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COMMUNICATION

In accordance with the Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the Helsinki Citizens' Assembly-Vanadzor

MUSHEGH SAGHATELYAN GROUP OF CASES V. ARMENIA (no. 23086/08)

1475th meeting (September 2023) (DH)

Introduction

1. This group of cases concerns various violations of Articles 3, 5, 6 and 11 of the European Convention on Human Rights ('the Convention') in the context of the dispersal by the authorities of the wide-scale opposition protests against the outcome of the 2008 presidential elections in Armenia, summarised in the Government's [Action Plan](#) of June 2023. Suffice it to provide here an overview of the violations found by the Court in this group of cases:
 - **Ill-treatment** of the applicant, an opposition activist, **at the hands of the police** after the dispersal of the protests of 2008 and the **absence of any official investigation** into his allegations that his injuries had been caused by police brutality (substantive and procedural violations of Article 3) (Mushegh Saghatelian case v. Armenia)
 - **Unlawful arrest and detention**, with the arrest not having been formally acknowledged for the first 16 hours and going 12 hours over the time-limit under domestic law for bringing a suspect before a judge (violation of Article 5 § 1) (Mushegh Saghatelian case)
 - **Unlawful detention** of the applicant between 1 and 13 May 2008 **not authorised by a court** as required by law (violation of Article 5 § 1). (Ayvazyan case)
 - **Failure of the domestic courts to provide relevant and sufficient reasons for the applicants' subsequent detention** (violations of Article 5 § 3) (in all cases of this group)
 - **Disproportionate and unnecessary dispersal of the protests**, which had been peaceful, and **subsequent rounding-up and detention of activists** (violation of Article 11) (Mushegh Saghatelian case, Ter-Petrosyan case, and Matevosyan case)

- Reliance, by the domestic courts, on police testimony to convict the applicants, while summarily rejecting their allegations of inconsistencies in the case and their requests to call defence witnesses, resulting in the **criminal proceedings against the applicants**, taken as a whole, having been **conducted in violation their right to a fair hearing** (violation of Article 6 § 1). (Mushegh Saghatelyan and Matevosyan cases)
 - **Conditions of the detention amounting to degrading treatment** due to lack of personal space, natural light, fresh air and unsanitary situation (violation of Article 3) (Gaspari case)
 - **Lack of an effective domestic remedy** for grievances under Article 11 (violation of Article 13 in conjunction with Article 11). (Ter-Petrosyan case)
2. This submission is made in anticipation of the September CM-DH meeting and in response to the Action Plan June 2023 concerning the Mushegh Saghatelyan group of cases submitted by the Armenian Government. It provides information regarding the progress made and prevailing challenges in Armenia concerning the issues raised by the European Court of Human Rights ('the Court') (listed above), and the adequacy of the steps made or envisaged by the authorities for the effective implementation of these judgments. We also note the contrasts between the series of recommendations we presented in the April 2020 communication pursuant to Rule 9.2 of the Rules of the Committee of Ministers.

Brief information about the Organization

3. Helsinki Citizens' Assembly-Vanadzor is a non-governmental human rights organization that unites individuals who value democracy, tolerance, pluralism and principles of human rights supremacy. In order to achieve its goal, the organization implements the following activities: monitoring and data collection, legal consultation and legislative analysis, advocacy and strategic litigation. A target group of the NGO includes victims of torture.

Criminal proceedings into allegations of torture

4. In their action plan submitted on 29 June 2023, the Government notes that there has been no conclusive identification of a perpetrator(s) in relation to the case. Though the Government notes that their investigation has included interviews with over 50 witnesses and other unspecified measures were ordered and further steps planned, we note with a concern the Government shares that the investigation has been hindered by the health and subsequent passing of the applicant.
5. In their response to the communication pursuant to Rule 9.2 of 20 April 2020, the Government noted that questioning the effectiveness of the investigation at such a time was spurious and speculative; however, as the investigation continues without identification of the perpetrators, our concerns from the 20 April 2020 communication remain.

General Measures

Developments regarding Article 11 of the Convention

6. According to the Report published by Helsinki Citizens' Assembly Vanadzor (HCA Vanadzor office) in February 2023, 180 cases were recorded during assemblies and protests as a result of police actions.¹
7. The number of human rights violations by police officers during or as a result of participating in assemblies increased by 47.8% (or 94 cases) in 2022 as compared to 2021, and 72.8% (or 131 cases) as compared to 2019. Thus, in 2022, cases of human rights violations by police officers increased twice, while cases of human rights violations by police officers during assemblies exceeded more than thrice the lowest post-revolutionary indicator. Moreover, the percentage of violations of the right to peaceful unarmed assembly, the right to liberty and security, the right to be free from physical violence has been the highest as compared to total cases of violations for the 8 years of monitoring. As compared to the previous year, cases of violations of the right to health doubled in 2022, thus recording the worst result over 8 years.²
8. Cases of disproportionate use of force were widespread.
9. As proof, violence was used against the citizens who blocked the streets demanding the resignation of Prime Minister Nikol Pashinyan in May, 2022.
10. Even when protesters were actually in the “hands” of police officers and could not show any resistance (for example, a police officer punched a citizen - being detained by his colleagues - several times on the head³) or the police officers used force and treated them humiliatingly.⁴ The police also used special measures (smoke and light-sound grenades) against citizens.
11. There were also recorded cases of police officers squeezing citizens by the throat, hitting their heads on the floor, throwing them into the car, using derogatory expressions, swearing, and spitting.⁵
12. The use of disproportionate force by police officers is also evidenced by the bodily injuries of many citizens, up to fractures.⁶
13. Human Rights Watch reported on violation of the right to freedom of assembly in 2022 recording that the law enforcement interfered with freedom of assembly during protests throughout the year.⁷
14. In the system, not only are illegal actions not properly investigated, perpetrators not identified and held accountable, but also, such actions seem to be encouraged, police officers who use violence are not only not removed from the system, but also promoted.
15. According to the statistics of police actions during 2022, representatives of civil society have a stable belief that ensuring the right to freedom of assembly in Armenia is retreating year by year. The right is largely restricted by the unlawful and disproportionate use of force by the police, whose officers lack the

¹ <https://shorturl.at/fgARW>

² <https://hcav.am/en/hcav-am-20-02-2023/>

³ <https://www.pastinfo.am/hy/news/2022/05/02/4sogvbo07/1391107>

⁴ <https://iravunk.com/?p=226488&l=am>

⁵ <https://iravunk.com/?p=226488&l=am>

⁶ <https://www.mediahub.am/post/6fd96a0b297de61e81303b5a971f3c4e> ; <https://galatv.am/hy/3094572/> ;

⁷ <https://www.hrw.org/world-report/2023/country-chapters/armenia>

capacity to ensure that the right to freedom of assembly is exercised unhindered, despite regular training and reforms by the state.

Developments regarding Article 3 of the Convention

16. In their action plan submitted on 29 June 2023, the Government noted the many revisions to the Penitentiary Code of Armenia, bringing them in line with international standards. However, the lack of conformity for ill-treatment in law and practice remains unaddressed.
17. In not adopting legislation criminalizing all forms of ill-treatment, the statute of limitations remains for such crimes, separate from removing the statute of limitations for torture. This presents difficulties in pursuing indictments for the Saghatelyan case in regards to the statute of limitations.
18. In the advisory opinion of the *Virabyan v. Armenia* (case no. 40094/05)⁸, the Court noted that, “It is first and foremost for the national courts to determine whether rules of international law having legal force in the national legal system can provide for a sufficiently clear and foreseeable legal basis within the meaning of Article 7 of the Convention to conclude that the criminal offence in question was not subject to a statute of limitation.”
19. As all forms of ill-treatment are not criminalised, only falling under certain articles of the criminal code rather than as an article in and of itself, there is an insufficient “clear and foreseeable legal basis” for the statute of limitations in regards to ill-treatment.
20. Additionally, in their 29 June 2023 action plan, the government only refers to ill-treatment in the context of the amended Penitentiary Code; this fails to criminalise ill-treatment in and of itself.
21. The Special Investigative Service (SIS), responsible for investigating cases of torture, was disbanded in 2021, and the responsibility for investigated cases of torture was passed to the National Security Service (NSS), Investigative Committee, and Anticorruption Committee.
22. The SIS investigators responsible for investigating cases of torture were moved to the Anticorruption Committee; as such, the Investigative Committee members responsible for investigating cases of torture have no experience in such investigations.
23. The ability to investigate cases of torture has been severely impacted by such redistributions of responsibility and experience, even as such actions were intended to remedy the deficiencies of the SIS covered in the 20 April 2020 communication.
24. In their 5 May 2020 response to the 20 April 2020 communication, the Government stated, “that deficiencies of the field will be remedied considering both the political will, as well as major reform processes already initiated.”

⁸ <https://hudoc.echr.coe.int/fre?i=003-7317048-9987185>

25. Since May 2020 circumstances have changed regarding Armenia's priorities, with additional focus understandably being directed towards the international situation; the concerns of the organization are that the political will to remedy and reform the deficiencies has been sidelined.
26. The organization stresses the need to continue with the reforms presented in the Government's earlier action plan, as well as to continue its cooperation with civil society groups and implement their suggestions so that the political will for continued reforms does not stall.

Recommendations

27. For the reasons above, HCA Vanadzor office respectfully makes repeated and new recommendations that the Committee of Ministers continue examining the execution of the judgments in the Mushegh Saghatelyan group of cases under enhanced supervision, and to call on the Government of Armenia to:
- Continue to ensure a thorough and effective investigation into Mr Saghatelyan's allegations of ill-treatment, conducted separately from the master criminal case related to the 1-2 March events; this includes presenting more detailed and regular updates on the progress of the investigation, as the time between the crime and the present will only present further difficulties without greater transparency.
 - As a continued matter of great urgency, adopt legislation criminalizing all forms of ill-treatment; this has remained a strong recommendation since the previous communication.
 - Develop sample templates for documenting torture and other inhuman or degrading treatment or punishment in police custody, in accordance with the standards of the Istanbul Protocol.
 - Ensure that the National Security Service, Anti-Corruption Committee, and Investigative Service are provided with sufficient material, experience, and human resources to guarantee the effectiveness of investigations, including establishment of professional and independent operative-search units.
 - Establish an anonymous complaint mechanism of torture in short periods.
 - Ensure effective access to compensation for torture victims regardless of the crime commitment time and criminal responsibility of perpetrators.
 - Implement integrity tests for police officers.
 - Install cameras in all corridors of police stations and in all rooms where detainees are kept.

Respectfully submitted,



Artur Sakunts,

Chairman of Helsinki Citizens' Assembly-Vanadzor

