



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΝΟΜΙΚΗ ΥΠΗΡΕΣΙΑ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

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**Τομέας Ατομικών
Δικαιωμάτων/Ελευθεριών
Νομικής Υπηρεσίας
(διεθνής πτυχή)**

Πρόεδρο Παγκύπριου Δικηγορικού Συλλόγου
Πρόεδρο και Μέλη Κοινοβουλευτικής Επιτροπής Νομικών
Πρόεδρο και Μέλη Κοινοβουλευτικής Επιτροπής Ανθρωπίνων Δικαιωμάτων

**Τελικό Ψήφισμα της Επιτροπής Υπουργών του Συμβουλίου της Ευρώπης για
κλείσιμο της επιτήρησης των υποθέσεων *Kabbara v. Cyprus* (no. 24459/12) και
Thuvo v. Cyprus (no.3869/07)**

Πληροφορείστε ότι η Επιτροπή Υπουργών του Συμβουλίου της Ευρώπης, η οποία επιτηρεί τη συμμόρφωση των κρατών με τις αποφάσεις του ΕΔΑΔ, κατά την 1451^η συνάντησή της στις 8.12.22, υιοθέτησε τελικό ψήφισμα για κλείσιμο της επιτήρησης της συμμόρφωσης της Δημοκρατίας με τις πιο πάνω αποφάσεις, καθότι πείστηκε ότι τα μέτρα που έχουν ληφθεί και τα οποία καταγράφονται στο Σχέδιο Έκθεσης που καταχώρησε η Δημοκρατία είναι ικανοποιητικά.

Το ψήφισμα και οι Σημειώσεις της Επιτροπής Υπουργών όπως και το επισυναπτόμενο σε αυτό Σχέδιο Έκθεσης επισυνάπτονται για ενημέρωση στη βάση σύστασης της Επιτροπής Υπουργών για δημοσιοποίηση και προώθηση των αποφάσεων του ΕΔΑΔ και των ψηφισμάτων της Επιτροπής Υπουργών.


Δρ. Θεοδώρα Χριστοδουλίδου

Ανώτερος Δικηγόρος της Δημοκρατίας
για Γενικό Εισαγγελέα της Δημοκρατίας

Resolution CM/ResDH(2022)348
Execution of the judgments of the European Court of Human Rights
Two cases against Cyprus

*(Adopted by the Committee of Ministers on 8 December 2022
at the 1451st meeting of the Ministers' Deputies)*

Application No.	Case	Judgment of	Final on
24459/12	KHANI KABBARA	05/06/2018	05/09/2018
3869/07	THUO	04/04/2017	18/09/2017

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter "the Convention" and "the Court");

Having regard to the final judgments transmitted by the Court to the Committee in these cases and to the substantive and procedural violations of Article 3 on account of ill-treatment by police officers in 2007 and 2011 and ineffective investigations into those allegations, as well as the applicant Thuo's poor conditions of detention pending deportation in Nicosia Central Prisons from 14 November 2005 to 9 March 2007;

Recalling the respondent State's obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- of general measures preventing similar violations;

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with the above-mentioned obligation;

Having examined the action plan and action report provided by the government indicating the measures adopted to give effect to the judgment, including the information on the payment of just satisfaction (see documents [DH-DD\(2020\)898](#) and [DH-DD\(2022\)1120-rev](#));

Recalled that in the *Khani Kabarra* case the just satisfaction was paid, and that an *ex officio* re-examination of the case by the competent authorities after the European Court's judgment revealed that there were no grounds to open a further investigation because the shortcomings identified by the Court in the first two investigations had already, as recognised by the Court, been remedied as far as possible by a third investigation; considered with regret that no further individual measures are possible;

Noting that no award of just satisfaction was made in the *Thuo* case, and that an *ex officio* investigation by an independent investigator after the European Court's judgment remedied as far as possible the shortcomings of the first investigation but that due to the passage of time, it was not possible to gather sufficient evidence for a prosecution; considered that no further individual measures are necessary;

Noting with satisfaction the significant improvements in the system of investigating complaints of ill-treatment by police officers since the facts at issue (in 2007 and 2011), in particular in respect of independence, promptness and quality, and the measures capable of preventing ill-treatment by police officers, in particular the Chief of Police's regular zero tolerance messages, the amended Police Code of Ethics and capacity building;

Recalling that since 2013 Block 10 of Nicosia Central Prison is no longer used as police detention centre and foreign nationals pending deportation who have not been convicted are not detained there which should prevent similar violations of Article 3 as occurred in the *Thuo* case in the future;

Considering that no further individual and general measures are required in these cases;

Having satisfied itself that all the measures required by Article 46, paragraph 1, have been adopted,

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the Convention in these cases and

DECIDES to close the examination thereof.

1451st meeting, 6-8 December 2022 (DH)

Human rights

H46-10 Khani Kabbara group v. Cyprus (Application No. 24459/12)

Supervision of the execution of the European Court's judgments

Reference documents

DH-DD(2022)1120-rev, CM/Del/Dec(2020)1390/H46-7

Application	Case	Judgment of	Final on	Indicator for the classification
24459/12	KHANI KABBARA	05/06/2018	05/09/2018	Complex problem
3869/07	THUO	04/04/2017	18/09/2017	

Case description

These cases concern allegations of ill-treatment by police officers in 2007 and 2011 and ineffective investigations into those allegations (substantive and procedural violations of Article 3), as well as the applicant's *Thuo* poor conditions of detention pending deportation in Block 10 of Nicosia Central Prisons from 14 November 2005 to 9 March 2007 (substantive violation of Article 3).

Status of execution

The Committee of Ministers last examined these cases at their 1390th meeting (DH) in December 2020 when it noted with interest the measures taken to improve investigations into allegations of ill-treatment by police officers since the facts at issue in particular:

- in respect of *independence*, that police administrative investigations are no longer permitted because complaints are now automatically transmitted to the Independent Authority for the Investigation of Allegations and Complaints against the Police (the "Authority");
- in respect of *promptness*, that there were instructions on the timing of the transmittal of cases from the police to the Authority and that investigators have deadlines to complete their investigations;
- in respect of *quality*, the improvements in recording and photographing of injuries and methodology of medical examinations in accordance with the Istanbul Protocol; the expansion of the list of investigators so that they are no longer former police officers; and annual training.

It also noted with satisfaction the measures taken to prevent ill-treatment by police officers, including in particular the Chief of Police's regular zero tolerance messages, the amended Police Code of Ethics, capacity building and a Memorandum of Cooperation between the police and NGOs. Finally, it noted that foreign nationals subject to deportation were no longer detained in Nicosia Central Prisons but in a more spacious specially designed facility with improved material conditions.

In response to the Committee's invitation to present updated information on a number of outstanding issues (see below), the authorities submitted a revised action report on 3 November 2022 (see DH-DD(2022)1120-rev) which may be summarised as follows:

Individual measures

The authorities recall that the just satisfaction awarded by the Court in the *Khani Kabbara* case was paid in time and that no award of just satisfaction was made in the *Thuo* case. Further, at the 1390th meeting (DH) in December 2020, the Committee considered with regret that no further investigative measures were possible in the *Khani Kabarra* case.

The only outstanding question was the pending reopened investigation in the *Thuo* case, in which, after the Court's judgment, the Attorney General instructed an independent investigator to investigate the possible commission of criminal offences by police officers against the applicant in 2007. His terms of reference were to rectify as far as possible the shortcomings of the previous investigations, as identified by the Court. On 14 January 2021, the investigator submitted his report of 78 pages along with his findings to the Attorney General. The investigation was assessed by a counsel at the Attorney General's office who considered it to have remedied as far as possible the shortcomings of the previous investigations. In particular, in the reopened investigation, new statements had been taken from four out of the five suspects and the investigator had assessed anew all the evidence in light of the findings of the Court. Nevertheless, he had noted that, despite all efforts having been made to investigate the applicant's complaint, the passage of more than 13 years since the incident had a negative impact on the establishment of the facts.

Following careful consideration of all the evidence collected and for public interest reasons, on 7 September 2021, the Attorney General decided not to prosecute. With regards to the adequacy of evidence, the Attorney General noted that the applicant's complaints were refuted by other independent credible evidence; and that the medical certificate furnished by the applicant did not identify the possible causes of the injuries or whether they had been caused by blows and did not corroborate his injury. Although the new investigation had remedied as far as possible the shortcomings identified by the Court, the passage of time had undermined the efforts to gather further evidence. The applicant was informed of all major developments in the reopened investigation and of the Attorney General's decision not to prosecute on 20 September 2021. The non-prosecution decision is final and not subject to any judicial review; however, nothing precludes the Attorney General from reviewing this decision should any further evidence be uncovered in the future. The authorities consider that no further individual measures are necessary.

General measures

The authorities recall that, as acknowledged by the Committee at its 1390th meeting, there have been significant improvements in the system of investigating complaints of ill-treatment by the police since the facts in the present cases. The outstanding questions were linked to the promptness of investigations, notably the promptness of transmission of complaints by the police to the Authority and the overall length of investigations; to the promptness and adequacy of collection of evidence, and to the authorities' assessment of the impact in practice of the measures taken so far and whether further measures may be required to strengthen safeguards against ill-treatment and reduce the incidence of ill-treatment. In response, the authorities submit the following:

Promptness of investigations and collection of evidence:

A new police order (a written protocol) on the cooperation between the police and the Authority was adopted on 8 August 2022 describing in detail the procedure to follow in cases where there has been a complaint of ill-treatment by the police. Among others:

- it provides for targeted measures to ensure that any complaint of ill-treatment is transmitted within 24 hours to the President of the Authority and to the Attorney General;
- it stresses the necessity of a forensic examination of a person within 24 hours and the photographing and recording of injuries when use of force has been used by the police when apprehending a suspect;
- it provides for the police's obligation to keep the CCTV footage if the circumstances giving rise to the complaint occurred at a place where there is CCTV.

In addition, the Authority frequently issues circulars on particular issues related to investigations, collection and use of evidence, CCTV footage or how to interrogate suspects under caution. Investigators undergo annual training at the Police Academy where they are trained on the methodology of taking statements and the handling and securing of evidence in accordance with police orders and the Criminal Procedure Law.

As for the average length of investigations carried out by the Authority, the authorities recall that investigators are given an initial three months to conclude the investigation, which can be extended. A member of the Authority is designated to supervise each investigation. The supervisor follows the progress of the investigation and may give additional instructions or guidelines to the investigator. In 2018, the average length of investigations conducted by the Authority was nine months and in 2020 the average length was 15 months, the increase being due to difficulties caused by the pandemic. The Authority's staff was recently increased and the procedure of employing an office assistant is under way.

Safeguards against ill-treatment - training of police officers and awareness raising actions:

The authorities explain that frequent police trainings take place at the Police Academy on subjects related to human rights protection and the handling of detainees and their rights (see DH-DD(2022)1120-rev for full details). All trainee police officers attend a six-month seminar at the University of Cyprus where they attend the subject "policing and human rights". In addition to information previously examined by the Committee, they also highlight the following activities in particular which should help to prevent ill-treatment and ensure the effectiveness of investigations:

- the Chief of Police continues to indicate through circulars that there is zero tolerance to ill-treatment, and that torture, inhuman or degrading treatment as well as threats of torture are absolutely prohibited and constitute a criminal offence. The most recent circular was issued in July 2021;
- an internal police portal on human rights was made available for all police officers which includes materials related to human rights, including the present judgments and circulars, laws and reports;
- relevant annual high-level conferences organised on the occasion of the world Human Rights Day;
- the publication of relevant materials such as: manuals on juvenile victims, human rights, the rights of detained persons, children's rights in conflict with the law, victims' rights and informative notes on the European Convention on Human Rights and its impact on the Cypriot legal order;
- a short film on human rights was shown on social media and posters were distributed to police stations.

Authorities' assessment of the measures taken so far.

A police committee was established on 20 July 2021 to assess the above measures and to reflect as to whether further measures may be required to strengthen safeguards against ill-treatment and reduce the incidence of ill-treatment. After examination, the committee considered the measures taken so far (including those noted with satisfaction by the Committee) to be sufficient to strengthen safeguards against ill-treatment. It nevertheless also noted that this is an ongoing process, and the police should continuously improve, adopt measures and actions aimed at reducing incidents of ill-treatment.

Analysis by the Secretariat

Individual measures

It is positive that shortly after the Court's judgment in the *Thuo* case, an independent investigation was launched *ex officio* and has remedied as far as possible the shortcomings of the previous investigations. The Attorney General, after examining the detailed investigation file, the circumstances of the case, and informing the applicant, has given clear reasons for concluding that there are no grounds for prosecution. In these circumstances, the authorities' position that no further individual measures are possible can be accepted and the individual measures' supervision could be closed.

General measures

As set out above, the Committee has already noted with satisfaction both the range of measures taken to prevent ill-treatment by the police and certain measures taken to improve investigations into ill-treatment by strengthening their independence, promptness and quality.

It is positive that the authorities have also now responded to the Committee's invitation to adopt additional targeted measures to address the issue of delay before transmission of complaints from the police to the Authority. The new written protocol adopted on 8 August 2022 is specifically targeted to ensure that all complaints are transmitted within 24 hours.

Furthermore, it is to be welcomed that the authorities have taken measures aimed at reducing the length of time it takes investigators to complete investigations, including by direct supervision by members of the Authority, regular circulars and a small increase in staffing. Moreover, the measures taken (including the adoption of the written protocol, regular circulars and extensive training and awareness raising of the police) are noteworthy as they respond to the Committee's previous decision encouraging additional measures to ensure the quality of investigations.

Overall, the measures taken by the authorities in their efforts to reduce incidence of ill-treatment by the police, to improve the promptness and quality of the investigations, to assess the measures taken so far as well as their commitment to keep those measures under review appear to constitute an adequate response to the European Court's judgments in these two cases. In the light of the foregoing, the Committee of Ministers may wish to close its supervision of their execution and adopt a Final Resolution.

Financing assured: YES

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
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DH-DD(2022)1120-rev

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Meeting: 1451st meeting (December 2022) (DH)

Item reference: Action Report (03/11/2022)

Communication from Cyprus concerning the case of Khani Kabbara v. Cyprus (Application No. 24459/12) and Thuo v. Cyprus (Application No. 3869/07)

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1451^e réunion (décembre 2022) (DH)

Référence du point : Bilan d'action (03/11/2022)

Communication de Chypre concernant l'affaire Khani Kabbara c. Chypre (requête n° 24459/12) et Thuo c. Chypre (requête n° 3869/07) (*anglais uniquement*)

03 NOV. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

THUO v. Cyprus

Application no. 3869/07, Judgment of April 2017, final on 18 September 2017

and

KHANI KABBARA v. Cyprus

Application no. 24459/12, Judgment 5 June 2018, final on 5 September 2018

UPDATED ACTION REPORT

I. CASES DESCRIPTION

(a) Procedural violation of Article 3 and Government's failure to discharge the burden of providing a satisfactory explanation for the injuries

Both cases concern the authorities' failure to carry out effective investigation into the applicants' complaints of ill treatment (procedural violation of Article 3) during deportation in 2007 (Thuo case) and arrest in 2011 (Kabbara case).

In the case of Thuo, the European Court noted that an official investigation into the applicant's complaint was launched following communication of the application by the Court, that is, more than a year after the applicant's alleged ill-treatment had first been brought to the attention of the Independent Authority for the Investigation of Allegations and Complaints against the Police ("Authority") and the Attorney General's office (para. 129 of the judgment). The European Court found a number of shortcomings in the domestic investigation carried out by the Authority, which are documented in paras 131-139 of the judgment. Its conclusion was that "the authorities did not make a serious attempt to find out what had happened and that hasty and ill-founded conclusions were drawn, giving full weight to the police officers' account without explanation." (para. 139).

In the case of Kabbara, the European Court noted that even though the authorities carried out three investigations into the applicant's complaint (para. 152 of the

judgment),¹ none of the three investigations managed to shed light on the exact circumstances in which the applicant's injuries were caused (para. 151). The European Court found that the first two investigations i.e. the administrative investigation by the police and the investigation carried out by the Authority suffered from a number of significant shortcomings which are documented in paras. 143-151 of the judgment. In particular, the administrative investigation was limited in scope and lacked the necessary appearance of independence (paras. 144-146). The investigation by the Authority was launched five months after the event (para. 148) and omitted to take all reasonable measures,² from the very beginning, in order to secure the necessary evidence, while no forensic medical examination of the applicant was ordered (para. 144). As for the third investigation which was carried out by two new investigators appointed by the Attorney General (para. 71), the Court noted that even though it was a more thorough investigation, the passage of time had undermined its effectiveness and certain essential omissions could no longer be remedied (para. 150).

As a consequence of the deficiencies in the domestic investigations, the Government have not been able to show that the applicant's injuries were sustained during his arrest and as a result of his own conduct or the intensity of his resistance. The European Court therefore found that the Government failed to discharge their burden of providing a satisfactory and convincing explanation for the applicant's injuries (para. 155) leading to a substantive violation of Article 3 (para. 157).

(b) Conditions of detention

The case of Thuo also concerns the applicant's conditions of detention pending deportation in Block 10 of Nicosia Central Prisons from 14 November 2005 to 9 March 2007, which subjected him to hardship going beyond the unavoidable level of suffering inherent in detention (violation of Article 3).

¹ The first investigation was conducted by the police itself and it was an administrative investigation. The second investigation was carried out by the Authority. The third investigation was carried out by two new investigators appointed by the Attorney General. The third investigation started following communication of the application by the Court (para. 71).

² For example, the investigator failed to interview witnesses who could have had relevant information, to elucidate significant inconsistencies in the applicant's allegations, to examine the CCTV footage, to conduct and identify a parade.

II. INDIVIDUAL MEASURES

(a) Thuo v. Cyprus

On 18 June 2018, the Attorney General appointed an independent criminal investigator (a practicing lawyer) to investigate the possible commission of criminal offences by members of the police force concerning the applicant's allegation of ill-treatment during the deportation on 9 March 2007. The criminal investigator's terms of reference were to rectify as far as possible the shortcomings of the previous investigation identified by the Court. The criminal investigator submitted the investigation file to the Attorney General who, after evaluating the investigation, considered that in view of the complexity of the case, dating back to events that occurred more than 10 years' ago, it had not remedied the shortcomings of the initial investigation. The Attorney General appointed a second independent criminal investigator with the same mandate. The second criminal investigator on 14 January 2021 submitted the investigation file along with his findings to the Attorney General.

The investigation was assessed by a counsel at the Attorney General's office and is considered to have remedied as far as possible the shortcomings of the previous investigation that had been identified by the Court. In particular,

(i) New statements had been taken (under caution) from four out of the five suspects. T.C. recognised his previous statements but when asked by the investigator to describe the amount of force actually used and to clarify the actual extent of the bandaging, he stated that he did not remember. He only remembers that he and other police officers, who he did not recall, wrapped the applicant's head with a bandage while he admitted that he did not see the applicant trying to injure himself by hitting his head on the wall. Po.P and Pa.P adopted their previous statements and did not reply to any of the investigators' questions. A.I.³ refused to reply to any of the investigator's questions. No statement was taken from N.S. due to his mental state (the suspect's psychiatrist verified that he suffers from regression of his mental capacities and does not always understand what the others say).

³ It is recalled that in the initial investigation, this suspect refused to answer any questions and referred the investigator to his lawyer (para. 131). The same suspect initially refused to give a statement to the new investigator, who used the powers conferred in the Criminal Procedure Law, Cap 155 and ordered in writing the suspect to appear. The suspect appeared before the investigator but did not reply to any of his questions.

(ii) The investigator assessed anew all the evidence in view also of the findings of the European Court.⁴ In a 78 pages report, he stated that the passage of more than 13 years following the incident impacted negatively on the establishment of the true facts of what had happened on 9 March 2007 at Block 10, at the airport and on board of the Cyprus Airways flight to Nairobi (via Milan). However, all efforts had been made to investigate the applicant's complaint and to remedy, as far as possible, the shortcomings of the previous investigation.

(iii) The investigator noted that the suspects' statements that they did not remember the colour of their uniform (criticism in para. 134 of the judgment) were aimed at hiding the truth and were considered by the investigator as incriminating. The investigator also criticised the discrepancies between statements made by T.C. and Po.P. (para. 132).⁵

(iv) The investigator concluded that force had been used against the applicant on 9 March 2007 at a special room in the airport by the five suspects. T.C. left the applicant at the special room with Po.P for about 20 minutes and when he returned Po.P informed T.C. that the applicant tried to injure himself. At some point, Pa.P, N.S. and A.I., from the Immediate Response Squad, entered the room and they nailed the applicant on the chair. Po.P wrapped the applicant's head with a bandage holding the bandage with adhesive tape. The suspects justified the force used as an attempt to prevent the applicant from injuring himself, while the applicant stated the suspects attacked and injured him at the special room and wrapped his head with a bandage and gagged him. In the investigator's opinion, the applicant's reaction to his deportation was only verbal. Consequently, the force used against the applicant was not necessary given that five police officers used force against the applicant who wore handcuffs. As for the extent of the bandaging (para. 135) the investigator concluded that from the evidence gathered, the head of the applicant from the forehead and above was bandaged.

(v) The investigator having examined and assessed all the evidence, including the applicant's statements, the suspects attempts to hide the truth and also the fact that the

⁴ The Court criticized that no effort was made by the investigator to organize face-to-face confrontations between the police officers in question and the applicant (para. 131). However, a face-to-face confrontation between suspects and complainants/victims is unknown to the Cypriot criminal justice system.

⁵ As ruled by the Court, Po.P and T.C. stated in their earlier evidence that the applicant's deportation had gone smoothly and no mention was made to the applicant trying to injure himself, or the fact that bandages had been used. On the contrary, in their statements to the investigator they stated that the applicant tried to hit his head on the wall, and with the assistance of colleagues from the airport T.C. they wrapped bandages around the applicant's forehead to protect him and used force (paras. 37, 58-60 and 132).

applicant recognised Pa.P, N.S. and A.I. from photos (that they ill-treated him' at the special room), concluded that the force used against the applicant at the airport's special room was not necessary and was excessive (see criticism in para. 135). In the investigator's opinion there is sufficient evidence to prosecute the five suspects for the offence of inhuman or degrading treatment by a public officer in violation of article 5(1b) and 5(2b) the Law 235/96, as amended.

(vi) As for the complaint of ill-treatment at Block 10 (para. 135), the investigator took statements from 4 police officers who had been on duty at Block 10 on 9 March 2007.⁶ All four stated that they did not remember anything or that they were not present when the applicant was released from detention. The investigator noted that the applicant's lawyer, with whom the applicant spoke on 9 March 2007, did not corroborate the applicant's version that he complained to him about being ill-treated and verbally abused by T.C. and Po.P.

(vii) As for the complaint that the applicant remained handcuffed and with his head wrapped during the flight from Larnaka to Milan (para. 135), the investigator considered that it was not true or at best, exaggerated. The person in charge of the airhostesses during the flight to Nairobi gave a supplementary statement to the investigator. He supplementary stated that it was not allowed for a passenger to be handcuffed and if he had seen a passenger with his head wrapped with bandages he would have filed it in the relevant form. Nothing is mentioned in the relevant form.

The applicant was informed of all major developments in the criminal investigation. The applicant initially requested that the Cypriot authorities forgave the suspects. However, following the completion of the investigation, and in view of deciding whether the five suspects would be prosecuted, a counsel from the Attorney General's office explained to the applicant the importance of his evidence. The applicant was requested to inform the office whether he would be willing to testify before the court as a witness for the prosecution, in case the Attorney General decides to prosecute the five suspects. The applicant replied to the affirmative.

Following careful consideration of all the evidence collected and for public interest reasons, the Attorney General decided not to prosecute the five suspects for the offence

⁶ The investigator in the initial investigation did not take any statements from the said police officers.

of inhuman or degrading treatment by a public officer in violation of article 5(1b) and 5(2b) the Law 235/96, as amended. With regards to the adequacy of evidence, the Attorney General noted that the applicant's complaints *vis-a-vis* the events at Block 10 and during the flight from Larnaka to Milan were refuted by other independent credible evidence (i.e. the applicant's lawyer and the person in charge of the airhostesses during the flight to Nairobi). The medical certificate furnished by the applicant did not identify the possible causes of the injuries or whether they had been caused by blows and did not corroborate the injury to the applicant's testicles. Moreover, the events giving rise to the present case took place more than 14 years' ago and the delay rests with the prosecuting authorities, thereby, possibly raising issues of due process and fair trial. Although the new investigation has remedied as far as possible the shortcomings identified by the European Court, the passage of time had undermined the efforts to gather further evidence and to address all shortcomings identified by the Court. Hence, the Attorney General on 7 September 2021 decided that it was not justified to prosecute the five suspects. The essential foundation of such evidence as is capable to give rise to a reasonable prospect of conviction of the suspects and thus justify their prosecution, was missing for the reasons explained above.

Although the Attorney General's above decision is final and not subject to any judicial review,⁷ nothing precludes him from reviewing this decision if any further evidence is uncovered in the future.

The applicant was informed of the Attorney General's decision on 20 September 2021.

No further individual measures are necessary.

⁷ On this issue, the European Court in the process of other individual applications against Cyprus rejected the applicants' complaints that the decision of the Attorney General lacked judicial and public scrutiny and stated: "Insofar as the applicants argued that, at the very least, the decision that the evidence was insufficient to justify a prosecution should have been submitted for decision by a court, the Court does not consider that the procedural obligation of Article 2 necessarily requires that there should be judicial review of investigative decisions as such. [...] it is not for the Court to micro-manage the functioning of, and procedures applied in, criminal investigative and judicial systems in Contracting States which may well vary in their approach and policies. No one model can be imposed. See *Gurtekin and others v Cyprus*, *Ayşe Akay and others v Cyprus* and *Ayşe Eray and others v Cyprus*, applications nos. 60441/13, 68206/13 and 68667/13, decision of 11 March 2014, paragraph 28 of the decision.

(b) Kabbara v. Cyprus

The Committee of Ministers in its 1390th meeting accepted the authorities' position after the *ex officio* re-examination of the case, that there are no grounds to reopen a further investigation.⁸

III. GENERAL MEASURES

(a) Effectiveness of investigations into allegations of ill-treatment by police

The authorities have previously submitted (see DD-DH(2020)898): (i) information about the Authority's establishment, powers and duties, composition and appointment of investigators, as well as the nature of its investigations (i.e. criminal); (ii) information about the procedure followed by the police whenever allegations of ill-treatment are reported to the police or come to the police's attention, the content of the Attorney General's legal advice of June 2014, as well as the police's circulars implementing the said advice; (iii) information about the procedure followed by the Authority whenever allegations of ill-treatment are reported to the Authority or come to its attention; and (iv) information about the *Amendment to the Law Ratifying the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Law 235/90) whereby, the forensic pathologist is bound by law to follow the Istanbul Protocol when examining allegations of ill-treatment.

The system of investigating complaints of ill treatment by members of the police has been greatly improved since the events in the cases of Thuo and Kabbara.⁹ This was acknowledged by the Committee of Ministers in its 1390th meeting ("there have been a range of significant improvements since the facts at issue"). The Committee of Ministers in its 1390th meeting assessed the said developments. It noted that while there have been significant improvements, several questions remain outstanding as to the impact in practice of the measures taken particularly as regards investigative delay and quality of the investigations.

⁸ 1390th meeting, 1-3 December 2020 (DH), CM/Notes/1390/H46-7.

⁹ An appraisal of the developments was submitted in the previous action plan (DD-DH(2020)898).

With regards to the independence of the investigations, the Committee of Ministers noted that there are no outstanding issues given that police administrative investigations into complaints of ill-treatment are no longer permitted and/or conducted.

In respect of promptness, a new police order (written protocol) entitled "cooperation between the police and the Authority" was adopted on 8 August 2022. This written protocol regulates the cooperation between the two bodies and describes in detail the procedure followed in cases where there has been a complaint of ill treatment by the police. Among others, it reproduces in a more comprehensive and practical manner the Attorney General's legal advice of June 2014. It provides for targeted measures in order to safeguard that the complaint of ill treatment is transmitted within 24 hours to the Attorney General and the President of the Authority, thereby remedying the previous delays.

As for the length of the investigations carried out by the Authority, investigators are given three months to conclude the investigation, which can be extended. For each investigation, a member of the Authority is designated as supervisor, who follows the progress of the investigation and may give instructions or guidelines to the investigator.¹⁰ According to statistics received from the Authority, the average length of investigations conducted by the Authority in the year 2020 was 15 months.¹¹ The average length of the investigations increased in the year 2020 (in contrast to the year 2018) because of the restrictions and measures in place due to the Covid pandemic. The Authority has informed that its staff was increased by one more person (a secretary) on 15.6.22 and the procedure of employing an office assistant is underway.

With regards to the quality of investigations, the Committee of Ministers noted as positive the improvements in recording and photographing of injuries¹² and methodology

¹⁰ Authority's circular no. 23 dated 19/10/21.

¹¹ The Committee of Ministers in its decision in the 1390th meeting, invited the authorities to submit statistics on the average length of investigations conducted by the Authority to enable an assessment of whether any additional measures are needed to ensure that they are progressed and concluded rapidly.

¹² When the person alleging ill-treatment is detained, the police ensures that the complainant is examined at all times by a forensic pathologist. The forensic examination in principle is concluded within 24 hours from filing the complaint and the forensic reports are forwarded directly by the forensic pathologist to the criminal investigation who investigates the alleged ill treatment (without any involvement by the police). When the person alleging the ill-treatment is not detained, the criminal investigator requests the forensic pathologist to give a written statement expressing the forensic pathologist's medical opinion as to whether the injuries are compatible with the complaint of ill-treatment. In case the police use force when apprehending a suspect, detailed records are made and photographs are taken of any injuries on arrival at the police station.

of medical examinations in accordance with the Istanbul Protocol.¹³ Moreover, the new police order on the cooperation between the police and the Authority, reproduces in a more comprehensive and practical manner the Attorney General's legal advice of June 2014 *vis-à-vis* the forensic examination of a person within 24 hours and the photographing and recording of injuries when use of force has been used by the police when apprehending a suspect. The same police order further provides for the police's obligation to keep the CCTV footage in case the circumstances giving rise to the complaint occurred at a place where there is CCTV. As for the Authority, it frequently gives its investigators circulars on particular issues, such as circular on CCTV footages¹⁴ and circular on the way to interrogate suspects under caution¹⁵ while these investigators undergo annual training at the Police Academy where they are trained on the methodology of taking statements and the handling and securing of evidence in accordance with police standing orders and the Criminal Procedure Law.

(b) Safeguards against ill-treatment by police

Training of police officers and awareness raising actions

(i) Frequent police training at the Police Academy in subjects related to human rights protection and handling of detainees and their rights, such as eradication of racism and xenophobia, religious and cultural differences, prohibition of torture, inhuman or degrading treatment, protection of human rights by police, investigation of racist crimes, policing and human rights, protection of victims, policing in a multicultural society etc. In the year 2019, 1057 police officers attended 58 educational programs; in 2020, 357 police officers attended 13 educational programs and in 2021, 74 police officers attended 2 educational programs.¹⁶ Educational programs have been reduced in the years 2019-2021 due to the covid pandemic but it is expected that they will be resumed. Moreover, all trainee police officers attend a six-month seminar at the University of Cyprus where they are taught on the subject "policing and human rights";

¹³ The forensic pathologist is bound by law to follow the Istanbul Protocol when examining allegations of ill-treatment, latest amendment to law 235/90.

¹⁴ Circular no. 20 dated 06/11/17.

¹⁵ Circular no. 22 dated 14/4/21.

¹⁶ Police officers attending these seminars come from all ranks of police and also from various police departments and offices.

(ii) Drafting and circulating the police code of ethics, which in essence is a framework of principles and rules guiding police officers in carrying out their duties with objectivity, impartiality, honesty and without prejudice. The code is largely based on the European Code of Police Ethics adopted by the Committee of Ministers on 19.9.01 and was amended twice, in 2016 and 2021. It is uploaded at the police portal.

(iii) Organizing an annual high level conference on the occasion of the world human rights day in December. Speakers are experts in the area of human rights. The first conference was held in 2016 and was entitled "respect for human rights"; the second conference in 2017 was entitled "human rights and criminal justice"; the third conference in 2018 was entitled "the European Convention on Human Rights and its impact on the Cypriot legal order"; the fourth conference in 2019 was entitled "developing a culture of human rights protection". In the past few years the conference was co-hosted by the Police, the Ministry of Justice and Public Order and the Cyprus Bar Association. The conference was not organized in 2020 and 2021 due to the covid pandemic.

(iv) Publishing material, such as juvenile victims' advisory manual, human rights advisory manual, rights of detained persons (material given to persons in custody), children's rights in conflict with the law, victims' rights, informative notes on the European Convention on Human Rights and its impact on the Cypriot legal order etc.

(v) Designing an easily accessible to all police officers internal police portal entitled "human rights". Material related to human rights, such as circulars, laws and reports are uploaded on the portal. The Kabbara and Thuo judgments and their analysis was also uploaded on the portal.

(v) Preparing a short audiovisual film related to human rights shown on social media and posters distributed to every police station and offices.

Police circulars

The Chief of Police through circulars frequently indicates that there is zero tolerance to ill-treatment, that torture, inhuman or degrading treatment, threats of torture and threats of retaliation are absolutely prohibited under police order no. 2/3 and constitute a criminal offence. Police order no. 2/3 is a standing police order of 62 pages and all

police officers undergo trainings on the provisions of this order. Latest circular was sent in July 2021.

Memorandum of cooperation with NGOs

A memorandum of cooperation between the police and 14 NGOs was signed in 2018. The purpose of the memorandum is to further improve and develop close cooperation between the police and the NGOs in order to further safeguard and protect human rights. The memorandum provides inter alia, that upon request, representatives of the 14 NGOs may visit police stations and the Menoyia centre and may talk to detainees. The memorandum further provides that in case the NGO files a complaint of ill treatment to the police, the complaint is forwarded to the Attorney General and the Authority as per the Attorney General's legal advice to the police (see above).

Assessment of the measures

An *ad hoc* police committee was established on 20 July 2021 to assess the above measures. The committee was comprised of two members: one coming from the police human rights and anti-discrimination office and the other from the police centre for scientific research and professional development. The members were chosen based on their expertise and experience due to their duties within the police. Having examined the measures adopted and reflected on the matter, the committee considered the above measures to be sufficient and satisfactory for the purposes of strengthening safeguards against ill-treatment. Having said that, the police have informed that the process of strengthening safeguards against ill-treatment is ongoing and hence the competent police offices will continue to adopt measures and actions aimed at reducing incidents of ill-treatment and assess those already in place.

(c) Conditions of detention

The Committee of Ministers noted that foreign nationals subject to deportation are no longer detained at Block 10 of the Nicosia Central Prisons but in a more spacious specially designed facility with improved material conditions which should prevent similar violations of Article 3 as occurred in the Thuo case in the future. However, foreign nationals convicted by a competent court and sentenced to imprisonment (even

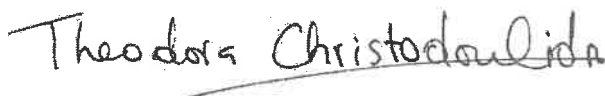
a short-term prison term) are held at the Central Prisons, where they serve their prison sentence.

IV DISSEMINATION

Information about dissemination of both judgments has been previously provided (DH-DD(2019)680 and DH-DD(2018)675).

V. CONCLUSION

In view of the above, the Republic of Cyprus has complied with its obligations under Article 46§1 of the Convention and the Government invites the Committee of Ministers to close the examination of the cases.



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