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Communication from Armenia concerning the Galstyan group of cases against Armenia (Application No. 26986/03)

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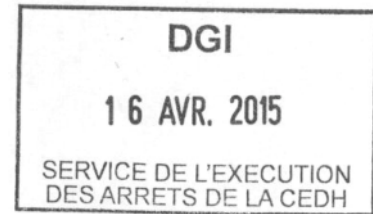
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Communication de l'Arménie concernant le groupe d'affaires Galstyan contre Arménie (Requête n° 26986/03) (*anglais uniquement*)

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The Government of the Republic of Armenia

Consolidated Action Report

GALSTYAN GROUP OF CASES

(Supervised by the Committee of Ministers under the standard procedure)

Department for Relations with the European Court of Human Rights

Ministry of Justice of the Republic of Armenia

16 April 2015

EXECUTION OF GALSTYAN GROUP JUDGMENTS

<i>Case of Galstyan v. Armenia</i>	(no. 26986/03, judgment of 15/11/2007 final on 15/02/2008)
<i>Case of Amiryan v. Armenia</i>	(no. 31553/03, judgment of 13/01/2009, final on 13/04/2009)
<i>Case of Ashughyan v. Armenia</i>	(no. 33268/03, judgment of 17/07/2008, final on 01/12/2008)
<i>Case of Gasparyan No.1 v. Armenia</i>	(no. 35944/03, judgment of 13/01/2009, final on 13/04/2009)
<i>Case of Sapeyan v. Armenia</i>	(no. 35738/03, judgment of 13/01/2009, final on 13/04/2009)
<i>Case of Gasparyan No. 2 v. Armenia</i>	(no. 22571/05, judgment of 16/06/2009, final on 16/09/2009)
<i>Case of Hakobyan and Others v. Armenia</i>	(no. 34320/04, judgment of 10/04/2012, final on 10/07/2012)

I. INTRODUCTORY CASE SUMMARY

1. The *Galstyan* group of cases concerns violations of Article 11, Article 6 §1, taken together with Article 6 §3(b), of the European Convention on Human Rights (hereinafter, the Convention) and Article 2 of Protocol No.7 to the Convention.
2. The European Court of Human Rights (hereinafter, the Court) held that the applicants' right to freedom of assembly had been breached due to their arrest and sentencing to several days of detention either for their alleged or effective participation in rallies in February 2003, as well as in those following the presidential elections of April 2003, or in order to prevent or discourage such participation in demonstrations calling for a referendum in March and April 2004 (violation of Article 11).
3. Secondly, the Court found infringement of the applicants' right to a fair trial as they were not provided with adequate time and facilities for the preparation of their defense (violation of Article 6 §3(b) taken with Article 6 §1).
4. Finally, the Court emphasized that there had been breach of the right of appeal in criminal matters due to the fact that at the material time the domestic legislation did not provide an individual with a clear and accessible right to appeal (no clearly defined procedure or time-limits and consistent application in practice was available at the material time), i.e. the applicants did not have at their disposal an appeal procedure satisfying the Convention requirements (violation of Article 2 of Protocol No. 7).
5. In *Hakobyan and Others* case, in addition to the mentioned, the Court found violation of Article 5 §1 due to unlawful deprivation of liberty of applicants on account of arbitrary arrest followed by short-term conviction.

II. INDIVIDUAL MEASURES

(i) Payment of Just Satisfaction¹

<i>Name of the Case</i>	<i>Pecuniary Damage</i>	<i>Non-Pecuniary Damage</i>	<i>Cost and Expenses</i>	<i>Total</i>
<i>Case of Galstyan</i>	---	EUR 3,000	---	EUR 3,000
<i>Case of Amiryan</i>	---	EUR 1,000	EUR 2,000	EUR 3,000
<i>Case of Ashughyan</i>	No just satisfaction awarded			
<i>Case of Gasparyan No.1</i>	---	EUR 1,000	EUR 2,000	EUR 3,000
<i>Case of Sapeyan</i>	---	EUR 1,000	EUR 2,000	EUR 3,000
<i>Case of Gasparyan No. 2</i>	---	EUR 2,000	EUR 3,000	EUR 5,000
<i>Case of Hakobyan and Others</i>	---	EUR 21,000 (EUR 7, 000 to each applicant)	EUR 7,000	EUR 28,000

(ii) Other Individual Measures

6. The applicants of the cases at issue are no longer detained. Moreover, except applicant Mr. Ashughyan (*Ashughyan v. Armenia*)², none of the applicants availed themselves from the right to lodge an application for the reopening and fresh examination of their cases at domestic level. Therefore, the Government considers that other than just satisfaction already paid, no other individual measures seem necessary with respect to the *Galstyan* group of cases.

¹ The payment receipts have been submitted previously.

² The applicant wanted to avail herself from the right to lodge an application for the reopening of her case but she missed the prescribed time limits for bringing an action under domestic legislation.

III. GENERAL MEASURES

A. Legislative Measures

7. The Government would like to highlight the following measures that have been introduced to amend the existing legislation and legal practice to prevent further possible violations in the future.

(i) Article 6 §3(b) taken together with Article 6 §1 of the Convention

8. Starting from 2005 Constitutional reforms it has become a high priority for the Armenian authorities to undertake comprehensive reforms in the administrative law and justice sector. The ultimate goal was to amend and put the relevant legislation in conformity with both international and Convention standards. Furthermore, for the purposes of implementing legal and judicial reforms in line with the European standards a *Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia for 2012-2016* was approved by the President of the Republic of Armenia in 2012. One of the main objectives of it is, *inter alia*, implementation of criminal, civil, and administrative justice reforms.

9. In July 2005, the Cassation Court of Armenia adopted a landmark decision which influenced the further statutory amendments and developments in the field of administrative legislation. Taking into due consideration and referring to the Court's well established case-law, the Cassation Court held that although the applicant's administrative detention was in the administrative legal framework, the very nature of the offence and the degree of severity of penalty imposed (5 days of administrative detention) gave sufficient grounds to conclude that the offence should be classified as "criminal". Based on the above, the Cassation Court established violation of applicant's right to public hearing, as well as right to examine or have examined witnesses against him, to obtain the attendance and examination of witnesses on his behalf.³ Following this decision, even before the delivery of the *Galstyan* group judgments, the problematic statutory provision regulating administrative detention was recognized incompatible with the Convention standards and was abolished on December 16, 2005.⁴ Thus, it has to be stressed that no similar violation connected to administrative detention can occur in the future.

10. Furthermore, a new Code of Administrative Procedure (hereinafter, the CAP) was adopted on December 5, 2013. This code regulates all the legal relations arising from administrative court proceedings and guarantees the following fundamental procedural rights of the parties: (i) to have their case heard; (ii) to submit evidence in their own defence; (iii) to make motions of self-challenge; (iv) to present evidence and take part in its examination; (v) to question each other, the other participants of the trial, witnesses, experts and interpreters, (vi) to make motions, as well as give explanations to the court; (vii) to present their position, proposals, objections and arguments in respect of all the issues arising during the process of case examination;⁵ (viii) to benefit from the free assistance of an interpreter, if they cannot understand the language used in court, and prove the

³ RA Court of Cassation decision on criminal case of V. Salartsortsyanyan (Վ. Սալարտսորտսյան) no. VQB-180/05(զործ թիվ՝ ՎՔԲ-180/05) dated on 22/07/05

⁴ Law no. HO-32-N on "Making Changes and Amendments to the Code of Administrative Offences of the Republic of Armenia"

⁵ Article 18 of the CAP

fact of not having sufficient financial means.⁶ According to the CAP, the examination of administrative case is conducted orally. The only exception to this rule is the mutual agreement of the parties to the examination of their case under written procedure.

11. As an additional guarantee, Article 86 §2 of the CAP states that the administrative court, taking into due consideration the peculiarities of a specific case, is authorised to adjourn the time limits for the submission of a response to the administrative claim in the following cases: (i) by its own initiative; or (ii) upon the motion of the respondent. This practically guarantees that if the person subject to administrative responsibility needs more time and facilities to prepare his defence, he can file a motion to adjourn the submission of the response. In addition, the CAP explicitly states that, if the time limits prescribed for the trial are not expired, it can be adjourned upon the motion of trial participants by the procedure prescribed by the CAP.⁷

12. It has to be emphasised that the application of administrative detention implied an expedited procedure which did not provide necessary safeguards and guarantees contained in Article 6 §3(b) of the Convention in violation of the right to a fair trial. It has to be emphasised that this violation was directly linked to the administrative procedure and practice of applying administrative detention existing at the material time. Therefore, following the abolishment of the latter, no similar violation can occur in the future.

13. Furthermore, as a result of comprehensive reforms implemented by the Armenian authorities in the field of administrative legislation and justice, the whole system was changed and additional safeguards have been introduced. In general, the cases of administrative violations are examined under the general procedure where all the fundamental procedural rights are guaranteed. Nevertheless, highlighting the importance of prevention of possible abuses in regard the application of speedy proceedings, the existing legislation explicitly and imperatively stipulates that the speedy proceedings can be conducted only in the following exceptional cases: (i) the application is manifestly justified; (ii) the application is manifestly unjustified; (iii) the action was brought to clarify the voters' lists.⁸

14. Thus, all the above-mentioned proves that sufficient safeguards and guarantees have been introduced to ensure adequate protection of the person's right to a fair trial in administrative proceedings.

(ii) Article 2 of Protocol No. 7 to the Convention

15. With regard to the violation of Article 2 of Protocol No. 7 the following developments have to be mentioned. Previously existing confusing and inadequate procedure of appeal under Article 294 of the RA Code of Administrative Offences was totally abolished on February 7, 2012.⁹ Considering the Convention standards and the Court's extensive case-law, the Armenian authorities decided that this questionable statutory provision impaired a person's right to access to a court and right to appeal.

16. In order to ensure that rights to access to a court and appeal are practically and effectively guaranteed, a three-tier judicial system has been created in the field of administrative justice. As of January 1, 2008 a specialized Administrative Court of first instance started to function. A

⁶ Article 9 §3 of the CAP

⁷ Article 55 of the CAP

⁸ Article 119 of the CAP

⁹ Law HO-2-N on "Making Changes and Amendments to the Code of Administrative Offences of the Republic of Armenia"

specialized Administrative Court of Appeal was created in 2010. And, the judicial acts of the Administrative Court of Appeal may be challenged in the Civil and Administrative Chamber of the Court of Cassation. In addition, in its most recent decision, the RA Constitutional Court held that Article 154 §4¹⁰ of the CAP is unconstitutional so far, as it stipulates that a person can have access to the Cassation Court only through an attorney. The Constitutional Court emphasised that such kind of regulation puts unnecessary social burden on a person depending on his financial abilities and, thus, does not guarantee the protection of a person's rights to a fair trial, effective judicial protection, as well as access to a court.¹¹

17. In the light of the above, the Government considers that amended legislation, as well as its uniform application in practice will prevent further similar violations in the future.

(iii) Article 11 of the Convention

18. In this regard, the Government would like to highlight the following developments: On April 14, 2011 the RA Law “*On Freedom of Assemblies*” (hereinafter, the Law on Assemblies) was adopted and entered into force on May 2, 2011. This law came to substitute the “*Law on the Procedure of Conducting Meetings, Assemblies, Rallies and Demonstration*” in force at the material time. Although the latter reflected the main content of the constitutional right to freedom of assembly, it presented several substantial shortcomings which led to diverse interpretations and contradictory law enforcement practice.

19. Taking into due consideration the very essence and importance of protection of the right to freedom of assembly, the necessity to adopt clear and precise legislation, the Armenian authorities enacted the new law to ensure that the freedom of assembly is practically enjoyed and guaranteed. It also should be highlighted that the draft of the said law was submitted to the Venice Commission expertise which, in general, gave a positive opinion and comments. These comments have been taken into due consideration while preparing the final draft.

20. The Law on Assemblies provides a comprehensive legal framework for the protection of the right of freedom of assembly. It includes rules for organizing and holding assemblies, as well as for authorizing, restricting or forbidding the latter. In particular, it, *inter alia*, provides that “*Assembly*” is “*an intentional and temporary peaceful and unarmed presence of two or more individuals, in a certain place (...)*”.¹² Such a broad definition recognizes all types of gatherings, meetings, marches and demonstrations as assemblies. Not only citizens, but also foreigners or stateless persons have the right to organize and participate in assemblies.¹³ Thus, equal treatment is guaranteed. Moreover, the legitimate grounds for restriction are now clearly defined. No matter the form of restriction the latter may be imposed only if it is necessary in a democratic society and pursues legitimate aims¹⁴ which are completely in line with Article 11 §2 of the Convention.

21. Not only a new law has been enacted, but Article 180¹ of the Code of Administrative Offences stipulating the forms of liability for violating the prescribed rules for organizing and holding assemblies has also been amended. It prescribes the list of situations and possible amounts of administrative fines imposable in the cases of violation. Thus, it can be inferred that this provision has been revised and formulated with sufficient precision to enable a person to foresee the consequences of his actions.

¹⁰ The right to lodge an application on points of law

¹¹ RA Constitutional Court decision no. SDV 1192 (ՄԴՈ 1192) dated on 03/03/15

¹² Article 2 of the Law on Freedom of Assemblies

¹³ Ibid. Article 6 §1, 7 §1

¹⁴ Ibid. Article 5 §1 - Legitimate aims: “*the protection of state security or the public order, the prevention of crime, or the protection of public health and morals or the constitutional rights and freedoms of others prevail.*”

22. As regards the right of judicial review, a specific chapter in the CAP regulates the administrative procedure for bringing an action to litigate the legitimacy of decisions and actions of competent administrative bodies on organizing and holding assemblies.

23. In the light of the above, it should be emphasised that specific law in line with the European standards, as well as consequent legislative amendments have been put forward to ensure that protection of right of freedom of assembly is practically and effectively guaranteed.

B. Practical Measures

24. The awareness-raising of the Convention standards, as well as the Court's well established and developing case-law is in the spotlight of the Armenian authorities. In addition to the publication and dissemination of the judgments in question, specific guidelines and orders have been adopted, as well as handbooks have been published; trainings, seminars and workshops have been organized in cooperation with both local and international organizations. All these measures were aimed at strengthening practitioners' knowledge and skills and preventing similar violations in the future.

(i) Publication and Dissemination of the Judgments

25. The *Galstyan* group judgments have been translated into Armenian and published on the official website of the Ministry of Justice.¹⁵ The relevant authorities involved, in particular, judges, prosecutors, police officers, administration of detention facilities have been duly informed about the judgments of *Galstyan* group. It was also respectively disseminated.

(ii) Practical Guidelines and Professional Trainings

26. In 2011, the Head of the RA Police approved two sets of guidelines: "***Guidelines for Conducting Negotiations to Maintain Public Order and Security***"¹⁶ and "***Guidelines for the Activities of Officers of the Police Units Involved in Public Order Management and for the Use of Physical Force, Special Means and Firearms by the Officers during Mass Disorders***".¹⁷ Furthermore, to ensure the professionalism of the RA Police actions during mass disorders, another important document "***Order for Preventing and Obstructing Mass Disorders***" was approved by the Head of the RA Police in 2013.

27. In 2012, a practical handbook "***Guidelines for Actions of the Police during Assemblies***" has been developed by the advice and direct participation of the OSCE experts. This practical handbook contains explanations on actions of the police stipulated by the RA Law on the Police. The explanations are totally in line with the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly.

28. Furthermore, special trainings were organized for police officers, by the RA Police and the Council of Europe Secretariat in October 2012. The purpose of the trainings was to enhance the theoretical and practical knowledge of police officers in the respective fields of human rights.

¹⁵ <http://moj.am> (*Galstyan* - on 15.02.2008; *Ashughyan* - on 01.12.2008; *Amiryan, Gasparyan No1* and *Sapeyan* - on 13.04.2009; *Gasparyan No2* on 16.09.2009; *Case of Hakobyan and Others* on 04.03.2013)

¹⁶ <http://www.osce.org/hy/yerevan/85136?download=true>

¹⁷ <http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>

During the seminar both local and international experts, among the others, presented the peculiarities of the right of freedom of assembly and active discussion followed.¹⁸

29. In addition to the above, in 2013, in the framework of the OSCE project, the international Centre for Excellence and Negotiation Yerevan (hereinafter, CEN-Yerevan) provided specialized negotiation trainings to police officers most often involved in interactions with society. A two-day master class workshop for the police officers involved in maintaining the public order during rallies and protests has been organized. These trainings engaged participants in an analysis of crowd psychology and profiling, negotiating with leaders and opinion makers for the crowd, and review of actual case studies, including local ones.¹⁹

30. About 140 community police officers from territorial divisions of Yerevan city police department completed training courses on communication and negotiation techniques held by the RA Police and the OSCE Office in Yerevan in June 2014. The courses focused on theoretical and practical aspects of negotiation, communication techniques, building relationship and trust. The CEN-Yerevan trainers consulted with police officers on their daily activities explored the problems they faced and solutions they found, as well as discussed the skills the police officers acquired. The OSCE Office also supported the development and publication of a brochure “*Communication and Negotiation*” with the material used during the training course that was distributed among police officers taking part in the course, to ensure wider dissemination of knowledge and information.²⁰

31. In 2013, the Council of Europe handbook on “*The European Convention on Human Rights and Policing*” has been translated into Armenian to ensure its wide dissemination and to improve the existing practice.²¹ This handbook is specifically for police officers and other law enforcement officials. It is aimed at enhancing the professionalism of police in view of disseminating the Council of Europe standards on policing. It, *inter alia*, covers the specific aspects of Articles 6 and 11 in the light of the Court’s extensive case-law and the Convention. Therefore, it is a useful tool for the police and public authorities in order to prevent and fight police misconduct or impunity and uphold the human rights.

32. In addition to the specific trainings, it should be highlighted that the respective training curricula of the newly established Justice Academy, the Police Academy²², as well as the Law Institute of Ministry of Justice have special training courses on the Convention and the Court’s case-law in general, and judgments delivered in respect of Armenia, in particular.²³ It is also worth to mention that relevant courses on both the Convention and the Court’s jurisprudence are included in the academic programmes of higher education institutions of Armenia.

¹⁸ <http://www.police.am/international-co-operation/history-of-cooperation/2012-%D5%A9%D5%BE%D5%A1%D5%AF%D5%A1%D5%B6.html>

¹⁹ <https://cenyerevan.wordpress.com/2013/04/11/police-trainings-on-crowd-management-negotiation/>

²⁰ <http://www.osce.org/yerevan/120534>

²¹ Funded by the European Union and the Council of Europe

²² The relevant materials are taught at the Police Academy, particularly within the Bachelors, Masters and Distance Learning Programmes of the Faculty of Law, as well as in the College and the Faculty of Trainings and Qualification of the Police Academy in the framework of subjects “Human Rights and the Police”, “The Major Problems of the Theory of Human Rights”.

²³ The Justice Academy provides trainings for acting judges and candidates for judges, prosecutors and candidates for prosecutors, investigators, as well as other public officials. The Law Institute provides trainings for penitentiary officials and civil servants.

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IV. STATE OF EXECUTION

33. The Government of the Republic of Armenia considers that measures adopted have fully remedied the consequences of the violations of the Convention found by the Court in cases in question, that these measures will prevent similar violations and that Armenia has thus complied with its obligations under Article 46 §1 of the Convention.