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Meeting: 1501st meeting (June 2024) (DH)

Item reference: Action Report (30/04/2024)

Communication from Armenia concerning the case of Movsesyan v. Armenia (Application No. 27524/09)

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Réunion : 1501^e réunion (juin 2024) (DH)

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Communication de l'Arménie concernant l'affaire Movsesyan c. Arménie (requête n° 27524/09) (**anglais uniquement**)



DH-DD(2024)516: Communication from Armenia.

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DGI

30 AVR. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

THE GOVERNMENT OF THE REPUBLIC OF ARMENIA
ACTION REPORT CONCERNING CASE OF MOVSESYAN v. ARMENIA¹
(no 27524/09, final on 16/11/2017)

Office of the Representative on International Legal Matters
30 April 2024

¹ Supervised under the standard procedure



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INTRODUCTORY CASE SUMMARY

The case of *Movsesyan v. Armenia* concerns the failure by the authorities to act with sufficient diligence and care in order to establish the cause of the death of the applicant's daughter, who on 7 September 2007, being pregnant was given two injections by an emergency doctor and died in hospital on 14 September 2007.

No criminal proceedings were instituted to this regard but rather an inquiry which established that the ambulance crew had not provided proper medical assistance. As to the compensation, according to the law at the material time the applicant had no possibility of claiming compensation for non-pecuniary damage.

The European Court found that criminal-law remedy did not result and the civil remedies were not capable in the determination of the cause of the death of the applicant's daughter and the accountability of those responsible. As regards the pecuniary damage, it was dependent on the results of the criminal proceedings which had not been instituted (procedural violation of Article 2).

INDIVIDUAL MEASURES

The just satisfaction amount was paid within the deadline and the just satisfaction form was duly submitted to the Just Satisfaction Unit of the Department for the Execution of Judgments of the Court.

Moreover, as was mentioned in the previous Action Plans both the applicant and the Deputy Prosecutor General applied to the Court of Cassation for the reopening of the *Movsesyan* case. On 20 September 2018 the Court of Cassation decided to send the case to the first instance court for a fresh examination.

In the reopened proceedings a number of shortcomings identified by the Court were addressed, namely criminal proceedings were instituted, a victim status was granted, a number of persons including the medical personnel and experts were questioned, a confrontation was held between the victim and the medical personnel, a new medical examination was carried out.

The criminal proceedings were however terminated due to lack of *corpus delicti*. The applicant has contested the termination decision before the prosecutor and the judicial instances. On January 3, 2023, the Cassation Court terminated the judicial proceedings by deciding to leave the appeal unexamined, as it did not meet the requirements of appeal set forth in the Code of Criminal Procedure.

The Government asserts that considering the factual circumstances of the case and the violation identified by the Court no other individual measures are possible or necessary in the present case.

GENERAL MEASURES

A. Practical developments regarding the initiation of criminal proceedings

In addition to the previously presented legislative amendments, which include the Code of Criminal Procedure, the Criminal Code and the structural improvements in the healthcare system the



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Government deems necessary to specify that regulations guaranteeing the rights of victims have been detailed in the Action Plan of *Oganezova case*², specifying the potential avenues of their involvement in criminal proceedings.

In this regard the Government sees fit to provide the Committee of Ministers with statistical data regarding the initiation of criminal proceedings for alleged medical malpractice which is at the core of the violation identified by the Court. In the period spanning from 2019 to 2022, before the adoption of the new Criminal Code 150, 168 and 116 criminal cases were initiated, with 92, 96 and 58 respectively of them being discontinued. The statistical data showcases the heightened scrutiny of medical practices. The entry into force of the new Criminal Code triggers an increase in the initiation of criminal proceedings and investigation of medical malpractice overall. In 2022 and the first half of the 2023 219 and 157 criminal cases were initiated respectively. Moreover, only 59 and 74 of those cases were discontinued, marking a decrease in the number of the discontinued cases as well.

The sheer amount of the criminal proceedings initiated shows the Government's commitment to addressing alleged medical malpractice. In most instances, thorough investigation reveals absence of *corpus delicti*. However, the inherent complexity of this specific crime cannot be neglected and it often leads to significant number of cases being discontinued. In other words, although the number of discontinued cases may appear high, it also reflects the complexity of establishing conclusive evidence and determining culpability, as well as the integrity of the investigative process.

B. Rules of professional ethics of the healthcare professionals

The Government notes that all developments related to the integrity of the medical personnel and are supervised under the case *Botoyan v. Armenia*. The Government deems unnecessary to reiterate the information presented the Action Plan of *Botoyan case*³, instead requests the Committee of Ministers to continue the supervision under that case.

C. 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 Office of the Representative on International Legal Matters (www.rilm.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 Academy³, the Police Academy⁴ as well as the Centre for Legal Education and Implementation of Rehabilitation Programmes⁵ have training

² Reference document: [DH-DD\(2023\)411](#)

³ Reference document: [DH-DD\(2022\)1197](#)



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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.

STATUS OF EXECUTION

In the light of the above 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 this case. Notably, the procedural shortcomings have been addressed and remedied and the legislative amendments have addressed all shortcomings that have resulted in the violation of Article 2 in the present case. Thus, the Government of the Republic of Armenia considers to have complied with its obligations under Article 46 §1 of the Convention and kindly invites the Committee of Ministers to close the supervision of *Movsesyan* case.