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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1164 DH meeting (5-7 March 2013)

Item reference: Action plan (15/01/13)

Communication from Armenia concerning the case of Poghosyan against Armenia (Application No. 44068/07).

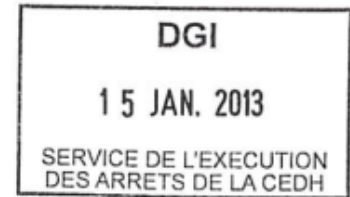
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Réunion : 1164 réunion DH (5-7 mars 2013)

Référence du point : Plan d'action

Communication de l'Arménie relative à l'affaire Poghosyan contre Arménie (requête n° 44068/07)
(anglais uniquement)



ACTION PLAN
POGHOSYAN v. ARMENIA
(Application no. 44068/07, Judgment of 20/12/2011)

INTRODUCTORY CASE SUMMARY

The case of *Poghosyan* concerns a violation of the unlawfulness of the applicant's detention, in particular Article 5 §§ 1 (lack of legal basis for detention period between 13 June and 2 July 2007), 3 (not appearing before a judge following his arrest) and 4 (refusal to examine the applicant's appeal).

The applicant's complaints concerned his detention following his arrest in April 2007 on fraud and burglary charges. The applicant was not immediately brought before a judge and part of his pre-trial detention – between 13 June and 2 July 2007 – was unlawful. One of the applicant's appeals against his detention was not examined.

I. INDIVIDUAL MEASURES

In its judgment, the European Court of Human Rights held that the Armenian Government was to pay the applicant EUR 10,000 (ten thousand euros) for non-pecuniary damages plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Armenian drams at the rate applicable at the date of settlement.

Payment of just satisfaction

Details of just satisfaction

Non-pecuniary damage	Total
EUR 10,000	EUR 10,000
Paid on 15/06/2012	

The Court considered no other individual measure necessary.

II. GENERAL MEASURES

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

a) *Dissemination of information about the judgment*

The judgment was translated into Armenian language and placed on the official website of the Ministry of Justice (http://moj.am/legal/browse/p/judgements_of_european_court/). The relevant authorities involved in the case were duly informed about the judgment and provided with the translation. It was also respectively disseminated.

A study of the European Court of Human Rights case-law, and the *Poghosyan* case in particular, is included in the training curriculum of the Police Academy, the Prosecutors' School, and the

Judicial School, Public Service Training Courses as well as in the trainings organized for the staff of the detention facilities.

b) *Legislative measures*

i) The issue concerning unlawful limitation of a person's right to liberty due to contradiction of Article 138 paragraph 3 of the current Code of Criminal Procedure (CCP) with Articles 11 paragraph 2 and 136 paragraph 2 of the same Code and Article 5 paragraph 1 of the Convention has been resolved via adopting the decision N **3/0106/01/08** dated as of 10 April 2009 by the Court of Cassation, which the European Court of Human Rights cited in the judgment at issue.

By that decision the Court of Cassation obliges investigating authority, while submitting the case to the court in cases when there is less than 15 days left before the expiry of detention term to resolve also the question of person's detention, namely release him if the grounds justifying his detention have ceased to exist or file a motion with the court seeking a prolongation of the detention period if there are relevant grounds. The period of 15 days has been considered by the Court of Cassation in order to make a court, while taking one of the decisions envisaged by Article 292 of the CCP, take it within the mentioned time-limit upon taking over the case and not to exceed the two months pre-trial detention term.

Thus, according to Article 15 paragraph 4 of the Judicial Code of Armenia the reasonings of the judicial acts of the Court of Cassation or the European Court of Human Rights in cases containing specific factual circumstances, including the interpretation of laws, are of mandatory nature for a court while ruling on a case with similar factual circumstances, save the case, when it argues, by virtue of serious arguments that those are not applicable to given factual circumstances.

However, the Government considered also to envisage the above-mentioned legal provision in the new Code of Criminal Procedure according to the final draft of which if the accused is detained, the bill of indictment alongside with the criminal case shall be submitted to court not later than 15 days before the expiry of detention term (Article 208 para.2).

Article 316 paragraph 2 prescribes that the Court, receiving criminal case, within the period of two days, shall take a decision on taking over the case and assigning preliminary court hearings.

Paragraph 3 of the same Article stipulates that if the term prescribed by Article 208 paragraph 2 is not kept, the Court, without taking decision on having preliminary court hearings, shall return criminal case to prosecutor who exercises supervision over the case.

Paragraph 5 of the same Article further provides that based on preliminary court hearings the first court hearing shall be assigned within the period of two weeks after the decision, prescribed by paragraph 2 of this Article, having been taken.

ii) As to the issues raised in the judgment of *Poghosyan* concerning the appearing before a judge following an arrest (Article 5 § 3) and refusal to examine an appeal (Article 5 § 4) those have been addressed in several judgments of the Court of Cassation of Armenia as well as laid down in the Draft Code of Criminal Procedure.

In its decisions N 0299/01/08 and N 0235/06/08 dated as of 28 November 2008 and 26 December 2008 respectively, the Court of Cassation within the framework of another criminal case found unacceptable the restriction of the right to appeal against decisions imposing detention or prolonging a detention period on the ground whether the appeal was lodged within

the scope of judicial control over pre-trial proceedings or during the court proceedings of the case. The first one of the said decisions was also highlighted by the Court in its *Poghosyan* judgment.

Besides, the draft Code of Criminal Procedure provides a norm in this regard which reads as follows:

Article 396. The scope, term and manner for appeal of judicial acts subject to special review at the court of appeal

1. The following judicial acts of the court of first instance are subject to special review at the court of appeal.

.....2) within the scope of pre-trial proceedings the motion on granting or denying the application of preventive measure or extending the period of applied preventive measure

3) within the scope of pre-trial proceedings the motion on granting or denying the dismissal of detention or applying an alternative preventive measure instead of detention

iii) In another decision N 0197/06/08 dated as of 26 December 2008 the Court of Cassation referred to the issue of appearing before a judge following a person's arrest. In this decision the Court of Cassation found the imposition of a preventive measure on an accused in whose respect a search has been initiated, to be incompatible with the requirement of Article 5 § 3 of the Convention that [an arrested person] be promptly brought before a judge. Moreover, by that very decision it imposed an obligation on the investigating authority to bring an accused to a competent court after his detention within the period of three days for the purpose of examining the issue of his detention once again. This decision has been later cited by the Court in its judgment at issue as well.

Having regard the legal position of the Court of Cassation provided in its decision, this issue has been envisaged in the draft Code of Criminal Procedure as well, the respective norm of which reads as follows:

Article 297. Re-examining and settling the issue of detention

1. If the decision on applying detention as a preventive measure has been made in absence of the accused, the investigating authority, after detaining the accused under the jurisdiction of the Republic of Armenia is obliged to take the accused to a competent court within 24 hours for the examination of the previously applied detention decision.

The new Code of Criminal Procedure is scheduled to be adopted by the National Assembly during 2013 and to enter into force in 2014.

CONCLUSION

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In the light of the abovementioned the Government considers that the relevant measures undertaken, that is legislative changes having been made in the field of criminal procedure, also measures of individual nature will fully remedy the consequences for the applicant, will respectively improve the current situation associated with unlawful detention, the right to appeal against decisions imposing preventive measure and the right of an arrested person to be promptly brought before a judge, and will also further prevent similar violations.

The Armenian authorities will keep the Committee informed of all new developments regarding the adoption of the Code of Criminal Procedure.