TAIEX Peer Review on Reforms in Prevention of Torture and Ill-Treatment in Armenia

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Draft Report

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AREA: PREVENTION OF TORTURE AND ILL-TREATMENT IN ARMENIA

Content

1. Executive summary

This report is based on the findings of a TAIEX peer review mission to Armenia from 6 to10 of March 2017.

The aim of the peer review is to analyse the current situation in the area of judiciary, penitentiary and prevention of torture and ill-treatment in Armenia in relation to the Programme on Legal and Judicial Reforms 2012-2017, and the recommendations of the Report of the European Committee for the prevention of torture and inhuman or degrading treatment or Punishment (CPT) of the Council of Europe (CoE) on the basis of its visit to Armenia from 5 to 15 October 2015, and the response of the Armenian Government published in November 2016. Furthermore, the aim of the peer review is to give advice on further development and the next Programme in 2018-2021.

This report does not cover the entire agenda of the peer review on reforms in judiciary, penitentiary and prevention of torture and ill-treatment, but it only looks at the issues relating to prevention of torture and ill-treatment in prisons and police stations, which I was asked to look at. The basis for reviewing the situation in Armenia is the 2015 CPT visit report, which was published in November 2016, hereafter referred to as the CPT report, and the response of the Armenian Government.[1]

2. Description of the Context

The agenda of this report is based on the following CPT recommendations on Prevention of torture and ill-treatment in prisons and police stations:

1. the fight against impunity (CPT report **paras. 13**)
2. the review of legal safeguards (CPT report **paras. 14, 27 – 30**)
3. the procedure for recording injuries observed on persons brought to police detention facilities (CPT report **paras. 17 – 18**)
4. the functioning of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture (CPT report **paras. 9 – 11**)
5. the review of administrative and criminal investigations into allegations of torture or ill-treatment:
    - against the Police (CPT report **paras. 21 – 26**)
    - against Prisons (CPT report **paras. 101-102** and **110 – 111**)

The report is mainly based on the information provided in a series of interviews conducted with several representatives of relevant authorities and institutions like the police, the prison service, the Special Investigation Service (SIS), the Investigative Committee (IC), the prosecution service, the Human Rights Defender (Ombudsman), the Police Monitoring Group, and the Prison Monitoring Group. In addition, meetings were held with representatives of NGOs and international organizations working on various human rights issues in Armenia. All interviewees were open and ready to answer questions. Most of the interviews were done together with EU Expert Anselmo De Moral Torres (Spain), who also had been given

[1] CPT/Inf (2016) 31. The Government's response is set out in document CPT/Inf (2016) 32.

the assignment to look at issues relating to prevention of torture and ill-treatment. Thus, this report should be seen as complimentary to the report written by him.

The information obtained from the interviews is supplemented by the most relevant laws and materials provided by the interviewees and by the EU delegation in Armenia, and obtained via own research. In addition, the concluding observations of the UN Committee against Torture on the fourth periodic report of Armenia have been included.[2]

The structure of this report follows the above-mentioned agenda.

3. Analysis of the topic in relation to the implementation of the CPT recommendations

3.1. CPT recommendations on Prevention of torture and ill-treatment

3.1.1. Fight against impunity

Impunity, defined as the exemption from punishment, was touched upon in several of the recommendations of CPT report, but this report focuses on the recommendations dealing with the recent legislative efforts of the Armenian Government introducing among other things a new definition of torture and an express ban on pardoning/amnesty for acts of torture.

In para. 13 of the CPT report of 2015, it is mentioned that Section 309.1 of Criminal Code (CC) had been amended making it clear among other things that the prohibition of torture applied also to acts committed by public officials in the exercise of their official duties. An immediate practical effect of this amendment was to render it possible for public prosecutors to initiate criminal cases involving allegations of this nature even in the absence of a formal complaint by the alleged victim.

It was also mentioned that a new draft Criminal Code (CC) and a new Code of Criminal Procedure (CCP) were in the process of being drafted. The drafts included:

- a new definition of torture in Criminal Code in compliance with the UN and European standards
- an introduction of an express ban on pardoning/amnesty for acts of torture

The CPT took note of the fact that the recent legislative efforts introducing among other things a new definition of torture and an express ban on pardoning/amnesty for acts of torture.

In its response to the CPT report, the Armenian Government informed that the package of laws amending legislation criminalising torture was adopted by the Parliament on 9 June 2015 and that the amendments entered into force on 18 July 2015.

Based on the information received in connection with the mission, it seems that the package of laws mentioned by the Armenian Government does not fulfil the standards of the CPT.

Firstly, legal reforms within the area of criminal law and within the subject of torture and ill-treatment are still ongoing with the aim of fighting impunity by improving the legal framework criminalising torture and

[2] The Committee adopted the concluding observations at its fifty-ninth session (7 November – 7 December 2016).

ill-treatment. E.g., the Council of Europe and EU are supporting the drafting of both the CC and the CCP.[3] According to information received during the mission, the two draft laws are expected to be adopted during the 4th session of the Parliament in 2017.

Secondly, in its concluding observations on the fourth periodic report of Armenia, adopted on 5 December 2016, the UN Committee against Torture criticised the current legislation for maintaining the statute of limitations in respect of the crime of torture and the possibility of granting pardon and amnesty to perpetrators of torture. The UN Committee made the following comments on legislative measures relating to the Convention against Torture:

> "**B. positive aspects**
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> 3. The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention, including:
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> (a) Adoption of amendments to the Criminal Code (article 309.1) providing for a definition and criminalization of torture in accordance with article 1 of the Convention, on 8 June 2015.
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> […]
>
> **C. Principal subjects of concern and recommendations**
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> […]
>
> **Statute of limitations, amnesty and pardon**
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> 7. The Committee regrets that, contrary to its previous recommendation (see CAT/C/ARM/CO/3), para. 10), the current legislation still maintains the statute of limitations in respect of the crime of torture and the possibility of granting pardon and amnesty to perpetrators of torture and that individuals convicted of torture or ill-treatment have benefitted from amnesty in practice. The Committee takes note of the State party's plans to discuss the possibility of excluding the pardon, amnesty and statute of limitations for torture in the context of a new legislative package that is currently being developed […].
>
> 8. **Recalling its previous concluding observations (see CAT/C/ARM/CO/3, para. 10), the Committee urges the State party to repeal the statute of limitations for the crime of torture or other acts amounting thereto under the Criminal Code. The State party should also ensure that pardon, amnesty and any other similar measures leading to impunity for acts of torture are prohibited both in law and in practice. In this regard, the Committee draws the State party's attention to paragraph 5 of its general comment No. 2 (2007) on the implementation of article 2 of the Convention by State parties, in which it states that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non derogability**."

Based on this information, the current situation seems to be that the acts of torture have been defined by the Armenian CC, and also that such acts have been criminalised. These positive developments have been

[3] The Council of Europe Opinion on the draft Code of Criminal Procedure of Armenia was prepared under the auspices of the Project "Supporting the criminal justice reform and combating ill-treatment and impunity in Armenia", funded within the European Union and Council of Europe Programmatic Cooperation Framework in the Eastern Partnership Countries for 2015-2017

recognised by both the CPT and the UN Committee against Torture. In spite of this, there still seems to be a need for further legal reforms in this area. Therefore, it should be considered to continuing the support to the legislative process in connection with the drafting of the new CC and CCP in order to ensure that the new laws will be in line with the international standards and the above-cited recommendation of the UN Committee against Torture.

Recommendations on fight against impunity:
To continue the support to the legislative process in connection with the drafting of the new CC and CCP in order to ensure that the statute of limitations in respect of the crime of torture and the possibility of granting pardon and amnesty to perpetrators of torture are repealed. The new laws are to be in line with the international standards and the recommendations of the UN Committee against Torture.

3.1.2. Review of the legal safeguards for prevention and combating of torture and ill-treatment

In para. 27 of the CPT report, the CPT states that in general the legal safeguards against ill-treatment (and, in particular, notification of custody, access to a lawyer – including ex officio legal assistance – and information on the aforementioned rights), seemed to be operating adequately, once the police custody was formalised (by drawing up a protocol of detention) and duly recorded. However, the CPT were concerned by the practice of the police "inviting" persons for "informal" talks, during which police custody was not recorded and safeguards not applicable.

The practice of persons being "invited"

In paras. 14, 27 and 29 of the CPT report, the CPT mentions the practice of persons being "invited" (usually by telephone) to come to the police for "informal talks", prior to being officially declared a suspect and prior to drawing up the protocol of detention. According to the CPT such "talks" could last several hours, and during these "talks" the persons would be held in offices and interviewed on the subject of a criminal offence. According to the CPT the purpose was to elicit confessions and/or collect evidence before the apprehended person was formally declared a criminal suspect and informed of his or her rights. The CPT clearly stated that it considers this practice unacceptable because it entails a heightened risk of ill-treatment and is not in accordance with the legal requirement to draw up a protocol of detention within three hours.

The CPT called upon the Armenian authorities to take all the necessary steps to ensure that the legal requirement to draw up a protocol of detention within three hours is strictly complied with in practice, and that the procedures of "inviting a person to a police establishment" or of summoning witnesses to an interview are not exploited by police officers to circumvent the legal time limits and safeguards in respect of the police custody of criminal suspects.

In its communication with the CPT, the Government among other things informed that the new CCP would inter alia contain provisions reinforcing the existing safeguards against ill-treatment for persons deprived of their liberty by the police and eliminate the lacunae of the present Code in respect of "informal talks". The Governments stated that in the framework of the planned amendments it is envisaged to make it clear that the period spent by persons "invited" to Police establishments for "informal talks" is to be considered (and recorded) as period of Police custody, and that all the relevant safeguards must be applicable accordingly.

In addition, in its response to the CPT, the Government explained that according to the existing case-law of the Court of Cassation from 2009[4], a person, from the moment of entry into administrative building of the inquiry body or of a body that has the power conduct the proceedings, acquires a preliminary status of a "brought" person, before acquiring the legal status of an arrested person. According to the case-law a "brought" person shall be granted to following rights:

- To know the reason for depriving him/her of liberty
- To inform a third person about his/her whereabouts
- To invite an attorney
- To remain silent

As an additional guarantee, the case-law establishes that, after 4 hours of de facto deprivation of liberty, in case the person is not informed that an arrest record in his/her respect has been drawn, from the that very moment, he/she automatically acquires the legal status of an arrested person.

The Government also informed that, based on the recommendations of the CPT, the Police had been given two instructions, i.e. instructions:

- to organize the procedure of apprehension and record keeping in accordance with the CPT standards (instruction No. 2/2-1-3589 issued by the Chief of Staff of the Police on 21 October 2015), and
- to ensure whenever a person is "invited" to a Police establishment, his/her presence shall always be duly recorded stating who was invited, by whom, at what time, for which reason and in which capacity, and when the person left the Police establishment (Documents Nos. 2/5-1315, 2/2-1344, 2/2-1346, 2/2-1347, 2/2-1349, 2/2-1350 given by the Chief of Staff of the Police on 12 April 2016)

The practice of persons being "invited" to Police establishments was discussed at several of the meetings during the peer review mission.

The Police confirmed that they have the possibility of inviting and/or bringing people to Police establishments and question them for 3 hours without arresting them. The primary purpose of doing so is to secure the presence of the persons. During the 3 hours, the Police is to decide whether there are sufficient grounds for arresting the persons. If the Police finds that there are sufficient grounds, then the persons are arrested, which means that they are can detained for 72 hours according to the rules of CCP, and that they get the legal status of an arrested person. The Police stressed that this system does not allow anyone to detained for more than 72 hours. If a person has been detained as a "brought" person for 3 hours and then is arrested, the 3 hours should be deducted from the 72 hours.

In spite of the differences in the status of a "brought" person and an arrested person, the Police informed that the rights of the two groups were essentially the same. According to the Police, both groups have the rights to meet with a lawyer, to make a phone call, to refuse to give a statement, to be seen by a doctor. The police also informed that the police had initiated various activities in order to increase the awareness and knowledge among police officers about the legal safeguards of the detainees. Also posters informing

[4] Court of Cassation of the Republic of Armenia, decision on criminal case N. EADD/0085/06/09, dated 18 December 2009.

about the rights of persons detained by the police had been produced and posted in all police establishments.

The description by the Police was generally in accordance with the above-mentioned case law of the Court of Cassation. The 3 hours mentioned by the Police referred to the time limit stated in the law, while the fourth hour mentioned in the case law was an additional hour, which the Court of Cassation had given to the Police to write the protocol ("protocol hour").

The Human Rights Defender (ombudsman) informed that the Defender considers the practice of "inviting" persons and of depriving persons as "brought" persons to be unconstitutional. According to the Defender, the laws regulating such kinds of administrative arrest, including the abovementioned case law, do not provide sufficiently clear procedures to safeguard the rights of e.g. "brought" persons. The Human Rights defender submitted an application to the Constitutional Court of the Republic of Armenia challenging conformity of relevant regulations of the Code on Administrative Offenses with the Constitution and international obligations of the Republic of Armenia, as well as the legal practice.[5] In the application it is highlighted that despite the type of the proceedings (Administrative or Criminal), the minimum rights of a person derived of his/her liberty must be insured by State authorities. Moreover, providing such guarantees should not depend on administrative proceedings. Furthermore, the Defender had discovered cases where persons deprived of their liberty had no opportunity to enforce their rights under the Constitution of the Republic of Armenia and the ECHR safeguards. Several complaints were received by the Defender on delaying the access to a lawyer or doctor, right to notification, etc.

According to the Defender, the Constitutional Court did not find a violation of the Constitution, but the Court recognised that there was a "legal gap", which was to be addressed. According to the Defender, the Parliament has agreed, and at the time of the peer review, this issue was included in the reform of the CCP. According to the draft CCP, the alternative statuses of persons deprived of liberty, such as "brought" persons, is to be eliminated. This is done to ensure that a person deprived of his/her liberty must have the minimum rights according to article 27 of the Constitution and article 5 of the European Convention on Human Rights and Fundamental Freedoms regardless of his/her formal status.

The issue of legal safeguards was also included as one of the principal subjects of concern and recommendations in the concluding observations of the UN Committee against Torture. In para. 10 the Committee recommends the Armenian Government to take effective measures to guarantee that all detained persons are afforded in practice all the fundamental legal safeguards against torture from the outset of their detention, in accordance with international standards. According to the Committee, the Armenian Government should consider in this respect introducing electronic detention reports.

Recommendations on the legal safeguards:

[5] For more information about the application to the Constitutional Court, please see the report, which The Human Rights Defender submitted to the UN Committee against Torture in connection with the Committee's examination of the Forth Periodic Report of Armenia on compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, November 2016 (paras. 49 – 55).

To continue the support to the legislative process in connection with the drafting of the new CCP in order to ensure that the alternative statuses of persons deprived of liberty, such as "brought" persons, is to be eliminated.

The new Armenian code of criminal procedure should clearly state that legal safeguards must be in place whenever, and from the very outset of their deprivation of liberty, persons are obliged to remain with the police. More precisely, from the very first moment a person is deprived of his/her freedom by the police, he or she should be informed about his/her rights and that the protocol should be initiated already in any police station. The 72 hours' maximum period of police custody should be initiated as soon as the person is deprived of liberty.

In addition to the amendments of the CCP, it could be considered to support further initiatives in order to raise the awareness of the legal safeguards among both the police officers and the public.

As proposed by the UN Committee against Torture the Armenian Government should consider in this respect introducing electronic detention reports.

3.1.3. The procedure for recording injuries observed on persons brought to police detention facilities

In para. 17 of the CPT report, the CPT reiterates its recommendations that further steps be taken to improve the screening for injuries at police detention facilities, in particular by ensuring that:

- all medical examinations are conducted out of the hearing and - unless the health-care professional concerned expressly requests otherwise in a particular case - out of the sight of non-medical staff;
- the confidentiality of medical documentation is strictly observed.

Health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given.

Further, the Committee reiterates its recommendation that steps be taken to ensure that records drawn up following the medical examination of persons in police detention facilities contain:

(i) an account of statements made by the persons concerned which are relevant to medical examination (including their description of their state of health and any allegations of ill-treatment),
(ii) a full account of objective medical findings based on a thorough examination, and
(iii) the health-care professional's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical finding.

Finally, the Committee once again encourages the Armenian authorities to take the necessary measures to extend the practice of conducting a systematic medical screening of newly admitted detained persons to all police detention centres in Armenia.

In para. 18, the Committee reiterates its recommendation that the medical screening of newly admitted detained persons at the Detention Centre of the Yerevan City Police Department be performed by health-care staff who are independent of the police.

The Committee also reiterates its recommendation that the task of recording any injuries displayed by detained persons on admission to other police detention facilities in Armenia (i.e. all those without their on-site health-care staff) be carried out by a health-care professional, if necessary, by having recourse to the emergency services.

In para. 19 in its response to the CPT recommendations, the Armenian Government mentioned that, according to certain legal provisions[6], when following a person's admission to the detention facility, **the Police officer on duty shall invite a medical professional, if bodily injuries, evident signs of illness are discovered or the person complains of his/her health condition**. The invited medical professional shall immediately conduct medical examination. A doctor of the detained person's choice can also take part in it. The medical examination shall be conducted out of the hearing and - if not otherwise requested by the examining doctor - out of the sight of the detention facility's administration. The Police officer who apprehended the person does not take part in the medical examination.

Furthermore in para. 20 the Government mentioned that the results of the medical examination are recorded in the journal and in person's personal file. Furthermore, the explanations provided by the person regarding the causes of bodily injuries are also duly recorded. All these materials are communicated to the body conducting criminal proceedings and supervising prosecutor. The body conducting criminal proceedings assigns a forensic medical examination to verify the gravity and causes of bodily injuries. Whenever there are grounds for instituting criminal proceedings, the materials prepared are transferred to the SIS based on the decision of a prosecutor.

Finally, in para. 23 the Government informed that there are 4 positions of feldshers at the Detention Centre of Yerevan City Police Department, who are entitled only to provide first aid. It is out of their competences to carry out a medical examination. Therefore, when following a person's admission to the detention facility, the Police officer on duty shall invite a medical professional from the institutions operating under the authority of the Ministry of Healthcare, if bodily injuries, evident signs of illness are discovered or the person complains of his/her health condition.

During the peer review it was explained that the police evaluates and decides, if a detainee is to be examined by a medical doctor. This decision is made on the basis of the observations that the police officer make when the person is admitted to the detention facility. Only if there are visible signs of injuries, then the detainee will be offered a medical examination. In other words, not everyone being detained in a detention centre was offered to be examined by a medical doctor.

In the event that the police discover visible signs of injuries, the police explained that depending on the location the police officers would either call an emergency doctor or take the detainee to a hospital for examination and treatment. In addition, the police would also be obliged to file a report to the prosecution service in order to make sure that the injury is recorded in the case.

When being transferred from a police detention facility to one a prison, the person will be given a medical examination when admitted to the prison. If any injuries are discovered that are not registered in the police

[6] Article 21 of the Law on Holding Arrested and Detained Persons and point 13 of the Government Decree No. 574-N (N 574-) of 5 June 2008 on Approving Internal regulations of Detention Facilities Operating in the Police System of the Republic of Armenia.

records, then the prison will send a report to the Special Investigation Service and to the prosecution service.

The decision to provide a medical check for a person deprived of liberty should not be taken by the police on the basis of ”if bodily injuries, evident signs of illness are discovered or the person complains of his/her health condition". The access to an independent medical check is a right of the person deprived of liberty from the very first moment of the deprivation at any police division, or station where the so-called 4 hours "administrative detentions" are applied. As such, everyone who is detained by the police should receive an offer to be examined by a medical doctor. According to the information received, this had already been suggested by the Human Rights Defender. In this connection, the Defender had recommended that the police improved their cooperation with the public local medical clinics around the country. At the time of the peer review these suggestions had not been followed by the police. The Human Rights Defender informed that according to their view the Armenian authorities has not accommodated the CPT recommendations regarding external and independent medical examinations, and that this issue still is to be settled.

In para. 9 of its concluding observations, the UN Committee against Torture among other things expressed concern about reports that medical examinations often take place in the presence of police officers, are performed by personnel that, owing to their status, are likely to have their independence compromised, and that, in such circumstances, accurate recording and reporting of attested injuries is highly problematic. In para. 10 the Committee recommended that the Government should take steps to guarantee the right to access to a medical examination by an independent doctor that should be conducted out of the hearing and, unless explicitly requested by the doctor, out of sight of police staff. The State party should guarantee in practice the independence of doctors and other medical staff dealing with persons deprived of liberty, ensure that they duly document all signs and allegations of torture or ill-treatment and provide the results of the examination without delay to the appropriate authorities and make them available to the detained person concerned and his or her lawyer;

Recommendations on the procedure for recording injuries observed on detainees:

The access to an independent medical check is a right of the person deprived of liberty from the very first moment of the deprivation, and as such, everyone who is detained by the police should receive an offer to be examined by a medical doctor. The current approach by the police should revised to secure that anyone in police custody is offered to be examined by a medical doctor. In this connection, it could be considered to support activities that improve the cooperation between the police and the public local medical clinics.

3.1.4. The functioning of the National Preventive Mechanism

The CPT recommendations regarding the functioning of the National Preventive Mechanism (NPM) are threefold.

Financing of the activities of the Expert Council

In para. 9 the CPT addressed a problem concerning the financing of the activities of the Expert Council on Torture Prevention. The Expert Council consists of 9 NGO representatives and 4 independent experts, including doctors, psychologists and social workers. Their task is to assist the NPM Division of the Human Rights Defender. According to the current legislation (Act on the Human Rights Defender), members of the above-mentioned Expert Council were performing their activities as volunteers and could not be paid from the budget of the Ombudsman's Office (including as regards costs of travel, accommodation and meals). The CPT were informed that draft amendments to the Act on the Human Rights Defender aimed at addressing the problem. The CPT took note of this and expressed an expectation that sufficient funds would be made available for the functioning of the NPM from the State Budget. The CPT requested to receive confirmation that the aforementioned amendments have now entered into force.

In its response, the Government informed that following the 2015 Constitutional amendments, a new Constitutional Law on Human Rights Defender was drafted. Consequently, the draft amendments to the Act on Human Rights Defender, which were expected to be adopted before the end of 2015, had not been enacted. However, the draft on the Constitutional Law on Human Rights Defender addresses the issue of ensuring the proper functioning of the NPM and the Expert Council on Torture Prevention, which is assisting the NPM in its activities. In particular, in contrast to the exiting legislation, specific regulations regarding the functions and the mandate of the NPM have been included in the Draft. Furthermore, the draft law specifically stipulates that the issues of composition, election, scope and working procedure of any Expert Council shall be defined and approved by the Defender.

According to the information received in connection with the peer review, the amendments made to the Constitution of the Republic of Armenia on 6 December 2015, the Constitutional Law on the Human Rights Defender was adopted by the National Assembly of the Republic of Armenia on 16 December 2016. The amendments entered into force in March 2017.

In article 28 (5) of the law it is stipulated that the Defender may engage up to 10 independent specialists and/or representatives of non-governmental organisations, who gain the status of an expert of National Preventive Mechanism. The purpose of engaging these persons is to provide professional assistance to the Human Rights Defender within the framework of the National Preventive Mechanism.

According to the regulation the Defender is to make a public advertisement for the members of the Expert Council. When appointed the members of the Expert Council will make a contract with the Defender, in which the rights and duties of the members are described. The contracts also extend the legal safeguards and rights of the NPM staff of the Human Rights Defender to the members of the Expert Council. This means that these members will have the same opportunity as the NPM staff to participate actively in the NPM tasks, such as the monitoring visits. During the peer review mission, it was mentioned that the members of the Expert Council are expected to participate actively in all of the phases when conducting the monitoring visits, including the planning phase and the reporting phase. They are regarded as members of the monitoring team and thus expected to contribute actively in all of the phases. E.g. they are expected to submitting their findings and opinions in sub-reports, which are to be integrated in the NPM report of the Defender.

The Law also prescribes that these experts shall be remunerated at the expense of the State Budget funds, from the financial means allocated to the NPM Department of the Defender.

According to the information received during the mission, members of the Expert Council will be entitled to remunerations for the time that they spend on NPM assignments and for the expenses that they may have in that connection, e.g. transportation.

Since the law only entered into force very recently, it is not yet possible to assess the implementation of the legal provisions relating to the Expert Council. However, based on the information received it seems as if the CPT recommendation relating to the Expert Council has been addressed by the Government of Armenia.

Based on practical experiences from Denmark, which in several ways resembles the NPM model of Armenia, it is advisable to have, from the very beginning, a very clear framework for the interactions between the NPM Department of the Human Rights Defender and the Expert Council. Furthermore, and especially in the beginning, it would also be advisable to have frequent meetings and/or activities between the two in order to make sure that everyone know their role, and the methodology and standards to be used when carrying out the functions within the framework of the National Preventive Mechanism. In other words, it is recommended that, when the Expert Council has been appointed, to support joint activities for the Expert Council and the staff of the NPM Department, in order to ensure a strong and constructive working relationship.[7] Apart from meetings about the NPM tasks, this could also be joint seminars together with international organisations like SPT or CPT or NPMs from other countries.

Recommendations on the activities of the Expert Council:
In order to ensure a strong and constructive working relationship between the Expert Council and the NPM Department of the Human Rights Defender, it is recommended that, when the Expert Council has been appointed, to support joint activities for the Expert Council and the staff of the NPM Department.

Publicizing and translation of the reports of the NPM

The second CPT recommendation concerned the reports of the NPM (para. 10). Reports on NPM visits to places of detention were as a rule not published and relevant information was instead reflected in the Ombudsman's annual report. The latter was a public document, but the CPT noted that the most recent annual report (in respect of 2014) was not available in languages other than Armenian. On that basis, the CPT recommended that the NPM should consider publicizing and translating NPM reports, in order to increase further the impact and outreach of the NPM's activities.

In its response, the Government informed that in contrast to the Act on Human Rights Defender in force, the draft law explicitly provides that the Human Rights Defender in its capacity as an NPM shall publish an annual report in the first trimester of the year. Therefore, once the draft law is adopted, the issue raised by the CPT will be resolved, since the NPM reports will be published separately, instead of being reflected in the annual report of the Human Rights Defender. As to the question of translating the NPM reports and making them available in languages other than Armenian, it should be mentioned that the office of the

[7] A similar recommendation was made by the SPT in its report of 2013 (para. 33), which was published in January 2017. (CAT/OP/ARM/.2).

Human Rights Defender informed that due to lack of financial and human resources it was not possible to ensure translation thereof.

During the peer review mission, it was confirmed that according to the new law on Human Rights Defender, the Defender will be publishing special annual NPM reports to the Parliament. Both the annual reports of the Human Rights Defender and the special NPM reports are planned to be published on the website of the Human Rights Defender, and the reports are to be translated into Russian and English.

In this sense, the recommendations of the CPT have been addressed by the Government and the Human Rights Defender of Armenia.

However, in order to increase the impact and outreach of the NPM's activities, the Human Rights Defender could consider developing a public relations strategy in the field of the NPM-work. This recommendation is based on the NPM experiences of the Danish Parliamentary Ombudsman. Besides the annual reports, the Danish Parliamentary Ombudsman also issues news on its website, so that the public, the authorities and the press are informed about the most important cases and findings. This also includes the cases stemming from NPM activities. Hereby, the Parliamentary Ombudsman seeks to increase the impact and outreach. When doing so, the Parliamentary Ombudsman is bearing in mind that the impact of an NPM to a great extent is determined on the quality of the constructive dialogue that the NPM has with the relevant authorities. Thus, the Parliamentary Ombudsman is constantly trying to ensure that the way that he is communicating to the public is not detrimental to the continuation of the constructive dialogue with the authorities. Other NPMs have a similar approach to issuing news, e.g. the Norwegian Parliamentary Ombudsman.[8]

Recommendations on publicizing and translation of the reports of the NPM:
In order to increase the impact and outreach of the NPM's activities, the Human Rights Defender could consider developing a public relations strategy in the field of the NPM-work.

The NPM Department of the Human Rights Defender could also consider arranging public meetings on NPM issues with stakeholders. Hereby, the NPM can engage in a constructive dialogue with stakeholders from both civil society and government institutions.

Competing and overlapping monitoring systems

The third CPT recommendation in para. 11 referred to an opinion of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).[9] According to SPT, the mandates of public monitoring groups (in particular the Prison Monitoring Group and the Police Monitoring Group) overlapped to a large extent with that of the NPM, both on the substance and regarding types of places of detention. Moreover, there appeared to be a lack of co-ordination in the activities of these bodies despite the fact that most members of the NPM Expert Council were also members of one of the public monitoring groups. The SPT stressed that this reduced the effectiveness of the work undertaken by the

[8] A closely related recommendation was made by the SPT in its report of 2013 (para. 29), which was published in January 2017. (CAT/OP/ARM/.2).
[9] The opinion was expressed in a report made in connection with a SPT visit to Armenia in September 2013. See document CAT/OP/ARM/1).

NPM, and risked leading to incoherent results due to parallel monitoring. The CPT found that the situation continued unchanged at the time of the CPT's visit, and therefore the CPT made enquiry into the steps being taken to address this problem.

In its response, the Government informed that the issue was of an institutional nature and that it had not been regulated yet. However, steps had been undertaken to partially address the recommendations of SPT. In this context, in May 2016 the Human Right Defender Office informed that based on the Decision of former Ombudsman the mandate of the National Prevention Mechanism (NPM) Expert Council had been expired on 31 December 2015. A new regulation was drafted, according to which a new NPM Expert Council was established. This regulation also contained an explicit prohibition for the Expert Council Members to sit simultaneously on another monitoring group. The new NPM Expert Council was established based on the HRD Decision of 28 September 2016. This Council is comprised of NGO representatives and independent experts (a psychologist, sociologist, doctor, etc.) experienced in prevention of any form of ill-treatment, and they have the capacity to monitor any prison or police establishment in order to prevent torture or ill-treatment cases.

Furthermore, executive orders had been issued by the Head of the Police and the Ministry of Justice explicitly prohibiting the members of the Prison Monitoring Group and the Police Monitoring Group to sit on another monitoring group.

During the peer review mission, representatives of the NPM Department of the Human Rights Defender, The Prison Monitoring Group, and the Police Monitoring Group confirmed that no members of the latter two groups were at the same time members of the Expert Council assisting the NPM. Thus, in terms of personnel, there was no longer an issue of overlap.

The Prison Monitoring Group was established by virtue of the order of the Ministry of Justice No. KH-66-N and its members are appointed by the Minister of Justice for five years. It has access to the pre-trial detention facilities and places of detention under the authority of the Ministry of Justice and monitors conditions in these facilities. It has 12 members, who all work on a voluntarily basis. Some of them are experts, while others represents various civil society organisations. Previously, the Prison Monitoring Group has received funding from the OSCE, but this is no longer the case. Even though the group is considered independent in its functions, its procedures and scope are defined by the Ministry of Justice. The Group publishes an annual report, and it considers itself an instrument of public control. In a year, the group approximately conducts 12 planned monitoring visits and 30 small visits based on specific allegations (whistle-blowers).

The Police Monitoring Group, established in 2005, has access to the police temporary detention facilities and monitors conditions in these facilities. It has the same working methods as the Prison Monitoring Group, and its members are appointed by the Head of Police for a three-year term. The Group has 9 members, who are lawyers and doctors.[10]

[10] From the meeting with NGOs it seemed as if these monitoring groups in general had limited impact on the conditions in the prisons and the police detention facilities. However, it was acknowledged that the Police Monitoring Group had had an impact on the current improvements of the conditions in the police detention centres that are being renovated. In that connection, it was mentioned that the Police was beginning to opening up towards civil society by e.g. asking for advice on how to accommodate the CPT recommendations. In relations to the prisons, NGOs expressed concerns that the Prison Monitoring Group had recently been denied access to see certain prisoners in Yerevan. These prisoners had been involved in incidents in connection with demonstrations in July and August 2016.

It was clear from the meeting with all three institutions that there were no formal coordination amongst them, when they carry out their activities. However, it was explained that there were informal contacts between the three institutions and that in reality they were to some extent cooperating. For instance, the NPM collected information from the monitoring groups to be used for the NPM monitoring activities. Thus, the NPM followed up on issues that were raised by the monitoring groups. In addition, the monitoring groups informed that they took into consideration the work of the NPM, when deciding the focus areas of their monitoring visits. Sometimes, the institutions even did joint visits in cases of "forum-shopping", i.e. where complainants or whistle-blowers had contacted one of the groups and the NPM at the same time. However, the institutions admitted that it was difficult to coordinate such individual visits, and that it did occur that they did "identical" visits. Furthermore, the three institutions explained that the two monitoring groups often were invited to participate in the training activities that was organised by the NPM.

In general, the three institutions described a situation in which they were complimenting each other and mutually assisting each other. Together, they could increase the number of monitoring visits and in this way strengthen the prevention of torture and ill-treatment.

Based on the information received in connection with the peer review mission, it is difficult to give a clear recommendation in relation to the issue of competing and overlapping monitoring systems. Even though it is clear that the CPT recommendations have not been fully complied with by the Armenian institutions, it does seem as if some coordination actually takes place between the three institutions in question. This seems to be done in an informal way amongst the persons involved. Furthermore, it seems as if all the involved institutions appreciates this informal cooperation and mutual support. In order to strengthen the cooperation amongst the three institutions, one could consider supporting the interaction between them by creating a network, where they can meet on a regular basis and exchange and share experiences and knowledge relevant for conducting preventive monitoring.

Furthermore, it could be considered that at least the scheduled visits to police or prison centres could be organized based on coordinated priorities or topics to be checked.

Recommendations on competing and overlapping monitoring systems:
In order to strengthen the cooperation amongst the three institutions, one could consider supporting the interaction between them by creating a network, where they can meet on a regular basis and exchange and share experiences and knowledge relevant for conducting preventive monitoring.

Furthermore, it could be considered that at least the scheduled visits to police or prison centres could be organized based on coordinated priorities or topics to be checked.

3.1.5. Review of administrative and criminal investigations into allegations

In its report, the CPT made a general note of the fact that – by 2015 – hardly any of the investigations into possible police ill-treatment (whether carried out by the SIS or the Prosecutor's Office) had actually led to court proceedings resulting in criminal sanctions.

Furthermore, the CPT took note of, and criticized, a practice whereby investigations concerning police officers were closed, because the officers concerned had been dismissed disciplinarily from the police force

(and sometimes, apparently, subsequently reintegrated, thus possibly avoiding responsibility for any misconduct).

The CPT called upon the Armenian authorities to take urgent steps to review the system of handling cases involving possible ill-treatment by police officers, and in particular to ensure that:

- the SIS was significantly reinforced in terms of operational staff, thereby removing the need to rely on local police officers;
- increased emphasis was placed on the structural independence of the SIS and the existence of transparent procedures in order to enhance public confidence and ensure that persons alleging ill-treatment have direct and confidential access to the SIS;
- all formal complaints about police ill-treatment as well as all cases in which other information indicative of ill-treatment by the police has emerged, were promptly forwarded to and processed by the SIS;
- whenever a detained person displays injuries indicative of ill-treatment or makes allegations of ill-treatment, he or she was promptly seen by a doctor with recognized forensic training.

During the peer review mission information was received on the number of cases on allegations on torture and ill-treatment relating to the police. In the course of 2015 the Police received 108 complaints (allegations/reports) of ill-treatment by police officers during the performance of their duties, and 108 proceedings were opened. Concerning these cases the allegations of torture or ill-treatment, the results were as follows:

- In 95 proceedings, torture or ill-treatment was not been proved and no violations established;
- In 7 proceedings, disciplinary actions were imposed and 12 Police officers were sanctioned.
- In 6 proceedings, it has been decided to open a criminal case and the disciplinary action is suspended after the outcome of the criminal proceedings.

In 2016 the police recorded 43 cases, and the results were that:

- In 36 cases no facts with regard to violations committed by police officers had been revealed.
- In 3 cases 4 police officers had been dismissed from the Police, and 1 officer had been subjected to another disciplinary sanction.
- In 4 cases criminal cases had been initiated, and these were pending.

The numbers stemming from the Special Investigation Service (SIS). SIS had investigated approximately 104 cases in 2016, and SIS had initiated 19 criminal cases[11]. The results of these 19 cases were:

- In 3 had been forwarded to court and was still pending;
- In 13 cases had been dismissed – mostly upon the ground of absence of corpus delicti in the act of the police officers;
- In 1 case 3 police officers were sentenced to imprisonment;
- In 2 cases preliminary investigations were still ongoing.

[11] SIS informed that SIS received a lot more allegations/complaints in 2016 compared to the number of investigations that SIS initiated. The allegations and complaints came from various sources, e.g. the Human Rights Defender, the two monitoring groups, NGOs, lawyers of the complainants, relatives of the complainants, and the media.

These numbers seem to confirm the situation described the CPT, i.e. that hardly any of the investigations into possible police ill-treatment (whether carried out by the SIS or the Prosecutor's Office) had actually led to court proceedings resulting in criminal sanctions.

Based on the information received during the peer review mission, it is difficult to give a clear explanation as to why so few cases result in criminal sanctions. The following is simply pointing at some of the factors, which may be part of the explanation.

The initial procedure at the Police. According to information received, it is the Internal Security Department of the Police, which receives allegations/complaints about torture and ill-treatment committed by police officers. When receiving such allegations/complaints, then the Internal Security Department checks the id of the complainant and checks the facts (i.e. police records) – for instance has the victim been in contact with the police on the given date? In addition, the person in question is screened for any visible signs of violence. Based on this preliminary check, the Internal Security Department files a report to the Chief of Police with a recommendation for the handling of the allegations/complaints. The outcome can be:

- To consider the case as a "non-case" as no evidence of physical violence has been detected;
- To propose a disciplinary action to the police officer involved in the case as misconduct has been detected according to the disciplinary code;
- To transfer the case to the SIS for further investigation.

By providing the Police a discretionary power, this initial procedure poses a risk that allegations/complaints about torture and ill-treatment are suppressed by the Police and not immediately transferred to SIS for further investigations. Therefore, it should be considered to change the initial procedure, so the Police is obliged to immediately transfer allegations/complaints to SIS. Hereby, any conflict of interest within the Police may be avoided.

Recommendations on the initial procedure of the Police when receiving allegations on torture or ill-treatment:

The Internal Security Department of the Police may be involved in preliminary checks concerning allegations of torture or ill-treatment by Police officers, but the Police should not have discretionary power to decide how to proceed with such allegations. A more transparent practice is that any allegation of torture or ill-treatment received by the Police shall promptly be transferred to SIS for further investigation.

The Special Investigation Service (SIS). The SIS receives allegations/complaints from a range of sources other than the Police and the Prisons, e.g. the Human Rights Defender, the two monitoring groups, NGOs, lawyers, prosecutors, and the possible victims. In addition, the SIS may begin instigations on its own initiative e.g. based on stories in the media. When investigating cases, the nine employees of SIS seek to collect evidence as quickly as possible.[12] According to the SIS and the Prosecution Service, the main challenge in these cases is to secure sufficient prove of acts of torture or ill-treatment.

[12] According to the SIS, the nine employees are lawyers with more than 5 years' experience of working as investigators. The nine investigators working on torture and ill-treatment have received special training on issues relating to torture and ill-treatment.

In its report to the UN Committee against Torture, the Defender commented upon the effectiveness of the investigations conducted by the SIS.[13] According to the Defender, the main problem is that the delay of examinations, such as medical examinations, is the reason for the loss of important evidences. In several cases, injuries on bodies of victims have disappeared before the forensic medical examination. In addition, the Defender points at another challenge in connection with these cases, i.e. the lack of objective witnesses. In general, the witnesses of torture in places of deprivation of liberty are the officers from the same institution as the alleged perpetrators. In these cases, the absence of witnesses other than the officers could cause a reasonable doubt on the objectivity of the investigation.

Investigation into allegation of torture or ill-treatment is a central, but difficult, task. Therefore, it should be considered to continue the support to SIS and its investigators dealing with such cases. Currently, the joint Council of Europe and European Union support for combatting ill-treatment and impunity in Armenia is an example of such support. Amongst other things, the program seeks to strengthen the skills and capacity of the SIS investigators in the area of effective investigations of torture and ill-treatment cases.

Furthermore, according to the information received, the SIS is an independent institution composed by 29 employees of which 9 are specialized in torture and ill-treatment cases. Given the fact, that there are approximately 100 of such cases a year, and that the SIS receives even a larger number of allegations and complaints, then it should be considered whether SIS should have more investigators working on torture and ill-treatment cases.

Recommendations on the SIS investigation of allegations on torture or ill-treatment:

In order to increase the effectiveness of the investigations conducted by the SIS, it should be considered to continue the support to SIS and its investigators dealing with torture and ill-treatment cases.

In addition, it should be considered whether SIS should have more investigators working on torture and ill-treatment cases.

4. Recommendations

Recommendations on fight against impunity:
To continue the support to the legislative process in connection with the drafting of the new CC and CCP in order to ensure that the statute of limitations in respect of the crime of torture and the possibility of granting pardon and amnesty to perpetrators of torture are repealed. The new laws are to be in line with

[13] The Human Rights Defender submitted a report to the UN Committee against Torture in connection with the Committee's examination of the Forth Periodic Report of Armenia on compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, November 2016 (paras. 98 – 99).

the international standards and the recommendations of the UN Committee against Torture.

Recommendations on the legal safeguards:

To continue the support to the legislative process in connection with the drafting of the new CCP in order to ensure that the alternative statuses of persons deprived of liberty, such as "brought" persons, is to be eliminated.

The new Armenian code of criminal procedure should clearly state that legal safeguards must be in place whenever, and from the very outset of their deprivation of liberty, persons are obliged to remain with the police. More precisely, from the very first moment a person is deprived of his/her freedom by the police, he or she should be informed about his/her rights and that the protocol should be initiated already in any police station. The 72 hours' maximum period of police custody should be initiated as soon as the person is deprived of liberty.

In addition to the amendments of the CCP, it could be considered to support further initiatives in order to raise the awareness of the legal safeguards among both the police officers and the public.

As proposed by the UN Committee against Torture the Armenian Government should consider in this respect introducing electronic detention reports.

Recommendations on the procedure for recording injuries observed on detainees:

The access to an independent medical check is a right of the person deprived of liberty from the very first moment of the deprivation, and as such, everyone who is detained by the police should receive an offer to be examined by a medical doctor. The current approach by the police should revised to secure that anyone in police custody is offered to be examined by a medical doctor. In this connection, it could be considered to support activities that improve the cooperation between the police and the public local medical clinics.

Recommendations on the activities of the Expert Council:

In order to ensure a strong and constructive working relationship between the Expert Council and the NPM Department of the Human Rights Defender, it is recommended that, when the Expert Council has been appointed, to support joint activities for the Expert Council and the staff of the NPM Department.

Recommendations on publicizing and translation of the reports of the NPM:

In order to increase the impact and outreach of the NPM's activities, the Human Rights Defender could consider developing a public relations strategy in the field of the NPM-work.

The NPM Department of the Human Rights Defender could also consider arranging public meetings on NPM issues with stakeholders. Hereby, the NPM can engage in a constructive dialogue with stakeholders from both civil society and government institutions.

Recommendations on competing and overlapping monitoring systems:

In order to strengthen the cooperation amongst the three institutions, one could consider supporting the interaction between them by creating a network, where they can meet on a regular basis and exchange

and share experiences and knowledge relevant for conducting preventive monitoring.

Furthermore, it could be considered that at least the scheduled visits to police or prison centres could be organized based on coordinated priorities or topics to be checked.

Recommendations on the initial procedure of the Police when receiving allegations on torture or ill-treatment:

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Recommendations on the SIS investigation of allegations on torture or ill-treatment:

In order to increase the effectiveness of the investigations conducted by the SIS, it should be considered to continue the support to SIS and its investigators dealing with torture and ill-treatment cases.

In addition, it should be considered whether SIS should have more investigators working on torture and ill-treatment cases.