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Meeting: 1273 meeting (6-8 December 2016) (DH)

Communication from a NGO (Helsinki Citizens' Assembly-Vanadzo) (07/11/2016) and reply from the authorities (17/11/2016) in the case of Nalbandyan (Virabyan group) against Armenia (Application No. 9935/06).

Information made available under 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.

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Réunion : 1273 réunion (6-8 décembre 2016) (DH)

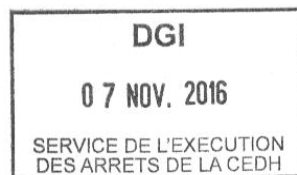
Communication d'une ONG (Helsinki Citizens' Assembly-Vanadzo) (07/11/2016) et réponse des autorités (17/11/2016) dans l'affaire Nalbandyan (groupe Virabyan) contre Arménie (Requête n° 9935/06)
[anglais uniquement]

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



HELSINKI CITIZENS' ASSEMBLY VANADZOR OFFICE
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Department for the Execution of
ECHR Judgments,
DGI - Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex
France



Helsinki Citizens' Assembly-Vanadzor,
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Communication

on execution of
ECHR judgments

Introduction

1. Helsinki Citizens' Assembly-Vanadzor is a non-political, non-religious, non-profit NGO, which unites individuals who acknowledge the supreme principles of democracy, tolerance, pluralism and human rights as values.
2. To fulfill its aims, the Organization carries out the actions below:
 - monitoring and data collection;
 - legal consultation, legislative analyses;
 - advocacy/including strategic litigations/ and lobbying
3. We write to you as an NGO, in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments to draw your attention on the lack in the Republic of Armenia of effective and thorough investigation by competent agencies into cases of ill-treatment.
4. The Reference aims to emphasize the fact that the Government has not ensured a proper investigation due to which the issue of ill-treatment has not received any final and systemic resolution so far.
5. By this document the Organization aims to provide information on the steps taken by RA Government to ensure full and effective execution of *Nalbandyan v. Armenia* judgment [9935/06](#) and [23339/06](#), adopted on March 31, 2015, final on June 30, 2015/ on the right to be



free from torture and other inhuman or degrading treatment or punishment and to submit certain proposals on the steps taken to this end.

6. In *Nalbandyan v. Armenia*, the Court found violations of Article 3 of the Convention, Article 6(1) in conjunction with Article 6(3)(c) and violations of Article 6(1) with respect to the first Applicant.
7. In its *Nalbandyan v. Armenia* judgment, the Court particularly found a substantive violation of Article 3, ECHR, in regard of the second and third applicants: "*Considering the peculiarities of the ill-treatment to second and third applicants, the obvious intentions of the police officers to show such treatment to extract confession testimonies, the fact that the second and third applicants were mother and daughter and therefore probably each of them suffered badly the pain experienced by the other as well as considering that the third applicant is minor, the Court holds that the treatment in question may be qualified as torture in the sense of Article 3 of the Convention. As for the first applicant, no such violation was committed against him*" (see Para 110-112 of the judgment).
8. The Court found that all the three applicants suffered a procedural violation of Article 3, ECHR; in particular, the investigation by the authorities into the applicants' allegations of ill-treatment was ineffective and improper (see Para 129-130).
9. The Court also found that the manner in which the courts of first and second instances held court hearings on the criminal cases violated the guarantees under Article 6(1) and (3)(c) of the Convention: "*The Court reiterates that a fundamental component of fair trial is every person's right to effective defense by an attorney and by a defense counsel assigned by the state if necessary in terms of the criminal charges brought against them...*" "*The hearings at both regional courts and the court of appeals apparently were held in an atmosphere of threats, insults and physical harassment against the first and second applicants, their family members and attorneys... It turns out that the situation was so bad that the lawyers had to refrain from attending court hearings fearing for their security...*"

Information provided by RA Government on general measures

10. As for the general measures under *Nalbandyan v Armenia*, the information provided by RA Government on *Virabyan v. Armenia* is referenced.
11. Hence, on *Virabyan v. Armenia*, the RA Government submitted that to prevent any further similar violations, structural legislative reforms were fulfilled to bring the national legislation in compliance with the best international practices. Relevant changes and amendments were



made to the RA Criminal Code; accordingly, the corpus delicti of 'torture' was stipulated¹ in compliance with the requirements of Article 1, United Nations Convention against Torture.

12. Then the Government notes that "to add procedural guarantees, the new draft Criminal Procedure Code and particularly Article 110 provide for the grounds for comprehensive and effective investigation into acts of torture. The Government finds that Article 110 which among other prescribes the minimum rights of the detained person² may be considered as a fundamental safeguard against any form of ill-treatment."

13. It is noteworthy that the regulation mentioned in the new draft criminal procedure code is still of declarative nature as the draft has not been adopted yet. The draft is covered in the agenda of the RA NA plenary sessions and the date of its final discussion is not known.³

Outline of the actual situation and measures taken by the Government

In Republic of Armenia, the issue of ill-treatment receives no systemic resolution as no proper and complete investigation is carried out into such cases and the officers showing ill-treatment remain unpunished.

In 2014-July 2016, Helsinki Citizens' Assembly-Vanadzor received applications from 11 persons on ill-treatment and degrading treatment and acts of torture by police officers to extract confessions.

7 of the applications above concerned ill-treatment cases against peaceful protesters as well as other persons after the seizure of Guard and Patrol Service regiment by 'Sasna Tsrer' group on July 17, 2016.⁴ To protect the rights of the persons who consulted the Organization, it submitted crime reports. However, due to the absence of elements of crime in the action of police officers in a particular case, the criminal proceedings were suspended, which was appealed to all the court instances in RA and upon gaining no result, an application was submitted to the European Court of Human Rights. Persons under joint cases were considered victims and the examination is still in progress.

¹ On June 9, 2015, the RA Law on Making Changes and Amendments to RA Criminal Code became effective, by which new Article 309.1 (Torture) was added to the Code, <http://www.arlis.am/DocumentView.aspx?docid=98839>

² At the moment of actual deprivation of liberty be informed verbally and at the moment of entering the administrative premises of the investigative agency or agency competent to carry out investigation also in writing about the minimum rights and duties stipulated by this article, know the reason for his/her deprivation of liberty, keep silent, inform the person of his/her choice about his/her whereabouts, invite a lawyer and undergo medical examination by his/her request.

³ See draft RA Criminal Procedure Code, <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=41901>

⁴ See HCAV Reference on Police Actions on July 17-27, 2016 after seizure of RA Police Guard and Patrol Service regiment by 'Sasna Tsrer' group, <http://hcav.am/wp-content/uploads/2016/07/%D5%8F%D5%A5%D5%B2%D5%A5%D5%AF%D5%A1%D5%B6%D6%84-%D5%8A%D5%8A%D4%BE-%D5%A3%D5%B8%D6%82%D5%B6%D5%A4.pdf>



The EU delegation to Armenia ⁵ and Mark Toner, US State Department Spokesperson, ⁶ also expressed their concerns over the issue under consideration.

The fact that investigation into cases of torture and other cruel, inhuman or degrading treatment is not comprehensive, thorough and impartial is also identified by RA Human Rights Defender in his Annual Report on RA Human Rights Defender's Activities and Situation of Protection of Human Rights and Freedoms in 2015.⁷

Also, the UN Human Rights Council referred to the fact that during the First Universal Periodic Review, Armenia mentioned that it was ready to "guarantee quick examination of complaints of torture, inhuman and degrading treatment and bring the perpetrators to justice," but back in 2012, the UN Committee Against Torture emphasized that Armenia failed to carry out quick, impartial and effective investigation into complaints on torture by police officers.⁸

Inaction by RA Court of Cassation

14. On September 11, 2015, the attorney of the Applicants under the case submitted an appeal to the RA Court of Cassation on reviewing under new circumstance ruling № ՎԲԲ-207/05 of the Criminal and Military Chamber of RA Court of Cassation of August 12, 2005, the judgment of the RA Court of Appeals of Military and Criminal Matters of July 2, 2005 and the judgment of Gegharkunik marz (region) court of February 4, 2015.
15. On December 24, 2015, the Court of Cassation admitted the appeal.
16. On February 24, 2016, the Court of Cassation scheduled the consideration of the appeals under review proceedings on June 24, 2016 and upheld the appeals by its ruling of the same day.
17. As of October 10, 2016, the appellants had not received any copy of the RA Cassation Court's ruling of June 24, 2016, i.e. 2 criminal cases were not sent for re-examination.

⁵ See Local EU statement on recent events in Armenia, https://eeas.europa.eu/topics/human-rights-and-democracy/10308/local-eu-statement-on-recent-events-in-armenia-21072016_en

⁶ See US State Department Spokesperson Mark Toner's statement, <http://www.state.gov/r/pa/prs/dpb/2016/07/260261.htm#ARMENIA>

⁷ See Human Rights Defender's Annual Report 2015, http://pashpan.am/storage/files/library/pdf_5949209102_arm_Tarekan_haghordum_2016_Ombudsman.pdf

⁸ See Working Group on the Universal Periodic Review, 19–30 January 2015, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, https://www.upr-info.org/sites/default/files/document/armenia/session_21_-_january_2015/a_hrc_wg.6_21_arm_3_e.pdf



HELSINKI CITIZENS' ASSEMBLY VANADZOR OFFICE
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18. The applicants' attorney took the necessary measures; particularly, on August 12, 2016 and on October 5, 2016, an application was submitted requesting for the RA Cassation Court's rulings; no response has been received so far.
19. The Applicant's attorney has repeatedly voiced the issue but in vain.⁹
20. Convict Narine Nalbandyan has been serving her sentence at 'Abovyan' penitentiary facilities for already 13 year.
21. Thus, the inaction by the Court of Cassation resulted in severe consequences for convict Narine Nalbandyan.

Proposed steps for thorough and effective execution of the judgment

- Prepare and submit an Action Plan to start the process of proper execution of *Nalbandyan v. Armenia* judgment;
- Ensure that SIS as an independent agency carries out a comprehensive, proper and fair investigation into cases of torture and ill-treatment by RA Police officers;
- Punish and dismiss from the RA Police system the police officers who showed ill-treatment and inhuman or degrading treatment against people on July 17-27, 2016.

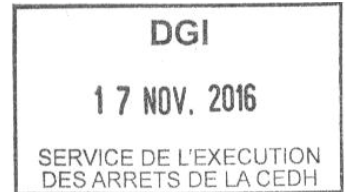
A. Sakunts

Helsinki Citizens' Assembly- Vanadzor



⁹ <http://hraparak.am/?p=113174&l=am/mied+vchiry+chi+katarvum%D5%9D+anmex+mardy+nstac+e>

**RESPONSE OF THE GOVERNMENT OF ARMENIA TO
THE COMMUNICATION OF HELSINKI CITIZENS ASSEMBLY – VANADZOR NGO
ON NALBANDYAN V. ARMENIA JUDGMENT**



I. Introduction

1. With reference to the communication of 7 November 2016 of Helsinki Citizens Assembly – Vanadzor NGO submitted in the framework of the execution of *Nalbandyan v. Armenia* judgment (nos. 9935/06 and 23339/06, final on 30/06/2015) of the European Court of Human Rights (hereinafter, the Court), and appreciating the cooperation with national human rights institutions, as well as other relevant national and international bodies the Government of the Republic of Armenia present the following comments.
2. The communication was submitted 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* for the implementation of *Nalbandyan v. Armenia* judgment which is under enhanced supervision and is considered by the Committee of Ministers in the *Virabyan* group of cases.
3. In the communication, the NGO has voiced its concerns about the lack of effective investigation into cases of torture and ill-treatment. It further stated that as of 10 October 2016 the 2 criminal cases in respect of applicants were not sent for re-examination.

II. Allegations about the lack of effective investigation into cases of torture and ill-treatment

4. The NGO made a general comment on the absence of systemic resolution in all cases of ill-treatment due to (i) declarative nature of procedural guarantees; (ii) lack of effective investigation in practice. By making reference to Article 110 of the draft Code of Criminal Procedure, the NGO emphasizes that the safeguards are of a declarative nature, as the draft has not been adopted yet, thus, are not applicable in practice.
5. First of all, it is to be noted that highlighting the importance of guaranteeing the minimum rights of all the apprehended persons from the very outset of deprivation of liberty, and taking into consideration that the process of drafting and adoption of a new code is a comprehensive and time-consuming process, the Armenian authorities adopted intermediary regulations¹ deemed to protect minimum rights of the persons deprived of liberty and to ensure that the fact of deprivation is properly recorded.
6. To ensure effective investigation into cases of torture and ill-treatment amending the definition of torture was taken as a starting point which entailed other related comprehensive legislative reforms as well. In particular, considering that the cases of torture - either committed by private actors or public officials - are subject to public criminal prosecution, authorities are obligated to investigate into such acts regardless of assertions of reconciliation between the alleged perpetrator(s) and the victim(s). Therefore, this can be considered as an additional guarantee for ensuring the initiation of criminal proceedings in each such case.

¹ Government Decree No. 818-N of 14 June 2007; RA Court of Cassation, decision on criminal case no. EADD/0085/06/09 (նրոշումը թիվ ԵԱԴԴ/0085/06/09) dated 18 December 2009

7. Besides the *proprio motu* initiation of cases, it should be noted that criminal cases are initiated based on the majority of reports submitted (either by private persons or media). Therefore, it can be stated that it is a policy for the Armenian authorities to initiate criminal proceedings even if the reports or allegations presented are not well substantiated. In this context it should be highlighted that the high number of dismissed cases (often speculated by the NGO's and other civil society representatives alleging that the investigation conducted was not effective) is primarily connected to the high number of cases initiated on the reports or allegations even not well grounded.

8. Turning to the NGO's allegations of lack of effective investigation into cases of alleged ill-treatment of peaceful protesters and other persons (after the seizure of Guard and Patrol Service regiment by "Sasna Tsrer" group on 17 July 2016), the Government consider that although the situation described is not connected to the execution of *Nalbandyan v. Armenia* judgment, it is worth to mention that the investigation into these events is in the process and the imperative comments on the absence of any results are groundless.

9. As to the NGO's reference to the UN Committee against Torture (hereinafter, the UNCAT) comments of 2012 on effectiveness of investigation into complaints of torture the following must be mentioned. First of all, these observations were made in relation to the events taken place back in 2008 and even earlier.² Secondly, extensive legislative, structural and practical reforms taken place aftermath positively affected the issue in question. The positive results achieved have been specifically mentioned in CPT Report (2015)³. In particular, the delegation noted that some steps had been taken recently to bolster the independence of the Special Investigation Service (hereinafter, the SIS) and to strengthen its capacity to investigate cases involving allegations of ill-treatment. The 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.

III. Allegations about failure to send the 2 criminal cases for re-examination

10. As it has been previously submitted, making reference to the Court's judgment on *Nalbandyan v. Armenia* case as a new circumstance, on 24 June 2016 the Court of Cassation decided to reopen the case at national level and send it to re-examination.⁴ Furthermore, it has been mentioned as well that in two weeks the two decisions would be sent to the parties and delivered to the respective first instance courts to proceed to further stage of the re-examination.⁵ In this regard, the Government stress that the copies of the Court of Cassation decisions on case VB-04/15 (N ՎԲ-04/15) and case VB-06/15 (N ՎԲ-06/15) were sent to the appellants.

11. **Case VB-04/15 (N ՎԲ-04/15)**: On 3 November 2016 the Court of Cassation decision was sent to the corresponding first instance court for re-examination. On 11 November 2016 Gegharkunik

² According to the procedure of the UN Committee against Torture (Article 19 of the UN Convention against Torture), the States Parties shall submit supplementary (periodic) reports every four years on any new measures taken. Thus, the UNCAT 2012 observations related to the period starting from 2008, even earlier.

³ The Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 October 2015. On 12 October 2016 the Armenian authorities requested for the publication of the Report.

⁴ For more details, see Action Plan of 14 October 2016, §§ 16-19: Reference document: [DH-DD\(2016\)11 42](#)

⁵ *Ibid.*

DH-DD(2016)1272 : Rule 9.2 - NGO in Nalbandyan v. Armenia and reply from the authorities.

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Regional First Instance Court admitted the case for examination and the appellants were notified thereof in accordance to the Armenian legislation.

12. **VB-06/15 (N ՎԲ-06/15)**: On 4 November 2016 the Court of Cassation decision on reopening was sent to the corresponding first instance court to proceed with re-examination. On 14 November 2016 Kentron and Nork-Marash District Court of Yerevan decided to send the case to Gegharkunik Regional First Instance Court for examination. The parties were present during the hearings and were duly notified about the decision made.⁶

⁶ On 17 November 2016 the proper delivery of the decision was confirmed.