary repetitions, reaffirms the information submitted in the Action Plan. That said, some allegations presented shall be commented on separately.

Individual Measures

The assessment that the investigation into the ill-treatment allegations of M. Saghatelyan cannot be effective is a premature and speculative by nature lacking any objective factual basis. According to the well established case-law of the Court, an obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible. In this regard, bearing in mind the open and constructive dialogue existing with the Committee of Ministers in terms of execution, moreover, regarding the steps taken in the framework of reopened proceedings further to the Court's judgments in other similar cases, mentioned approach and like position, especially at the initial stage of execution, is unacceptable . Thus, as an established practice, the Government will periodically update the Committee of Ministers regarding the investigation into the ill-treatment allegations giving the possibility to assess the effectiveness thereof based on the unbiased data.

General Measures

The co-signing organisations label the Armenia's legislative framework in respect of the prohibition of torture and inhuman or degrading treatment or punishment as "weak" and state that it has been subject to criticism by numerous international and national organisations. To further justify their allegations they bring as an external source of verification the country specific recommendations given by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment further to the visit to Serbia and Kosovo.[2] The Government will refrain from making any comments on this strategy and will repeat what has been and will be done.

In its Concluding observations on the fourth periodic report of Armenia, the UN Committee against Torture welcomed the adoption of amendments to the Criminal Code (Article 309.1), providing for a definition and criminalisation of torture, in accordance with Article 1 of the UNCAT without specifically recommending that this provision should criminalise the inhuman and degrading treatment as well.[3]

[2] Reference document: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/019/20/PDF/G1901920.pdf?OpenElement , last accessed on 30 April 2020.
[3] Reference document: CAT/C/ARM/CO/4, §3 (a), last accessed on 30 April 2020

It has to be recalled that torture by private actors is criminalised as well and is also subject to public prosecution.[4] More of that, certain articles of the existing Criminal Code cover the inhuman and degrading treatment.

In particular, acts wilfully committed by an official who obviously exceeded his/her authorities and caused essential damage to the legal interests and rights of citizens, organisations, to the public or state interests, as well as the same acts accompanied with violence, use of fire-arms or special means are punished under Article 309 (Exceeding official authorities) of the Criminal Code. Another example is forcing the persons participating in the proceedings to make a testimony or an explanation or the expert to make false conclusion, or the translator to make incorrect translation by using violence or threat or any other illegal action by the judge, by the prosecutor, by the investigator or by the inquest body which is punished under Article 341 (Forcing to make testimony or explanation or false conclusion or incorrect translation by the judge, the prosecutor, the investigator or the inquest body) of the Criminal Code.

Here, the Government would like to particularly mention that to support adoption of anti-torture legislation to implement the UNCAT at the national level, the Convention against Torture Initiative commissioned the Association for the Prevention of Torture to draft a specific guide on anti-torture legislation. There relevant parts of the document read as follows: "One of the recurrent questions is whether there is an obligation on States to criminalise cruel, inhuman or degrading treatment or punishment (CIDTP). The wording of article 16 of the Convention requires that State parties "shall undertake to prevent […] other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture." The separation of torture and CIDTP into distinct articles in the Convention was deliberate, because the drafters intended some of the State obligations to apply only to torture.[5] In particular, the obligation in article 4 to criminalise torture through domestic legislation was not intended to apply to CIDTP.[6] In rare concluding observations, the Committee has commented on the absence of national law provisions criminalising CIDTP,[7] but the Convention is not generally considered to require that States criminalise such treatment as a separate offence.[8] States are therefore free to adopt a legislation criminalising CIDTP as a separate crime ... ."[9]

Further on, the Government repeats that taking into consideration the necessity to further strengthen the mechanisms of fight against any form of ill-treatment, bearing in mind the international obligations undertaken by the Republic of Armenia, as well as the Court's case-law, it is envisaged to repeal the statute of limitations for the crime of torture, as well as to ensure that amnesty and any other similar measures leading to impunity for acts of torture are prohibited by incorporating relevant legal provisions. Relevant provisions have been already incorporated in the Draft Criminal Code.

[4] Article 119 of the Criminal Code, Article 183 of the Code of Criminal Procedure
[5] Manfred Nowak and Elizabeth McArthur, the United Nations Convention against Torture: A Commentary (Oxford University Press 2008), pp. 229 and 230.
[6] Ibid, p. 247
[7] CAT, Concluding observations on Ukraine (11 December 2014), UN Doc. CAT/C/UKR/CO/6, § 134; CAT, Concluding observations on Sweden (6 June 2002), UN Doc. CAT/C/CR/28/6, § 7(a); CAT, Concluding observations on Kazakhstan (12 December 2014,) UN Doc. CAT/C/KAZ/CO/3, § 7(a)
[8] Rodley and Pollard, op. cit. 10, § 118
[9] Reference document: https://cti2024.org/content/docs/APT%20Anti%20Torture%20Guide_ENG.pdf, page 19, last accessed on 30 April 2020

The co-signing organisations allege that ill-treatment is a widespread practice in Armenia, whereas the most recent public report of the CPT proves just the contrary. In particular, as indicated in the Action Plan, in its Report on the visit carried out in 2015, the CPT indicated that the delegation received a small number of allegations of police ill-treatment. Based on the findings of the visit, the CPT stated that the above-mentioned would suggest that there had indeed been an improvement in this area since the CPT's 2010 periodic visit and 2013 *ad hoc* visit (as also expressly stated by several of the remand prisoners interviewed by the delegation).[10]

Throughout the communication the co-signing organisations, by referring to the statistical data regarding the ill-treatment cases, allege that the investigation is not effective. Whereas as indicated in the Action Plan, during the 2015 visit the CPT delegation examined in detail a number of cases involving allegations of ill-treatment under active investigation by the SIS. In each of the cases reviewed, comprehensive case files demonstrated that the available evidence (e.g. records of medical examinations, duty rosters and operational orders) had been swiftly secured, complainants promptly interviewed and police officers robustly questioned based on the evidence gathered by the SIS. The delegation formed a positive view of the professionalism with which SIS investigators carried out their tasks. [11]

Turning to the remarks regarding the fundamental legal safeguards, the Government reiterates that given their important nature, pending the adoption of the Draft Code of Criminal Procedure, and despite the fact that the Court of Cassation case-law has already established grounds for ensuring those rights from the moment of *de facto* deprivation of liberty, corresponding amendments[12] have been made to the Code of Criminal Procedure in 2018[13] to put in place legislative provisions for application of these rights from the very moment of deprivation of liberty.

The Government once again stresses that further to these amendments, Article 129 provides that after 4 hours of factual deprivation of liberty, in case if the person is not informed that an arrest record in his respect has been drawn, from that very moment, he automatically acquires the legal status of a "suspect" with all the relevant rights and guarantees provided for by law.

Therefore, from the moment of being taken into custody the person is considered *de facto and forcibly deprived of liberty* with all the fundamental rights guaranteed. Furthermore, in case if the person is not informed about an arrest record drawn in his respect, after 4 hours he is considered to be a suspect and domestic provisions applicable to a suspect are applied to him from that very moment. It has to be underlined that in June 2018, assessing the progress made in execution of the *Virabyan* group of cases (no. 40094/05), the Committee of Ministers noted with satisfaction the changes in the existing Code of Criminal Procedure incorporating these safeguards.[14]

The co-signing organisations mentioned that the Court also noted that the Government did not point to any procedure capable of providing redress *post factum*, that is after the expiry of the applicant's short-term arrest, such as an acknowledgement of a violation of the applicant's rights and, if necessary, payment of compensation. As indicated this is because Articles 103 and 290 of the Code of Criminal

[10] Reference document: CPT/Inf (2016) 31, § 15, last accessed on 30 April 2020
[11] Reference document: CPT/Inf (2016) 31, § 23, last accessed on 30 April 2020
[12] Law on making amendments and supplements to the Code of Criminal Procedure of the Republic of Armenia (HO-69-N) of 16 January 2018
[13] Article 129 of the Code of Criminal Procedure
[14] Reference document:http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1318/H46-1E, last accessed on 30 April 2020

Procedure did not prescribe a procedure capable of providing redress of a post hoc nature in respect of the applicant's particular complaints.

The Government assumes that the mentioned refers to the material time of the case which is true for that specific period. However, even if we assume that the Government did not mention specific regulatory framework capable of addressing this issue at present in this specific Action Plan, this does not mean that relevant information has not been submitted previously in the framework of other communications.

In this context it is quite regrettable that the co-signing organisations do not indicate that following the 2015 Constitutional reform the Code of Criminal Procedure was amended in 2018. To be more precise, at present Articles 289.1-289.5 prescribe a specific procedure for contesting the arrest. After examining the claim brought against the arrest, if the allegations prove to be true, the competent court is, *inter alia*, entitled to deliver a decision establishing that arrest was unlawful. Therefore, this is the first step, i.e. the establishment of the violation.

Further on, based on the Civil Code, there is an enforceable right to claim compensation of non-pecuniary damages based on the procedure prescribed thereof. Thus, this is the second step of the *post factum* redress, according to which, if necessary, there can be payment of the compensation for the violated right.

Turning to the mechanism for compensation of non-pecuniary damages, as detailed in the Action Report submitted by the Government of the Republic of Armenia on the cases of *Poghosyan and Baghdasaryan*, *Khachatryan and Others* and *Sahakyan* (nos. 22999/06, 23978/06, 66256/11) on 23 March 2016 based on which the Committee of Ministers closed the examination of the cases by its Resolution CM/ResDH (2016)184 adopted on 6 September 2016, right to claim compensation for non-pecuniary damage in case of a number of violations of fundamental rights and freedoms, including the rights protected under Articles 3, 5, 6, 11, is prescribed by the Civil Code. Thus, to avoid any repetitions of the information already submitted and assessed by the Committee of Ministers, the Government reaffirms it and at the same time repeats that non-pecuniary damage shall be subject to compensation regardless of the guilt of the official at the time of causing the damage (Article 1087.2 § 3).

With reference to the remarks made regarding Article 11, Government agrees that challenges still remain; at the same time the progress made and also attested by the international counterparts cannot be disregarded. Here, the Government recalls that acknowledging the necessity of continuing reforms in the field, the Special Rapporteur on the rights to freedom of peaceful assembly and of association visited Armenia from 7 to 16 November 2018 at the invitation of the Government. The purpose of the visit was to assess the exercise, promotion and protection of the rights under his mandate in a moment of democratic transition following the Velvet Revolution of 2018.

The Special Rapporteur acknowledged that the effective enjoyment of the right to freedom of peaceful assembly is of particular importance in Armenia, especially considering the recent political changes. After concluding his visit, he noted that the action of law enforcement officials has improved in the management of assemblies throughout the country in the recent years, as well as that State institutions have over time improved their capacity to absorb shocks and control crowds while respecting human rights. The Special Rapporteur also noted that a good level of dialogue and negotiations between the police and the organisers or participants was observed during the events of April and May 2018.[15]

[15] Reference document: A/HRC/41/41/Add.4, last accessed on 30 April 2020

To conclude, the information submitted in the Action Plan and the present document proves that the Government is decisive and committed to bringing the field of human rights protection in line with the international standards. The Government believes that the improved legislation and its coherent and consistent application in practice will be capable of preventing similar violations in the future. The steps undertaken in the course of the years already have produced results which have been noted by the international bodies as well. The progress made cannot be disregarded. It creates strong grounds for continuing the reforms of the field, as the protection of human rights is a "living process" requiring constant effort and attention. In this regard, the commitment of the Government is already expressed in a number of strategic papers adopted recently. These documents include, but are not limited to 2019-2023 Strategy and Action Plans for Judicial and Legal Reforms, the National Human Rights Strategy and Action Plan for 2020-2022 and most recently adopted 2020-2022 Strategy and Action Plan for Police Reforms. The latter, amongst others, prioritises establishment of a policy making institution in the sector, reforms in the police troops, changes in the community police ideology and functions, establishment of unified operational management centre, systemic reforms in the education sector of the Police and more importantly- philosophical change of the Police service and public perception towards Police.

Against this background the Government is convinced that deficiencies of the field will be remedied considering both the political will, as well as major reform processes already initiated. At the same time the Government stands ready and open to cooperate with the civil society organizations for tackling the remaining shortcomings and further increasing the efficiency of domestic capacities for rapid execution of this group.

Kind Regards,

Yeghishe KIRAKOSYAN

Cc: Permanent Representation of Armenia to the Council of Europe