

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES



Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

Date: 07/10/2021

DH-DD(2021)980

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1419th meeting (December 2021) (DH)

Item reference: Action Plan (05/10/2021)

Communication from Armenia concerning Mushegh Saghatelian group of cases v. Armenia (Application No. 23086/08)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1419^e réunion (décembre 2021) (DH)

Référence du point : Plan d'action (05/10/2021)

Communication de l'Arménie concernant le groupe d'affaires Mushegh Saghatelian c. Arménie (requête n° 23086/08) **(anglais uniquement)**

DGI

05/10/2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**THE GOVERNMENT OF THE REPUBLIC OF ARMENIA
ACTION PLAN CONCERNING MUSHEGH SAGHATELYAN GROUP OF CASES¹**

Office of the Representative of the Republic of Armenia before
the European Court of Human Rights
05 October 2021

¹ no. 23086/08, final on 20 December 2018, supervised under the enhanced procedure

Case Name	Application Number	Final Judgment Date
<i>Mushegh Saghatelyan v. Armenia</i>	23086/08	20 December 2018
<i>Ter-Petrosyan v. Armenia</i>	36469/08	25 July 2019
<i>Matesvosyan v. Armenia</i>	61730/08	10 October 2019
<i>Gaspari v. Armenia (no. 2)</i>	6822/10	23 June 2020
<i>Jhangiryan v. Armenia</i>	44841/08	8 January 2021
<i>Smbat Ayvazyan v. Armenia</i>	49021/08	8 January 2021
<i>Myasnik Malkhasyan v. Armenia</i>	49020/08	15 January 2021
<i>Hovhannisyan v. Armenia</i>	8049/10	18 May 2021
<i>Mikayelyan v. Armenia</i>	1879/10	31 August 2021
<i>Arzumanyan v. Armenia</i>	63845/09	31 August 2021

I. INTRODUCTORY CASE SUMMARY

This group concerns various violations of Articles 3, 5, 6, 11 and 13 of 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.

The *Mushegh Saghatelyan* case concerns the ill-treatment of the applicant, an opposition activist, at the hands of the police after the dispersal of the protests 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).

In the *Gaspari* case, the Court held that the conditions of the applicant's detention in March 2008 amounted to degrading treatment due to the lack of personal space, natural light, fresh air and unsanitary situation (violation of Article 3).

The *Mushegh Saghatelyan* case also concerns the applicant's unlawful arrest and detention as the arrest had not been formally acknowledged for the first 16 hours and had gone 12 hours over the time-limit under domestic law for bringing a suspect before a judge. In the case of *Jhangiryan* the violation was because of the delay between deprivation of liberty and drawing up of the record of arrest. Moreover, the applicant remained in police custody in excess of the maximum period prescribed. In both cases of *Jhangiryan* and *Smbat Ayvazyan* the applicants remained in custody without a court decision (violation of Article 5 § 1).

The *Myasnik Malkhasyan* case concerns the applicant's unlawful arrest and detention as the charges were generic and abstract terms and, *inter alia*, were not substantiated by evidence. In the

case of *Jhangiryan v. Armenia* the Court found that the domestic courts had failed to provide relevant and sufficient reasons for the applicant's continued detention. (violation of Article 5 §1 (c))

In all the cases of this group, except for the *Ter-Petrosyan, Matevosyan, Gaspari (no. 2) and Myasnik Malkhasyan* cases, the domestic courts failed to provide relevant and sufficient reasons for the applicants' subsequent detention (violations of Article 5 § 3).

In the *Smbat Ayvazyan* case, the violation was due to the fact that the applicant's appeal against this extended detention was refused on the grounds that the criminal case was no longer considered to be in its pre-trial stage, thus rendering the grounds irrelevant and insufficient. (violations of Article 5 § 4)

In the *Mushegh Saghatelyan, Ter-Petrosyan and Matevosyan* cases, the Court found that the dispersal of the protests, which had been peaceful, and the subsequent rounding-up and detention of activists, such as the applicants, had been disproportionate and unnecessary (violation of Article 11) and that in the *Mushegh Saghatelyan, Matevosyan, Smbat Ayvazyan and Gaspari (no. 2)* cases, the criminal proceedings against the applicants, taken as a whole, were conducted in violation of their right to a fair hearing because the courts had relied on police testimony to convict them, while summarily rejecting both their allegations of inconsistencies in the cases and their requests to call defence witnesses (violation of Article 6 § 1).

As regards the *Jhangiryan* case, the Court found that the impartiality of the court was jeopardised as the trial court judge's son was involved in the investigation of the protest movement (violation of Article 6 § 1).

In the *Ter-Petrosyan* case, the Court also held that the applicant had not had at his disposal an effective domestic remedy for his grievances under Article 11 (violation of Article 13 in conjunction with Article 11).

In the *Hovhannisyan* case the sanction imposed on the applicant, especially such a severe one as his dismissal, was not a proportionate measure within the meaning of Article 11 § 2 of the Convention.

In the *Mikayelyan* and *Arzumanyan* cases the Court concluded that the domestic courts failed in their duty to provide reasons for their decisions and that the reasons adduced to justify the interference with the applicant's right to freedom of peaceful assembly were not "relevant and sufficient".

II. INDIVIDUAL MEASURES

A. Payment of just satisfaction²

In addition to the information submitted in the previous Action Plan³ of 2 April 2020, the just satisfaction awarded to the applicants in the cases of *Gaspari (no. 2)*, *Jhangiryan*, *Myasnik*

² The just satisfaction forms have been submitted to the Just Satisfaction Unit of the Department for the Execution of Judgments of the European Court of Human Rights.

³ Reference document: [DH-DD\(2020\)301](#), last accessed on 2 July, 2021

Malkhasyan, Smbat Ayvazyan and Hovhannisyan were payed to the applicants within the deadlines set out by the judgements. Given the nature of the case of *Myasnik Malkhasyan v. Armenia* and *Hovhannisyan v Armenia*⁴ and the factual circumstances thereof, no other individual measures seem necessary.

B. Other individual measures

i. The case of Mushegh Saghatelyan v. Armenia

As mentioned in the previous Action Plan, with due regard to the violations of Article 3 found in the respective judgment, criminal proceedings were instituted on 9 August 2019 under Article 309 § 2 of the Criminal Code of the Republic of Armenia (exceeding official authority accompanied by violence) thus ensuring the investigation addressing the allegations of ill-treatment. It should also be recalled that due to the applicant's health status and current condition, the investigative authorities are not able to question him, which objectively hinders the investigation in whole. Having this in mind, it should be noted that with the aim to best protect the interests of the applicant, his son was recognized as his legal successor.

The investigation is still pending, with the intention to address all the deficiencies identified by the Court. With the aim to discover the origins of Mushegh Saghatelyan's injuries, to identify the people responsible for the alleged ill-treatment and to shed light on the events of the material time, certain investigative measures have been undertaken. In this context it should be noted that more than 50 witnesses were questioned, and a number of operative-investigative measures were ordered.

ii. The case of Matevosyan v. Armenia

Turning to the case of *Matevosyan*, it should be noted that pursuant to the Prosecutor General's appeal of 28 October 2019, the case was reopened and the applicant was acquitted on 25 May 2020. With regard to the nature of the violations of the present case, no other individual measures seem necessary.

iii. The case of Gaspari v. Armenia (no. 2)

After the delivery of the judgment both the Prosecutor General, as well as the applicant's representative brought appeals to the Court of Cassation seeking to quash the court decision of 30 March 2009 and to acquit the applicant. The appeals were granted by the Court of Cassation on 28 October 2020, and the applicant was fully acquitted. With regard to the nature of the violations of the present case, no other individual measures seem necessary.

iv. The cases of Jhangiryan v. Armenia and Smbat Ayvazyan v. Armenia

⁴ In the case of *Hovhannisyan v Armenia* after the judgment became final, the applicant did not apply for the reopening of the case in 3 months time period as prescribed by law.

Even prior to the delivery of the judgments of *Jhangiryan* and *Smbat Ayvazyan*, the applicant's representative in the case of *Jhangiryan*, and the Prosecutor General in the case of *Smbat Ayvazyan* appealed to the Court of Cassation seeking to quash the previous court decisions and to acquit the applicants. The appeals were based on the finding in the judgment of *Mushegh Saghatelyan v. Armenia*. The Court of Cassation has granted both appeals, Gagik Jhangiryan was acquitted on 18 September 2019, and Smbat Ayvazyan was acquitted on 20 December 2019.

III. GENERAL MEASURES

A. Legislative and practical developments

Extensive information regarding the general measures taken and envisaged in the frameworks of the execution of the present group of cases has been provided in the previously submitted Action Plan. Yet, it should be recalled that considerable steps have already been undertaken to ensure the protection of the fundamental human rights and the prevention of similar violations at the national level.

In particular, with the 2015 amendments to the Constitution, an elaborate and modern catalogue of fundamental rights taking up many guarantees from the Convention and/or the Charter of Fundamental Rights of the European Union was established. Further to the 2015 constitutional amendments, for the first time, constitutional protection was guaranteed for the right to compensation of damages inflicted through a non-legitimate action or inaction of state and local self-government bodies and officials.

More of that, the Constitution ensures that in interpreting the constitutional provisions on fundamental human rights and freedoms, *inter alia*, the case-law of the Court shall be taken into account,⁵ and the restrictions imposed may not exceed the restrictions defined by the international treaties of the Republic of Armenia⁶.

Nevertheless, bearing in mind the fact that the field is ever-changing and may always be subject to improvement, it should be noted that the Government remain faithful to the principles set out in the Convention. Thus, it is always the Armenian Government's aim to improve the national legislation and ensure its coherent and consistent application in practice, which will in turn enable the prevention of similar violations.

i. The adoption of the new Criminal and Criminal Procedures Code

- *Developments related to Article 3*

Before turning to the more specific provisions and practical amendments and developments aimed at prevention of similar violations, it should be noted that after the extensive work and commitment to the matter, both the new Criminal Code (hereinafter CC) and the new Code of Criminal Procedure (hereinafter CCP) were adopted on 27 May 2021 and 30 June 2021 respectively. This

⁵Article 81 of the Constitution

⁶*Ibid.*

development provides for the reboot of the criminal justice system of the Republic of Armenia completely in line with the international requirements and European standards.

In particular, while the act of torture was previously criminalized on 9 June 2015, the new CC remains in full conformity with Article 1 of the UNCAT, including crimes committed by public officials, recognizing the purposive element of the crime, as well as ensuring that the penalty for this crime is proportionate to the gravity of the act of torture according to Article 4 of the UNCAT.⁷ The new CC goes even further by prescribing 3 levels of penalty according to the aggravating circumstances set out by the Article.

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, Article 83 paragraph 9 of the new CC further provides that statute of limitation cannot be applied to certain crimes. Among those crimes are torture (prescribed by Article 450), as well as the crime of abuse of authority or influence by a public official (prescribed by Article 441). It should be noted that paragraph 2 (1) of the Article provides the criminalization of said abuse accompanied by using or threatening to use violence. Thus, paragraph 2 (1) of Article 441 mainly covers the cases of ill-treatment by public officials.

In this context, it becomes apparent that under Article 83 paragraph 9 of the CC, the actions prescribed, *inter alia*, under Article 441 paragraph 2 and Article 450 are not subject to the application of the statute of limitation. Moreover, according to the new CC the actions prescribed in the above-mentioned articles are not subject to the pardon and amnesty as well.

Turning to the new CCP, it should be noted that as in the previous version, the cases of torture - either committed by private individuals or public officials - are subject to public criminal prosecution. Hence, authorities bear the responsibility to investigate into such acts regardless of assertions of reconciliation between the alleged perpetrator(s) and the victim(s). Thus, this further ensures the initiation of a criminal case in relation to any allegation of torture.

Furthermore, the Court found a violation due to the fact that there was not any official investigation into acts of torture. In this regard it should be mentioned that with the adoption of the draft CCP a number of issues concerning the effective investigation into acts of torture had been addressed. Particularly, the increased procedural safeguards described in the previous Action Plan have been implemented, thus securing the basis for comprehensive and effective investigation. Moreover, the CCP stipulates the minimum rights of the arrested person, which can be considered as a fundamental safeguard against any form of ill-treatment. Thus, through these provisions the CCP creates a clear system of procedures and mechanisms through which the effective investigation into allegation of ill-treatment can be conducted.

In this context it should be noted, that during its periodic visit the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT) in its Report of 2020 has also evaluated the prescribed legal safeguards as satisfactory, and has considered the adoption of the draft CCP as an additional guarantee.⁸

⁷ Article 450 of the Criminal Code of 27 May 2021

⁸ Reference document: [CPT/Inf\(2021\)10](#)

Pursuant to the process of the gradual installation of audio and video surveillance equipment in police premises, it should be noted that Article 214 paragraph 3 of the CCP provides that all the investigative actions prescribed by Article 208⁹, i.e. questionings, of the present code are to be audio and video recorded, with the exception of objective impossibility. The Article goes further to describe the procedure of conducting the video recording, establishing that the investigative action should be video recorded from the starting point to the end with no interruptions. If for objective reasons the video recording was interrupted, the investigative action will also be stopped and the causes are to be described in a separate minutes. The CCP prescribes that the video recording cannot be edited in any way. The carrier of the video recording is attached to the minutes, thus making it accessible to the person or their representative.

It is also to be mentioned that in January 2020 sample forms for documenting torture, other cruel, inhuman or degrading treatment elaborated in line with the Istanbul Protocol standards, have been approved by the order of the Minister of Justice of the Republic of Armenia. At present these forms are used only at the penitentiary establishments, however, the question of using them in other places of deprivation of liberty as well - including those of the police - is being currently discussed.

• *Developments related to Article 5 § 1- lawfulness of applicants' arrest*

A person's right to liberty and security is a Constitutional right, and therefore, its protection is always at the center of the Government's attention. In this context it should be noted that pending the adoption of the new legislation, the Government has continuously aimed at ensuring the due protection of this right under the existing legislation, and has continuously amended the provisions of the material time. The detailed information regarding the interim amendments is provided in the previous Action Plan.

However, the adoption of the Criminal and Criminal Procedure Codes is a major step forward for the outstanding issues of deprivation of liberty in terms of safeguards and regulations. It is also a significant measure to address the shortcomings identified by the Court. Particularly, in the majority of the cases in the group the applicants had found themselves detained without a court decision. Thus, the Court has found numerous violations of the lawfulness of the applicants' arrest and detention. In this context, the Government consider that with the adoption of the CCP, the lawfulness of applying restraint mechanisms, detention and its lawfulness as well as the terms for detention were clearly prescribed by the legislator, thus bringing the field in line with the international standards and the requirements of ECHR case-law.

In this regard it should be mentioned that the new CCP prescribes that a restraint measure may not be applied unless there is reasonable suspicion that the Accused has committed the act attributed to him. Moreover, a restraint measure may be applied if it is necessary to prevent the escape of an Accused, to prevent the commission of a crime by the Accused or to ensure the fulfillment by the Accused of obligations placed on him by law or by Court decision¹⁰. It should be noted that according to the new CCP an Accused may be arrested on the grounds of violating the conditions

⁹ Article 8 of the CCP provides all the types of investigative actions.

¹⁰ Article 116 p. 2

of the measure of restraint imposed on him only if the provisions of CCP allow detention to be applied to him as a measure of restraint¹¹.

As the Court found violations concerning the lawfulness of the applicants' arrest and detention the Government would like to highlight that the new CCP provides with a number of important provisions in this regard. Particularly, detention is the deprivation of liberty of the Accused by Court decision in the cases and procedure stipulated by law for a term defined by law and by such Court decision. It may be applied only in case the application of alternative restraint measures is insufficient for securing the requirements of the above-mentioned article. Moreover, detention may be applied only in case when, based on the sufficient totality of factual circumstances, the Investigator or Prosecutor have justified and the Court has confirmed with reasoning the relevant conditions of lawfulness¹².

Furthermore, the maximum period for holding the Accused in detention during Pre-Trial Proceedings is set. In particular, four months maximum period is envisaged in cases of accusing of a non-grave crime, six months for a medium-gravity crime, ten months for a grave crime and twelve months for a particularly grave crime. During the Court Proceedings detention may be applied and prolonged by no longer than 3 months each time¹³.

In addition to the abovementioned guarantees, with regard to the fact that the issue of applying a restraint mechanism requires, *inter alia*, promptness, the CCP further provides the time-limits for the institution and examination of detention motions, and the delivery of the decision to apply detention in general. Particularly, if the Accused has been detained, then the accusatory conclusion shall, together with the Criminal Case File, be delivered to the Court no later than 15 days prior to the end of the detention period of the Accused.

Afterwards, upon receiving the Criminal Case File the judge shall render a decision on assuming the proceedings and scheduling a preliminary court hearing. If the three-day time period is not kept, the trial court, without taking decision on having preliminary court hearings, shall return criminal case to prosecutor who exercises supervision over the case.

Additionally, the CCP provides that a person is considered to be arrested at the *de facto* deprivation of his liberty, and the time limits for the arrest are to be counted from that moment. As a guarantee for the right calculation of the time limits, the Code enumerates the exact data that should be reflected in the minutes of a person's arrest. In particular, the minutes should contain the exact date, time and place of the person's *de facto* deprivation of liberty.

Thus, by the amendments the CCP specifies the reasonable grounds and circumstances for applying a restraint measure, including detention. The CCP goes further to underline that detention is a restraint measure of a last resort, and its application is to be absolutely justified in front of a court. Additionally, by specifying the exact moment of the start of detention, by envisaging the maximum terms for applying detention, as well as outlining the general terms, the CCP ensures the person's right to lawful detention.

¹¹ Article 112 p 2

¹² Article 118

¹³ Article 119

- *Developments relating to Article 5 § 3 – lack of relevant and sufficient reasons*

In addition to the extensive information on the developments of the case-law of the Court of Cassation regarding the relevant and sufficient reasoning by the national courts while deciding on detention and its extension provided in the previous Action Plan, the guarantees provided for by the CCP are to be mentioned as well.

Before turning to the guarantees provided by the CCP, the Government would like to recall that the Court has found that the applicants' subsequent detention was not based on relevant and sufficient reasons and was contrary to the requirements of the Convention. In this regard, the provisions of the CCP develops the conditions for justifying the detention bringing them completely in line with the Convention standards.

In particular, detention may be applied solely in cases when there is a reasonable suspicion that the accused has committed the act attributed to him as well as upon the existence of at least one additional relevant and sufficient ground. Thus, in line with the Court's case-law the requirement on the judicial officer to give relevant and sufficient reasons for the detention in addition to the persistence of reasonable suspicion applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest.

Turning to the requirements applicable when extending the detention term, in addition to the persistence of reasonable suspicion and the relevant and sufficient grounds, the due diligence exerted by the body conducting the criminal proceedings for the purpose of discovering circumstances of significance to the proceedings in question, as well as the necessity of continuing the criminal prosecution of the accused in question must be justified before the court, as well.

Moreover, in contrast to the provisions of the previous CCP, which did not prescribe any such requirements, according to the new CCP if the grounds for detention are no longer relevant, the person is to be freed from detention. This is a further guarantee for the fulfillment of the relevant and sufficient reasoning requirement.

- *Developments relating to Article 5 § 4 – review of lawfulness of detention*

The Court has found a violation due to the fact that the applicant's appeal against this extended detention was refused on the grounds that the criminal case was no longer considered to be in its pre-trial stage, thus rendering the grounds irrelevant and insufficient.

In this regard, the new CCP ensures a person's right to a review of the decision on detention. In particular, with respect to the lack of judicial review of the decision applying detention it should be mentioned that the CCP prescribes that "1. The following Judicial Acts of first instance Courts shall be subject to special review in the appellate Court: ... 2) a judicial act on granting a Petition on applying, prolonging, abolishing or applying an alternative restraint mechanism instead of detention, or a judicial act on rejecting a Petition on abolishing detention or applying an alternative restraint mechanism instead of detention. ..." This provision fully ensures that the relevant court decision is to be reviewed under the special review procedure by the Court of Appeal.

ii. *Developments relating to Article 11*

In order to protect public order and safety, rights and freedoms of others more effectively, particular attention is paid to the police reforms. It is important to note that the Government launched massive police reforms as a result of which extensive structural and practical improvements have taken place. Particularly, in the context of the large-scale reforms in the police sector launched in December 2019, the Government has undertaken the establishment of a new Patrol Service, and this was also approved by Decision No 638-L of 23 April 2020 “On approving the Strategy for Reforms of the Police of the Republic of Armenia and the 2020-2022 Action Plan arising from the Strategy”. The establishment of a new Patrol Service serve as the first wave of modern police with new functions, new equipment, new education and skills and, most importantly, a new mind set. The steps for formation of these new values were taken at the Educational Complex of the Police of the Republic of Armenia during instruction that lasted 5 months.

Before beginning their patrol duties in the Capital City of Yerevan the applicants passed IQ tests, physical fitness tests and individual interviews. Representatives of relevant state bodies, civil society representatives, as well as international partners and psychologists were represented in the commissions that are responsible for conducting the tests and interviews. As a result, in December 2020, more than 700 learners started taking the five-month training course. The mentioned training program among the others include the courses of Human Rights and the Police, Constitutional Law, Criminal Law, Criminal Procedure Law, Operative and Intelligence Measures. Alongside theoretical lessons, the modules also included the development of key tactical skills, for which guest specialists from the United States, Canada, Ukraine and Georgia prepared trainers.

After acquiring communication, physical fitness, basic tactical skills and defensive tactics, on 7 July 2021, the Yerevan subdivision of the new Patrol Service launched its activities. The new Patrol Service will be fully operational throughout the Republic of Armenia before the first quarter of 2023.

The establishment of a well-trained, well-specialized service that helps the citizens in difficult situations is a priority goal for the Government on the way to the implementation of police reform. The aim was to create community-oriented police with integrity and professionalism that would provide relevant services to the Armenian society.

The image of the new police officer trusted by the public was chosen as a guideline for a contextual and reasonable change in the field, at the basis whereof the best international practice, objectives set before the Police in our country, new people in the profession in order to bring in fresh blood, fundamentally review professional education, transform the educational environment, equip the Service with up-to-date equipment and special means, as well as the sequence of clear and calculated steps for the creation of a public servant having integrity, accountability and professionalism were put.

The above-mentioned reforms provide strong grounds in order to protect the right to freedom of assembly more effectively and exclude further potential violations.

iii. Domestic remedies

• *Preventive remedies*

In terms of preventive remedies, the Armenian legislation provides for, *inter alia*, the right to appeal to the court on the alleged violations of their rights and liberties of persons deprived of liberty as described in the previous Action Plan.

In regard to the judicial remedy, based on the decision of the Constitutional Court on the matter of jurisdiction to examine the appeals of the actions and inactions of the penitentiary institution authorities, a number of cases are currently in the process of examination in the Administrative Court. It should be noted that the Administrative Court decides on the matter quite promptly and with the examination of all factual circumstances in detail, and delivers a decision as appropriate to the situation. Among such decisions is for example the appeal of a person deprived of liberty against the decision of the head of the penitentiary institution on annulling a previous favorable decision on granting additional hours of outdoor activity. After careful and thorough examination of all the arguments and factual circumstances, the Administrative Court granted the appeal and annulled the decision of the head of the penitentiary institution¹⁴.

Moreover, in two other cases the Administrative Court granted the appeal and recognized the activities of high-level officials of “Yerevan-Kentron” and “Nubarashen” penitentiary institutions illegal. In particular, by its decision, the Administrative Court stated that as a result of the actions of the administrative body, the powers of the member of the monitoring group defined by the order of the Minister of Justice of the Republic of Armenia QH-66-N were limited. The Administrative Court find, that the members of the Monitoring Group did not have an opportunity to carry out their professional activities, as prescribed by the decree, therefore the above mentioned facts reaffirm the circumstance that the activities of the administrative body were illegal.¹⁵

In other cases, the Administrative Court granted the appeals and annulled the decision on not applying the amnesty of the head of penitentiary institution.¹⁶ The Administrative Court also annulled the decision of the head of “Armavir” penitentiary institution, which concerned imposing the penalty on a convict.¹⁷ A number of cases are pending before the Administrative Court the outcome of which will be submitted to the Committee of Ministers.

¹⁴ Administrative case no ՎԴ/3639/05/20 http://datalex.am/?app=AppCaseSearch&case_id=38562071809946157

¹⁵ Administrative cases nos. ՎԴ/0434/05/19
http://datalex.am/?app=AppCaseSearch&case_id=38562071809930251, ՎԴ/1203/05/19
http://datalex.am/?app=AppCaseSearch&case_id=38562071809931108

¹⁶ Administrative cases nos. ՎԴ/7781/05/19
http://datalex.am/?app=AppCaseSearch&case_id=38562071809938139, ՎԴ/0695/05/19
http://datalex.am/?app=AppCaseSearch&case_id=38562071809930588

¹⁷ Administrative cases nos. ՎԴ/9332/05/19
http://datalex.am/?app=AppCaseSearch&case_id=38562071809939835, ՎԴ/8205/05/20
http://datalex.am/?app=AppCaseSearch&case_id=38562071809951124

On the other hand, in terms of internal control, the person deprived of liberty may lodge a complaint to the administration and the superior authority of the administration of the penitentiary institutions. According to Article 18 of the Law on Holding Arrested and Detained Persons, the person deprived of liberty may lodge their complaints everyday both in writing as well as orally. The corresponding authorities in turn are obliged to duly examine the complaint.

In the framework of prosecutorial oversight, it should be noted that the Prosecutor's Office of the Republic of Armenia, with the intention to ensure the protection of fundamental rights of persons deprived of liberty, supervises the penitentiary institutions and oversees the compliance to the domestic regulations. To this aim the corresponding prosecutors regularly pay visits to penitentiary institutions without prior notice or permission from the penitentiary institution, after which they prepare a report detailing any and all violations found, including those related to conditions of detention.

As an external source of supervision, the individuals deprived of liberty may also bring complaints regarding violation of their fundamental rights to the Human Rights Defender's Office both in writing as well as orally.

- *Compensatory remedies*

Despite the legislative measures and safeguards already undertaken, the Government is mindful that a more holistic approach to the protection of a person's fundamental rights is required. Acknowledging that preventive remedies alone would clearly not be sufficient, the Armenian authorities have taken the necessary legislative measures to ensure the existence of a legal mechanism for non-pecuniary compensation in cases of, inter alia, similar violations on a national level with amendments to the Civil Code of RA in 2014, with additional amendments in the subsequent years.

In particular, compensation for non-pecuniary damage in case of a number of violations of fundamental rights and freedoms, including the right not to be subjected to torture or inhuman or degrading treatment or punishment, right to liberty and security, right to a fair trial, freedom of assembly and association, right to an effective remedy is prescribed by the Civil Code of Armenia.

Turning to the practical application of the Civil Code provisions, it should be noted that with the objective to reveal whether the legislative mechanism in place is actually practiced, the Government studied randomly selected 37 appeals for non-pecuniary damage examined by domestic general jurisdiction courts with a time span of 5 years after the implementation of the Civil Code provisions. The study revealed that out of the 37 random appeals 25¹⁸ were granted in accordance with the requirements of the Civil Code. The remaining appeals were rejected on the basis of insufficient basis for the compensation, and were upheld by superior courts. The results of the study indicate that the issue of non-pecuniary damage compensation has been resolved on a

¹⁸ See for example cases no. LՂ/0031/02/16, ՍՂ/1242/02/17, ԵՂ/8096/02/20, ԵՂ/21198/02/18, ԵՂ/14039/02/20, ԵՂ/20654/02/20, ԵՂ/0810/02/20, available on datalex.am

legislative level, and is now being practiced in the domestic courts, who in turn give due regard to the importance of upholding this fundamental human right.

B. Publication and dissemination of the judgments

All the judgments of this group have been translated into Armenian and published on the official websites of the Ministry of Justice (www.moj.am), the Armenian Government Representation before the European Court of Human Rights (www.echr.am), as well as on the ECHR's official case-law database HUDOC (hudoc.echr.coe.int). Considering the importance of preventing further similar violations, as well as of effectively implementing the Court's judgments, the relevant authorities involved were duly informed about the judgment and provided with the corresponding translation.

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

IV. STATUS OF EXECUTION

The Government of the Republic of Armenia 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 this field in line with the international standards. In this context, the multifaceted and targeted measures already implemented, particularly the adoption of the CC and the CCP provide sufficient basis to conclude that the deficiencies of the field are generally addressed, thus, remedying the violations found and preventing similar violations in the future.

In the light of the aforementioned, and bearing in mind that the general measures will be examined in the *Mushegh Saghatelyan* group, the Government kindly invites the Committee of Ministers to close the supervision of the *Matevosyan*, *Gaspari (no. 2)*, *Jhangiryan*, *Myasnik Malkhasyan*, *Smbat Ayvazyan* and *Hovhannisyan* cases, given the fact that no more individual measures are necessary in these cases.