

INFORMATION

ON CONCLUDING OBSERVATIONS ON THE REPORT SUBMITTED BY ARMENIA UNDER ARTICLE 29 OF THE CONVENTION

MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA

12. The Committee recommends that the State party ensure that the revision of the Criminal Code is fully aligned with the obligations contained in the Convention by incorporating all those changes that are needed to comply with the provisions of the Convention. In particular, the State party should define enforced disappearance as a separate crime in line with the definition in article 2 of the Convention and ensure that that crime is punishable by appropriate penalties which take into account its extreme seriousness. The Committee invites the State party, when criminalizing enforced disappearance as an autonomous offence, to consider establishing the specific mitigating and aggravating circumstances provided for in article 7, paragraph 2, of the Convention. It also recommends that the State party ensure that mitigating circumstances will in no case lead to a lack of appropriate punishment.

13. The Committee wishes to emphasize the continuous nature of the crime of enforced disappearance, in accordance with the principles of the Convention, to recall the strict terms laid down in the article governing the statute of limitations for this crime, and to emphasize its imprescriptible character when it constitutes a crime against humanity in accordance with article 5 of the Convention.

On 5 May 2021 the Parliament of Armenia has adopted the New Criminal Code of the Republic of Armenia which will enter into force on July 2022. Within the New CC the enforced disappearance is criminalized. In particular:

Article 451: Enforced disappearance:

1. Enforced disappearance—denial or hiding the fact of or the status or the place of a legally or illegally detained person by an official, another person or a group of persons, with the authorization, assistance, consent or connivance of the state as a result of which the disappeared person found himself outside the protection of law—is punished with imprisonment from 3 to 7 years.
2. The act, envisaged by the 1st part of the given article, committed in relation to
 - 1) a pregnant woman
 - 2) a minor
 - 3) a helpless personis punished with imprisonment from 5 to 10 years.
3. The act, envisaged by 1st or 2nd parts of the given article that has unintentionally caused a death or another grave consequence is punished with imprisonment from 8 to 15 years.

- A criminal liability for enforced disappearance is also envisaged within the *corpus delicti* of crimes against humanity. In particular:

Article 135 of the New CC (Crimes against humanity)

1. Within the frames of massive or regular attack against civilians, committing one of the listed acts, including enforced disappearance is punished with imprisonment from 12 to 20 years or for life.

Article 137 of the New CC. War crimes against a sponsored person

The commission of any one of the following acts: 1) causing harm to health of mild or moderate severity, 2) the imposition or execution of a sentence without a fair trial against a person or 3) humiliation of honor and dignity, considered a serious violation of the norms of international humanitarian law or the laws or customs of warfare against a person sponsored by international humanitarian law or another person enjoying international protection in an international armed conflict or an armed conflict not of an international nature is punished with imprisonment from 6 to 12 years. The commission of the following acts considered as considered a serious violation of the norms of international humanitarian law or the laws or customs of warfare, including (.....) ***enforced disappearance***, against a person's envisaged by the 1st part of this Article is punished with imprisonment from 12 to 20 years or for life.

17. The Committee recommends that the State party consider explicitly incorporating into its domestic legislation a prohibition on carrying out an expulsion, refoulement, rendition or extradition when there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. The Committee also urges the State party to ensure that the competent authorities strictly comply with the applicable procedures for extradition, refoulement or expulsion and ensure, in particular, that an individual examination is carried out in each case to determine whether there are substantial grounds for believing that the person might be in danger of being subjected to enforced disappearance.

In accordance with Article 55 of the Constitution “No one may be expelled or extradited to a foreign state, if there is a real danger that the given person may be subjected to death penalty, torture, inhuman or degrading treatment or punishment in that country. A citizen of the Republic of Armenia may not be extradited to a foreign state, except for the cases provided for by the international treaties ratified by the Republic of Armenia”.

It should be mentioned that the separate Law “On Mutual Legal Assistance” is now in the process of elaboration and the ground of forced disappearance for non extradition should be considered within the drafting process.

19. The State party should take the necessary steps to ensure that:

(a) Information on all persons deprived of their liberty, without exception, is entered in registers and/or records in accordance with standard protocols and that the information contained therein includes, as a minimum, that required under article 17, paragraph 3, of the Convention;

(b) All registers and/or records of persons deprived of their liberty are accurately and promptly completed and kept up to date;

(c) All registers and/or records of persons deprived of their liberty are regularly checked and that, in the event of irregularities, the officials responsible are sanctioned.

- Persons deprived of their liberty enjoy the fundamental legal safeguards enshrined in the Constitution for prevention of torture and ill-treatment. In January 2018 the National Assembly adopted “Amendments to CPC”, according to which, prior to announcing the arrest warrant to the person placed under custody, the person placed under custody shall be entitled to: be informed on the grounds for depriving him or her of liberty; remain silent; receive a verbal explanation on his or her rights; receive a written notice and explanation on his or her rights and obligations; notify the person of his or her choice his or her whereabouts; invite a lawyer; undergo a medical examination upon his or her request. The last four rights arise from the moment of bringing to the body of inquiry or investigator. Immediately after the arrest, the person arrested is registered in the register of the relevant police unit and the further record keeping is carried out by police officers. Pursuant to Order of the Chairperson of the Committee of 28 December 2016, agencies and units of the Committee submit, in the form of a report, the results of their semestral and annual activities, which inter alia reflects the number of violations of the rights of arrested persons and gives the general overview of the nature of violations. Irrespective of announcing the person the arrest warrant, the person shall, four hours after being placed under actual custody, acquire the rights and responsibilities applicable to a suspect.

- Furthermore, the Article 15 of the Law “On holding the arrested and detained persons” also ensures the minimum safeguards: after the arrest, the suspect shall be entitled to receive without delay from the investigating authority, investigator or prosecutor, in a language which he or she understands, a written notification and explanation about his or her rights under his or her signature, as well as the reasons and grounds for his or her deprivation of liberty, has also been enacted, ability to inform selected persons about the whereabouts of the detained person and the invitation of the lawyer, to request to ensure his medical examination, a date with a lawyer. The meeting could be unhindered without limiting the number and duration of meetings, regardless of working days or hours under the conditions where other persons can see them, but cannot hear. The detained or arrested person and their lawyer also have the right to request a forensic medical examination. The suspect shall be entitled to notify without delay by phone or other possible means the person of his or her choice, about the place and grounds for holding him or her under custody, immediately after his or her placement under custody. All abovementioned measures clearly state that persons deprived of their liberty enjoy all fundamental safeguards.

- In 2019 the Draft Decision “On making an amendment in the Internal Regulation on detention facilities operating within the Police System (from 2008)” was elaborated, which

envisages making amendment to the Form 1 Register, which will enable to indicate the date and time of apprehending (actually placing under custody), arresting and entering detention facilities.

- The documents on transfer of detained persons, including convicted persons from one penitentiary institution to another, as well as documents on any person deprived of liberty in general, are attached to their personal files under Form 1 of Annex 5 of the Order N 311-N of 18 December 2009 “On approving the procedures for the activities of structural subdivisions of the penitentiary service of the MOJ of RA”.

- In addition, conditioned by the need for developing full information on persons held at penitentiary institutions, ensuring the comprehensive analysis of work carried out by the subdivisions, as well as introduction of effective control mechanisms, “Information Register of Remand Prisoners and Convicts” **“e-penitentiary” system** for electronic management was designed and developed, which is unprecedented in terms of its scale and technical capabilities. The system includes full information about all the functions being performed under the legislation with respect to detained persons and convicts (for example: information on conditional early release from serving the further punishment, changing the regimes for serving the punishment, visits, education, work, as well as other data).

- Sufficient funds necessary for putting the system into operation have been allocated by the GoA in 2019, technical refurbishment works have been carried out, training courses (with timetable) on proper functioning of the system were elaborated and launched for employees of penitentiary institutions in August 2020. It’s worth mentioning that the launch (full operation) of the system was postponed due to objective reasons (martial law and COVID-1) for a prolonged period and steps aimed at ensuring its functioning will be taken in a possibly short period of time.

21. The State party should ensure that the Office of the Human Rights Defender of Armenia has sufficient financial, human and technical resources to perform effectively its role as the national protective mechanism, and that all relevant government authorities allow and enable the Office to execute its mandate in full compliance with the provisions of the Optional Protocol to the Convention against Torture

The Defender's activities as the National Preventive Mechanism (NPM) are aimed at preventing torture and other cruel, inhuman or degrading treatment in places of deprivation of liberty (Article 27 of the RA Constitutional Law on the Human Rights Defender)

The Human Rights Defender as the NPM is entitled to:

- make regular, as well as ad hoc visits places of detention to prevent ill-treatment and is not obliged to inform the institution in advance on the time or purpose of the visits;
- visit persons deprived of their liberty and to have private interviews with them;
- no one has the power to surveillance or interferes with these interviews;
- engage an interpreter if deemed necessary and use technical equipment;
- make recommendations to the relevant authorities and organizations to prevent ill-treatment and improve the detention conditions of persons in any place of deprivation of liberty;

- to receive information and clarifications referring to the treatment, as well as detention conditions of persons in the place of deprivation of liberty, as well as any other issue necessary for the exercise of his or her powers;
- to get acquainted with all the documents necessary for the exercise of his or her powers, receive their copies;
- submit recommendations on legal acts or their drafts to the competent authorities;
- exercise other powers prescribed by the law.

23. The Committee recommends that the State party take the necessary measures to ensure that all military and civilian law enforcement personnel, medical personnel, public officials and any other persons who may be involved in the custody or treatment of persons deprived of their liberty—including judges, prosecutors and other officials responsible for the administration of justice—receive suitable information on a regular basis concerning the provisions of the Convention, in accordance with article 23.

On a regular basis during the vocational training of persons, enlisted as candidates of judges and prosecutors, annual training of persons, enlisted as judges and candidates of judges as well as prosecutors, provisions of the Convention are touched upon within the framework of the course “Contemporary issues of Criminal Law”, particularly within the topics “Exact qualification issues of criminal acts envisaged by the special part of the RA Criminal Code”, “Issues of delimiting adjacent corpus delicti and legislative and law enforcement experience in the field of their solution”, “ECHR legal positions on protection of rights, guaranteed by the European Convention on Human Rights in the field of Criminal Law”, “Content of the international obligations of the Republic of Armenia” as well as during the course “Contemporary issues of criminal process” particularly within the topic “Issues of application of international agreements on legal assistance.”

In the vocational trainings of the RA Investigative Committee for persons, enlisted as candidates for autonomous positions, provisions of the Convention are touched upon within the framework of the course “Contemporary issues of Criminal Law”, particularly within the topic “Content of international obligations of the Republic of Armenia”, and during the training of persons, occupying autonomous positions in the course “Contemporary issues of applying legal positions of the ECHR in criminal matters.”

25. The Committee recommends that the State party should take the necessary measures to ensure that the definition of “victim” in the Criminal Code and other applicable legislation in Armenia is fully in line with article 24, paragraph 1, of the Convention.

In accordance with current Criminal Procedure Code the victim is a person who has directly suffered moral, physical or proprietary damage, without giving any specificity regarding the corpus delicti of a crime.

The New Criminal Procedure Code was adopted on 30 June 2021 and will enter into force on 01 July 2022. The New CPC defines the victim as a physical or legal person, community or

international organization who suffered any harm by any supposed crime (or could suffer harm if the crime was committed). The Article 50 clearly defines the rights and responsibilities of a victim.

Taking into consideration the abovementioned definition of a victim within the New CPC, which does not differentiate the types of harm, including both direct and indirect harm caused by the offense, the disappeared person or any individual who has suffered harm as the direct result of an enforced disappearance should be considered as a victim.

29. The Committee recommends that the State party adopt the necessary legislative measures to make the actions described in article 25, paragraph 1, of the Convention specific offences, and for such actions establish penalties that should be commensurate with their extreme gravity.

a. As it was mentioned within the answer to the point 12 the enforced disappearance in line with the New CC committed in relation to a pregnant women and a minor is an aggravating circumstance and is punished with imprisonment from 5 to 10 years.

b. In accordance with Article 325 of the current Criminal Code (Forgery, sale or use of forged documents, stamps, seals, letter-heads, vehicle license plates) Forgery of an official document which grants rights or exempts from liability, or any other official document, by the forger or other person for the purpose of using, or selling such a document or forgery and sale of seals, signs, letter-heads or license plates for the same purpose, as well as, the use of an obviously forged document, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for the term of up to 2 years. The relevant provision is also envisaged by the New CC.

POLICE OF THE REPUBLIC OF ARMENIA

From 2015 to 2021, police officers received training at the Training Centre of the RA Police Education Complex on the following topics: "Decisions of the European Court of Human Rights regarding Armenia in violation of Article 3 of the European Convention on Human Rights", "Torture, inhuman or degrading treatment", "Right to life", "Gender and stereotypes of socialization", "Gender as a socio-cultural paradigm", "Gender violence", "Domestic violence and sexual violence", "Criminal law characteristics of human trafficking and exploitation", Specifics of combating human exploitation/human trafficking and "Ways of organising the fight against human exploitation/human trafficking".

It is currently planned to include the topic "International Convention for the Protection of All Persons from Enforced Disappearance" in the curriculum of the Training Centre of the RA Police Education Complex.