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Protection of human rights and fundamental freedoms within the activities of law enforcement bodies in Armenia



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Introduction

On December 11, 2014, the European Union and Armenia held the sixth round of human rights dialogue in Brussels.

According to the joint press release the talks during the meeting focused, in particular, on National Human Rights Protection System, judicial reforms, elections and electoral system, freedom of expression and information, freedom of assembly, freedom of religion and belief, civil society activity, and fight against discrimination.*

The improvement of law enforcement activities is considered as one of the most important issues for establishing democracy and rule of law in the Republic of Armenia (RA). The specific objective of RA National Indicative Program of 2011-2013 was to promote the development of more independent, transparent and effective judicial system and of strong democratic institutions, which, according to the program should have as a result in increased public confidence in the judiciary and law enforcement authorities, as well as increased investigation of cases of alleged politically motivated crimes and abuses by law enforcement system.

The result of another objective specified by the program, to respect human rights and conduct regular decision-making consultations with the civil society in line with international and European standards of human rights and fundamental freedoms, is enhanced the respect for human rights and fundamental freedoms by the judiciary, prosecutors, law enforcement bodies and penitentiary staff.

The purpose of this report is to provide information on existing gaps in democratic oversight over the law-enforcement bodies, their accountability, transparency and efficiency.

* http://www.mfa.am/en/press-releases/item/2014/12/11/arm_eu_humanrights/

According to Article 1 of the Code of Conduct of law enforcement officials, the term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

In this report, the following authorities are viewed as law enforcement authorities:

- RA Police;
- RA National Security Service (RA NSS);
- RA Special Investigation Service (RA SIS);
- RA Investigative Committee (RA IC);
- Investigation Department of RA Ministry of Finance (RA MF ID);
- RA Prosecutor’s Office.

Among the above mentioned authorities, the RA Prosecutor’s Office is the only constitutional body: the composition and the list of powers of the Prosecutor’s Office are established on the Constitution level thus emphasizing the important role of this authority in implementing the rule of law and justice.

The RA Police and the RA National Security Service operate as adjunct bodies to RA Government. The RA Special Investigation Service is an independent body. The legislation regulating the activities of the RA Investigative Service does not define the type of this agency. On the one hand, these bodies do not make part of the Government, which results in poor application of control mechanisms of the RA representative body on them, available directly to the RA Government, and on the other hand, the RA President particularly has main role in the formation and control of either the National Security Service, or the RA Special Investigation Service, the RA Investigative Committee, the RA Police.



Brief Description of Each Body

RA Police

The RA Police functions as an adjunct body to the RA Government. The RA police is a state-governance body composing a joint system, whose objectives are defined in the RA Law on Police, and which has the right to apply enforcement for implementation of those issues in cases, in the way and within the frames prescribed by the same law.

The police system is composed of the police and state non-commercial organizations and institutions which are subordinated by the police. The police, in its turn, consist of the central division of the police, the direct supervision units, Yerevan city and regional departments of the police and their subordinate divisions. Within the RA Police system, the “RA Police Educational Complex”, a state non-commercial organization, operates. The police activities are regulated by the Law on Police, RA Criminal Procedure Code, RA Law on Operative- Intelligence Activities, RA Law on Police Service etc.

National Security Service

The RA National Security Service (NSS) functions as an adjunct body to the RA Government. The RA National Security agencies are integral parts of the RA Security insurance system and ensure the security of an individual, society and the state within their competence.

The NSS is a state-governance authorized body within the RA national security sector which is empowered to make preliminary investigations and investigations, conduct operational and intelligence activities, own and utilize detention areas for the detainees.

The activities of the National security bodies are regulated by the RA Constitution, the RA Law on National Security Bodies, the RA Law on Operative - Intelligence Service, the RA Law on Service at National Security Bodies and a number of other laws and regulations.

RA Special Investigatory Service

According to Article 17 of RA Law on Special Investigatory Service, the Special Investigation Service (SIS) is an independent state body, is independent in implementation of its duties and is subject only to the law.

The Special Investigation Service has been acting since 2007 and conducts investigations of criminal cases (as prescribed by the RA Criminal Procedure Code) involving the officials of the legislative, executive and judicial state authorities, officials performing special state services as well as cases related to elections.

The activities of the Special Investigation Service are regulated by the RA Law on Special Investigation Service, RA Criminal Procedure Code and other legislations and regulations.

RA Investigative Committee

According to Part 1 of Article 6 of the RA Law on Investigative Committee, the powers of the Investigative Committee cover coordinating and implementing the investigation of alleged crimes within its competence in line with the Criminal Procedure Code.

According to the RA Criminal Procedure Code, all the crimes are not within the powers of the investigators of the RA NSS, RA tax and custom authorities or RA SIS, are within the power of RA Investigative Committee.

The RA Investigative Committee has been acting since 2014.

The powers and activities of the Investigation Committee and its investigators are regulated by the RA Law on Investigative Committee, RA Criminal Procedure Code and other laws and regulations.

Investigation Department of RA Ministry of Finance

The Investigation Department has been acting under the Ministry of Finance since May 2014. Before that, this body used to act under the State Revenue Committee under the RA Government.

The RA Criminal Procedure Code defines the list of crimes to be investigated by the Investigation Department of the Ministry of Finance. The crimes reserved for the power of investigators of tax or customs authorities at the same time are reserved for the investigators of RA NSS bodies or RA Investigation Committee. In these cases, the subordination issue is resolved in the following way: the preliminary investigations are conducted by the body which has examined the particular criminal case, except for the cases when the Prosecutor hands over that case to another body for preliminary investigations.

There is no specific legislation regulating the activities of the Investigation Department of the Ministry of Finance. The activities of the investigators of the Ministry of Finance are regulated by the RA Criminal Procedure Code and other general laws and regulations.

RA Prosecutor’s Office

According to Article 103 of the RA Constitution, the RA Prosecutor’s Office is an integrated system managed by the Prosecutor General.

The Prosecutors’ office is composed of the RA General Prosecutor’s Office, Central Military Prosecutor’s Office, Military Prosecution offices of Yerevan city, administrative districts of Yerevan city, Regional Prosecutor’s offices, garrisons (Part 2, Article 3, RA Law on Prosecution).

The powers of the RA Prosecutor’s Office, the regulations for appointment and dismissal of Prosecutor are specified in the RA Constitution. The Prosecutor’s office powers cover:

1. initiation of criminal prosecutions;
2. control over the legitimacy of the investigations and preliminary investigations;
3. defense of the accusation in the court;
4. filing actions to the court for state advocacy;
5. appealing the court ruling, verdicts and decisions;

6. overseeing the legitimacy of application of sanctions and other enforcement measures

The Prosecutor’s Office acts in line with the RA Constitution, Law on Prosecution, Law of Criminal Procedure Code, Law on Prosecution Service and other laws and regulation acts.

Issues Related to the Powers of the Law Enforcement Bodies

As mentioned above, the RA SIS is an independent authority which investigates criminal cases involving officials. Therefore, ensuring the independence of this body ranges among the most essential objectives. At the same time, this body is competent only to conduct preliminary investigation within the scope of the alleged crimes within its powers; and the SIS agencies are not authorized to conduct either investigation or operational and intelligence activities, while both of them play a pivotal role in disclosure and resolution of criminal cases.

According to the opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police** the agency responsible for the determination of complaints against the police should be vested with all the authorities of the Police that would ensure fair, independent and effective investigation.

The RA SIS is not authorized to conduct investigation and operational intelligence activities, which may result in its reduced efficiency. Moreover, both the RA National Security Bodies and tax and customs bodies are authorized to conduct investigations and intelligence operations. It is quite noteworthy that while this issue has been raised by the SIS agencies, particularly engaged with investigating corruption crimes,** it still remains unresolved. Hence, the Special Investigation Service should be vested with the power to conduct investigation and operational and intelligence activities.

The RA criminal procedure law stipulates the various cases subject to investigation by the RA investigative bodies. In some cases, the criminal procedure law provides that several investigative bodies shall be responsible for investigating the same kind of crimes. As for particular cases, the body responsible for their

** <https://wcd.coe.int/ViewDoc.jsp?id=1417857>
 *** <http://investigatory.am/am/News/Item/202/>



investigation is determined, in its turn, by the bodies that initiated the criminal case or by the bodies that detected the crimes while investigating the case under their processing.

The legislation summarizes the scope of the crimes the investigation of which may be initiated by the NSS bodies only. However, extremely broad contemplative possibilities are allowed for the NSS bodies for case investigations of the crimes (a number of crimes related to economic activities and illegal trafficking of drugs or psychotropic substances) that may also be investigated by customs investigators or crimes disclosed during the cases investigated by such bodies. In such cases, a prosecutor is also authorized to transfer the case from one authority to another.

Considering the fact that the criteria and conditions for the prosecutor to decide on transferring a case from one body to another are not defined clearly, the probability of discretionary approaches by investigators of both the Prosecutor's Office and the NSS towards defining the subordination of some crime investigations increases.

It should be stipulated that the NSS authorities may investigate the criminal cases that might also be investigated by the customs authorities, enforcement investigators and other authority investigators and the cases where there is a clear and real danger to national security.

Besides, the National Security Service is a militarized body, since according to the RA Law on Service in the National Security Agencies, the service in the national security agencies is considered as military service. According to the PACE Recommendation 1402 (1999)¹ on the Control of Internal Security Services in Council of Europe Member States,**** the inter-

nal security services should preferably not be organized within a military structure.

Thus, the services responsible for investigating a variety of crimes, including economic crimes, in the RA appear to be organized within a military structure.

It is necessary to ensure the demilitarization of the national security services and to stipulate that the national security services are responsible for investigating only the cases posing a real danger and threat to the national security.

The efficient fighting against torture ranges among the most essential issues in the RA. The mechanisms for fighting ill-treatment in the RA are not effective which is also conditioned by the lack of common policy against ill-treatment. While the RA SIS is considered to be the main body for investigating ill-treatment cases and has a Department for investigating cases of torture and crimes against the person within it, the Service does not investigate complaints against torture crimes as prescribed under the RA Criminal Code as it does not include as a subject of crime state officer or another person officially acting on his/her behalf, or following his/her instructions or by his/her agreement as the subject of the crime. As for the actual cases of ill-treatment by officials, such cases are investigated in the SIS on the basis of fulfilling official responsibilities with committing violence and under a number of other articles. Thus, the most essential interstate investigation mechanism to ensure the fundamental human right to be free from torture lacks responsibility to be accountable to the RA representative body, as well as the authority to conduct investigations and operational intelligence activities and the possibility to give an alleged proper qualification to torture cases, due to the insufficient material base.

**** See Control of Internal Security Services in Council of Europe Member States <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta99/EREC1402.html>



Opportunities for Effective Democratic Oversight over Low-Enforcement Bodies

The accountability mechanisms for the RA representative body are limited at the level of law-enforcement bodies. Out of the above mentioned agencies, only the RA Prosecutor's Office is directly accountable to the RA Parliament. Neither the RA Police, nor the RA National Security Service, nor the SIS, nor the RA IC are directly accountable to the Parliament. At the same time, the accountability level of these agencies is higher to the RA Government and particularly the RA President, and the heads of such agencies are appointed by the RA President by the recommendation of the RA Prime Minister.

As for the supervisory powers of the representative body, they are indirect and very limited. In particular, such control may be established through performing legislative activities, approving the state budget, the RA Government Program and the annual report on the Program implementation.

Here, it is also noteworthy that while these bodies are accountable mainly to the RA President and in some part the RA Government, none of them makes a part of the Government. Obviously, these mechanisms of indirect control are not efficient enough making it impossible for the RA National Assembly Standing Committee on Defense, National Security and Internal Affairs and the Parliament in general to exercise real control over the activities of such bodies. It should be noted that the responsibility of the RA SIS to submit annual reports to the RA National Assembly was specified before amending the RA Law on Special Investigation Service on May 19, 2014, according to which the reports should be submitted to the RA Government instead of the National Assembly.

One of the priority issues of the program schedule for 2014-2015 ensuring the implementation of European Neighborhood Policy of RA-European Union Action Plan is considered to be the improvement of parliamentary oversight mechanisms over the national security, police and emergency areas with application of the EU best practices. However, as a result, it is specified that within the reporting period, the parliamentary oversight tools should be applied fully and efficiently, and the cooperation between the NA Standing Committee of Defense, National Security and Internal Affairs and executive bodies of internal affairs should be strengthened in the mentioned area. This issue can

be completely resolved through introduction of relevant legislative mechanisms. Hence, relevant effective mechanisms for accountability of the law enforcement bodies to the representative body should be ensured.

It is noteworthy that the fact that the law enforcement bodies lack uniform organization and legal form makes it even more difficult to exercise effective democratic oversight over the activities of such bodies. Thus, as described above, out of the bodies responsible for preliminary investigation and investigation, the Police and NSS are adjunct bodies to the Government, the SIS and the IC are independent bodies, and the tax and customs investigative authorities are generally subordinate to the RA Ministry of Finance. Moreover, following the RA Presidential decree of May 24, 2014, the State Revenue Committee under the RA Government was merged with the Ministry of Finance. At the same time, the RA Presidential Decree of September 24, on Establishing a Committee for Legal Provision of Forming a Joint Investigation Body aimed to increase the independence of investigation bodies and the efficiency of criminal investigations and to set up a joint investigation committee on the basis of investigating bodies operating within the RA Ministry of Defense, RA Police under the RA Government and the State Revenue Committee under the RA Government. However later on, the investigation body operating within the State Revenue Committee was not included in the RA Investigation Committee and currently operates within the structure of the RA Ministry of Finance. Considering that only investigation bodies of the RA Police and the RA Ministry of Defense joined the RA Investigation Committee, and that the investigation subdivisions of the RA Tax and Customs bodies (currently Investigation Department of the RA Ministry of Finance) have not been included in the Investigatory Committee, the issue of bringing the activity of investigation bodies up to the common standards causes a concern. Thus, it becomes more difficult to use the opportunity of direct parliamentary oversight over the body conducting the preliminary investigation and investigation of economic crimes.

It is noteworthy that the key real power of the oversight over the legality of the investigation and preliminary investigation is vested in the RA Prosecutor's Office. However, the experience comes to show that such oversight by the RA Prosecutor's Office proves to



be inefficient, and both RA lawyers, and the RA Ombudsman and relevant NGOs have raised this issue for many years.***** The non-efficient oversight by the Prosecutor’s Office over investigations has been also recorded in 2013 in the Ombudsman’s Report on RA Human Rights Defender’s Activities and Violations of Human Rights and Fundamental Freedoms in the Country. For instance, in October-November of this year, the RA Prosecutor’s Office has initiated criminal proceedings against the investigators of the RA Investigation Committee for a number of abuses during the investigation of criminal cases. In this case, considering that even the investigation of the cases above was subject to the prosecutorial oversight, it is obvious that had such oversight been proper, it would have prevented the abuses of the investigators of the Investigation Committee. At the same time, on the background of the cases above, a criminal case was initiated against only one prosecutor for professional negligence while ensuring the oversight and judicial management of the investigation.

There are also many unresolved issues related to ensuring sufficient public accountability on the activities of the law enforcement bodies. Such bodies still lack the culture of public accountability, and though some of these bodies from time to time highlight the importance of the public accountability, their practical activities still show the policy of denying such accountability. For instance, the RA police is the closest authority to citizens with its activities most related with them as compared with the other authorities in question. And most important issue highlighted by the RA Police Reform Program of 2013- 2014 is to achieve increased public confidence towards the police. Besides, one of the priority issues of program schedule of 2014- 2015 for ensuring the implementation of the European Neighborhood Policy of RA-European Union Action Plan is to ensure the sustainability of the police reforms, in collaboration with the OSCE and the European Union, which will result in an atmosphere of confidence between the police and the society for fighting crime and keeping the public order. However, the public speech of the RA Police high-ranking officials still contain the opposing approach to the society and the intolerant attitude towards criticizing the police practices.*****

***** “In a number of cases, the Prosecutor’s Office has not exercised relevant supervision to control the performance of the investigators; as a result, the victim has not been provided with the decision to suspend the criminal case, and the discussion procedure for reporting the crimes has not been followed. Consequently, the law requirements have been violated, and people have been deprived of the efficient protection of their rights”, Annual Report on the Activities of the RA Human Rights Defender and Violations of Human Rights and Fundamental Freedoms in the Country in 2013. http://www.ombuds.am/pages/downloadPdf/file_id/2053

***** “The police transparency, accountability and parliamentary oversight,” excerpt from the report of Mr. Yeghiazaryan/ Deputy Chief of

Yet another issue is the public oversight over the detention facilities for the detainees at the national security services. There are no mechanisms of permanent monitoring of the detention facilities under the NSS system by public monitoring groups. The national security agencies are entitled to own detention facilities for keeping certain detainees; accordingly, detention facilities have been established within the National Security Service system under the RA Government. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report, the NSS DF consists of 2 cells, one of which is intended for 2 persons: 7 m², and the other - for 4 people: 17 m².***** According to paragraph 1, Section 47 of the RA Law on Keeping Detained and Arrested Persons, the public monitoring of the activities of detention facilities is conducted by the Public Monitoring Group set up by the head of the competent body. The public monitoring group functions within the detention facilities of the RA Police system, in compliance with the relevant decree of the Chief of the RA Police. Despite the frequent disagreements between the RA Police and the members of the Public Monitoring Group, obviously, the mere existence of such a monitoring group appears to be a key mechanism to ensure the protection of the rights of the persons in the detention facilities under the Police.

Thus, it should be ensured that the law enforcement agencies develop the culture of public accountability within their activities.

Police, Major General of the Police (19.11.2014). “At the same time, we often face external confrontations, misunderstanding, in some cases, even obvious hostile and negative attitude. One gets the impression that some people are pointing out the partial negative phenomena and manifestations with malevolence and irony, guided by “the worse, the better” principle. They try to generalize it and blindly ignore and deny the obvious progress, do not notice any positive achievements and initiatives damaging the reputation of the police. They actually do not need any positive change. They are fed with identified imperfections and created a special cozy corner for reproaching the police which, by the way, is often turned into a monopoly, even leaving no room for other “critics”, and they try to justify and extend their “existence”. It is sad that such false critics often come out as supporters doing a good job; they are disguised as various rights defenders, while the police itself highlights the “self-cleaning” process, is interested in identification and elimination of gaps and shortcomings and is open to any healthy and constructive cooperation. You can always witness that we discover the cases previously concealed. Headed by its Chief, the Police is persistent in its initiatives and by using all the possible efforts and resources, is able to radically change its working practices and increase public confidence toward the police. <http://www.police.am/news/view/%D5%AD%D5%B8%D6%80%D5%B0%D6%80%D5%A4%D5%A1%D6%80%D5%A1%D5%B6%D5%A1%D5%AF%D5%A1%D5%B6%D5%AC%D5%BD%D5%B8%D6%82%D5%B4%D5%B6%D5%A5%D6%80191114.html#sthash.0iaGADY5.dpuf>

***** See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report on Armenia visit of March 15-17, 2008, page 19, point 28, March 19, 2010. <http://www.cpt.coe.int/documents/arm/2010-07-inf-arm.pdf>

Conclusion

To summarize, it should be mentioned that like in any other country, the effective activities of the law enforcement bodies in the spirit of the rights in the RA are among the key prerequisites for establishment of the rule of law in the country. In the RA, criminal cases, and particularly controversial criminal cases, usually do not undergo comprehensive, sufficient and full investigation, for example the deaths that occurred during the clashes of the March 1, 2008 mass protests against electoral violations have not been investigated effectively yet.***** At the same time, the government seems to have implemented regular reforms in recent years. In 2014, the RA Investigative Committee was set up to unite the bodies responsible for preliminary investigation within the system of the RA Police and the RA Ministry of Defense and seemed to aim forming a single specialized investigatory agency but failed to include the tax and customs investigative bodies. Despite the reforms, almost no steps are currently taken to introduce effective mechanisms of democratic oversight over such bodies. Thus, the oversight by the RA Prosecutor’s Office over the investigation and preliminary investigation cannot be considered effective. Moreover, no agency responsible for investigation and preliminary investigation in the RA is **directly accountable to the representative body, i.e.**

***** ENP Country Progress Report 2013- Armenia http://europa.eu/rapid/press-release_MEMO-14-220_en.html

the National Assembly. Such agencies are directly accountable only to the RA President and partly to the RA Government despite of de jure making no part of the Government (except for the Investigation Department of the RA Ministry of Finance). Out of the law enforcement agencies, it is only the Prosecutor’s Office, with its oversight function over the preliminary investigation and investigation on criminal cases that is immediately accountable to the RA National Assembly. And this accountability mechanism has not been fully applied yet, since the annual reports of the RA Prosecutor’s Office have not been discussed at the sessions of the RA National Assembly yet. Here, it should be noted that the legislative changes of 2014 seemed to have attempted to bring some clarity to this issue and ensure the compulsory procedure for discussion of the annual report of the RA Prosecutor’s Office at the sessions of the RA National Assembly.

The democratic oversight over the law enforcement authorities and particularly their public accountability are also obstructed by the unwillingness and denial policy of such agencies towards accountability and the lack of accountability culture.



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SUBMISSION OF HELSINKI CITIZENS' ASSEMBLY – VANADZOR

in the case
Virabyan v. Armenia, application no. 40094/05, judgment of 02/01/2013

Introduction

"Helsinki Citizens' Assembly – Vanadzor" NGO is a non-political, non-religious, non-profit NGO, which unites individuals who support the supreme principles of democracy, tolerance, pluralism, and human rights as values. In order to achieve its goals, the organization implements the following activities: monitoring and data collection, legal consultation and legislative analysis, advocacy and strategic litigations. A target group of the NGO includes victims of torture. For years, the NGO has carried out its mission of fact-finding on torture, consulting and protection of the rights of torture survivors during pre-trial and trial proceedings and submitted alternative communications on the protection of the right to be free from torture in the Republic of Armenia to UN treaty bodies against torture and other monitoring bodies. Since 2012, the NGO has been monitoring the activities of the police. The NGO has filed 2 appeals on violation of Article 3 of the Convention to the European Court of Human so far.

As a non-governmental organization, we are writing pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments, to draw your attention to the need for full and proper execution of the ECtHR judgment on the case of *Virabyan v. Armenia*.

The *Virabyan v. Armenia* concerned: 1) torture of the applicant, who was a member of one of the main opposition parties at the material time in Armenia (Art. 3 of the ECHR); 2) ineffective, inadequate and fundamentally flawed investigation undertaken by the authorities into the applicant's allegation of ill-treatment not leading to the establishment of the facts; failure to act with due diligence to identify and punish those responsible (procedural violation of Art. 3 of the ECHR); 3) violation of the presumption of innocence, at the pre-trial stage (violation of Art. 6§2 of the ECHR); 4) failure by the authorities to carry out an effective investigation into the applicant's allegations that his ill-treatment had been politically motivated despite the existence of plausible information which was sufficient to alert the authorities to the need to carry out an initial verification, and depending on the outcome, investigation (procedural violation of Article 14 taken in conjunction with Art. 3 of the ECHR).

On September 25, 2013, the Helsinki Citizens Assembly – Vanadzor, jointly with the Spitak Helsinki Group, sent a submission to the Committee of Ministers on the case of *Virabyan* expressing its concern over the measures taken by the state to combat torture in the Republic of Armenia (RA) as well as about compre-

hensive, thorough and effective investigation in torture cases by the Special Investigation Service and the proper control by the RA Prosecutor General's Office over such investigation.

On October 8, 2013, the RA Government responded to the respective communication and on February 25, 2014, presented an action plan for the implementation of the respective decision.

In this submission, we focus on the right to be free from torture, other inhuman or degrading treatment or punishment, including on the basis of discrimination, as well as to offer our own observations to the RA Government's response of October 8, 2013 to the submission of September 25, 2013 and on the Action Plan of the RA Government of February 25, 2014. We welcome the fact that the execution of judgment is placed under enhanced supervision procedure and provide our recommendations for its proper execution.

In its action plan, the Government referred to the RA Law on the Special Investigation Service dated November 28, 2007 as a legislative reform (the action plan specifies November 28, 2013 as the adoption date of the Law). It is noteworthy that although the Special Investigation Service is, according to the Law, a de jure independent investigative agency aimed at investigating, among others, crimes by police officers, the Service has not developed into an effective mechanism yet. The data of 2013 suggests that the Special Investigation Service instigated criminal proceedings into 2 out of 87 acts of violence by officials only.*

The RA Government referred to Article 110 of the RA Draft Criminal Procedure Code both in its response to the submission of the Helsinki Citizens' Assembly Vanadzor and in its action plan.** The rights under

* "Annual report on the activities of the RA Human Rights defender and on the violations of human rights and fundamental freedoms in the country in 2013", Yerevan 2014, page 12.

** Article 110. Rights and Obligations of Persons Arrested on Well-Founded Direct Suspicion of Crime; Conditions and Safeguards for their Exercise and Performance

1. Persons arrested on the grounds under Article 108(1)(1) of this Code shall acquire all the relevant rights and obligations of the accused as prescribed by this Code upon receiving the decree on their arrest or, if such decree is not delivered in time as specified by law, after 6 hours upon the de-facto deprivation of their liberty.

2. Prior to acquiring the relevant rights of the accused, the arrested persons shall enjoy the minimum rights below:

1) get verbal information on their minimum rights and obligations stipulated by this Article upon de-facto deprivation of their liberty and similar written information upon their entry into the administrative office of the investigating authority or any competent agency responsible for the proceedings;

2) learn the reasons underlying the deprivation of their liberty;

this Article may provide effective safeguard for preventing infliction of torture. Nevertheless, the Article is unable to serve as a sufficient basis for comprehensive and effective investigation into acts of torture by competent agencies.

In its judgment on the case *Virabyan v. Armenia*, the ECtHR, among other violations, has found a violation of Article 14 of the Convention taken in conjunction with Article 3 in its procedural limb. The ECtHR particularly noted as follows: "the Court has already found that the Armenian authorities violated Article 3 of the Convention in that they failed to conduct an effective investigation into the incident. It considers that it must examine separately the complaint that there was also a failure to investigate a possible causal link between alleged political motives and the abuse suffered by the applicant at the hands of the police".*** "(...) The Court therefore concludes that the authorities failed in their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to investigate whether or not discrimination may have played a role in the applicant's ill-treatment".****

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- 3) keep silence;
 - 4) inform a person of their own choice about their whereabouts;
 - 5) invite an advocate;
 - 6) undergo a medical examination on their own request.
3. The rights under Para 2(4-6) of this Article shall arise from the moment of entry into the administrative office of the investigating authority or any competent agency responsible for the proceedings;
4. Prior to acquiring the relevant obligations of the accused, the arrestees shall perform the obligations below:
- 1) follow the instructions of their arrester, as well as the authorities responsible for investigation and proceedings;
 - 2) undergo personal search;
 - 3) undergo medical examination and fingerprinting, be photographed and provide samples for expert examinations as envisaged by this Code.
5. To ensure the exercise of the rights under Para 2 of this Article:
- 1) the arrester shall be obliged to verbally explain to the persons their minimal rights, obligations and grounds for depriving them of liberty;
 - 2) Upon the arrestees' entry into the administrative office of the investigating authority or any competent agency responsible for the proceeding, the latter shall be obliged to provide the arrestees with the list of their minimum rights and obligations, as well as to ensure that they make calls to inform about their whereabouts and invite an advocate, ensure their medical examination upon their own request and not to obstruct their meetings with their advocates.
6. The exercise of the minimum right under Para 2(4) of this Article may be delayed by a maximum of 6 hours, if there are well-founded grounds to believe that the immediate exercise of such right might obstruct prevention or deterrence of a crime or lead to destruction or damaging of the evidence.
7. The competent authorities shall provide the arrested persons with immediate written notice on the delay of the exercise of their minimum right under Para 2(4) of this Article and draft a protocol with the grounds for such delay.

*** See *Virabyan v. Armenia* judgment, Para. 58.

**** See *Virabyan v. Armenia* judgment, Para. 61.



The action plan lacks any information on any measures to ensure detection and proper investigation of acts of ill-treatment on the basis of discrimination.

RA Legal Regulations on Ill-treatment

The ineffective measures against ill-treatment in detention and the atmosphere of impunity constitute one of the current challenges to the protection of human rights in the RA. This problem is rooted both in the legislation and in the practice. The incomplete regulation of the legislative framework prohibiting ill-treatment also results in the incomplete application of the principle of the prohibition of torture in the legal practice.

Article 17 of the RA Constitution explicitly stipulates that no one shall be subjected to torture, inhuman or degrading treatment or punishment. Arrested, detained or imprisoned persons are entitled to humane treatment and respect for dignity. Meanwhile, the RA legislation fails to fully reflect this provision. Article 119 of the RA Criminal Code lays out the element of crime entitled as torture. Thus, under Article 119 of the RA Criminal Code, torture is any willful act of causing strong pain or bodily or mental suffering to a person, if this did not cause consequences envisaged in Articles 112 (Infliction of willful heavy damage to health) and Article 113 (Infliction of willful medium-gravity damage to health) of this Code. Given that such definition of torture fails to cover acts committed by any specific entity, e.g. a public official or any other person acting officially or by their consent or instigation for any specific purpose, it can be characterized as non-compliant with the international standards of prohibition of torture.

The representatives of the state government system also stated that this Article with such a wording had nothing to do with the international definition of torture.***** This issue has been raised before state government agencies for numerous times, but has remained unresolved so far.*****

***** "The Prosecutor of Shengavit Administrative District of Yerevan, Artur Davtyan, while providing the feedback on the observation of the lawyer about in compliance of "torture" definition enshrined in Article 119 of the Armenian Criminal Code with the definition envisaged by the UN Convention, said that although Article 119 was entitled "Torture", it had nothing to do with its definition under the UN Convention. It covers ill-treatment rather than torture inflicted by the public authority with a certain purpose". Serious Torture Prevention Action Plan is expected from the State, See more at: <http://www.hra.am/en/point-of-view/2013/06/28/torture#sthash.8d33kOKS.dpuf>

***** See Ibid.

The UN Committee against Torture also focused on this issue. In its Concluding Observations of July 6, 2012, the Committee particularly noted: "The Committee is concerned that national legislation criminalizing "torture" (Article 119 of the Criminal Code) does not conform to the definition of torture in accordance with Article 1 of the Convention, and that torture, as presently defined by the State party, does not include crimes committed by public officials, only by individuals acting in a private capacity, with the result that no public official has ever been convicted of torture by the State party".*****

Given that the Criminal Code of the RA fails to establish a proper definition and prohibition of an act of torture, the acts by public officials banned under Article 3 of the ECHR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment usually fall under another article of the RA Criminal Code on abuse of power in conjunction with violence (Article 309 (2)***** and can also be presented under breach of Articles 308***** and

***** See: Consideration of reports submitted by States Parties under Article 19 of the Convention. Concluding Observations of the Committee against Torture CAT/C/ARM/CO/3, Para 10.

***** RA Criminal Code, Article 309. Exceeding official authorities

1. Actions by an official that obviously constitute an abuse of official authority and cause considerable damage to the rights and legal interests of individuals or organizations, or public or state legal interests (in case of property loss, an amount (value) exceeding the 500-fold of minimal salary as prescribed at the material time of the crime) shall be punishable by a fine in the amount of 300-500-fold of minimal salary, or with deprivation of the right to hold certain offices or practice certain activities for a maximum of 5 years, or with detention for the term of 2-3 months, or imprisonment for the term of a maximum of 4 years.
2. The same action committed with violence, weapons or special measures shall be punishable by imprisonment for 2-6 years, with deprivation of the right to hold certain offices or practice certain activities for a maximum of up to 3 years.
3. The same action which negligently caused grave consequences shall be punishable by imprisonment for 6-10 years, with deprivation of the right to hold certain offices or practice certain activities for a maximum of up to 3 years.

***** RA Criminal Code, Article 308. Abuse of Official Authority

1. Abuse of official authority or duties by a state official for mercenary, personal, group or other interests, which has caused considerable damage to the rights and legal interests of individuals or organizations, or public or state legal interests (in case of property loss, an amount (value) exceeding 300-fold of minimal salary at the material time of the crime), shall be punishable by a fine in the amount of 200-300-fold of minimal salaries, or with deprivation of the right to hold certain offices or practice certain activities for a maximum of 5 years, or with detention for the term of 2-3 months, or imprisonment for the term of a maximum of 4 years.
2. The same action which has negligently caused grave consequences shall be punishable by imprisonment for 2-6 years, with deprivation of the right to hold certain offices or practice certain activities for a maximum of up to 3 years.
3. For the purposes of this Chapter, the public servants below shall mean the state officials:
 - 1) performing the functions of a representative of the authorities, permanently, temporarily or by special authorization;
 - 2) permanently, temporarily or by special authorization, performing organizational, disciplinary and administrative functions within state bodies, local self-government bodies, organizations thereof,

341***** of the RA Criminal Code. Such elements of crime are covered under the section on Crimes against State Authorities. This state of affairs comes to not only contradict the RA uniform law principle, since the RA Constitution,***** RA Criminal Procedure Code,***** RA Judicial Code,***** RA Law on Police***** and a number of other legislative acts directly use the term of torture in the sense the term used in international legal acts, but also fails to ensure the nega-

as well as, in the armed forces, other troops and military units of the Republic of Armenia.

4. For the purposes of Article 311, Article 311.2, Article 312, Article 312.2 and Article 313 of this Code, officials shall also denote as follows:

- 1) foreign officials performing the functions of state officials in compliance with the domestic right of the country as well as members of any representative body with the authorities of a foreign legislative agency or administrative functions;
- 2) officials of an international or supranational public organization or agency or contractual employees of such organization or agency under relevant regulations thereof or other persons performing functions similar to those of such officials or employees;
- 3) members of international or supranational organizations, parliamentary assembly or other agencies with similar functions;
- 4) members or officials with judicial functions of an international court, with jurisdiction accepted by the Republic of Armenia;
- 5) jury of foreign courts.

(Article 308 as amended by Law 20-119-Ն of 20.05.05; changed by Law 20-206-Ն of 28.11.06 and Law 20-18-Ն of 09.02.12)

***** RA Criminal Code, Article 341. Forcing testimony by the judge, prosecutor, investigator or by the person in charge of investigation

1. The judge, prosecutor, investigator or the person in charge of the investigation who uses threats to exact testimonies from the witness, suspect, accused, defendant or the aggrieved party, or false expert opinions from experts, or false translation from translators, shall be punished by deprivation of the right to hold certain offices or practice certain activities for a maximum of 5 years, or detention for a maximum of 3 months, or imprisonment for a maximum of 2 years.
2. The same action committed with mockery, torture or other violence against the persons mentioned in part 1 of this Article shall be punishable by imprisonment for a term of 3-8 years with or without deprivation of the right to hold certain offices or practice certain activities for a maximum of 3 years.
3. The actions envisaged in parts 1 and 2 of this Article, which have caused grave consequences, shall be punishable by imprisonment for a term of 6-12 years, with deprivation of the right to hold certain offices or practice certain activities for a maximum of 3 years.

***** According to Article 17 of the RA Constitution, no one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment. Arrested, detained or imprisoned persons shall be entitled to humane treatment and respect of dignity. No one shall be subjected to scientific, medical and any other experiments against their will.

***** According to Article 11(7) of the RA Criminal Procedure Code, in course of criminal proceedings, no one shall be subjected to torture, unlawful physical or mental violence, including the use of drugs, hunger, exhaustion, hypnosis, deprivation of medical aid, and any other cruel treatment. It shall be prohibited to use force, threats, fraud, violation of rights, and other unlawful methods to obtain testimony from the suspect, the accused, the defendant, the aggrieved party, the witness, and other persons involved in criminal proceedings.

***** According to Article 119(2) of the RA Judicial Code, court bailiffs shall be prohibited from using torture, cruel or degrading treatment or violence and otherwise shall be brought to liability as prescribed by law.

***** According to Article 5(2) of the RA Law on Police, the police officers using torture, violence or other cruel or degrading treatment shall be punishable as prescribed by law.

tive treatment to torture practices, a uniform policy against acts of torture and uniform statistics on acts of torture.

Prohibition of Ill-Treatment on the basis of Discrimination

According to Article 14(1) of the RA Constitution, everyone shall be equal before the law. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, affiliation to a national minority, property status, birth, disability, age or other personal or social circumstances shall be prohibited.

While the RA Constitution stipulates the general principle of non-discrimination, the RA legislation fails to ensure comprehensive implementation of this principle. Thus, the RA legislation lacks any regulations ensuring the principle of non-discrimination and the effective mechanisms for protection of the right to be free from torture.

The right to be free from torture is one of the key absolute rights arising from the supreme value of personal integrity and dignity that cannot be restricted on any grounds, including on the grounds of affiliation to any group. The restriction of this right on the ground of affiliation to any protected group may lead to more dangerous consequences, such as spread of intolerance and hatred.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among other reasons underlying torture, specifies the prohibited action on the ground of discriminatory treatment. At the same time, Article 308, Article 309 and Article 314 of RA Criminal Code above lack any provisions concerning prohibited actions resulting from discriminatory treatment. Moreover, these articles make it impossible to duly categorize the ill-treatment based on discrimination and used for other reasons above. Hence, both the above and other articles of the RA Criminal Code lack any prohibition of ill-treatment, particularly, that based on discrimination.

To prevent any abuse of power by officials, Article 5(2) of the RA Constitution stipulates that the national and local self-government bodies and public officials are competent to perform only the acts for



which they are authorized by Constitution or legislation.

Both Article 309 of the Criminal Code that usually refers to cases of ill-treatment by officials, and other articles of the RA Criminal Code fail to define the prohibition of the ill-treatment based on discrimination as an aggravating circumstance. In this respect, even if there are reasonable grounds to assume that the ill-treatment (or according to the RA Criminal Code, the abuse of power in conjunction with violence, for example) resulted from discriminatory attitude towards any protected group, the legislation lacks any mechanisms to make the investigatory agencies take measures to clarify this issue, and what is more, the investigatory agencies have no such authorities.

Thus, the RA Criminal Code lacks any definition of the concept of torture and this leads to the decreased effectiveness of combating torture. Moreover, the RA legislation lacks a proper criminal and legal definition of such offense and fails to ensure protection against the violation of the right to be free from torture based on discrimination.

Recommendations

Based on the above, we hereby provide our recommendations below:

1. Given the fact that the cases have been attributed to the enhanced procedure, the Government of Armenia should without any further delay present the action plan for execution of the judgment in the part of prohibition of torture as an act, committed on the ground of discrimination.
2. Define the elements of crime of torture in the RA Criminal Code as an act prohibited by the Criminal Code and approximate the definition of torture to that under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to include both a specific subject and a specific goal of the act, by ranging such element of crime among particularly grave crimes under the Humanity Crimes Section of the RA Criminal Code.
3. Define torture applied to any protected group on the basis of discrimination on any ground as an aggravating circumstance of torture.

On behalf of the Helsinki Citizens' Assembly-Vanadzor
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SUSUBMISSION OF HELSINKI CITIZENS' ASSEMBLY – VANADZOR and SPITAK HELSINKI GROUP

in case
Tadevosyan v. Armenia, application no. 41698/04, judgment of 2 December 2008

Introduction

“Helsinki Citizens Assembly- Vanadzor” NGO, as well as “Spitak Helsinki Group” NGO are non-political, non-religious, non-profit NGOs, which unite individuals who support the supreme principles of democracy and human rights as values. In order to achieve their goals, both organizations implement the following activities: (1) monitoring and data collection, (2) legal consultation and legislative analysis, (3) advocacy and strategic litigations. For years, the HCA Vanadzor has been engaged in the protection of a person's right to be free from ill-treatment and other issues related to the protection of human rights within the activities of the police by monitoring of the ongoing police reforms and strengthening of human rights protection mechanisms. A representative from the Spitak Helsinki Group NGO is a member of the Public Monitoring Group at the detention facilities of the Police system of the Republic of Armenia (RA), and in its capacity of a member of a such group he regularly visits such facilities.

We hereby submit our communication pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments, to draw your attention to the need of full and proper implementation of the ECtHR Judgment in the case of Tadevosyan v. Armenia. The case concerns the enhanced supervision procedure and is considered by the Committee of Ministers in the same group with the judgments on the cases on ill-treatment of *Kira-*

kosyan v. Armenia, Mkhitarian v. Armenia and Karapetyan v. Armenia. On April 9, 2010, the RA Government presented an action report on the execution of the judgments in the cases of *Kirakosyan v. Armenia, Mkhitarian v. Armenia and Tadevosyan v. Armenia*.

As general measures, the action report mentions the repair works performed at the detention facilities of the RA Police system in compliance with the RA Presidential Order № NK-328-NG dated December 28, 2004 and the amendment of July 8, 2005 to the RA Law on Conditions for Holding Arrested and Detained Persons stipulating that the living space allocated to each inmate shall not be less than four square meters.

The Government of Armenia has failed until now to produce any further information on the implementation of this requirement.

In that regard, we provide information about several aspects of conditions in the RA police detention facilities and on the lack of effective mechanisms for lodging complaints on poor conditions in such facilities. We also provide recommendations for a proper implementation of the judgment.

In its judgment on the case *Tadevosyan v. Armenia*, the Court held that there had been a violation of Article 3 of the Convention on account of the con-



ditions of the applicant's detention. Moreover, the Court found that there is a lack of effective complaint mechanism against poor detention conditions. In terms of the mechanisms for complaint against poor conditions in detention facilities, the Court stated as follows: "In the present case, the Government claimed that the applicant had had a remedy at his disposal, namely that he could have lodged a complaint under Article 13 of the RA Law on Conditions for Holding Arrested and Detained Persons. The Court observes, however, that the Government did not produce any evidence to demonstrate that the remedy relied on was sufficient and effective".

Detention conditions in police detention facilities

General remarks

While the detention facilities of the RA police system have been refurbished since 2004, and according to the information provided by the Police, almost all the detention facilities of the Police system have undergone facelift renovation,* they still face unsolved problems identified both by the entities responsible for public control at the national level and by the Committee for the Prevention of Torture (CPT).

The 2013 Interim Report of the RA Ombudsman produced within the scope of Independent National Prevention Mechanism** stated: "The conditions at detention facilities remain deplorable and consequently affect the health of the detainees. In particular, the cells at the detention facilities lack lavatories and laundries. As a result, along with the difficulties for the employees of the detention facilities, the coordination of such processes entails corruption risks, since they usually do the laundry at their own expense (e.g. at the police detention facilities of Abovyan, Vagharshapat and Spitak). Furthermore, even the investigators of the detention facilities complain that it is fairly cold at the facilities since the interrogation room lacks both heating and natural light."

Lack of natural light

The issue of lighting was raised by the Public Monitoring Group of detention facilities of the RA Police (hereinafter the Monitoring Group). In its report of 2013, the Group mentioned the poor natural and artificial lighting at 11 detention facilities (RA Police detention facilities of Aparan, Artashat, Dilijan, Ijevan, Yeghegnadzor, Tchambarak, Kotayk, Martuni, Tumanyan, Vardenis and Noyemberyan).*** In the Annual Report of 2012, both the artificial and natural lighting of all the 32 detention facilities were considered poor.**** According to the Monitoring Group, artificial lighting is obstructed by the security metal netting and poor lamps. As stated in the Annual Report of 2012, it is impossible to read or write any documents with poor artificial light during late hours at any of the detention facilities.

During its visit in 2010, the CPT also noted that the access to natural light was limited. Particularly, the Committee stated: "The delegation observed that access to natural light was somewhat limited in the cells of many detention facilities visited (e.g. in Yerevan, Charentsavan, Martuni, Sevan and Vardenis), due to the small size of the windows, which were sometimes covered by several layers of metal netting."*****

Food provision

The RA Government Decree № 587-N of May 15, 2003 established the minimum free food portions for the inmates of the detention facilities of the RA Police system; however, the studies showed that the allocated funds appeared insufficient to provide the detainees with three meals a day.***** Thus, the inmates of detention facilities usually have 1 and in some cases 2 meals a day.***** According to the information provided by the RA Police in 2013, the minimum per diem allocation per inmate of detention facilities was increased to provide the inmates

*** Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 56, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

**** Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2012, Yerevan, 2013, p. 20, http://policemonitoring.org/DownloadFile/4072arm-Report_2012.pdf

***** Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2010, Strasbourg, 17 August 2011, Para. 39: <http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.pdf>

***** Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 55, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

***** RA Ombudsman as Independent National Prevention Mechanism (Interim Report, 2013), Yerevan, 2013, p. 25, [file:///C:/Users/LENOVO/Documents/Downloads/pdf_7752511044_arm_AKM_REPORT_2013.pdf](http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf)

with free food,***** yet, it should be noted that since the increase is quite small, the allocated amount still appears not enough to cover 3 adequate daily meals per inmate. Such state of affairs may also entail corruption risks.

Sanitary conditions

Among its major concerns, the Monitoring Group also pinpointed the ventilation, and inadequate sanitary conditions at detention facilities.***** In particular, the group has observed that the ventilation is mostly provided by opening windows, whereas the RA Police detention facilities in Sisian, Tchambarak and Tavush have only fixed windows, and windows in some other detention facilities can be opened only by using a ladder.*****

As for the sanitary conditions, the Monitoring Group mentioned that the lavatories at 7 detention facilities (RA Police detention facilities of Goris, Ararat, Ashtarak, Ijevan, Talin, Tavush and Noyemberyan) were not disinfected and were in anti-sanitary conditions. The group also found that the water taps in some of the cells, in 8 detention facilities (RA Police detention facilities of Goris, Yerevan, Ararat, Artashat, Akhuryan, Ijevan, Nairi and Talin) did not function.*****

Departmental control mechanisms for redress for alleged violations of Article 3 due to detention conditions

Under Article 13(1)(3) of the RA Law on Conditions for Holding Arrested and Detained Persons, the detained or arrested persons are entitled to lodge, both personally and through their advocates or legal representatives, applications and complaints on violations of their rights and freedoms to the administration or superior authorities of detention or penitentiary facilities, courts, prosecutor's office, the ombudsman, national and local government bodies, public associations and political parties, mass media,

***** Ibid, p. 57

***** Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

***** Report on Activities of Public Monitoring Group at RA Police System Detention Facilities in 2013, Yerevan, 2014, p. 55, http://policemonitoring.org/DownloadFile/4366arm-%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_2013_10.06.pdf

***** Ibid.

as well as international institutions or organizations for the protection of human rights and freedoms.

Paragraph 46 of the Internal Regulation of RA Police System Detention Facilities approved by RA Government Decree № 574-N dated June 5, 2008 sets the procedure for filing complaints by detainees under the departmental control. The Regulation states particularly that the officers of the detention facilities are obliged to receive both written and verbal recommendations, applications and complaints from the detainees during their daily inspection tours. All the recommendations, applications and complaints addressed to the administration of the detention facilities are recorded in the relevant register and reported to the chief of the territorial police department (as for the detention facilities of Yerevan police department, such recommendations and complaints must be reported immediately to the chiefs of such detention facilities) who must take measures to address them. Paragraph 52 of the document prohibits any persecution of detainees for their recommendations, applications and complaints on violation of their rights and legal interests. The officials responsible for the persecution are legally liable for such conduct.

While the legal regulations described above generally prescribe the right to complain against the violations of the rights of the detainees, at least at the departmental control level, the mechanism for exercising this right cannot be considered efficient. According to the official information obtained by our organization, no complaints and recommendations were received in 2012-2013 from detainees held at the detention facilities of Yerevan Police Department and the detention facilities at the police precinct of Taron Police Department of Vanadzor. In this respect, another noteworthy fact is that a person may be detained at a detention facility for a maximum of up to 72 hours and any complaint or recommendation on detention should be reported in the shortest possible time as otherwise, it will become of no use for the person in question.

From our observations, we can conclude that the arrested persons are reluctant to complain against their detention conditions and consistently follow up on their complaints and possibly avoid doing so, or are merely unaware of their rights. The involvement of an advocate could serve as a positive stimulus and additional guarantee. Nevertheless, the temporary access to lawyer's services is also of intrinsic importance. In this respect, it should be noted that if the



lawyer is engaged only after the arrest of the person, the investigative agency may delay the meeting of the lawyer with the client. According to Article 71 of the RA Criminal Procedure Code, to prove his/her status, the lawyer must present his/her identification document as well as a document issued by the Chamber of Advocates in support of the fact that he/she is an lawyer and a signed document by the suspect or the accused approving his/her acting as an lawyer or the decree of the competent authority under the Criminal Procedure Code on appointing him/her lawyer to the criminal investigative agency. In practice, the lawyer is unable to meet his/her client until he/she is “authorized” to do so by the criminal investigative agency. This process often delays the first meeting of an lawyer and a client and has an adverse impact on the effective protection of the rights of detainees. Also it substantially hinders the detainee’s right to file complaints.

Hence, despite the implementation of relevant measures on detention facilities of the RA Police system under a number of police reforms (2011-2012 Police Reforms Program and 2013-2014 Police Reforms Program) and the refurbishment works in the Police system completed in accordance with the RA Presidential Order of 2004 referred to by the RA Government, it should be noted that a number of problems remain with ensuring both adequate conditions of detention, and effective mechanisms for complaining against such conditions.

Recommendations:

Taking into account the above mentioned, we would like to propose the following recommendations:

1. Given the fact that the cases have been attributed to the enhanced procedure, the Government of Armenia should present the updated action plan of implementation of the judgments in the issues above without further delay.
2. Ensure mechanisms for the full, effective and systematic implementation of the recommendations of the CPT, of the RA Ombudsman in his capacity of the independent national preventive mechanism as prescribed by the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the Public Monitoring Group at RA police system detention facilities;
3. Provide the arrested persons with an unrestricted access to their lawyers since the very first minutes of their arrest by reducing to zero any interference of the investigative agency.

On behalf of the Helsinki Citizens’ Assembly-Vanadzor

A. Sakunts

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A. Babayan

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