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Meeting: 1355th meeting (September 2019) (DH)

Item reference: Action plan (12/06/2018)

Communication from Cyprus concerning the case Khani Kabbara v. Cyprus (Application No. 24459/12)

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Réunion : 1355^e réunion (septembre 2019) (DH)

Référence du point : Plan d'action

Communication de Chypre concernant l'affaire Khani Kabbara c. Chypre (Requête n° 24459/12)
(anglais uniquement)

KHANI KABBARA v. Cyprus

(Application no. 24459/12, Judgment 5 June 2018, final on 5 September 2018)

ACTION PLAN

I. CASE DESCRIPTION

This case concerns the authorities' failure to carry out an effective investigation into the applicant's complaint of ill treatment during his arrest in 2011 (procedural violation of Article 3). Even though the authorities carried out three investigations into the applicant's complaint (para. 152 of the judgment),¹ none of the three investigations managed to shed light on the exact circumstances in which the applicant's injuries were caused (para. 151).

As a consequence of the deficiencies in the domestic investigations, the Government have not been able to show that the applicant's injuries were sustained during his arrest and as a result of his own conduct or the intensity of his resistance. The Court therefore found that the Government failed to discharge their burden of providing a satisfactory and convincing explanation for the applicant's injuries (para. 155) leading to a substantive violation of Article 3 (para. 157).

II. INDIVIDUAL MEASURES

(a) Just satisfaction

The just satisfaction awarded by the European Court has been paid and evidence has been previously supplied.

(b) Other individual measures

¹ The first investigation was conducted by the police itself and it was an administrative investigation. The second investigation was carried out by the Independent Authority for the Investigation of Allegations and Complaints against the Police. The third investigation was carried out by two new investigators appointed by the Attorney General. The third investigation only started following communication of the application by the Court (para. 71).

The Court observed that the first two investigations, i.e. the administrative investigation by the police itself and the investigation carried out by the Independent Authority for the Investigation of Allegations and Complaints against the Police (hereinafter “the Authority”), suffered from a number of significant shortcomings (para. 143). As for the third investigation which was carried out by two new investigators appointed by the Attorney General (para. 71), the Court noted that even though it was a more thorough investigation, the passage of time had undermined its effectiveness and certain essential omissions could no longer be remedied (para. 150).

In light of the deficiencies identified by the Court *vis-à-vis* the three investigations, counsel from the Attorney General’s office reviewed the criminal investigation file of the third investigation. The conclusion was that the deficiencies identified by the Court in the first two investigations have been remedied, as far as possible, by the third investigation. In fact, the third investigation, which started following communication of the application by the Court and concluded before the Court delivered its judgment, was considered as a proactive measure aiming to remedy the shortcomings of the first two investigations (para. 143), rather than waiting for the Court to deliver its judgment. To a great extent the third investigation remedied as far as possible the deficiencies identified by the Court.² However, as the Court observed, due to the passage of time, it was more difficult to gather evidence:

“many witnesses were not able to remember the relevant events and details or had become uncooperative, whereas the applicant had already left the country. The forensic experts were no longer able to establish the possible causes of injuries. Nor would an identity parade have served any purpose at this stage as the applicant had already seen many of the officers in the context of the criminal proceedings against him.” (para. 150).

In light of the above, no further individual measures seem to be necessary: there is nothing more to investigate³ while the only deficiencies of the third investigation are the

² Investigators in the third investigation sought forensic medical examination (paras. 90-91), interviewed witnesses who were not interviewed by the first and second investigators (para. 73), examined the CCTV footage (para. 72). It was not however possible at the time to conduct an identity parade, forensic experts were not able to establish the cause of injuries, the applicant had left the country.

³ With regards to the reference in para. 149 of the judgment that no face-to-face confrontations were held between the police officers in question and the applicant, it is noted that the “confrontations” the Court had in mind are foreign to the Cypriot criminal justice and prosecutorial system.

natural consequences of the passage of time, which rendered it difficult to gather further evidence.⁴

III. GENERAL MEASURES

(a) Procedural violation of Article 3

Administrative investigation

The Court found that the administrative investigation suffered from a number of significant shortcomings, including lack of the necessary appearance of independence (paras. 144-146). Administrative investigations carried out by the police into allegations of ill-treatment by members of the police have been discontinued following legal advice from the Attorney General in June 2014.

Investigation by the Authority

The Court found that the investigation by the Authority suffered from a number of significant shortcomings (para. 144-145, 148-149 and 151). The authorities omitted to take all reasonable measures⁵ from the beginning⁶ in order to secure the necessary evidence, while no forensic medical examination of the applicant was ordered. Overall conclusions were largely based on the applicant's lack of credibility.

In light of the shortcomings identified by the Court, the Attorney General wrote to the President of the Authority urging him that the quality of the investigations carried out by the Authority into allegations of ill-treatment by members of the police and the Authority's supervision in this regard need to be improved. The Attorney General also stressed that the alleged victim of ill-treatment should always be examined by a forensic pathologist within 24 hours from the time the Authority receives the allegation.⁷ The dissemination of the judgment to the President of the Authority (see below) is also expected to enable the Authority and the investigators appointed by it, to avoid similar shortcomings in their investigations in the future.

⁴ Hence, as the Court noted, the conclusions were largely based on the applicant's lack of credibility, para. 151.

⁵ For example, the investigator failed to interview witnesses who could have had relevant information, to elucidate significant inconsistencies in the applicant's allegations, to examine the CCTV footage, to conduct and identify a parade.

⁶ The investigation was launched five months after the events.

⁷ Unless of course, the alleged victim has already been examined, see below Attorney General's legal advice to the police.

For the purposes of enriching the list of the independent criminal investigators with new investigators coming from the legal profession, the Attorney General invited members of the Bar Association to submit to the Law Office their CV.⁸

Developments since the applicant's ill treatment: (a) Attorney General's legal advice to the police, June 2014 and (b) Amendment to Law Ratifying the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Law 12(III)/2017

The Attorney General in June 2014 issued instructions on the procedure to be followed in cases of alleged ill-treatment by police officers. He made it clear that all such cases must be considered as allegations of the commission of criminal offences. The instructions require police officers to inform both the Attorney General and the President of the Authority within 24 hours whenever allegations about ill-treatment are reported or come to their attention. Hence, as of June 2014 police regularly inform the Attorney General and the President of the Authority of such allegations, in order for these bodies to exercise their powers and duties.

Further, when a person is detained at a police station and alleges that he/she has been ill-treated by members of the police, the instructions are for the police to ensure that a person is examined by a forensic pathologist no later than 24 hours from lodging complaint of ill treatment or within 24 hours from the time the police became aware that such ill-treatment may have occurred.

In 2017 the *Law Ratifying the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Law 235/90) was amended by Law 12(III)/2017. According to the amendment, medical examination into allegations of torture, inhuman or degrading treatment or punishment is carried out in accordance with Annex I of the *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. The medical expert prepares a concise written report in accordance with the provisions of Annex I of the *Istanbul Protocol*, including the circumstances of the interview, history, physical and psychological examination, opinion, authorship (para. 6(b) of Annex I).

⁸ See also Response of the Government of Cyprus to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Cyprus from 2 to 9 February 2017, CPT/Inf(2018)17, p. 15.

(b) Substantive violation of Article 3

Education/training

The police force is constantly taking measures for the purposes of educating its members against ill-treatment. For example,

- (i) a seminar on the rights and handling of detained persons and their conditions of detention was organized in May 2018. The trainers were a practicing lawyer with experience in human rights and the current Cypriot member of the CPT. The seminar was repeated in June 2018.
- (ii) Advisory manuals and audio-visual material on the rights of detained persons and respect for human rights was prepared.
- (iii) Police code of ethics was recently amended and in particular its provisions on police conduct while on duty.
- (iv) Further information on the measures taken is documented in the Response of the Government of Cyprus to the Report of the CPT on its latest visit to Cyprus in 2017.⁹

Discharging the Government's burden of providing a satisfactory and convincing explanation for the injuries

The Attorney General's legal advice to the police as *per* above involved also practical advice on how to discharge the Government's burden of providing a satisfactory and convincing explanation for the injuries. According to the advice, in the case of use of force by members of the police when apprehending a suspect, a detailed record must be made and photographs taken of any injuries of the arrested persons on arrival at the police station (and before being questioned or detained in a cell). The photos can assist the criminal investigator to establish whether the person's injuries occurred during his arrest and therefore before his/her arrival at the police station and hence, shed light on the circumstances in which the person's injuries were caused.

IV. DISSEMINATION

⁹ *Ibid.*, pp. 5-10. See Action Plan in the case of *Thuvo v. Cyprus*, 26 June 2018.

The judgment has been disseminated by the Human Rights Sector of the Law Office of the Republic to the President of the Independent Authority for distribution to its members and investigators, the Chief of Police and the Ministry of Justice and Public Order. The judgment has also been disseminated to the Republic's counsels at the Criminal Law Sector of the Attorney General's office, the Cyprus Bar Association, the Parliamentary Committee for Human Rights and the Parliamentary Committee for Legal Affairs. The dissemination was accompanied by letters setting out a summary of the judgment and explaining the reasoning for the Court's finding of a violation.

V. CONCLUSION

The Government will inform the Committee of Ministers of any other practical measures the Authority and the Police may have taken for the purposes of complying with the judgment.

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Nicosia, 12 June 2019