

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1201 meeting (3-5 June 2014) (DH)

Item reference: Updated action plan (25/02/2014)

Communication from Armenia concerning the case of Virabyan against Armenia (Application No. 40094/05)

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Réunion : 1201 réunion (3-5 juin 2014) (DH)

Référence du point : Plan d'action mis à jour

Communication de l'Arménie concernant l'affaire Virabyan contre Arménie (requête n° 40094/05)  
**(anglais uniquement)**.

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**ACTION PLAN<sup>1</sup>**  
**VIRABYAN v. ARMENIA**  
**(Application no.40094/05, Judgment of 02/10/2012)**

## I. CASE SUMMARY

In his application, the applicant complained that the alleged treatment amounted to torture on account of his political opinions, and that no effective investigation was carried out. He also alleged that the prosecutor's decision to discontinue the proceedings on the basis of Article 37 § 2 (2) of the CCP had violated his right to be presumed innocent.

The European Court of Human Rights (hereinafter referred to as "the Court") stated under Article 3 of the Convention that the applicant was subjected to a particularly cruel form of ill-treatment which must have caused him severe physical and mental pain and suffering. Having regard to the nature, degree and purpose of the ill-treatment, the Court found that it might be characterized as an act of torture. Accordingly, the Court concluded that there was a substantive violation of Article 3 of the Convention.

As to the procedural aspect of Article 3 of the Convention, the Court stated that the investigation into the applicant's allegations of ill-treatment undertaken by the authorities was ineffective, inadequate and fundamentally flawed. It was not capable of producing credible findings and leading to the establishment of the facts of the case. The authorities failed to act with due diligence and cannot be said to have been determined to identify and punish those responsible. Accordingly, there had been procedural violation of Article 3 of the Convention.

The Court stated under Article 6 § 2 of the Convention that the reasons for termination of the criminal case against the applicant given by the prosecutor and upheld by the courts with reliance on Article 37 § 2(2) of the CCP were in violation of the presumption of innocence. There had accordingly been a violation of Article 6 § 2 of the Convention.

The Court further noted that it could not conclude beyond reasonable doubt that the applicant's ill-treatment was motivated by his political opinions and therefore there was no substantive violation of Article 14 of the Convention in conjunction with Article 3 of the Convention. Meanwhile, the Court held that the authorities had failed in their duty to take all possible steps to investigate whether or not discrimination may have played a role in the applicant's ill-treatment, so there was a procedural violation of Article 14 of the Convention in conjunction with Article 3 of the Convention.

## II. INDIVIDUAL MEASURES

### (i) *Just satisfaction*

In its judgment, the Court held that the Government was to pay the applicant EUR 25,000 (twenty-five thousand Euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus EUR 6,000 (six thousand Euros) in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom.

The just satisfaction award has been paid on 22 March July 2013.<sup>2</sup>

Non-pecuniary damage	Total
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<sup>1</sup> This Action Plan is the updated version of the one submitted on 29 November 2013.

<sup>2</sup> Evidence previously supplied, annexed to the *Virabyan* Action Plan of 29 November 2013.

EUR 25,000	EUR 25,000
Paid on 22/03/2013	

Costs and expenses	Total
EUR 6,000	EUR 6,000, converted into 5104 pounds
Paid on 22/03/2013	

(ii) *Other individual measures*

On 24 October 2013, the Court of Cassation of the Republic of Armenia has decided to review its Decision of 13 May 2005 on the basis of new circumstances. On 28 November 2013, the Court of Cassation examined the applicant's appeal on points of law and decided:

1. To review the Decision of the Chamber on Criminal and Military Cases of the Cassation Court of 13 May 2005, concerning Mr. Virabyan;
2. To quash the decisions of the First Instance Court of Erebuni and Nubarashen Communities of Yerevan and the Court of Appeal on Criminal and Military Cases of 12 November 2004 and 3 March 2005 respectively, and to send the case to the First Instance Court of Erebuni and Nubarashen Administrative Districts of Yerevan, for new proceedings.

### III. GENERAL MEASURES

The Government would like to mention in particular the following general measures that have been taken:

(i) *Dissemination of information about the judgment*

The judgment was translated into Armenian and published on the official website of the Ministry of Justice of the Republic of Armenia on 21 June 2013. The relevant authorities involved in the case were duly informed about the judgment and provided with the translation. It was also respectively disseminated. The study of the Court's case-law and the *Virabyan* case, in particular, have been included in the training curricula of the Police Academy, the Prosecutors' School, and the Judicial School, The Public Service Training Courses as well as in the trainings organized for the staff of the detention facilities. This judgment will be also included in the respective training curricula of the newly established Justice Academy.

(ii) *Legislative measures*

(1) Article 37 § 2 (2) of the CCP laid down that a prosecutor could decide not to proceed if he considered it not to be expedient on the ground that the suspect had redeemed the committed act through suffering, limitation of rights and other privations which he had suffered in connection with the committed act.

The Government would like to mention that Article 37 of the CCP was amended even before the Court's judgment by Law of the Republic of Armenia of 25 May 2006 HO-91-N "On Making Changes and Additions to the Code of Criminal Procedure of the Republic of Armenia." The mentioned legislative amendment has excluded the possibility of future violations of similar character. In particular, the relevant statutory provision, further established by the Court to be incompatible with person's constitution and convention rights and allowing the termination of proceedings if, in the prosecutor's opinion, the accused had

redeemed the committed act through suffering and other privations which he had suffered in connection with the committed act, was eliminated.

(2) The Law of the Republic of Armenia “On Special Investigative Service” adopted on 28 November 2013, that is in the aftermath of the *Virabyan* judgment, (effective as of 6 December 2011), prescribes, *inter alia*, that the Special Investigative Service investigates the cases which involve the state officials from the Legislative, Executive and Judicial bodies, including police officers (Article 2 § 1 of the Law “On Special Investigative Service”).

(3) The Draft Code of Criminal Procedure of the Republic of Armenia (hereinafter referred to as “the Draft Code”) provides the exhaustive list of grounds for termination of criminal proceedings, vesting a person, *inter alia*, with the right to object against the termination of criminal proceedings. Particularly, Article 153 § 4 of the Draft Code stipulates that in some cases it is not allowed to discontinue criminal proceedings against the accused if the latter objects against it. In this case the criminal proceedings are continued in ordinary manner.

Furthermore, the Draft Code prescribes that:

"Article 110: Rights and Obligations of a Person Arrested on the Basis of Reasonable Suspicion that has Arisen Directly about Having Committed a Crime; Conditions and Safeguards of Their Exercise and Performance

1. A person arrested on the basis of the ground envisaged by sub-paragraph 1 of Paragraph 1 of Article 108 of this Code shall acquire all the relevant rights and obligations of an Accused stipulated by this Code from the moment of receiving the Arrest decision or, if such decision was not delivered during the time period prescribed by law, then after six hours have passed since the moment of his *de-facto* deprivation of liberty.

2. Prior to acquiring the relevant rights of an Accused, an arrested person shall have the following minimum rights:

1) To be informed about the minimum rights and obligations stipulated by this Article orally from the moment of becoming *de facto* deprived of liberty and in writing at the time of entry into the administrative building of the Inquiry Body or of a body that has the power to conduct the proceedings;

2) To know the reason for depriving him of liberty;

3) To remain silent;

4) To inform a person of his choosing about his whereabouts;

5) To invite an attorney; and

6) To undergo a medical examination if he so demands.

3. The rights prescribed by sub-paragraphs 4-6 of Paragraph 2 of this Article shall arise from the moment of entry into the administrative building of the Inquiry Body or of a body that has the power to conduct the proceedings.

4. Prior to acquiring the relevant responsibilities of an Accused, an arrested person shall have the following responsibilities:

1) To abide by the Instructions of the person performing the Arrest, the Inquiry Body, and the Body Conducting the Criminal Proceedings;

2) To undergo a personal search;

3) To undergo a medical examination and fingerprinting, to be photographed, and to provide samples envisaged by this Code for expert examination.

5. To ensure the exercise of the rights envisaged by Paragraph 2 of this Article:

1) The person performing the Arrest shall be obliged, immediately after the Arrest, to explain orally to the arrested person his minimum rights, responsibilities, and the reason for depriving him of his liberty;

2) The Inquiry Body or the Body Conducting the Criminal Proceedings shall be obliged, after bringing the arrested person to the administrative building of the Inquiry Body or of a body that has the power to conduct the proceedings, to provide to the arrested person the list of his minimum rights and obligations, to safeguard the possibility of the arrested person to make phone calls for the purpose of informing about his whereabouts and inviting an attorney, and, if demanded by the arrested person, to safeguard his medical examination and not to obstruct the attorney's meeting with the arrested person.

6. The exercise of the minimum right envisaged by sub-paragraph 4 of Paragraph 2 of this Article may be postponed by a maximum period of six hours, if there are justified reasons to believe that the immediate exercise of such right may obstruct the prevention or deterrence of a crime or lead to destruction or damaging of the Evidence.

Immediate written notice shall be given to the arrested person about the postponement of the exercise of the minimum right envisaged by sub-paragraph 4 of Paragraph 2 of this Article, and a separate Protocol shall be prepared, stating the reasons for postponing the exercise of such right."

The Government points out that relevant provisions have also been drafted, to meet the CPT legal standards.

"Article 22: Proper Proving

(...)

6. Confession Testimony may not serve as a basis for convicting a person unless it is substantiated by the sufficient totality of Evidence examined in the framework of a proper legal procedure."

"Article 295: Decision on the motion on imposing a preventive measure or extending the period of the imposed preventive measure

1. In result of the examination of the motion on imposing a preventive measure and extending the period of the imposed preventive measure, the court decides to dismiss the motion also in the cases when it comes to the conclusion that gross violations of law took place during the person's arrest."

Hence, the Draft Code considers gross violations of law during the arrest in the following cases when:

1) arresting the person there obviously was no immediate suspicion on him or her of having committed the crime;

2) the person was not vested with the possibility to communicate with his or her lawyer during the arrest,

3) the arrested person was not provided with necessary medical assistance in case of presence of obvious injuries on his or her body or no reasonable explanation on the occurrence of these injuries was presented to the court ,

4) the arrested person was brought before the court in such a violation of the term determined by this Code that the court had no possibility to properly examine and decide on his or her issue of detention.

(4) Besides, considering that "any act of ill treatment by police officers against citizens, arrested or detained persons contradicts the norms of international law on human rights and freedoms, the rights of citizens prescribed by the Constitution of the Republic of Armenia"

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and "taking into account the importance of complying with the legal standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") for the prevention of ill treatment," the Head of Police of the Republic of Armenia issued the Order No. 20C, dated 27 November 2013, regarding the issues raised by the Court (*see* Annex 2).

#### **IV. STATE OF EXECUTION**

The Government will provide further information once there are any developments on the passage of the legislation and the re-opening proceedings.