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Meeting: 1406th meeting (June 2021) (DH)

Item reference: Action Plan (08/03/2021)

Communication from Cyprus concerning the case of Nicolaou v. Cyprus (Application No. 29068/10)

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Réunion : 1406e réunion (juin 2021) (DH)

Référence du point : Plan d'action (08/03/2021)

Communication de la Chypre concernant l'affaire Nicolaou c. Chypre (requête n° 29068/10) ***(anglais uniquement)***

DH-DD(2021)289: Communication from Cyprus.
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NICOLAOU v. Cyprus

Application no. 29068/10, Judgment 28 January 2020, final on 28 May 2020

ACTION PLAN

DGI
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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. CASE DESCRIPTION

The case concerns the authorities' failure to carry out an effective investigation into the death of the soldier Athanasios Nicolaou (procedural violation of Article 2) in 2005 when he was performing his six months' compulsory military service.

The European Court held that the authorities attempted by means of various investigative measures to shed light on the events and establish the circumstances of Nicolaou's death. However, despite these efforts they were not able to do so and the various investigations resulted in divergent findings (para. 143). The Court held that the "root of the problem lay in the initial police investigation which was marred by a number of significant shortcomings" which were acknowledged both by the investigators appointed by the Council of Ministers and the Attorney General of the Republic of Cyprus (paras. 66-70, 81 and 145). In particular, the initial police investigation was from the very beginning conducted on the premise that it was a simple case of an unnatural death and most likely a suicide, never seriously questioning this premise or attempting to verify any other possible scenario. As a result, the investigation was not carried out by experienced criminal police investigators with forensic experience and the line of investigation was limited, leading to oversights and a tenuous conclusion (para.146). The Court also noted that even though the investigation conducted by the criminal investigators appointed by the Council of Ministers (which commenced nearly six years after Nicolaou's death) and the fresh police investigation (which commenced ten years after his death) were more thorough, the passage of time had undermined their effectiveness and certain essential failings could no longer be remedied (para. 150).

The Court also held that: "These omissions undermined the plausibility of the findings of the initial investigation. They also fueled the applicants' suspicions of a cover-up. A more careful and thorough collection of evidence could have shed light on the circumstances surrounding some crucial aspects of the case, clarified certain matters,

given less ground for misgivings and avoided the need for further investigations" (para. 149).

II. INDIVIDUAL MEASURES

The just satisfaction awarded by the European Court has been paid.

On 26th February 2020, the Limassol District Court ordered the re-opening of Athanasios Nicolaou's inquest. The order was issued following an application by the applicants. The Attorney General did not oppose to the application. Within the context of the new inquest and following an application by the deceased's mother (applicant no. 1), the same court on 9th December 2020 issued an order with which it instructed the Limassol Police Director to take charge of the exhumation of the body of Athanasios Nicolaou and its safely transfer to the morgue of the General Hospital of Limassol for inspection by a named Professor of Forensics and/or a named forensic pathologist and/or an anthropologist and/or a photographer of the choice of the family of the deceased, on behalf of the family of the deceased in the presence of member(s) and a photographer of the Limassol Divisional Police Headquarters as well as one to three named forensic pathologists and/or a named anthropologist on behalf of the Republic of Cyprus who can also inspect and prepare relevant reports.

The exhumation took place on 17th December 2020 and on 18th December 2020 the deceased's skeleton was forensically examined at the General Hospital of Limassol. Following the forensic examination, applicant no. 1 filed on 7/1/2021 an application within the context of the inquest, requesting the issuing of a Court order instructing and/or allowing the transfer of the hyoid bone taken from the deceased's skeleton to a named Professor of the Medical School of the University of Athens in order to be examined. The Court issued the relevant order on 26th January 2021 allowing its transportation to and from Greece and specifying the procedure for this to be done safely whilst safeguarding the independence of the procedure. According to the Court order the results of the hyoid bone examination will be communicated to the Attorney General and to the lawyer of the deceased's family. Within three days from the arrival of the hyoid bone back to Cyprus, the Limassol Police Director will inform the Coroner

of the arrival so that the possibility of issuance of new instructions and/or orders regarding the further course of the inquest file is examined.

The report of the anthropologist related to the order dated 26th February 2020 as well as the report of the forensic examination of the hyoid bone related to the order dated 26th January 2021 are currently pending. The content of these two reports will determine the future course of the case.

III. PROCEDURAL VIOLATION OF ARTICLE 2 – GENERAL MEASURES

(a) The procedure followed by the police in relation to the investigation and handling of sudden or unnatural death cases

Police circulars

Since 2004 the Chief of Police has been occasionally issuing Police Circulars ordering Police Directors in all districts to ensure that in the situations of sudden or unnatural deaths, the investigation is carried out by the District Criminal Investigations Department, if during the preliminary investigation there is the slightest suspicion that a criminal act had occurred.[1] Similarly, the aforementioned directions were repeated in a new circular dated 2/11/2015 which also added that where a claim of possible criminal act is made by the deceased's relatives, the investigation is carried out by an experienced investigator coming from the District Criminal Investigations Department, who investigates on the premise that a criminal act and not a suicide had taken place, until the contrary is proved.[2] The same circular stresses that such cases are investigated with priority, in a short time limit and the collection of evidence and statements should be made on the premise that something which initially seems unimportant might eventually be crucial to resolve the case.

The latest circular dated 17/2/2020 reiterated that unnatural death cases are examined, with due care and professionalism, on the premise of the existence of a criminal act, unless the facts of the case during the autopsy of the scene are such that the existence of a criminal act is ruled out with absolute certainty.

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[1] Chief of Police Circular dated 24/3/2004.
[2] Chief of Police Circular dated 2/11/2015.

Standing police order – police order no. 3/25

In light of the need to safeguard a certain set of rules and procedures regarding the investigation of sudden or unnatural deaths, the Police issued on 2nd February 2021 a standing police order (order no. 3/25) entitled "Inquests", to be followed by the police officers when investigating sudden or unnatural deaths. Specifically, the police order stresses that:

(a) The Local Police Stations are in charge of the investigation of sudden or unnatural deaths, unless a suspicion exists that the cause of death is that of a criminal act, in which case, the District Criminal Investigation Department takes charge.[3]
(b) Where an ambiguity as to the circumstances of the death exists (i.e., whether there is a suspicion that a criminal act might have occurred), instructions are given by the Director of the Divisional Police Headquarters.[4]

Furthermore, the same Police Order includes an "Action Protocol regarding the Investigation of Sudden and Unnatural Deaths". This Protocol provides guidelines to the members of the Police who investigate sudden and unnatural deaths.

In particular, where the Police is informed of a death the circumstances of which justify or demand the conduct of a death inquest, the following actions,[5] *inter alia,* must be taken:

(a) immediate visit of the scene, corpse inspection and taking of measures to secure the scene,
(b) commencement of investigations to establish the identity of the deceased and the circumstances of their death,
(c) if considered necessary a forensic pathologist visits the scene in order to inspect the corpse, [...]

[3] Para. 2(2) of Police Order 3/25.
[4] Para. 2(3) of Police Order 3/25.
[5] Para. 3 of Police Order 3/25.

(h) statements are taken from all witnesses. The closest relative of the deceased is informed of the date and time of the post mortem examination so that they can be present for the purpose of corpse identification before the post mortem examination begins,

(i) the corpse identification is conducted in the presence of the investigator and the forensic pathologist,

(j) the investigator and the police photographer are present during the post mortem examination,

(k) [...] the investigator continues without delay the investigation in order to complete the case file,

(m) when the investigation is completed, the police file is forwarded to the Coroner. The investigator prepares a short report with the facts of the case without any comments and conclusions as those are the Coroner's responsibility.

(b) <u>Handling of evidence during the investigation of cases</u>

Police Order 3/17, entitled "Exhibits – Action Protocol" and dated 18th January 2021, provides instructions to police officers for the correct handling of exhibits during an investigation and includes an action protocol on the receipt, registration and storage of exhibits. Specifically, the action protocol states *inter alia* that: (a) necessary measures must be taken to avoid contamination, falsification or alteration of the evidence. (b) all exhibits are registered in an Electronic Register of Exhibits. (c) the exhibits are stored by the investigator in suitable and secure places and the number of persons handling them is very limited. (d) every police officer or any other specialist who handled the exhibit must make a statement or report which is placed in the police investigation file in order to prove that the exhibit before the Court is the one found in the accused's possession or is related to the offence.[6]

Police Order 3/17 clearly states the persons responsible for the receipt, registration, storage, control etc. of exhibits,[7] and that the receipt, package and storage of the exhibits are made in accordance with the directions included in the Handbook issued by the Criminalistic Service Department. The Criminalistic Service Department issues

[6] Para. 2 of Police Order 3/17.
[7] Para. 4 of Police Order 3/17.

and occasionally reviews the aforesaid Handbook.[8] Moreover, the police order states that all exhibits intended for examination/analysis must be sealed and delivered by hand to the relevant Laboratory via the Exhibits Reception Office of the Criminalistic Service Department and that they must always be accompanied by a specific form on which the investigator has stated the type of the requested examination.[9] The exhibits must also be received, sealed, by the police member who submitted them to a Laboratory for analysis.[10]

Police Circulars dated 17/11/2014 and 3/2/2016[11] issued by the Chief of Police (Director of the Criminalistic Service Department) and sent to the Directors of the Divisional Police Headquarters stress the necessity of the direct and valid briefing of the Director of the Criminalistic Service Department for situations of serious incidents in a manner which allows the future handling of the case to be co-decided, as this would lead to the better utilization of evidence at a scene and the resolving of cases. As stated in Police Circular dated 17/11/2014, under Police Order 3/12 entitled "Criminalistic Service Department (duties and responsibilities)" the Criminalistic Service Department is responsible to direct and supervise the members of the District Criminal Investigation Departments when it comes to, *inter alia*, the crime scene examination, the collection and packing of evidence. These circulars also state that any deviation from the appropriate procedures that have been successfully followed over time in the examination of crime scenes carries risks, as the crime scenes are only available for examination once. Moreover, Police Circular dated 3/2/2016 emphasizes that the utilization of the experience, know-how and technological equipment of the Criminalistic Service Department is seen by the Department as highly necessary to the Police.

It must be noted that because the Criminalistic Service Department has occasionally identified weaknesses and mismanagement of the various parameters that make up the professional treatment of crime scenes, it has created a comprehensive Action Manual for Crime Scenes yet to be submitted for approval.

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[8] Para. 5 of Police Order 3/17.
[9] Para. 8(1) of Police Order 3/17.
[10] Para. 9 of Police Order 3/17.
[11] A Police Circular of similar content dated 17/2/2020 was also sent by the Chief of Police to the Directors of the Divisional Police Headquarters.

Standing police orders no. 3/25 and 3/17 and latest circulars constitute an important set of rules to be followed by the police members when investigating cases of sudden or unnatural deaths, like the present case. In the Government's opinion, they are capable of preventing future similar violations.

(c) Training of police officers at the Police Academy

Police members are trained at the Police Academy in subjects such as death inquests[12] including the Coroners Law (Chapter 153) and the aforementioned Police Order no. 3/25, which incorporates the "Action Protocol regarding the Investigation of Sudden and Unnatural Deaths".

Moreover, in relation to the handling of evidence during the investigation of cases, police members attend a seminar entitled "Crime Scene"[13] during which they are taught how to safeguard a crime scene as well as all the necessary actions they must take during the collection and storage of exhibits. The subject is divided in two categories (a) the duties of the first police officer at the crime scene, and (b) the duties of the investigator at the scene. With regards to the first category, specific references are made as to the way the first police officer should block the scene, deal with people and journalists, never abandon the crime scene before an investigator arrives. Moreover, it is emphasized that no objects on which any fingerprints or genetic material could possibly exist should ever be touched by police members, or should any object be moved until the investigators together with the specialists arrive. The seminar also stresses that all necessary actions must be taken to prevent the contamination of the scene and the destruction of valuable evidence.

With regards to the second category, the duties of the investigator at the scene are taught in detail, including the taking of statements, the detection of the perpetrator, the guarding of the scene, protection of evidence etc. It is stressed that depending on the nature of the crime, the investigator calls for the specialists from the Criminalistic Service Department, a forensic pathologist and is provided with the appropriate means and necessary assistance in the discovery, collection, packaging, preservation of

[12] Seminar no. 73, as of February 2021.
[13] Seminar no. 152, as of March 2008.

exhibits.[14] Focus is also placed on the several types of real evidence and how it should be handled and preserved.

Trainee Police Officers also attend a seminar entitled "Exhibits"[15] based on the Police Order 3/17 and the Criminalistic Service Department Handbook which have already been analysed above.

IV. DISSEMINATION

The judgment has been disseminated to various domestic authorities, including the Chief of Police, the Secretary to the Council of Ministers, the Ministry of Justice and Public Order, the Ministry of Defence, the Chief of the National Guard, the Chief Registrar of the Supreme Court, 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 judgement and explaining the reasoning for the Court's finding of violation. Analysis of the judgment is expected to be published in the Cyprus Law Journal; a journal published by the Cyprus Bar Association.

V. CONCLUSION

The Government will keep the Committee of Ministers updated of the outcome of the anthropological and forensic examinations and the effect these may have on the future course of the case, and of any other measures the Police may have taken for the purposes of complying with the judgment.

A. Gregoriou

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Nicosia, 8 March 2021

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[14] In the situation of very serious crimes, it is pointed out that the crime scene investigation must be conducted by a team in which every specified specialist has a particular set of duties to fulfill.
[15] Seminar no. 85, as of January 2021.