



# **TAIEX Peer Review on Reforms in Judiciary, Penitentiary and Prevention of Torture and Ill-Treatment in Armenia**

**Yerevan, 6-10th March 2017**

**DRAFT REPORT**

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**AREA: PREVENTION OF TORTURE AND ILL-TREATMENT IN ARMENIA**



## **1.- EXECUTIVE SUMMARY**

The aim of the JHA IND/EXP 64029 TAIEX Peer Review carried out by EU experts in Yerevan (Armenia) from 6 to 10th March 2017 is to analyse the current situation in the area of judiciary, penitentiary and prevention of torture and ill-treatment 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 Armenia Government published in November 2016.

## **2.- DESCRIPTION OF THE CONTEXT**

According to the scheduled agenda the following activities have been performed concerning prevention of torture and ill-treatment:

- Introductory meeting in the EU delegation in Yerevan (Armenia)
- Introduction of main Armenian Institutions responsible for prevention of torture and ill-treatment (Police, Prison Service, Special Investigation Service (SIS), Investigation Committee (IC) and Ombudsman.
- Visit to the Yerevan detention centre of City Police and the police custody cells
- Visit to the Ombudsman premises to check the functioning of the National Preventive Mechanism (NPM) under Optional protocol to the UN Convention against torture
- Meeting with NGO,s in the premises of the Ministry of Justice to know their input concerning the judicial reforms and prevention of torture and ill-treatment in Armenia.
- Meeting with International organisations (Council of Europe) and Embassies representatives.
- Visit to the Kentron District Police Division and the administrative detention cells
- Meeting with the Public Prosecution office and the Special Investigation Service (SIS) to review the state of play of criminal and administrative investigations into corruption and torture and ill-treatment.
- Meeting with the Police related to training provided to law enforcement bodies on proportionate use of force during demonstrations and current procedures including preparation for elections in April 2017.

## **3.- ANALYSIS OF THE TOPIC IN RELATION TO THE CPT RECOMMENDATIONS.**

### **3.1.- Fight against impunity and review of legal safeguards**

According to the response of the Armenian Government to the CPT recommendations (page 10), following the existing case-law of the Court of Cassation of Armenia, a person, from the moment of entry into the administrative building of the inquiry body or of a body that has the power to conduct the proceedings and before acquiring the legal status of an arrested person,



acquires a preliminary status of a “brought” person and shall be granted with the minimum rights which are as follows:

- 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.

Furthermore, these minimum rights are, *mutatis mutandis*, applicable to the persons not having the legal status of an arrested or detained person, who can reasonably presume that their right to liberty is restricted or they are deprived of liberty and are being suspected of having committed a crime. Therefore, these minimum rights are enforceable regardless of the official status of the “brought” person. As an additional guarantee, the case-law establishes that, after 4 hours of factual deprivation of liberty, in case if the person is not informed that an arrest record in his/her respect has been drawn, from that very moment, he/she automatically acquires the legal status of an arrested person, and thus, shall be granted all the rights and guaranties of the arrested person provided by law.

As justly noted in the Report by the CPT, the draft Code of criminal procedure (CCP), *inter alia*, encompasses provisions reinforcing the existing safeguards against ill-treatment for the persons deprived of their liberty by the Police and will eliminate the *lacunae* of the present Code in respect of “informal talks”. The adoption of the draft CCP will be followed by the adoption of new implementing regulations for the Police. In particular, 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. Pending that and in the light of the CPT delegation’s visit, the practice of “inviting persons” for informal talks by the Police has been examined. Based on the recommendations of the CPT, the Police territorial divisions, *inter alia*, have been instructed to organise the procedure of apprehension and record keeping in accordance with the CPT standards. In addition, on 12 April 2016 the Police territorial divisions have been instructed to ensure that whenever a person is “invited” to a Police establishment, his/her presence shall always be duly recorded. In particular, the records shall mention who was invited, by whom, at what time, for which reason and in which capacity, and when the person left the premises of the Police establishment concerned.

During the peer to peer EU mission, it has been stated that the practice of “inviting” or “bringing” persons to police stations whose liberty is really deprived under the concept of “apprehended person” for the period of 4 hours previous to the opening of a criminal investigation period of 72 hours in a police detention centre is still ongoing.

As regards this practice, it is considered that the use of different terms to refer persons deprived of liberty (apprehended person, brought, arrested, detained, etc) leads to confusion and a possible lack of transparency.



According to best international practices, any person deprived of liberty by the police should be informed immediately, in simple and accessible language, and of the facts attributed to him and the reasons for his deprivation of liberty, as well as of the Rights and especially of the following:

- Right to remain silent not declaring if you do not want, not to answer some or some of the questions that you ask, or to state that you will only testify before the judge.
- Right not to testify against oneself and not to confess guilty.
- Right to appoint counsel, and to be assisted by him without undue delay. In case, due to the geographic remoteness, it is not possible immediately the assistance of counsel, the detainee will be facilitated by telephone or by videoconference with him, unless such communication is impossible.
- Right to access elements of the actions that are essential to challenge the legality of arrest or deprivation of liberty.
- Right to be informed of the family member or person he wishes, without undue delay, deprivation of liberty and the place of custody in which he is at any time. Foreigners shall have the right to have the above circumstances communicated to the consular office of their country.
- Right to communicate by telephone, without undue delay, to a third party of his choice. This communication shall be held in the presence of a police officer or, where appropriate, the official designated by the judge or prosecutor
- Right to be assisted free of charge by an interpreter, in the case of need
- Right to be recognized by the medical examiner or his legal substitute and, failing that, by the institution in which he is, or by any other dependents of the State or other Public Administrations.
- Right to request free legal aid, procedure to do so and conditions to obtain it.

**Recommendation 1:**

The Armenian Code of criminal procedure (and not only a jurisprudential reference) should indicate that there is no grey zones in deprivation of liberty. From the very first moment that a person is deprived of his/her freedom by the police, he or she should be informed about his/her rights and the protocol should be initiated already in any police station. The 72 hours maximum period of police custody in any way should be initiated as soon as the person is deprived of liberty.



### 3.2.- Pre-trial detention: conditions and safeguards in Police Establishments

Also in the response of the Armenian Government to the CPT recommendations it is mentioned (page 13) that according to 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* (hereinafter, Government Decree No. 574-N), following the person's admission to the detention facility - ***if bodily injuries, evident signs of illness are discovered or the person complains of his/her health condition*** - the Police officer on duty shall invite a medical professional. 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. 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.

During the peer to peer EU mission it has been stated that the mentioned provisions are foreseen for detention centres. Yerevan have 16 police divisions with establishments in which individual cells are available for apprehended persons who are "brought" or deprived from their liberty by the police for a period of 4 hours on the basis of a so called "administrative detention". Moreover there is only 1 Police detention centre in Yerevan, where persons deprived from liberty are sent into police custody for 72 hours when they are investigated under a criminal investigation. A paramedic assistance is available on a 24 hours basis in the unique Police detention centre, and the medical checks records of the persons in custody are filed in the same police detention building.

#### **Recommendation 2:**

The decision to provide with 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 a independent medical check should be considered 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.

The original medical checks records should not be archived in any police establishment as this information should be considered confidential and it could be filed in the public clinic or hospital where the person deprived of liberty has received the medical check. The doctor who assist a person deprived of liberty should report directly the prosecution office in case of indications of physical or neurologic violence.



### 3.3.- Review of administrative and criminal investigations into allegations

On the basis of the response the Armenian Government to the CPT recommendations published in November of 2016 (page 11), on 27 November 2013 the Head of the Police gave a specific Instruction on Ensuring the Application of Legal Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Heads of Police Headquarters Divisions, those of Yerevan City and territorial departments and subdivisions thereof have been instructed to ensure that: (i) Police officers' conduct is in accordance with the CPT standards when apprehending, arresting persons or performing any other action with respect to them within the limits of their competence; (ii) record keeping of cases of ill-treatment and complaints against such treatment is effectuated in accordance with the CPT standards; (iii) any case of detecting violation of the CPT standards, as well as of any prima facie similar complaint is reported to the administration of the Police and the relevant materials together with the complaint are sent to the Special Investigation Committee (SIS) immediately, as prescribed by law; (iv) all Police officers are regularly informed of unacceptability of ill-treatment in the course of their activities and of inevitable liability for any such act.

According to information received during the peer to peer EU mission the Police itself dispose of an **Internal Security Department** based in Yerevan who is responsible for preliminary check of any citizen complain on torture or ill-treatment received by the Police. The results of these preliminary checks could be as follows:

- 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 report the SIS as independent body a possible case of torture or ill-treatment in order to open a criminal investigation.

In the course of 2015 the Police received 108 complaints (allegations, reports) of ill-treatment by other 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 rules 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.



Similar figures are presented for 2016, and the outcome seems to show that only when physical violence is detected by the police (Internal Security Department) concerning allegations of torture or ill-treatment by police officers criminal proceedings are proposed to SIS and then initiated.

These records seem not to match with those presented by the Public Prosecution office showing that approx. 100 criminal cases per year of torture and/or ill-treatment are open by the Public Prosecution office in Armenia on the basis of information arriving from different sources (Citizens complaints, Ombudsman, NGO, etc).

**Recommendation 3:**

The Internal Security Department of the Police can be involved in preliminary checks concerning allegations of torture or ill-treatment by Police officers, but they should not decide on the closure or not of the case on the basis of detecting physical violence, as it is considered a more transparent practice that any allegation of torture or ill-treatment received by the Police should be considered as a crime allegation, and be dealt directly by the criminal investigation body (SIS) or the prosecution office.

Moreover, according to the information received during the peer to peer EU mission the SIS is a centralised independent body composed by 29 members from which 9 are specialized in torture and ill-treatment criminal cases, and 9 are dedicated to anti-corruption cases.

**Recommendation 4:**

Only 9 investigators are national wide dedicated in the SIS to torture and ill-treatment criminal cases. It is recommended to increase this staff in order to be involved in any allegation concerning human right violation in the whole country due to the fact that the Public Prosecution office is reporting near 100 criminal cases per year related to torture and ill-treatment.

**3.4.- National Prevention Mechanism.**

According to the response of the Armenian Government to the CPT recommendations (page 9), in May 2016 the Human Right Defender (HRD) 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. According to the information published by the HRD Office on 29 September 2016, 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, there are executive order of the Head of the Police or the Ministry of Justice establishing Monitoring Groups for preventing torture or ill-treatment with the explicit prohibition for the member of this Groups to sit on another monitoring group.

The CPT report of 2015 stated that it was need to *"articulate a unified vision of organising the work of torture prevention"*. During the EU peer to peer mission it was stated that there is no coordination in the monitoring activities of the NPM and the monitoring groups, therefore in the same line as the CPT reports it is recommended:

**Recommendation 5:**

The monitoring activities of the NPM and the Monitoring groups are not coordinated. It is considered that at least the scheduled visits to monitor police or prison centres could be organized on a certain type of coordinated priorities or topics to be checked

**3.5.- Rules practices and training on proportionate use of force by law enforcement, especially during demonstrations**

According to the information provided by the Police during the EU peer to peer mission, the rules, practices and training related to the use of force are set up according to international standards.

In this context, the relevant laws "on the police" and "on the police troops" (special police forces for mass control) establish the general principles and clear grounds for discharge of physical force, special means, firearms and combat equipment.

Moreover the Law of the Republic of Armenia "On freedom of assemblies" seems to set up clear rules for police in the control of mass events.

According to the information received by the police, the following guidelines have been published for general knowledge and are available in the police website:

- Use of force in general situations
- Police actions in Assemblies
- Police duties during elections procedures
- Negotiation in public order.

Concerning the possibility of using video surveillance in public areas in order to prevent disorders, and be able to record video evidences concerning radical behaviour by citizens, and proportional use of force by police, no legal provision exist in Armenia apart from the possibility of video surveillance for road safety purposes.



**Recommendation 6:**

To implement a Law on video surveillance in public spaces for public safety prevention in order to provide police with a technical instrument to show evidence of police officers behaviour in mass control activities.

As regards training provided by the police concerning proportional use of force, and prevention of torture and ill-treatment, the information received from the Police shows the existence of such training at different educational levels.

- Basic Level: During the 6 months residential training period to become "police officer" and also in the training for "police sergeant"
- Medium Level: During the 2 years of residential training period to become "Police Lieutenant"
- High Level: To be promoted over "Police Major", one year of filed experience and a 4 academic years bachelor is required. A "Human Right and the Police" course is included in the curricula of the degrees (Bachelor and Master) to reach higher ranks in the police.

Apart from the described training activities the Armenian Police reports to hold specific courses for the improvement of anti-corruption practices and methodology of investigation. Moreover to have developed an in-service training concerning Human Rights based on 2 hours courses carried out in police stations.

**Recommendation 7:**

In a short term to organise a TAIEX workshop in Yerevan for all head of police divisions in order to focus the importance of CPT and EU recommendations on torture and ill-treatment prevention, and in a long term to support the Police of Armenia to improve its in-service training in Human Rights topics by developing a e-learning platform in its intranet network available for police officers in all police stations.



#### 4.- SUMMARY OF MAIN RECOMMENDATIONS

##### **Recommendation 1:**

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