

ALTERNATIVE REPORT
OF HELSINKI COMMITTEE OF ARMENIA
HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATION
ON IMPLEMENTATION OF
THE UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT

During the reporting period (2001-2011) the Republic of Armenia has ratified the “European Convention for the Protection of Human Rights and Fundamental Freedoms”, “European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment” adopted by the Council of Europe.

In 2006 the Republic of Armenia has ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For the implementation of the Protocol in 2008, within the framework of the National Preventive Mechanism for the prevention of torture, the Human Rights Defender of the Republic of Armenia was appointed by a law adopted by the National Assembly of the Republic of Armenia. This resulted in a situation that the involvement of the civil society was left to the discretion of the Human Rights Defender of the Republic of Armenia.

In the legislation of the Republic of Armenia the concept of torture is reflected in a number of provisions which do not comply with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Criminal Code of the Republic of Armenia (Article 119), torture is an any type of action through which a severe pain or physical or mental suffering is intentionally caused to a person. Article 119 does not imply commitment of the action by an official.

Article 341(2) prescribes liability for officials for compelling to testify, accompanied by mockery, torture or other violence against the person. Very often acts of torture are not committed directly by officials referred to in Article 341, but are committed upon their provocation, awareness and silent consent. Article 341 defines a narrow circle of certain persons that might be subjected to torture, yet according to the Convention this may be any person.

Police System

Studies carried out by the Helsinki Committee of Armenia in 2012 and various information received from different sources have shown that occurrences of torture and violence are widespread which are expressed in beating by rubber truncheons, hands and feet, applying electroshock and in other forms. The three principles of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *i.e.*, the right of arrested persons to inform of their situation to a third person upon their choice, the right to have access to an advocate, and the right medical examination by a doctor upon their choice, are not observed.

The finding of studies of the Helsinki Committee of Armenia have shown that 136 persons have been confined in Yerevan arrest and detention facilities (ADF) during the period from 1 November 2011 to 31 December 2011, 37 of which have been admitted to ADF with bodily injuries. Seven of them were provided with medical aid dues to their bodily injuries. Three of the mentioned 136 persons had access to the services of an advocate and advocates of 3 detained persons visited them in the presence of investigator. The observations have revealed that some persons did not have bodily injuries when being admitted into ADF and thereafter, following their transfer from ADF for investigatory operations, there appeared to be a need for medical aid.

The Public Monitoring Group, carrying out supervision in the arrest and detention facilities of the Police of the Republic of Armenia, is operating since 2006. The Group is independent in its activities; however the powers of the Group are limited and are applicable only with respect to ADFs, having no right of access to police departments.

In 2011 the Monitoring Group of the RA Police has recovered cases when the transfer of the arrested person to ADF was organized by the investigators only after 5-55 hours, or investigatory operations were organized outside the boundaries of the ADF and lasted for up to 25 hours.

On May 12, 2007, Levon Gulyan was invited as a witness to Shengavit Department of RA Police. Shortly after his arrival, he was taken to Police Headquarters. A couple of hours later his family members were informed about his death. According to the Police version of the story, Levon Gulyan tried to escape, fell from the second floor and died.

In accordance with the Decision of March 21, 2011, the Special Investigation Service of the Republic of Armenia dismissed the criminal case instigated in connection with the death of Levon Gulyan. The Court of General Jurisdiction by its decision of 25.05.2011, which has not been reversed later and entered into legal force, cancelled the decision on dismissing the case. Thus, the proceeding of this case that was dismissed earlier resumed, but so far no one has been punished and no charges have been brought against anyone under this case.

On June 14, 2011, Arman Davtyan and Sona Mkrtchyan were apprehended to Mashtots Department of the RA Police. After retaining Sona Mkrtchyan for 1 day, during which she had been beaten, they released her without issuing any protocol. Arman Davtyan was tortured: first he was beaten with sticks and parquet planks, then they broke his hand, and then applied electroshock to his back. Only a protocol on arrest dated June 15, 2011, without any indication of the date and time of preparation of the protocol, was issued afterwards.

The following injuries were found and registered on A. Davtyan's body: scratches and bruises on the back, and swelling on his right leg. In the process of the investigation proceeding A. Davtyan was taken out of the temporary retention facility three times: once for 14 hours and 40 minutes; the second time for 15 hours and 45 minutes; and the third time for 9 hours and 45 minutes. The investigation proceedings continued also at night time; the minimum 8-hour sleep-time requirement had not been observed. A. Davtyan was taken out of the temporary retention facility on June 18, 2011, but was placed in the penitentiary institution on the following day, on June 19.

Recommendations

- Make amendments in the Criminal Code of the Republic of Armenia by bringing the definition of torture in compliance with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Adopt a law on the National Preventive Mechanism for the Prevention of Torture by which the involvement of non-governmental organizations will be guaranteed;
- Provide for in law the binding nature of the right of de facto detained persons to have an advocate;
- Carry out all the medical examination actions with respect to detained persons out of the sight of police officers;
- Take electronic records of interrogations with the indication of the time of commencement and completion of the interrogation.

Penitentiary System

The Public Monitoring Group, carrying out monitoring in the penitentiary establishments and bodies under the Ministry of Justice of the Republic of Armenia, operates since 2004. The Group is independent in its activities and has the right of access to penitentiary establishments any day and any time. Members of the Group are elected by the Group.

After the transfer of penitentiary establishments to the control of the RA Ministry of Justice and after the establishment of the Group in 2004, an impression was left that the number of cases of torture in the

penitentiary establishments diminished. However, the developments proved that the violence towards the prisoners has not stopped.

In May 2005 special equipment (rubber truncheon) was used against the convict M.E. During this act of violence the convict was in handcuffs. No protocol has been made on the bodily injuries received.

In August 2005 signs of torture were found on the head and body of the convict A.A. According to the words of the convict, he had been beaten with rubber truncheons and steel reinforcement rods.

On December 23, 2008, the Quick Response Squad of the Penitentiary Department carried out a search operation in "Nubarashen" prison. In the result of that operation many occurrences of humiliating treatment of prisoners were reported by the convicts.

During this operation the commander of the Quick Response Squad received injuries, which resulted in further escalation of violence towards the persons in prison cells. Many of the convicts received different bodily injuries, such as: broken noses, contusions and bruises all over the body.

On September 2, 2011, the employees of Vanadzor penitentiary institution used special equipment in cell No 23, during a search operation; those included rubber truncheons and shields. In the mentioned cell 5 convicts were beaten. The Public Monitoring Group found signs of violence (contusions and bruises) on the bodies (arms, hands, feet and backs) of three of these convicts.

Physicians working in penitentiary institutions are staff members of these institutions and are directly subordinate to the management of the institutions. Thus, there are also issues related to independence and impartiality of the medical staff. This becomes especially obvious when physical force is applied against an inmate by a staff member. In cases like this the physicians either do not register the injuries received by the inmate, or do it very superficially.

Penitentiary institutions are overcrowded. As of July 1, 2010, 4850 prisoners were kept in penitentiary institutions designed for a maximum of 4396 persons. There were cases, when up to 20 people were held in a prison cell designed for a maximum of 8 persons.

Recommendations

- Videotape the process of application of physical force.
- Prisoners and detained persons, towards whom physical force has been applied, shall be subjected to medical examination, the results of which shall be recorded and provided to the detained person.
- Medical examination shall be carried out by medical personnel not employed directly by the penitentiary institution.
- Medical personnel of the penitentiary institutions shall be passed from the Ministry of Justice to the Ministry of Health jurisdiction.