TREATMENT OF DETAINED PERSONS IN POLICE DEPARTMENTS

Report

Helsinki Committee of Armenia

PENAL REFORM INTERNATIONAL

Avetik Ishkhanian and Robert Revazian

TREATMENT OF DETAINED PERSONS IN POLICE DEPARTMENTS

Report

Yerevan
Helsinki Committee of Armenia
2013

Helsinki
Committee
of Armenia

Yerevan 2013

ՀՏԴ 343.353.13 (042.3)
ԳՄԴ 67.99 (2)8
Ի 684

Editing & proofreading: T. Susliyan
Translation: Vladimir Osipov
Computer Layout: Aram Urutyan

684 Ishkhanian, A. Treatment of detained persons in police departments: Report / Ishkhanian, Avetik and Robert Revazian. - Yerevan: Helsinki Committee of Armenia Human Rights NGO, 2013. - 72 p.

The publication presents the findings of the study on the treatment of detained persons in police departments conducted by Helsinki Committee of Armenia. The goal of the Project was to identify instances of torture or inhuman or degrading treatment and to make recommendations on their prevention.

The Study was financed
by Penal Reform International

The translation and publication of the study
was supported by Open Society Institute-Budapest

ՀՏԴ 343.353.13 (042.3)
ԳՄԴ 67.99 (2) 8

ISBN 978-99941-2-809-9

The study has been conducted with financial support from Penal Reform International NGO.

Authors of the Report: **Avetik Ishkhanian**
Robert Revazian

The study has been conducted by
Members of the group that conducts monitoring of correctional institutions:

Arthur Sakunts
Ruben Sargsian
Tirayr Khalapian
Robert Revazian
Avetik Ishkhanian

Members of the group that conducts monitoring of police detention facilities: **Suren Iskandarian**
Nelly Harutyunian
Hasmik Sahakian

Special thank you note is directed to Narine Gasparyan, Senior Staff Attorney at Armenian Representative Office of American Bar Association *CEELI* Inc. for providing useful comments for the Report.

ACRONYMS

RoA - Republic of Armenia

CoE - Council of Europe

CPT - the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Correctional institutions monitoring group - the group of civic observers that exercises supervision in correctional institutions and bodies of the RoA Ministry of Justice

Police detention facilities group - the group of civic observers that exercises supervision in the RoA police facilities for detained persons

PDF - police detention facilities

CI - correctional institution

UN - United Nations Organization

ECHR - The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

CONTENTS

1. *INTRODUCTION*

The goal of this study is to analyze the root causes as well as possible ways and forms of prevention of torture and ill-treatment in police departments in Armenia. The studies conducted by local and international organizations demonstrate that inhuman treatment and torture occur regularly in Armenia. The situation in police departments is of a particular concern. Information about tortures is also frequently published by the press. As a rule, the public at large is informed about ill-treatment and torture in police departments when the developments take a tragic turn or when victims of violence are political activists who speak out. From the 1990s on, the general public is aware of over 10 cases of deaths, which resulted from torture, as the public, various human rights organizations and experts see it. However, according to the official versions, those deaths were suicides or brought about by other causes *(See Ditord/Observer, 2002, # 6,* http://armhels.com/wp-content/uploads/2002/03/82eng-Ditord–6.pdf). As a rule, in such instances a criminal case is not instituted at all or, if instituted, is subsequently suspended or dismissed.

In recent years there was a considerable public response to Levon Gulian´s and Vahan Khalafian´s deaths in police departments[1].

After Armenia obtained membership in the Council of *Europe in 2001 and ratified the European Convention for the Prevention of Torture and Inhuman or Degrading*

1. On May 12, 2007, Levon Gulian was summoned to Shengavit department of the RoA Police as witness. He was then taken to the RoA Police building. Several hours later his family members were notified that Levon Gulian had died. According to the police version, while trying to escape Levon Gulian fell from the second floor and died. With regard to L. Gulian´s death a criminal case was instituted with the charges of "incitement to suicide." From 2007 till present the preliminary investigation was terminated 4 times on the grounds of the absence of corpus delicti. All decisions to terminate the investigation were appealed against in the court. In all instances the court overturned the decision to terminate the investigation. So far no one has been held accountable for L. Gulian´s death.

   On April 13, 2010, Vahan Khalafian was forcibly brought to a police department. A few hours later he sustained a knife injury in the abdomen and, according to the official version, was taken by an ambulance to a hospital, where he died. Forensic examination of Vahan Khalafian´s dead body showed that he had been subjected to violence. In this criminal case two policemen were given prison sentences for exceeding and abusing their powers. However, V. Khalafian´s legal successor declared that Vahan Khalafian had not committed suicide but that he had been murdered by policemen.

Treatment or Punishment[2] the CPT started its periodic visits. During its first visit in 2002 the CPT got reports of instances of ill-treatment of persons in police custody. The ill-treatment alleged consisted essentially of punches and kicks, and of striking the persons concerned with truncheons and/or other hard objects, such as chair legs, thick metal cables or gun butts. In virtually all cases, it was said to have been inflicted in the context of police interrogation (mostly by operative police officers) and with a view to extracting confessions or information. In some cases, the ill-treatment alleged - very severe beating by several police officers, including on the soles of the feet, or the squeezing of fingers with pliers - could be considered as amounting to torture.

In the course of the conversations some persons gave accounts also of psychological pressure put on them, in the form of threats of physical abuse, including sexual violence.

As the results of subsequent visits by PRI indicate that the situation has not become different since that time. In all of its reports the CPT reiterates and periodically addresses the instances of torture in the RoA Police departments. In its report published in 2011 the CPT pointed out that torture and other forms of ill-treatment still occur in the RoA Police departments. The report notes that ill-treatment mainly consisted of punches, kicks and blows inflicted with truncheons, bottles filled with water or wooden bats, with a view to securing confessions or obtaining other information. According to the report, in several instances, the severity of the ill-treatment alleged was such that it could be considered as amounting to torture.

In its recommendations the CPT stresses that there should be "zero tolerance" of the officials who use torture. In 2011-2012, there were no positive changes in Armenia. The violations highlighted by the CPT occurred also during that period.

Despite the fact that groups of civic observers exercising supervision in correctional institutions and in police departments operate in Armenia, there are, however, no systematic domestic studies of ill-treatment in police custody.

Becoming a CoE member country, Armenia assumed an obligation to adopt a law to transfer the prison system, including pre-trial detention facilities, from the Ministries of the Interior and of the National Security to the Ministry of Justice and to cooperate closely with non-governmental organizations to guarantee respect for the rights of inmates and convicts (*See PACE Opinion N 221* (2000) *"Armenia's application for membership of the Council of Europe"*.)

As per Article 47 of the RoA *Law on holding detained and arrested persons* adopted on February 6, 2002, civic oversight was instituted. The oversight of the operation of facilities for holding detained and arrested persons was to be carried out by a group of civic observers established by the head of the relevant competent body.

The group of civic observers that exercises supervision in correctional institutions and

2. The Republic of Armenia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on June 18, 2002.

bodies of the RoA Ministry of Justice has been operating in Armenia since 2004 (following the Order issued by the RoA Minister of Justice) and the group of civic observers that exercises supervision in the RoA police facilities for detained persons has been operating since 2006 (following the Order issued by the Head of the RoA Police).

Members of both groups are members of human rights non-governmental organizations and are independent in their activities, including issues of enrolling new members and making visits. Both groups submit periodic reports about the situation in police and correctional institutions; however, the reports deal primarily with material conditions of detention, while information about ill-treatment of persons deprived of liberty is either absent at all from the reports or is inadequate. We believe that the reason is that the civic monitoring group is entitled to exercise control only over the police detention facilities. As a rule, persons who have been submitted to ill-treatment and who are in a police detention facility do not report torture or inhuman or degrading treatment to relevant bodies because they are still afraid. They speak more openly after they have been transferred to a correctional institution. The powers of the group that exercises supervision in correctional institutions cover supervision of material conditions of correctional institutions and treatment of inmates. That is the reason why the groups have been unable for many years to adequately identify instances of torture in police departments, while other entities, in particular the CPT, have been able to do that.

The Project goal was to identify instances of torture or inhuman or degrading treatment in police departments through cooperation between the two above-mentioned groups and to submit recommendations about possible ways to prevent those.

2. *METHODOLOGY*

The following methods were used in the course of the monitoring.

a. Analysis of the legislation

Examined were both international and domestic legal acts on prohibition of torture and the right to liberty and security of person. Also examined was domestic legislation on the admission procedure to facilities for holding detained and arrested persons, on the right to medical assistance and on judicial and prosecutor's office oversight.

b. Interviews

In the first month of the Project implementation the working group drew up a questionnaire to be filled out during interviews with inmates. While drawing up the questionnaire, the working group relied primarily on the CPT principles and the European Prison Rules. From January to July 2012 visits were conducted on a regular basis to Nubarashen correctional institution, which is the largest in Armenia, and conversations were held with 80 inmates in pre-trial detention. Questionnaires were filled out during interviews with 30 of them with a view to finding out the instances of ill-treatment or torture that they had allegedly been subjected to in police departments. Conversations were also held with investigators, policemen and prosecutors.

c. Desk review of documents

Examined were the medical examination log books for detainees in Nubarashen correctional institution and log books and medical examination or medical assistance log books for individuals held in police detention facilities. The two groups worked in close coordination with one another. The monitoring group for correctional institutions would share the identified incidents of ill-treatment (in case of express consent of the person concerned) with members of the group on police detention facilities so that they would check the log book entries related to that person and vice versa.

3. *LEGISLATION*

3.1. Prohibition of tortures[3]

Prohibition of torture is enshrined in the Constitution of the Republic of Armenia. As per Article 17 of the Constitution, "No one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment. Arrested, detained or incarcerated persons shall be entitled to human treatment and respect of dignity. No one shall be subjected to scientific, medical and other experiments without his/her consent."

Under Article 1 of the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Paragraph 1 of Article 2 of the same Convention states that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Paragraph 2 states that no exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.

As per Article 3 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

3. A more detailed analysis of this issue can be found in the Country Report on Armenia "Combating ill-treatment and impunity and effective investigation of ill-treatment" by Eric Svanidze.

Under Article 11 paragraphs 7, 8 and 9 of the RoA Criminal Procedure Code, in the 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 while trying to obtain testimony from the suspect, the accused, the defendant, the aggrieved party, the witness, and other persons participating in criminal proceedings. It shall be prohibited to get a person involved in long investigative experiments or other procedural actions or the same causing physical sufferings or endangering his life or the life of other persons around, as well as to subject a person to any other tests of similar character. In the course of criminal proceedings, it shall be prohibited to use methods that may endanger the life and health of people or the environment.

At the same time it should be noted that the concept of torture as defined by the domestic legislation of the Republic of Armenia is not in line with the definitions in the above-mentioned international legal instruments[4]. Under Article 119 of the RoA Criminal Code, torture is any action of willfully causing strong pain or bodily or mental sufferance to a person. It is noteworthy that cases investigated under this Article are private prosecution cases, i.e. cases are instituted under this Article only on the basis of the complaint lodged by the aggrieved party. Besides, the statutory provision in the Article indicates that as per Article 119 of the RoA Criminal Code the *corpus delicti* of torture does not include requirements concerning the aim and the perpetrator of the crime, i.e. a private person can be a perpetrator of the crime.

As per Article 308 of the RoA Criminal Code, abuse of official authority or duties by a state official for mercenary interests, other personal motives or group interests, which caused essential damage to rights and legitimate interests of citizens and organizations and to legitimate interests of the society at large or the State, shall entail liability.

As per Article 309 of the RoA Criminal Code, the actions willfully committed by an official, which obviously exceeded his powers and caused essential damage to rights and legitimate interests of citizens and organizations and to legitimate interests of the society at large or the State, shall entail liability.

Under Article 341 of the RoA Criminal Code, the judge, prosecutor, investigator or a person in charge of inquiry shall be held liable for coercing a person to testify. As per paragraph 2 of the Article, the judge, prosecutor, investigator or a person in charge of inquiry shall be held liable for coercing, with the use of taunts, torture or other forms of violence, the witness, the suspect, the

4. See, for example, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 3rd periodic report of States parties due in 2002: Armenia, 7 December 2010, publisher: Committee against Torture. See also, Human Rights Council, Working Group on the Universal Periodic Review, Eighth session, Geneva, 3-14 May 2010: Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, Armenia, paragraph 24.

accused, the defendant or the aggrieved party to testify, the expert to give a false conclusion or the interpreter to make an incorrect interpretation.

As regards Article 341, the analysis of the Articles discussed above gives grounds to conclude that according to the RoA criminal legislation, coercion to testify or to give a certain conclusion through torture is punishable only if that occurs during the trial. Numerous other instances of the use of torture or other forms of ill-treatment by an official, for example, violence during rallies or in correctional institutions, armed forces, etc., are left outside the scope of legislative regulation.

Not infrequently tortures are used not directly by the officials listed in Article 341 of the RoA Criminal Code but by their inducement and with their knowledge and silent consent. Besides, Article 341 outlines a narrow circle of certain individuals the violence against whom is to be addressed under this Article.

Besides, as per the RoA Criminal Code, not every instance of violence used by the body in charge of the case can be qualified as containing the *corpus delicti* of torture. The matter here concerns particularly the situations, when an investigator or a policeman torture a person or cause him severe pain or suffering with a view to forcing him to give explanation, to submit a statement or to turn oneself in to law-enforcement bodies. In all those cases the official is to be held criminally liable for exceeding his powers and/or for causing damage to person´s health.

3.2. The right to liberty and security of person

As per Article 16 of the RoA Constitution, "Everyone shall have a right to liberty and security. A person can be deprived of or restricted in his/her liberty in accordance with a procedure and in cases prescribed by law.

Everyone who is deprived of his/her freedom shall in a language comprehensible to him/her be immediately informed of the reasons for this and of charges should such be brought against him/her. Everyone who is deprived of his/her freedom shall have a right to immediately notify this to any person of his/her choice. If the detained person is not placed under arrest following a court decision made within 72 hours of the detention, he/she must be released immediately.

As per Article 5 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, everyone has the right to liberty and security of person. No one shall be deprived of his liberty other than in accordance with a procedure prescribed by law.

Under Article 11 of the RoA Criminal Procedure Code, everyone has the right to liberty and immunity. The arrest or keeping in custody is allowed only by court´s decision. A person may not be held in custody for over 72 hours without a court decision.

As per Article 63 of the RoA Criminal Procedure Code, the suspect has the right:

- to know, what he/she is suspected of;
- to know the content of suspicion, the factual side and legal qualification of the deed incriminated to him/her;

- to receive immediately upon detention from the body of inquiry, the investigator or the prosecutor a written notification and explanation of his or her rights;
- to receive for free immediately upon detention or upon declaration of the decision on the selection of the measure of restraint from the body of criminal prosecution, a copy of the detention decision by the body of criminal prosecution or a copy of decision on the selection of the measure of restraint and to receive immediately a copy of the detention protocol upon its completion;
- to have a defense attorney from the moment of presentation to him/her the detention decision made by the body of criminal prosecution, the protocol of detention or the decision on selection of the measure of restraint;
- to refuse from defense attorney and to conduct the defense himself/herself;
- to have the body conducting the criminal investigation to notify by telephone or by other available means, within 12 hours after detention, the close relatives (and in case of a military serviceman also the commanding officers of his military unit) about the place of and the grounds for his/her imprisonment.

The suspect has other rights outlined by law. The accused, too, is entitled to those rights.

As per Article 1881 of the RoA Criminal Procedure Code, the investigative activities cannot be undertaken at night, with the exception of urgent cases. The use of violence, threats and other unlawful actions against the participants of a preliminary investigation as well as the creation of conditions that pose danger to their life and health are prohibited in the course of investigative activities.

As per Article 153 of the RoA Criminal Procedure Code, in the event the suspect, the accused, the defendant, the convict, the witness or the aggrieved party fails without a valid reason to report to the body in charge of the criminal investigation and therefore is forcibly brought to the body in charge of the criminal inquest so that appropriate investigative actions required by the said Code are undertaken, the process of forcibly bringing the person in question can entail a temporary limitation of the said person´s rights and freedoms.

As per Article 205 paragraph 1 of the RoA Criminal Procedure Code, the witness, the aggrieved party, the suspect and the accused are summoned to the investigator by written notification. The notification indicates who is summoned, to whom, in what judicial procedural capacity, where and when (the day and hour of appearance) the summoned person should come. It also indicates consequences of failure to appear. As per paragraph 2, the notification is handed over to the summoned person against his or her signature or delivered to the said person via another communications means. In case of his/her absence, the notification is handed over to their adult family member, neighbors, condominium (the housing maintenance office) or is passed on through the administration at the place of work or study.

3.3. The admission procedure to facilities for holding detained and arrested persons and the right to medical assistance

As per Article 21 paragraph 5 of the RoA *Law on holding arrested and detained persons*, in case it is discovered that an arrested and detained person has a bodily injury, a medical staff member of the facility for holding arrested persons or of the facility for holding detained persons or an invited medical worker shall immediately make a medical examination and a doctor of the detained or arrested person's choice can take part in it. Medical examination is made out of the hearing of the administrative staff member of the facility for holding arrested persons or of the facility for holding detained persons and, unless the doctor demands the opposite, out of his/her sight. The results of medical examination are put down in a personal file in line with the established procedure and then the patient and the body in charge of the criminal investigation are notified.

As per Article 29, arrested persons shall be admitted to places of arrest and detained persons shall be admitted to places of detention by the administration of those institutions in accordance with the procedure established by internal regulations. Person transferred to a place of arrest shall be placed in a special quarantine section for a period of up to 7 days to undergo medical examination and to familiarize themselves with conditions in the place of arrest.

As per paragraph 5 of the internal regulations of places for holding arrested persons, the admission of an arrested person brought to the place for holding arrested persons and of a convict brought to a correctional institution is organized in the quarantine section and, as a rule, is done from 10 a.m. till 8 p.m. by a duty officer of the place for holding arrested persons or of a correctional institution.

As per paragraph 9, when an arrested person is admitted to the place for holding arrested persons and a convict is admitted to a correctional institution, he undergoes a medical examination in a quarantine section in line with the established procedure.

As per paragraph 10, after an arrested person has been admitted to the place for holding arrested persons and a convict has been admitted to a correctional institution he is placed in specially designated cells in a quarantine section for a period of up to 7 days to undergo medical examination and to familiarize himself with conditions in the place for holding arrested persons or of a correctional institution. As per paragraph 41, the arrested persons and convicts have the right to make use of services of other medical professionals at their own expense.

As per paragraph 11 of the internal regulations of the RoA Police facilities for pretrial detention (PTDF), detainees are admitted to the PTDF around the clock. As per paragraph 13, in case of finding bodily injuries or obvious signs of a disease or in case of health-related complaints of a detainee, a duty police officer summons a medical worker who immediately makes a medical exami-

nation and a doctor of the detainee's choice can take part in it. Medical examination is made out of the hearing of the PTDF administrative staff member and, unless the doctor demands the opposite, out of his/her sight. The results of medical examination are put down in a registration log book and then the patient and the body in charge of the investigation are notified.

As per paragraph 25, after the detainee has been searched and his personal effects examined and he has undergone medical examination and sanitary treatment a duty police officer shall inform him about his rights and duties, about the liability for violating the requirements of the PTDF internal regulations and the established procedures and about the possibility of the use of technical means, physical force, special means and firearms while exercising control over him.

As per paragraph 30, detainee shall be provided with free food sufficient for maintaining health and strength. Detainee has the right to purchase food and necessary, allowed items at his own expense.

As per paragraph 177, first aid to detainees held in PTDF shall be given by the PTDF medical worker or by specialized ambulance service.

As per paragraph 179, PTDF are not allowed to hold detainees with mental or acute infectious diseases or who need professional medical assistance. Such detainees shall be transferred to a special specialized or civilian medical institution following a written conclusion by a PTDF medical staff member or an ambulance doctor and a decision made by a head of the police facility on those grounds.

3.4. Judicial oversight

As per Article 41 paragraph 2 of the RoA Criminal Procedure Code, the powers of the court are, *inter alia*, to consider and pass a decision, in cases stipulated by law, on complaints against the decisions and actions (inaction) of the employee of the investigative body, investigator, prosecutor and bodies that carry out operative and searching activities and, in cases stipulated by the Criminal Procedure Code, to make a motion to the prosecutor to get a criminal case instituted.

As per Article 278 paragraph 1 of the RoA Criminal Procedure Code, the court shall consider the implementation of investigative, operative and searching activities and the motions concerning the application of judiciary enforcement restricting the constitutional rights and freedoms of the person. As per paragraph 2, the court shall consider, in cases specified and through the procedure established by Criminal Procedure Code, complaints against the decisions and actions of investigative bodies, investigator, prosecutor and bodies that carry out operative and searching activities.

As per Article 278 of the RoA *Law on holding arrested and detained persons*, the administration of places of detention shall inform the court about holding the particular detainee in detention, the time that he/she is to spend in detention and the release from detention.

In cases specified and through the procedure established by the Republic of Armenia legislation the court shall examine any complaints by arrested or detained persons against any actions by the administrations of places of arrest or detention.

3.5. Prosecutoŕs office oversight

As per Article 103 of the RoA Constitution, the Office of the Prosecutor General in the Republic of Armenia represents a unified, centralized system, headed by the Prosecutor General.

The Prosecutor General shall be appointed by the National Assembly upon the recommendation of the President of the Republic for a six-year term. The Prosecutor General may be removed from the office in cases prescribed by the law and upon the recommendation of the Speaker of the National Assembly of the Republic of Armenia by a majority of its votes.

In conformity with the procedure established and in cases specified by law the Office of the Prosecutor General shall:

1) institute criminal prosecution;

2) oversee the lawfulness of inquest and preliminary investigation;

3) present the case for the prosecution in court;

4) bring actions in court to defend the interests of the State;

5) appeal against the judgments, verdicts and decisions of the courts;

6) oversee the lawfulness of discharge of penalties and other means of coercion.

As per Article 36 paragraph 1 of the RoA *Law on the Prosecution*, the Prosecutor General shall be appointed by the National Assembly upon nomination by the President of the Republic. The Prosecutor General shall serve in office for a six-year term. The same person may not be appointed as the Prosecutor General for more than two consecutive terms. As per paragraph 2, deputies of the Prosecutor General shall be appointed by the President of the Republic upon nomination by the Prosecutor General.

As per Article 53 paragraph 1 of the RoA Criminal Procedure Code, during the pre-trial proceedings the prosecutor is authorized:

- *to institute and carry out criminal prosecution, to cancel the decision of the investigator on suspension of a criminal case, to institute a criminal case based on court motion, to cancel the decision of the body of inquiry and the investigator rejecting the institution of a criminal case and to institute a criminal case as well as to institute a criminal case on his own initiative;*
- *to task, in case of a crime, the body of inquiry and the investigator with preparing the materials for the institution of a criminal case, to task the body of inquiry and the investigator with taking urgent investigative measures and to provide prosecutorial leadership of the inquest and the preliminary investigation.*

As per Article 26 paragraph 1 of the RoA *Law on the Prosecution*, defending charges in court shall, as a rule, be carried out by the prosecutor that supervised the lawfulness of inquest and investigation in the same criminal case, unless, in cases stipulated by law, such prosecutor has been replaced by a higher-ranking prosecutor. In exceptional cases, the higher-ranking prosecutor may

engage other accusers, too, in the exercise of procedural powers by the prosecutor defending charges.

As per Article 46 of the RoA *Law on holding arrested and detained persons*, oversight of observance of laws in places of arrest or detention shall be exercised by the Prosecutor General and the subordinate prosecutors in accordance with the procedure established by the Republic of Armenia *Law on the Prosecution*.

As per Article 29 paragraph 1 of the RoA *Law on the Prosecution*, the prosecutor shall exercise oversight of lawfulness in of the enforcement of sentences and other measures of coercion. As per paragraph 4, the prosecutor shall have the right:

1) *At any time, without any hindrance, to visit all places in which persons deprived of liberty are held;*
2) *To familiarize himself with the documents on the basis of which the person was subjected to a sentence or other coercive measures;*
3) *To check the conformity with the legislation of such orders, instructions, and decisions of the administration of bodies enforcing sentences and other coercive measures, which concern the fundamental rights of the person subjected to a sentence or other coercive measures. When discovering an act that contradicts the legislation, the prosecutor shall file a motion to revise it; when the prosecutor considers that a delay may lead to grave consequences, he shall have the right to suspend the validity of the act and to file a motion to revise it;*
4) *To interrogate persons subjected to a sentence or other coercive measures;*
5) *To release immediately persons kept unlawfully in places of deprivation of liberty and in penal and disciplinary isolation cells of such places, and, if a person was deprived of liberty on the basis of a legal act of the administration of the place of deprivation of liberty, then it shall be incumbent on the person who adopted such act to eliminate the act, as ordered by the prosecutor, with no delay;*
6) *To demand explanations from officials on actions taken by the latter or their inaction should he have a suspicion that the rights and liberties of persons subjected to a sentence or other coercive measures have been violated.*

4. *STUDY FINDINGS*

4.1. Oral interviews and a desk review

In the course of general conversations the inmates directly or indirectly noted violence that they had been subjected to in police departments. However, for the most part they did not believe that a change is possible or else they were anxious lest their complaint should aggravate their situation. In the cells where over 4 or 5 inmates were held it was even more difficult to hold a conversation because of distrust they had of one another as well as because of obvious hierarchic relations. In one cell an inmate was in a very grave psychological state. When he was trying to impart information about what had happened to him in a police department, he was clearly overstressed. He was even intimating that he would harm himself. In another cell all inmates pointed at a fellow inmate who had been brutally beaten. They tried to convince him to tell how he had been beaten in police custody. However, he refused to do so. His cellmates even joked that he had been so brutally beaten that he was no longer in his right mind. In the course of the conversations the inmates in that cell pointed out that there are no prisoners who were not beaten in police custody. When asked whether they made a statement at the time of their admission to a correctional institution to the effect that they had been beaten and had bodily injuries, they would reply that medical examination is conducted in the presence of policemen and that is one of the reasons why they do not make such a statement. The inmates also pointed out that at night they had been held in police departments where they had been subjected to beatings and verbal abuse and taken from one room to another and later on they would not even recognize the perpetrators. During the conversations many inmates contended that they had been framed up for criminal prosecution. They complained that their friends and family had been summoned to police departments to testify against them.

During the visits medical examination log books for detainees in Nubarashen correctional institution and medical assistance or medical examination log books for individuals held in police detention facilities were checked.

The study findings indicate that overall 136 detained persons were held in the detention facility of Yerevan city police department from November 1 to December 31, 2011. According to the log books entries, 37 out of 136 detainees were admitted to the detention facility with bodily injuries. Medical assistance because of bodily injuries was given to 7 of them. 3 out of those 136 persons availed themselves of the right to have access to a lawyer and their lawyers visited them in the police detention facility accompanied by an investigator.

4.2. Questionnaire results

Conversations were held with 80 inmates in pre-trial detention; 30 of them filled out the questionnaires. The others replied that they have no complaints or that all will be the same and nothing will be changed. Some of them said during the conversations that they had been subjected to violence in police departments; however, out of caution they did not wish to fill out the questionnaires.

According to the questionnaire results, 18 respondents of 30 had bodily injuries at the time of their admission to the correctional institution, while the 12 other respondents did not. 10 persons were given medical assistance, while 6 persons were not, even though they needed it. 28 persons underwent medical examination at the time of their admission to the correctional institution. In case of 24 inmates the medical examination was made by a doctor, in 2 instances by an employee of the correctional institution, while 4 inmates did not know who made the examination. In 9 instances policemen were present during the medical examination. In case of 10 inmates all bodily injuries were registered during the medical examination, while in 7 instances they were not, even though there was a need to do so, and in other cases there was no such need. At the time of admission to the correctional institution 4 persons made a statement about having bodily injuries. All statements were registered. 11 persons did not make a statement, even though they had injuries. All respondents were subjected to physical violence or psychological pressure in police stations or in departments of investigations. Presented below are the cruelest forms of physical violence used. Physical violence mainly consisted of kicks and blows to legs, head and kidneys. Detainees were handcuffed and then policemen inflicted blows with truncheons to ribs, legs and head. Policemen inflicted blows with a book to detainees' backs and with truncheons to the soles of the feet. Blows were inflicted with truncheons and parquet boards. The police used electroshock devices on detainees. They beat detainees with truncheons and handgun handles, and kicked and punched them, threw them to the ground and beat them (the

traces of injuries were still visible at the time of the survey). Detainees were punched, kicked and severely beaten with truncheons; there were also threatened. The police used electro-shock devices on detainees and struck the detainees´ heads to heating batteries. At some point the police strapped a detained to a chair and wanted to hit his ankles with a hammer but someone entered the room at that moment, so they did not manage to do that. Later on detainees got palm slaps in the face and in the ear and kicks to the kidneys. The beatings were accompanied with verbal abuse. The detainee was handcuffed and thrown to the ground and then policemen inflicted blows with truncheons to the soles of the feet without taking his shoes off. The policeman would take turns, with one of them holding the detainee, while the other was inflicting blows. The detainee was punched, kicked and was beaten with *nunchaku*[5] he was also hit on his head with his own boots with pointed toes; policemen inflicted blows to the soles of the feet.

Psychological pressure was exerted in the following way:

"They warned me that if I do not confess and implicate myself, they will frame up my father and my brothers." "They said that unless he confesses to the crime he will be sentenced to imprisonment for ´failure to testify´, which will make his situation worse." The beatings were accompanied with verbal abuse and threats. The police threatened that unless he confesses they will detain and beat his girlfriend. The police told the detainee to confess and give a written testimony; in that case they would let him take part in his relative´s funeral ceremony (one of the detainee´s relative died at that time). They threatened the detainee that he would be sentenced anyway and unless he confesses his situation will be worse. They also said that they would also put other family members, even his father, in prison and will deny the right to visits. After beating the detainee, policemen threatened him that unless he confesses they will involve his friend and his father in the case; then they forcibly brought his brother to the police department so as to force the detainee to confess. After beating the detainee, policemen did not allow him to make a phone call until he confessed.

Instances of torture and ill-treatment were registered in the course of the study in the following police departments: 5 in Shengavit, 4 in Mashtots, 3 in Arabkir and 3 in Kentron communities and 2 in Shahumian community in Yerevan, 2 in the town of Abovian and 2 in the town of Echmiadzin 2 instances in the 6th Division. 1 instance was registered in each of the following departments; the Yerevan City Division, in Kanaker-Zeytun community and in Malatia community in Yerevan and in the towns of Baghramian, Ashtarak, Sissian, Hrazdan and Artik.

26 respondents were not informed of their rights after they had been forcibly brought to a police department. 25 were not given a copy of a detention protocol. The

5. It is a traditional Okinawan weapon consisting of two sticks connected at one end with a short chain or rope.

right of access to a lawyer was not explained to 20 respondents. 29 respondents did not have a defense attorney initially. Detainees refused to have a lawyer primarily because they were induced by investigators to do so. They cited the following reasons:

"I refused because I was told in the police department that there is no need [of a lawyer]." "Investigators coerced me to refuse to get a lawyer. They said that defense attorneys cannot do anything." "They beat me and forced me to refuse." "The investigator convinced me that I don't need a defense attorney and that he (the investigator) will defend me." "He demanded but they did not provide him [with a lawyer]." "He was induced by the investigator to refuse to get a lawyer. The investigator said that he does not need one and that having a lawyer will make things worse." "He did not know that he could demand [to get a lawyer]." "The investigator induced him to refuse to get a lawyer. They said that a defense attorney cannot do anything." "He did not know he had the right to get a lawyer." "They told him that until he admits his guilt they will not provide him with a lawyer." "At the initial stage, when he demanded a lawyer, they did not provide him with one; they convinced him that he did not need a lawyer and only at the end they offered him to get a lawyer." "He expressed a wish to have a lawyer but for days on end they did not provide him with a lawyer." There were other similar responses.

The respondents did not have an opportunity to make a phone call. Interrogations were accompanied by physical and psychological violence. During the interrogation, besides the investigator there were other staff members of the police department (police operatives, the head of the criminal investigations department and other policemen) present. In many cases violence was committed before the start of the interrogation proper and before the detainee was taken to the investigator. In some instances the number of policemen present during the interrogation would be about 10. 14 persons were taken to police detention facilities more than 24 hours after they had been detained. 19 detainees had bodily injuries at the time of admission to police detention facilities.

4 respondents did not undergo a visual examination at the time of admission to police detention facilities. When they did, a visual examination was made by various individuals, viz. by an officer of the day, a medical assistant, a policeman, a doctor, a police detention facility staff member, an ambulance doctor, a head of the police detention facility, etc. 13 respondents reported that besides the person who was doing an examination there were also policemen present. In 9 instances all bodily injuries were registered and in 5 instances not all injuries were registered, even though they should have been. Medical assistance was provided in a police detention facility in 10 instances and in 4 instances it was not, while other detainees did not need it. A court session where a decision was made to apply a remand in custody as the measure of restraint lasted no more than 15 minutes in 18 cases and less than 30 minutes in 7 cases. One detainee was taken to court in a state of unconsciousness by an ambulance. 21 detainees did not have a defense attorney at a court session concerning a decision

whether to apply a remand in custody as the measure of restraint.

According to the survey results, 22 respondents said that policemen in police detention facilities treated them well, while 5 said the treatment was not bad. In all cases, the treatment by policemen in police departments was bad. In 25 cases the treatment by a staff member of a police detention facility was good, in 4 cases it was not bad and in 1 case it was bad.

4.3. Identified instances of violation of rights

On the morning of 14 June 2012, **Arman Davtian**, his wife S.M. and his friend A.M. were forcibly brought to Mashtots police department. They were not allowed to make a phone call. Several individuals submitted them to beatings using rubber truncheons and parquet boards trying to force them to "confess" and to give self-incriminating testimonies. Fingers on A. Davtian´s left hand were broken with blows inflicted by a parquet board; later on electroshock was applied to various parts of his body. He was taken to court 4 days later, on June 18, with the investigation requesting detention as a measure of restraint.

A. Davtian was taken to the Yerevan police detention facility on June 16, at 3:15 a.m., i.e. 2 days after he had been detained. In the course of a medical examination several bodily injuries were registered: abrasions and bruises on his back and a swelling in the shin area of his right leg. A. Davtian was taken out of the detention facility three times for the purpose of investigation activities. The time he spent outside the detention facility was 14 hours 40 minutes the first time, 15 hours 45 minutes the second time and 9 hours 45 minutes the third time. The investigation undertook activities also at night time and on the night of 16-17 June. An 8-hour time slot for sleep was not provided to the detainee at all. On June 18, A. Davtian was taken out of the detention facility so as to be taken to *Nubarashen* correctional institution; however, he was taken there only the next day, on June 19.

A physical examination made at *Nubarashen* correctional institution identified the following bodily injuries: swellings in the area of a left shin, abrasions on the back side of the shin and wounds on his back, including abrasions and scabs. On October 10, 2012, policemen took A. Davtian´s wife to Mashtots police department against her will, where they forced her to give testimony that policemen had not used any violence. The criminal investigations department of Mashtots district and then the Special Investigations Service refused to institute a criminal case, while the general jurisdiction court and the Criminal Appellate Court rejected petitions to get a criminal case instituted. On November 1, 2012, by its decision ? EADD/0004/11/12 the RoA Cassation Court overturned the rulings handed down by the general jurisdiction court and the Criminal Appellate Court and sent the case for a new investigation.

According to the statement made by H.I., he was beaten in the 6th Division of the RoA

Police and in the police department in the town of Vagharshapat. During a medical examination of H.I. in a police detention facility in the town of Armavir the following bodily injuries were found: "There were an abrasion on the left side of the forehead and bruises on the left hand and left leg and on the back." The person in question was taken from the police detention facility in Armavir at 1:55 p.m. to be transferred to the police detention facility in Vagharshapat; however, he was admitted to the police detention facility in Vagharshapat the next day at 4:50 p.m., i.e. 26 hours later. It is not clear where he was during that period of time. This person's bodily injuries were not registered in the *Medical assistance or medical examination of detainees* log book of the police detention facility in Vagharshapat.

When this person underwent medical examination, the following bodily injuries were registered in the log book for bodily injuries registration in *Nubarashen* correctional institution: a (10-12 cm long and 3-4 cm wide) hematoma in the middle third of the back surface of the left hip, a hematoma covering the back and front surfaces of the left upper arm and the upper half of the forearm, a (6-7 cm long and 3-4 cm wide) hematoma in the lower part of the shoulder blade, a wound in the upper part of the left brow that has skinned over and a skinned-over wound in the middle part of the left foot with bruised edges. According to the detainee's statement, the above-mentioned injuries were inflicted by officers from the 6th Division of the RoA Police and the *Echmiadzin (Vagharshapat)* police department.

The group of civic observers that exercises supervision in the RoA police facilities for detained persons submitted an inquiry regarding this case, inter alia, to clarify the circumstances under which the person in question received bodily injuries and why those bodily injuries were not registered in the police detention facility in Vagharshapat. In response to the inquiry the Police Division of Armavir region replied that it was not possible to clarify the causes because former head of the police detention facility G. Mghdessian and leader of the duty detail of the day, former policeman of the detention facility A. Daveyan were dismissed and are no longer in the Republic of Armenia, while former head of the police detention facility of the Armavir region first lieutenant G. Hakobian died.

During a medical examination of H. Kh. in Yerevan police detention facility the following bodily injuries were registered: "Bruises in right temple, in right and left lower pelvic area and in waist area, an abrasion with wound on the forehead and an edema in an upper lip."

During a medical examination of this person in *Nubarashen* correctional institution the following bodily injuries were registered in the log book for registration of bodily injuries: "A massive hemorrhage in the eye-socket area and in right half pelvic area, abrasions in two upper arms areas and a broken thumb of the right wrist. The person in question made the following statement: *"I have been beaten in Shengavit police department."*"

During a medical examination of A. A. in Yerevan police detention facility the following bodily injuries were discovered: "There are

bruises ... in the right and left ears, in the left lower eyelid area, in the neck, in the right and left should-blades, in the right and left shoulders, in the left section of the chest, in the left upper arm, in the right forearm and in the left hip, and there are abrasion wounds in the right and left forearms and an edema in the left cheek.

During a medical examination of this person in *Nubarashen* correctional institution the following bodily injuries were registered in the log book for registration of bodily injuries: "A massive hemorrhage in the areas of the left rib, left upper arm, left eye socket and auriculas. The person in question made the following statement: *"I have been beaten in Shengavit police department."*"

According to the statement made by H.G., he was beaten in Mashtots police department. The following entry regarding this person was made in the log book in Nubarashen correctional institution: "During a physical examination a reddish trace was found on the wrist ... (the rest of the sentence is written in an illegible handwriting). The person in question made the following statement: *"I received the injuries in Mashtots* police department, where I was beaten by the head and deputy head of the criminal investigations department. I also wish to state that I swallowed five big nails and a ring-shaped piece of metal in the criminal investigations department room and in the investigator's room in *Mashtots* police department and I refuse medical treatment and I am signing to that effect."

According to the statement made by G.K., he was beaten and verbally abused in *Ashtarak* police department. An entry regarding G.K. in the log book in Ashtarak police detention facility states that he was admitted to the detention facility with bodily injuries and was given medical assistance by a doctor. The detainee complained of "pains in the right shoulder joint." Various doctors registered a fracture of the right shoulder joint. According to an entry in the log book for registration of taking detainees out of cells, he was taken to the Medical center in the town of Ashtarak for an X-ray examination; however, there are no entries to that effect in the medical log book.

According to the log book for registration of bodily injuries in *Nubarashen* correctional institution, during a physical examination of the person in question no new injuries or wounds were discovered. This person made the following statement: "I have pain in the area of the right shoulder and in the lower part of the left..."

During a medical examination of R.H. in Yerevan police detention facility the following bodily injuries were registered: wounds in the neck, throat, left forearm, left wrist and right forearm.

According to the log book for registration of bodily injuries in *Nubarashen* correctional institution, during a medical examination of the person in question the following abrasions were found: wounds in the neck, throat, left forearm, left wrist and right forearm. This person made the following statement: "The above-mentioned wounds were inflicted in *Mashtots* police department."

During a medical examination of H.T. in Yerevan police detention facility the following bodily injuries were found: "There are a wound and a bruise on the right side of the

forehead and there are a wound and reddish traces in the area of the deltoid muscle."

According to the log book for registration of bodily injuries in *Nubarashen* correctional institution, during a medical examination of the person in question the following bodily injuries: "He has an abrasion and a wound in the upper part of his back..." This person made the following statement: "I sustained the above-mentioned wounds when I was apprehended by police officers."

According to the statement made by V.D., he was beaten in the police department of the town of Abovian. An entry about V.D. in the log book in the police detention facility in Abovian says that he was admitted to the detention facility with the following bodily injuries: "He had an abrasion on the left side of the forehead," an ambulance was called and an examination was made." It was registered that "he had an abrasion on the left side of his forehead," that "there was no need of other measures" and that "he had no complaints."

During a medical examination of A.V. in Yerevan police detention facility the following bodily injuries were registered: "wounds in the area of the right temple, wounds on the forehead, a bruised right ear, reddish traces on his back and small abrasions and bruises in the left pelvic area."

According to the log book for registration of bodily injuries in *Nubarashen* correctional institution, during a medical examination of the person in question no new bodily injuries were found.

As a rule, correctional institutions of the RoA Ministry of Justice do not admit detained persons after 8 p.m. There are documented instances, when detained persons were taken out of the detention facilities within the said time period to be transferred to a correctional institution; however, they were brought to the correctional institution only the next day.

According to the entries in the Yerevan police detention facility log book, A.D. was taken out of the detention facility at 9:50 p.m. on June 18, 2011, so as to be transferred to Nubarashen correctional institution; however, he was admitted to Nubarashen correctional institution only the next day, on June 19.

In the course of the observations it was documented that some persons did not have bodily injuries at the time of admission to a police detention facility but later on, when they were transferred from the detention facility for investigative activities, they needed medical assistance.

From 11:05 p.m. November 4, 2011 till 00:30 a.m. November 5, 2011, detainee A.P. was taken out of the detention facility for investigation, in the course of which a need arose to transfer him to Erebuni medical center for medical assistance. Also, at 5:22 a.m. November 5, 2011, the administration of the detention facility called an ambulance and medical assistance was provided to the detainee.

From 10:30 a.m. November 6, 2011 till 7:20 p.m. November 6, 2011, detainee A.P. was taken out of the detention facility to Arabkir department of the RoA Police for investigation. During that period of time he was taken to clinical hospital N 1 for a medical examination, in the course of which he was diagnosed with gastric hemorrhage.

Another circumstance raised concerns as a result of the observations. A person is taken for a long period of time for the purposes of investigation conducted outside the police detention facility and then, bringing the detainee back, the police hands in to the administration of the detention facility a detention decision delivered by the court. Since the detention decision does not indicate the hour, the question of whether decision about remand in custody as a measure of restraint was made within the maximum period of allowed detention time or later remains outside of control.

According to the data from Yerevan police detention facility, A.H. was detained on December 11, 2011 at 00:45 a.m. He was taken to investigative bodies from 10:50 a.m. December 13, 2011 till 03:00 a.m. December 14, 2011 and a detention decision was made during that time period.

According to the data from Yerevan police detention facility, A.V. was detained on December 16, 2011 at 6:00 p.m. He was taken to investigative bodies from 7:10 p.m. till 10:30 p.m. December 19, 2011 and a detention decision was made during that period. In this case it is obvious that the detention decision was made after 72 hours because the detention deadline expired at 6:00 p.m. December 18, while the detention decision was made at some point from 7:10 p.m. to 10:30 p.m.

According to the data from Yerevan police detention facility, A.G. was detained on November 15, 2011 at 6:05 p.m. He was taken to investigative bodies from 10:25 a.m. till 9:15 p.m. November 18, 2011 and a detention decision was made during that period.

In the course of examination of the log books in police detention facilities it was documented that a detainee with viral hepatitis C disease was held in Yerevan police detention facility, even though the Armenian legislation prohibits holding such persons in police detention facilities.

E.B. was admitted to a police detention facility with the following bodily injuries: "abrasions and traces of bruises in the nasal area, on the right side of the neck and in the elbow joint area of the left hand." Ambulance was called three times to give medical assistance. The ambulance doctor made the following entry: "... the patient complaints of abdominal pains, especially in the liver area, indicated that he was nauseated and that he vomited. The patient's medical case history contains an entry that he had hepatitis C." In this case the medical assistance was limited to injection of Analgin-Dimidrol.

While many respondents spoke about tortures and ill-treatment, they refused to provide their names as a measure of precaution. Therefore, entries in the Medical assistance or medical examination log books of Yerevan police detention facility were examined to find out whether any bodily injuries had been registered over the period in question.

A.K. was admitted to Yerevan police detention facility with bodily injuries. During a medical examination the following bodily injuries were registered: "There is a trace of abrasion on the left knee and there are traces of redness in both eyes. There are reddish traces in the left shoulder and hip."

R.B. was admitted to Yerevan police detention facility with bodily injuries. During a medical examination the following bodily

injuries were registered: "There are a reddish trace in the left shoulder, reddish-bluish traces on the right hip, bluish traces on the left side of the waist and a bruise on the right ear."

E.M. was admitted to Yerevan police detention facility with bodily injuries. During a medical examination the following bodily injuries were registered: "His head and a wrist of the right hand are bandaged, there are reddish-bluish traces and abrasions on his forehead and nose, in his eyes and on left and right upper arms and right elbow, and in the left pelvic area and on his back."

K.O. was admitted to Yerevan police detention facility with bodily injuries. During a medical examination the following bodily injuries were registered: "There are bruises on the lower eyelid of the left eye, in the neck, right and left shoulder blades, and in the right armpit, there are abrasion wounds in the neck, on the lower eyelid of the left eye and on the crown of the head, and the right side of the chest is oedemic."

H.S. was admitted to Yerevan police detention facility with bodily injuries. During a medical examination the following bodily injuries were registered: "There are bluish traces on the nose, bruised eyelid of the left eye, a black eye, abrasions on the left temple, cheek, thumb and index finger of the left hand and a bruise on the right side of the neck."

4.4. Conversations with prosecutors, investigators and policemen

Interviews were held also with judges, prosecutors, investigators and policemen to ascertain their views on reasons and forms of tortures in police departments.

In a confidential conversation a judge from the Appellate Court of Armenia became sincere. When asked, why criminal case is not instituted based on the statement of the accused, he replied: "80 percent of the accused state that they testified because they were beaten and threatened, so which one of those statements should we look into?"

In the words of an investigator, tortures are primarily practiced by police operatives. When a detainee is brought to an investigator, he has usually been already "handled". As a rule, investigators do not use torture themselves. One method of torture is inflicting blows to the detainee's soles of the feet without removing his shoes so that no traces are left. Another method is forcibly putting a gas mask on a detainee and then closing the gas mask hose and forcing the person to move abruptly which lead to asphyxia without causing visible bodily injuries.

One of the investigators pointed out that often they are forced to resort to a remand in custody as the measure of restraint, even though they feel that there are no grounds for that measure. They are concerned, however, that if they do not opt to apply a remand in custody the prosecutor's office may have suspicions that they are interested in some

way in the outcome of the case. That is the reason why they choose to play safe and resort to that measure so often. Judges, too, expressed similar concern, which explains why they tend to apply a remand in custody as the measure of restraint.

Another reason why a remand in custody is used as the measure of restraint is that investigators believe that when in custody, a person is more inclined to give testimony.

In the course of individual talks with policemen the latter would say, for instance: *"How can we not beat them, if all the evidence is there but they do not confess?"*

During the conversations with prosecutors the latter would note: *"Unless violence is used, crimes will not be solved. It is due to that violence that you can sleep peacefully." One prosecutor pointed out during the conversation: "Why should I bother to prepare a long and well-substantiated document for the court? In any case, the court will make a decision in my favor whatever I submit. When courts no longer side with me, I will start thinking then."*

Another prosecutor indicated inadequate level of professional competence of investigators and policemen: *"We have to go ahead in the court with the cases prepared by incompetent investigators."*

One of the investigators said: *"If [the accused] raped a minor, how can you refrain from beating him up?"*

Investigators pointed out that they have a heavy caseload, so they do not manage to do everything on time. Funding, relevant equipment and materials are not sufficient and it is difficult to do a detailed investigation in all cases. Sometimes it is much easier and faster to solve the crime by using violence.

In the words of the former policeman: *"An experienced policeman will not beat up a man for nothing. An experienced policeman is also a psychologist. He looks into a person's eyes and realizes whether this person is a criminal or not. If a detainee does not confess, you hit his head a couple of times and he confesses."*

5. *CONCLUSIONS*

The studies have shown that in Armenia inhuman or degrading treatment and tortures still occur in police departments and that not only suspects or the accused but also witnesses become victims of such treatment. Ill-treatment is manifested through physical and psychological pressure that is brought to bear by several individuals. The causes of ill-treatment include gaps in the legislation as well as law enforcement practices.

As it has been mentioned above, the concept of torture as defined by the domestic legislation of the Republic of Armenia (Article 119 of the RoA Criminal Code) is not in line with the definitions spelled out in international documents. Even if it is proved that the person in question has been subjected to torture, a criminal case can be instituted only on charges of abuse or excess of power or of coercion to give false testimony.

In police departments in the Republic of Armenia persons are subjected to torture and inhuman or degrading treatment, which take the form of physical as well as psychological violence. Physical violence mainly consisted of punches, kicks and blows inflicted with wooden bats, truncheons and other objects to various parts of the body, infliction of electric shocks, etc. Psychological violence mainly consisted of verbal abuse and of threats to forcibly bring family members, to involve them as participants in the case, etc.

As a rule, the persons subjected to violence cannot point at or recognize perpetrators, to give names or to indicate a concrete person. No one has a personal responsibility for the state of the person who has been forcibly brought to the police department.

The civic monitoring group is entitled to exercise control only over the police detention facilities, whereas in police departments there is no civic oversight.

After persons have been forcibly brought to a police department they are not for the most part informed of their rights or the

process of information is a mere formality. As a rule, detainees are not given a copy of a detention protocol.

When persons are detained by the police, their right to have the fact of their detention notified to a third party of their choice, the right of access to a lawyer and the right to request a medical examination by a doctor of their choice are not secured. The right to have a lawyer is for the most part not explained or is explained superficially. The overwhelming majority of detainees do not have a lawyer at the initial stage. The main reasons why detained persons did not have a lawyer or refused to have one are investigators´ urging and threats, delays on the part of investigators in providing a lawyer and a failure to clarify that right. For the most part detainees do not have an opportunity to make a phone call. A person in police custody is, as a rule, denied an opportunity not only of getting a doctor of his choice but also of getting medical examination and assistance at all.

Even though the RoA legislation spells out the procedure for inviting a person to a police department clearly, the vicious practice of using various methods to invite persons to police departments has taken root in Armenia. When summoning persons by phone calls or forcibly bringing them to a police department, the goal of the "invitation" is often a so-called talk, which, as a rule, is conducted without a lawyer. In such cases the officers take advantage of the fact that citizens are not aware of their rights, and when a detainee demands a lawyer they deny lawyer´s entry contending that there is no need of defense because a person in question is not held as a suspect and because a protocol designating that person as a suspect has not been drawn up. A person can be held in police custody for hours without a clear status; the status is clarified and a detention protocol is drawn up only after he breaks down and makes a self-incriminating confession or testifies against a third party.

An overwhelming majority of criminal cases starts with suspect´s testimony. That has become so widespread and usual that it is regarded as normal. However, in an appropriate investigation that cannot predominate because the case can start with other pieces of evidence and only then a person can be summoned and given an opportunity to provide information based on obtained evidence. Otherwise the statements will be made on the basis of obtained evidence. When the first pages of files in criminal cases start with the suspect´s testimony, it means that information is obtained from him and investigation is not carried out on the basis of obtained evidence. These two approaches differ considerably. To expect information from the suspect means getting the maximum to determine the course of the investigation, finding the witness, the victim, etc. The suspect thus becomes a core subject from whom maximum information has to be obtained. That has become the law enforcement bodies´ psychology. This is the root cause why violence is used. The person´s refusal to provide information is followed by violence.

As a rule, persons who have been subjected to torture or inhuman or degrading treatment either do not speak out about them

at all or speak out later, after they were transferred to correctional institutions, where the police has weaker control over them. The later the information about ill-treatment that the person was submitted to is given, the more difficult it is to prove the fact of violence. Under the influence of suffering and of fear of new persecution and having no confidence in justice, most individuals subjected to violence prefer to remain silent and not discuss the suffering and indignities that they have been subjected to.

The medical examination at the time of admission to a police detention facility or a correctional institution is done cursorily and not all bodily injuries are registered.

The medical examination in a police detention facility or a correctional institution is frequently done in the presence of accompanying policemen. That is the reason why detainees avoid making statements about ill-treatment that they have experienced.

In some case detained persons are transferred to a correctional institution only on the next day after their release from a police detention facility. Sometimes persons that the police do not have the right to hold in a police detention facility are nevertheless held there.

Persons in police custody are taken to participate in lengthy activities of the investigation, during which time a decision regarding police custody is made. When a decision to take a person into police custody is made, the court does not indicate the hour; thus whether a remand in custody as the measure of restraint was applied during the maximum time period specified for detention or later is unclear.

The court session where a decision on the use of a remand in custody as the measure of restraint is made is a mere formality. For the most part sessions last no more than 15 minutes and are conducted without a defense attorney.

Not infrequently the reasons for violence are lack of professionalism of the law-enforcement staff, inadequate material and technical basis, the absence of modern forensic and other equipment and insufficient funding. Sometimes the law-enforcement bodies are inclined to solve the crime in a fast and easy fashion by resorting to violence rather than conducting an investigation on the basis of obtained facts.

All police detention facilities in Armenia, with the exception of Yerevan facility, are located in the police department buildings and their staff is subordinated to the Head of the department in question. That is the reason why bodily injuries of persons admitted there are sometimes not registered.

The studies have shown that mentality of the law-enforcement bodies is still heavily influenced by the Soviet practice and that Vishinsky's notorious principle, according to which confession is "a queen of all evidence," is still in effect.

In 2002-2003, Helsinki Committee of Armenia together with the *National League for Democratic Reforms* NGO conducted studies of the conditions in which persons deprived of their liberty are held in Armenia. In the course of the studies, inmates in correctional institutions were quite openly telling about ill-treatment in police department. At present the situation in that respect has become worse and inmates talk about ill-

treatment in police department cautiously or they prefer not to talk at all. To some extent it can be accounted for the fact that in recent years former high-ranking policemen are appointed as a Head of the Department of Correctional Institutions.

In November 2012, media outlets disseminated a letter sent by Hayk Galstian, an inmate of *Hrazdan* correctional institution, who notified them that he went on an open-ended hunger strike and sewed his eyes until the Minister of Justice meets him. Several days later a refutation was issued through a video material disseminated by electronic media, where the same convict contended that he had not written the letter. It is noteworthy that the video material was prepared by the Department of Correctional Institutions. It does not stand to reason that the convict would on his own initiative refute the information disseminated by the media, particularly in a video format. It can reasonable be concluded that if they wish to do so, the staff in correctional institutions can force inmates to keep silent and to not speak out about violations of their rights.

In its annual reports the civic group that conducts monitoring of correctional institutions raises the issue of overcrowding in correctional institutions time and again. In correctional institutions, particularly in *Nubarashen* (inmates in *Nubarashen* correctional institution are for the most part the accused or persons on trial to whom a remand in custody was applied as the measure of restraint), up to 20 inmates are held in cells designed for 8 persons. Overcrowding of detention facilities leads to inhuman treatment and frequently becomes the reason why inmates "break down." *Is keeping* a person in custody *not an additional means of pressure* to extort testimony and *do the motions* to get the decision to use remand in custody as the measure of restraint not aim to "break down" the persons?

Correctional institutions actually execute the decisions made by courts and admit detainees even if their facilities are overcrowded, thereby violating the constitutional norm that states that no one may be subjected to inhuman or degrading treatment and the Article of the RoA *Law on holding detained and arrested persons*, according to which the size of the living space allocated to detained and arrested persons may not be less than four square meters per person. This is the case when there is a conflict between and, as a result, the right is violated.

The prosecutor's office exercises control over preliminary investigation and inquiry and at the same time supports prosecution. As a rule, the same prosecutor who exercised control over legality of preliminary investigation and inquiry is in charge of prosecution in the case in question. Thus, the prosecutor, who exercises control and who is subsequently in charge of prosecution, is responsible for the actions undertaken by bodies of preliminary investigation and inquiry. It follows then that rather than exercising control the prosecutor's office collaborates with the bodies of preliminary investigation, which results in those entities being de facto identical. The conflict of interest emerges in this case. To speak about the violations committed in the course of preliminary investigation would amount to admitting its own mistakes for the prosecutor's office,

i.e. that appropriate control was not exercised in the case. Therefore, the prosecutor's office is not interested in identifying instances of torture; furthermore, in the court it supports the charges based on the evidence obtained through torture.

In fact the prosecutor's office and the police do not operate as independent entities and they can be compared to Siamese twins. The prosecutor's office is guided by the same punitive mentality as the police. It is not incidental that the prosecutor's office jubilee board meetings are attended by the Head of the Police, whereas the Prosecutor General attends the board meetings of the Police and they give awards to one another.

During its short-term visits the CPT identified numerous instances of ill-treatment and tortures. The prosecutor's office, which exercises permanent control over preliminary investigations as well as over closed institutions, has not instituted a single criminal case on its own initiative for torture during a preliminary investigation so far. At least the general public is not aware of such a case. Unless there is a political decision, the prosecutor's office does not institute a criminal case on its own initiative against the police.

In August 2012, the session of the Board of the RoA Prosecutor's Office instructed the departments and divisions of the RoA Prosecutor's Office to regard notifications about bodily injuries found during the medical examination at the time of admission of persons to detention facilities as grounds for instituting a criminal case. As per the December 4, 2012 letter N 2/3-1-3806 of the RoA Police, 35 materials were prepared following the notifications about bodily injuries discovered during the medical examination at the time of admission of persons to detention facilities. In 11 instances a decision was made to not institute a criminal case, 2 materials were sent to the RoA Special Investigation Service for further consideration, while in 22 instances the materials are still being prepared[6].

Judicial independence of courts is a serious problem in Armenia. Under Article 117 paragraph 4 of the RoA Judicial Code, by his decree the President of the Republic approves those candidates who are acceptable to him on the list of judges compiled by the Justice Council. The country's President has a discretionary power to appoint and dismiss judges. The lack of courts independence is also evidenced by the fact that courts grant the motions to use remand in custody as the measure of restraint.

The *Armenia's ENP Implementation in 2010 published* in 2010 as the Partnership for Open Society Perspective points out that

6. According to the 23 January 2013 official letter N 18-y-13 of the RoA Special Investigations Service, in connection with the above-mentioned incidents a criminal case was instituted by the RoA Special Investigations Service against operative police officers from *Kentron* department of the RoA Police for exceeding their official powers when forcibly bringing R.H. to the said police department, unlawfully holding him there and committing violence against him. The above-mentioned police officers were charged under Article 309 paragraph 2 and Article 314 of the RoA Criminal Code and remand in custody was selected as a measure of restraint for them. The criminal case investigation is in progress. However, it was reported that the criminal case with regard to the said officers was instituted not because of the bodily injuries discovered by the Prosecutor's office but on the basis of the statement made by the Human Rights Ombudsman of Armenia.

conflict of interests between the judiciary and prosecutors is not regulated and close relatives (fathers and sons, siblings) serve in both camps. In these cases, career advancement of a judge depends on how complacent the judge is with the Prosecutor's Office. This conflict of interest comes on top of a strong tradition of prosecutorial dominance in the trials, which is still very much enshrined in the Criminal Procedure Code. In the course of the last year all new judges were former prosecutors or police servicemen. Such practice only reinforces the judicial dependence upon prosecution.

The dependence of judiciary on prosecution is easily demonstrated by a telling fact of almost non-existent acquittals. The acquittal rate is less than 1% of all rulings. Another vivid proof of judicial dependence on the Prosecutor's office is provided by the overview and disciplining of judiciary. More specifically, the judge might get the most serious reprimand for a minor and quite questionable "mistake in favor" of the defendant, while in the case of the most serious violation of rights "in favor" of prosecution, the punishment is symbolic, if imposed at all.

The Prosecutor General is appointed and dismissed at the suggestion made by the President of the Republic. That is the reason why courts avoid contradicting the prosecutor's office, since the latter is the entity whose head is appointed following the nomination by the country's President. In those isolated instances, when courts make decisions against the actions of the prosecutor's office, the latter may simply ignore those decisions (See Ditord/Observer, 1(57) http://http://armhels.com/wp-content/uploads/2012/06/463eng-Ditord–157–2012.pdf):

As a rule, courts do not pay due attention to the statements made in court by persons on trial about the evidence obtained through beatings or courts at best refer those statements to the prosecutor's office. In the end an internal inquiry is undertaken, which from the very beginning is inclined to prove that no violence was committed against the person in question.

Even though under the existing legislation courts have a responsibility to make an additional decision in the event it is discovered in the course of the trial that serious violations were committed during the pre-trial investigation of the criminal case, in reality, however, very few such decisions are made by courts.

6. *RECOMMENDATIONS*

- To harmonize the definition of torture given in the domestic legislation of the Republic of Armenia with Article 1 of the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
- As the CPT noted in its report, there should be "zero tolerance" of ill-treatment and torture by officers in police departments. The officers should be aware that they will be severely punished for such acts.
- To conduct interrogations only in specially designated furnished rooms equipped with video cameras. To videotape the entire process of interrogation. To allow members of the group that conducts monitoring of police detention facilities and representatives of general public to observe (without hearing) the interrogation from another room.
- To assign individual responsibility for the state of the person brought into police custody so that a concrete police officer could be subsequently held responsible in case there are problems with the detainee in question. Not only the perpetrator of ill-treatment but also his superior should be brought to justice.
- To broaden powers of the group that conducts monitoring of police detention facilities so that they could exercise control in police departments as well in case they are alerted.
- To meet the demands of the law and to notify persons brought into police custody about their rights and to give them a copy of the detention protocol.
- *When taking persons into police custody* - To secure their right to have the fact of their detention notified to a third party of their choice, the right of access to a lawyer and the right to request a medical examination by a doctor of their choice.
- *When inviting persons to a police department* - To meet the demands of the law and to invite persons to

the police department with summons providing an opportunity to come with a lawyer.

- To conduct a proper investigation of criminal cases and to conduct an interrogation only on the basis of obtained evidence and to eliminate the existing practice of regarding self-incriminating confessions as core evidence.
- To make mandatory the defense attorney's participation in case the person is involved as a suspect or the accused in a criminal case. To increase the number of public defenders.
- To do a detailed medical examination and to register all bodily injuries upon the admission of detained persons to police detention facilities or correctional institutions.
- To make sure that the accompanying policemen cannot observe or hear the medical examination done in police detention facilities or correctional institutions.
- *When taking detained persons to police detention facilities or correctional institutions* - To take them on the same day and within the shortest possible time.
- To state the hour of the announcement of the decision made by court to apply a remand in custody as the measure of restraint.
- *When courts make decisions to use a remand in custody as the measure of restraint* - To undertake a detailed review and to ensure mandatory participation of the lawyer in the decision-making.
- To conduct courses for police servicemen with a view of enhancing their professional development; To provide police departments with modern forensic and other equipment and to increase funding to an adequate level. *While conducting an investigation* - To rely on obtained facts and to rule out violence.
- To take measures to separate regional police detention facilities from buildings of police departments and when that is impossible - to grant regional police detention facilities a status of separate entities so that they would not be subordinated to a police department in question.
- To rule out the appointment of former policemen to high-ranking positions in the Department of Correctional Institutions.
- To add an Article to the Corrections Code that will prohibit correctional institutions to admit new detainees, when the number of detainees in the correctional institution has reached a certain limit.
- To limit the prosecutor's office powers of control over the inquiry and preliminary investigation bodies and to give more autonomy to the latter. To amend Article 26 of the RoA Law on the Prosecutor's Office so that prosecution during the trial will be conducted by the prosecutor other than the one who exercised control over legality of preliminary investigation.
- *With regard to the bodily injuries discovered during a medical examination at the time of admission of detained and arrested persons to*

detention facilities - To conduct an effective official inquiry so as to ascertain what has happened and not to rely on hasty or unfounded assumptions when making a decision to terminate the inquiry.

- To make an amendment to the RoA Judicial Code to eliminate the powers of the President of the Republic to appoint and dismiss judges.
- To avoid appointing close relatives of high-ranking officials (especially in law-enforcement agencies) as judges. To not appoint as judges those individuals who have at least within the last 5 years worked in the prosecutor's office, in the police or in the National Security Service.

To courts: - To make an additional decision in the event it is discovered in the course of the trial that serious violations were committed during the pre-trial investigation of the criminal case.

- To continue further collaboration between the groups that conduct monitoring in police detention facilities and correctional institutions with a view to ruling out inhuman treatment and torture of persons deprived of their liberty.