

LIST OF ISSUES

LEGISLATIVE ISSUES

Even though specific legal provisions defining the prohibition of torture have been adopted in the domestic legislation, issues, hindering the implementation of an efficient fight against torture, still exist at the domestic legislative level. The most urgent problems are presented below.

1. The legal definition of torture is set out in Article 309.1 of the RA Criminal Code, which is included in the Chapter on crimes against public service. The subject of a criminal act included in the aforementioned chapter is specific-a state official, the notion of which is defined by Part 3 of Article 308 of the RA Criminal Code. According to the said article, the following public servants are considered state officials:

1) persons performing the functions of a representative of the authorities, permanently, temporarily or by special authorization;

2) persons, permanently, temporarily or by special authorization, performing organizational, disciplinary and administrative functions in state bodies, local self-government bodies, organizations thereof, as well as, in the army of the Republic of Armenia, or other forces of the Republic of Armenia.

However, it is worth mentioning that people deprived of liberty can also be subject to torture or ill-treatment by persons who, within the meaning of the domestic law, are not considered as state officials. For instance, acts of torture or ill-treatment carried out by people working at psychiatric organizations, the “Hospital for the Convicted” or penitentiaries, and providing sanitary or medical care, who, according to the legal norm mentioned above, are not considered as state officials. In this case, the committed act shall be qualified as a crime against life and health. This, however, does not stem from internationally recognized documents and does not provide a clear picture of any manifestations of torture or ill-treatment committed against people deprived of liberty.

2. The compensation of the inflicted non-pecuniary damage resulting from the violation of rights regarding torture, inhuman or degrading treatment or the right not to be punished is set out in Article 162.1(2)(2) of the RA Civil Code. In accordance with the said article, a person (or in case of death or disability, their spouse, parent, adoptive parent, child, adopted child, guardian, trustee or curator) has the right to demand the compensation of the inflicted non-pecuniary damage through a court order, if the criminal prosecution authority or the court has confirmed that the rights established in the RA Constitution and the “Convention for the Protection of Human Rights and Fundamental Freedoms”, i. e. **torture, inhuman or humiliating/degrading treatment or the right not to be punished**, have been violated due to the action or inaction, or the decisions made by a state or local self-government body or an official thereof.

It follows from the foregoing that not only the inflicted non-pecuniary damage resulting from the violation of rights with respect to facts of torture are subject to compensation through civil litigation, but also that of inhuman or degrading treatment or the right not to be punished.

3. Statute of limitation, amnesty or demands for not granting pardons, which emanate from the absolute prohibition of torture set out in internationally recognized documents, are not

established for committing crimes listed in Article 309(2), Article 309.1 and Article 341(2)(3). Contrary to the constitutional principle of ratified international treaties being a constituent part of the RA legal system, as well as their primacy over domestic law, the RA law enforcement body continues to apply statutes of limitations, grant pardons or amnesty to persons having committed crimes set out in Article 309(2), Article 309.1 and Article 341(2)(3). Hence, the implementation of requirements defined in internationally recognized documents with respect to the non-application of statutes of limitations or not granting pardons or amnesty in cases of crimes involving torture is necessary in the domestic law.

4. At the domestic legislative level, persons deprived of liberty occupy the most vulnerable position with regard to the violation of rights regarding torture, inhuman or degrading treatment or the right not to be punished, since the exercise of their rights of appeal against actions, or inaction, of state officials is problematic. The opportunity to appeal to the court, or any other body provided by law, against the actions of state officials is established in Article 7 of the RA Penitentiary Code. Despite this, no clear appeal procedure for actions or inaction of, as well as decisions made by the administration and other competent authorities is established by the RA Penitentiary Code. The same applies to i) the recording of facts pertaining to the violation of rights of persons deprived of liberty ii) the timeframes thereof iii) the requirements relating to the appeal iv) the resolution and discussion procedure of appeals v) the type of judicial act and the timeframe of its entry into force vi) the appeal thereof vii) other relevant issues.

5. Other issues relating to the exemption of punishment due to severe disease or illness exist in the domestic legislation. Namely, severe illnesses that hinder punishment are listed in the RA Government's 825-N Decision of 26 May, 2006. The list, however, is restricted. Hence, in practice, there are numerous cases of persons deprived of liberty suffering from a type of severe disease, such as ischemic stroke in the cortical-subcortical branches of the left middle cerebral artery, atherosclerosis, arterial hypertension, second and third stages of arterial hypertension, hemiplegia, ischemic stroke, etc., that is not listed in the aforementioned decision. The emergency of the issue is related to the fact that the material and technical conditions as well as the relevant human resources are not sufficient to provide the needed support and proper care for convicted persons suffering from a severe illness. The above mentioned list of illnesses was issued on 26 Ma6, 2006, after which it has not been revised or modified. Therefore, it is not in compliance with current requirements and needs to be reexamined.

6. The RA Code of Criminal Procedures does not provide for timeframes with respect to proceedings of a medical nature. As a result, persons housed in psychiatric hospitals can be kept/under custody for a long period of time, regardless of the fact that the person might already be cured and illness-free, thus no need for isolation from the society. It is necessary to set up a judicial review requirement at the legislative level with respect to the legitimacy of the continuing application of compulsory measures of a medical nature to persons kept in psychiatric hospitals. Thus, it will be possible to submit a petition to the court regarding compulsory measures of a medical nature, in cases where the person is not in need of compulsory treatment, or when there is a possibility of general or outpatient treatments.

SYSTEM PROBLEMS

There are systemic problems in the fight against torture, though they have legislative regulation but are still relevant today. Below, we present several of them, which, inter alia, are information we obtained from the Ombudsman, as an annual report on the activities of the 2018 national

prevention mechanism for individual applications sent by persons deprived of their liberty and media.

1. Under Article 21 of the RA Law on the Custody of Detainees and Detainees, a medical examination is carried out by the hearing of the detainee or the detention facility's administrator. The doctor does not require the opposite, and beyond the scope of the vision. The results of the examination shall be recorded in a personal file in a prescribed manner and shall inform the patient, as well as the body conducting the criminal proceedings.

In accordance with Article 37 of Annex 1 to Decision 825-N of 26 May 2006, persons entering the place of detention (including transit) shall undergo a preliminary medical examination, the results of which shall be recorded in the appropriate register: Medical Assistance and for the purpose of registering a complaint about a physical injury or health condition. The record of the detainee's or convicts medical examination should include:

- 1) The full picture of all the statements made by the person subjected to medical examination (including any description of his / her health status or any ill-treatment);
- 2) A complete picture of the results of an objective medical examination;
- 3) The conclusion of the physician based on subparagraphs 1 and 2 of this clause.

All medical examinations should be conducted outside of the hearing and sight of the penitentiary or other servants.

Despite these arrangements, prisons, detention centers, prisoners in police detention cells in the military nor the Ministry of Defense are due to undergo a medical examination. In particular, cases of medical examination are carried out in the presence of the police officer and the duty officer of the relevant institution or within their visibility and visibility of the latter. In addition, often the results or injuries of a medical examination are not duly registered and are not fixed on the medical card of deprived of liberty. Thus, there are no opportunities to conduct a proper medical examination and record the results of possible torture.

2. There are problems involving the deprivation of liberty from the punishment cell on the application of disciplinary penalties. Particularly, cases of disciplinary penalties for deportation are applied to persons deprived of their liberty in inpatient treatment, which is unacceptable. There are often recorded instances where cells moved towards persons deprived of liberty do not properly implement daily medical supervision.

3. To date, the problem of overcrowding and unequal distribution of cells in the cells remains relevant. Particularly, the minimum size of residential premises for persons deprived of their liberty under the RA legislation is not maintained at the "Nubarashen" penitentiary.

4. The complaints of applicants serving sentences in the "Nubarashen" penitentiary are mostly related to sanitary and hygienic conditions. The conditions of the "Nubarashen" penitentiary are in a very dire state, drainage and water supply systems are technically depreciated, hidromekusich layer decomposes over time. This is due to the presence of stench in the penitentiary, quarantine cells are wet, the walls are destroyed, the toilets are in antisanitary hygienic condition, and some cells have lighting and heating problems. Nubarashen penitentiary does not properly carry out disinfection and destruction of parasites, especially insects in the walls, on the floor of the cell, in the cabinets, even in clothes, food and utensils.

In 20 September 2018, the European Court of Human Rights issued a verdict against Gaspari v. Armenia, which also raised the Nubarashen penitentiary in 2008. ECHR has accepted that the applicant at Nubarashen prison during the trial, subjected to inhuman, degrading treatment and poor conditions caused by cell. The ECHR admitted that separate cells had been overcrowded and had an anti-sanitary situation which was equivalent to inhuman and degrading treatment (Gaspari v. Armenia on 20 September 2018, Complaint No. 44769/08, Clause 54-72).

5. In the cells of the disciplinary isolator of the Ministry of Defense of the Republic of Armenia, it was found that electric lighting did not turn off during the whole night, which was explained by the prison administration as a means of controlling the cells. Thus, proper conditions for sleeping are not created, which is inhumane treatment for persons held in cells.

6. Persons serving sentences in penitentiaries are deprived of the opportunity to receive adequate psychiatric services, as medical staff in penitentiary institutions are mostly non-psychiatrists. Under such conditions, in-patient treatment for mental health can only be organized at the Prison Hospital, where appropriate divisions or conditions are not envisaged for women or minors. As a result, psychiatric services are not available in penitentiary institutions for persons deprived of mental health, and their transfer to a specialized department is often delayed, which can result in irreversible consequences for people with mental health problems.

7. According to the RA Human Rights Defender, the annual report on the activities of the National Preventive Mechanism for 2018 , at Sevan Psychiatric Hospital, at the Armash Health Center and the National Center for Mental Health, physical deterrence has been applied to patients within the eyes of other patients, which contradicts the RA legislation, and physical restraint was imposed on one of the patients at the Avan Center for Mental Health at the departmental corridor. Specifically, the sleeping situation in terms of the iron bed appliance, coming into use by tying force (synthetic ribbons attached to his hands and right leg), which is provided by the Health Minister on August 23, 2016 Order No. 2636-A, paragraph 6. The Ombudsman has also recorded by the Minister of Health on August 29, 2018, No. 2210-L of the insulation provided by the riot, particularly "Dzorak" care center for people with mental health problems in building B -1 1. In a fairly large room locked in the department, two caregivers were kept. After the Ombudsman's representatives demanded to open the door, one of the caregivers hurried to the bathroom, obviously the caregiver had no access to the toilet and was kept in a locked room for a long time. Thus, in psychiatric organizations, medical personnel also record torture and inhumane treatment methods that are directly contravening the RA legislation.

THE PRACTICE OF THE APPLICATION OF DETENTION AS A MEASURE OF RETRAIN FOR PUNITIVE PURPOSES

According to the RA Criminal Procedure Code, “preventive measures are measures of coercion taken towards the suspect or the accused to prevent their inappropriate behavior during the criminal proceeding and to ensure the execution of the sentence. However, very often, it is applied by the criminal prosecution body as a form of punitive policy even towards people with health issues. The foregoing can be justified by the wiretapping between Mr Artur Vanetsyan, Director of the RA National Security Service, and Mr Sasun Khachatryan, Head of the Special Investigation Service, from which the reason of the application of detention as a preventive measure by the

criminal prosecution body becomes evident. Particularly, in the video Mr Sasun Khachatryan mentions the following: “everybody will start confessing when detention is applied” (<https://www.youtube.com/watch?v=GY4OYxlOffw>, starts at 02:12). This means that the detention is being applied in order to influence other people who participate in the criminal proceeding. In the same video, the following is also mentioned by Mr Sasun Khachatryan: “He will not give testimony unless he is detained (...) he should be detained for a couple of days so that he thinks it through and gives testimony” (<https://www.youtube.com/watch?v=GY4OYxlOffw>, starts at 08:15). These provide evidence that the criminal prosecution body applies detention as a punitive policy and for the sake of obtaining “desirable” testimonies and, thus, go on with a preliminary investigation of a “desirable” nature. Meanwhile, we would like to highlight that such a policy, meaning the application of detention as a preventive measure, is an inhuman treatment towards participants of the trial, and, what is more, can lead to irreversible consequences, which are presented below.

Case 1

Within the framework of the filed criminal case due to Article 178(3)(1) and Article 34-312(3)(1) of the RA Criminal Code, on 4 December, 2018, Mr Mher Yeghiazaryan, Vice President of “Armenian Eagles: United Armenia” NGO and Head of “Haynews.am” news website, was arrested, and detention was applied as a preventive measure. As a sign of protest, on 5 December, 2018, Mr Mher Yeghiazaryan announced hunger strike, which lasted for 44 days. On 17 January, 2019, Mr Mher Yeghiazaryan ended his hunger strike. However, on 26 January, 2019, at around 06:15, the state of health of 50-year-old Mher Yeghiazaryan, who was imprisoned in the “Nubarashen” penitentiary, sharply deteriorated. The ambulance staff reported about his death at around 06:35.

In this case, the question regarding why exactly the preventive measure of Mr Mher Yeghiazaryan was not changed due to his state of health and why it was this was not a subject of discussion, especially when Mr Mher Yeghiazaryan’s defense group as well as the staff of the Human Rights Defender had raised the issue back in December, 2018. Moreover, data regarding illnesses of Mr Mher Yeghiazaryan as well as information about the document certifying his disability group had been submitted to the criminal prosecution body. As a matter of fact, a week before the death of Mr Mher Yeghiazaryan, the Yerevan Court of General Jurisdiction had rejected the petition of his advocates for the application of pledge, in the case when an amount of 5 million AMD had been offered (Mr Mher Yeghiazaryan was accused of fraud of 9 million AMD). Moreover, various organizations and deputies had stood as guarantees.

Also, clarifications are needed in terms of the question regarding the kind of actions taken by the competent authority for providing the needed medical support and care not only during the hunger strike, but also after that.

Case 2

On 6 October, 2018, within the framework of the filed criminal case due to Article 38-311 (assisting in obtaining a bribe) of the RA Criminal Code, Mr Samvel Mayrapetyan was arrested, and detention was applied as a preventive measure. Starting from the very first day of his detention,

not only documents describing his medical state were submitted by his advocates to the criminal prosecution body, but also conclusions of specialists of the relevant field regarding the incompatibility of his state of health with detention as well as the high probability of the sharp deterioration of his state of health, including the possibility of death. However, the body conducting the criminal proceeding appointed a forensic medical examination after 40 days of his arrest. Even after 67 days the conclusion of this examination was not yet ready. As a result of the inaction of the body conducting the criminal proceeding, his state of health had sharply deteriorated and an immediate operation was necessary, which, according to the conclusions submitted by Mr Samvel Mayrapetyan's group of advocates, was not possible to be carried out in Armenia.

Only on 27 December, 2018, was detention replaced with pledge as a preventive measure, however, the body conducting the criminal proceeding had forbid Mr Samvel Mayrapetyan to travel to Germany for the necessary operation. Only after the decision of 17 January 2019 of the European Court of Human Rights (ECHR), a professional console was organized on 23 January, 2019. According to the conclusion drawn by the latter, it was necessary for Mr Samvel Mayrapetyan to travel to Germany for an operation not possible in Armenia.

Case 3

On 16 June, 2018, within the framework of the filed criminal case due to Article 235(2) of the RA Criminal Code, Mr Manvel Grigoryan was arrested, and detention was applied as a preventive measure. According to his defense group, on the date of detention, Mr Manvel Grigoryan only had 4 severe illnesses and was under the strict surveillance of doctors. During detention, the number of serious illnesses reached 30. The defense group has also mentioned, that the Human Rights Defender had also confirmed that relevant conditions for the treatment of Mr Manvel Grigoryan did not exist in the hospital for the convicted. Thus, the defense concluded that the surveillance of his health was only possible in a civil hospital.

Contrary to the foregoing conclusion, the body conducting the criminal proceeding considered that detention as a preventive measure is compatible with the state of health of Mr Manvel Grigoryan, and that the hospital of the convicted had the necessary conditions for carrying out the relevant surveillance. As a result, on 5 June 2019, during nighttime, Mr Manvel Grigoryan was taken to a civil hospital from the penitentiary in a severe situation by the ambulance. Mr Manvel Grigoryan was in the reanimation department.

According to the decision of 6 June 2019 of the European Court of Human Rights, due to the severe state of ill-health of the applicant, the RA Government was obliged to provide the transportation of Mr Manvel Grigoryan to the medical organization mentioned in the decision as soon as possible.

In addition to the foregoing, an oriented public pressure towards Mr Manvel Grigoryan and his advocates had taken place by a group of citizens with gross violations of the presumption of innocence. This was combined with offensive and insulting expressions and labeling towards Mr Manvel Grigoryan and his group of advocates, of which numerous facts have been recorded.