



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Concluding observations on the third periodic report of
Armenia***

Addendum

**Information received from Armenia on follow-up to the
concluding observations****

[11 July 2013]

**Information on the recommendations contained in paragraph 8 of the
Committee's concluding observations (CAT/C/ARM/CO/3)**

1. The issue of manifestations by police officers of degrading treatment, ill-treatment or torture against the citizens, as well as the lawful response to such acts is always a focus of interest and under the control of the management of the Police of the Republic of Armenia. In this regard, measures required for preventing and prohibiting similar vicious acts are always undertaken.
2. As regards the acts of ill-treatment and torture of suspects in police custody, especially with the purpose to extract confessions during criminal proceedings, it should be noted that the Criminal Procedure Code of the Republic of Armenia envisages a series of legal safeguards for preventing any incidents of unlawfulness, including those of torture or cruel treatment. Such safeguards include, inter alia, the legislative stipulation of the rights of a suspect, accused to defence, as well as the rights of a victim, a witness to appear before the body conducting the criminal proceeding with an advocate.
3. Based upon the reports on any incident of bodily injuries incurred on arrested and detained persons, the body conducting the proceeding, by the procedure prescribed by Articles 180 and 181 of the Criminal Procedure Code of the Republic of Armenia, prepares materials that, upon the availability of the grounds provided for by law, shall be forwarded, as of relevant jurisdiction, to the Special Investigation Service.

* Adopted by the Committee at its forty-eighth session (7 May–1 June 2012).

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

4. In September 2012, under the coordination of the Ministry of Justice of the Republic of Armenia, the Draft law of the Republic of Armenia on making amendments and a supplements to the Criminal Code of the Republic of Armenia (K-049-23.08.2012-PI-010/0) was submitted to the National Assembly of the Republic of Armenia, the adoption whereof was substantiated by the necessity to bring into compliance the corpus delicti of torture stipulated by the Criminal Code of the Republic of Armenia to the standards of international law, in particular with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (hereinafter referred to as “the Convention”). The draft document agreed upon by the Police of the Republic of Armenia, the National Security Service of the Republic of Armenia, the General Prosecutor's Office of the Republic of Armenia, the Special Investigation Service of the Republic of Armenia, the Judicial Department of the Republic of Armenia and the Staff of the President of the Republic of Armenia stipulates the following:

- A proposal has been made on supplementing part 2 of Article 104 of the Code with point 5.1, stipulating the murder accompanied by torture will also be considered as a qualified murder. Moreover, any of the elements of crime making the murder a qualified murder may not be interpreted as torture; committal of a murder with particular cruelty relates exclusively to the modus operandi, and the motives typical of torture are ignored. Besides, torture may also be practised without particular cruelty.
- Article 118 of the Code has been revised so that committal of acts with torture entails relevant liability for private individuals and is distinguished from torture as the elements of the latter are broader. The mentioned Article must eventually be read as follows:

“Article 118. Beating and other violent actions

(1) Beating or other violent actions that have not resulted in consequences provided for by Article 117 of this Code, shall be punished by a fine in the maximum amount of one-hundred-fold of the minimum salary, or by detention for a maximum term of two months.

(2) Beating or any action by which a severe pain or physical or mental suffering is intentionally inflicted on a person, which has been committed for aims or reasons foreseen in Article 119 of this Code, in case it has not resulted in consequences provided for by Article 112 of this Code, shall be punished by imprisonment for a maximum term of three years.

(3) The action provided for by part 2 of this Article that has been committed:

- (1) Against two or more persons;
- (2) Against a person or his/her close relative due to service or public duty of that person;
- (3) Against a minor or a person in financial or other dependence on the criminal, as well as a person kidnapped or taken as a hostage;
- (4) Against an obviously pregnant woman;
- (5) By a group of persons or an organised group;
- (6) With particular cruelty;
- (7) Out of motives of national, racial or religious hatred or religious fanaticism — shall be punished by imprisonment for a term of nine to fifteen years.”

- Article 119 on torture was fully replaced with new edition. Moreover, this has been done for the purpose that in spite of the fact that the subject of corpus delicti is specific, i.e. the public officer, the main object of the act is the human life and health, honour and dignity of a person prevailing over other interests protected by criminal laws. The mentioned Article must eventually be read as follows:

“Article 119. Torture

(1) Torture – any action by which a severe pain or physical or mental suffering is intentionally inflicted on a person by a public officer or a person acting on behalf of that officer’s order, administrative order or assignment in connection with performing their powers, with the aim of receiving information or extracting confession from that person or from any other third party, or to punish that person or any other third party for acts committed thereby or for being suspected in the committal of such an act, or to intimidate or oblige him or her to perform certain actions or to refrain from performing certain actions or for any reason based on discrimination - shall be punished by imprisonment for a term of three to eight years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.

(2) The same act that has been committed:

(1) Against two or more persons;

(2) Against a person or his/her close relative due to service or public duty of that person;

(3) Against a minor or a person in financial or other dependence on the criminal, as well as a person kidnapped or taken as a hostage;

(4) Against an obviously pregnant woman;

(5) By a group of persons or an organised group;

(6) With particular cruelty;

(7) Negligently causing the death of the victim — shall be punished by imprisonment for a term of six to twelve years with deprivation of the right to engage in certain activities for a maximum term of three years.”

5. A proposal has also been made on revising Article 341 of the Code that stipulates a separate form of torture, for which the imposition of a more severe sanction is conditional on the fact that justice is an object of particular protection. The mentioned Article must eventually be read as follows:

“Article 341. Compulsion by judge, prosecutor, investigator, or person conducting inquest to giving evidence

(1) Compelling — by a judge, prosecutor, investigator or a person carrying out inquest — a witness, suspect, accused, person on trial or a victim to testify, or compelling an expert to issue a false opinion, as well as compelling a translator to provide an incorrect translation, by use of threat or by other unlawful actions, shall be punished by deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of five years, or by detention for a maximum term of three months, or by imprisonment for a maximum term of two years.

(2) The same act accompanied by humiliation, torture or other violence against the persons referred to in part 1 of this Article shall be punished by imprisonment for

a term of six to twelve years, with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.”

6. We attach great importance to the fact that the definition of torture provided in Article 119 of the Draft law is in compliance with the provisions of Article 1 of the Convention and is compatible with law enforcement solutions and the selected concepts.

7. Besides, taking into account the degree of danger of an act, parallel to the above-mentioned Draft law a proposal has been made on making relevant amendments to Article 183 of the Criminal Procedure Code of the Republic of Armenia and on removing Article 118(2), (3) and Article 119 from the list of cases being instituted exclusively based upon the appeal of a victim (K-0491-23.08.2012-PI-010/0).

8. Another action aimed at bringing the legislation of the Republic of Armenia in line with the international standards and ensuring its compliance with the provisions of the Convention, was the drafting of a new Criminal Procedure Code that, upon the coordination of the Ministry of Justice of the Republic of Armenia, was submitted to the consideration of the National Assembly of the Republic of Armenia in November 2012. The draft is based on the requirements of the Constitution of the Republic of Armenia and the international commitments assumed by the Republic of Armenia, as well as the outcomes of the judicial practice generated in the course of several years. Article 10(7) of the Draft Code stipulating the freedom and inviolability of a person prescribes that in the course of criminal proceedings no one must be subjected to torture, unlawful physical or mental violence, including through the use of medicine, hunger, exhaustion, hypnosis, deprivation of medical aid, as well as other cruel treatment. It shall be prohibited to receive information from a person through violence, threat, deception, infringement of his/her rights, as well as through other unlawful actions.

Information on the recommendations contained in paragraph 11 of the Committee’s concluding observations

9. The fight against torture in the Republic of Armenia, as the most essential component of the protection of human rights, was included in the directions stipulated by “The national strategy for the protection of human rights” approved by the executive order of the President of the Republic of Armenia NK-159-N of 29 October 2012, point 40 whereof envisages especially the following:

“Safeguarding the right to not being subjected to torture or other cruel, inhuman or degrading treatment or punishment, which includes:

- (1) Definition of torture pursuant to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, differentiating torture from other forms of violence;
- (2) Determination of procedures for carrying out independent inquest on any incident of torture or ill-treatment even where no formal complaint is available;
- (3) Creation of a domestic system for examination of reports on incidents of torture in places of imprisonment and preliminary detention facilities, guaranteeing the protection of the person making a report on the incident of torture and the victim;
- (4) Ensuring that victims of torture and ill-treatment are provided with compensation, as well as implementation of procedures required for full rehabilitation;
- (5) Ensuring the compliance of arrest conditions with international standards of treatment;

- (6) Improving working conditions of the personnel in preliminary detention facilities;
- (7) Ensuring the transparency of the activities of penitentiary institutions and enhancing the cooperation of penitentiary institutions with mass media;
- (8) Increasing human and financial resources of the staff of the Human Rights Defender for the purpose of visiting holding facilities and exercising monitoring over the treatment of persons and conditions of keeping them;
- (9) Training of the medical personnel on the rules of medical ethics, directly or indirectly preventing the medical personnel from participating in the acts of torture and aggravating penalties for them;
- (10) Provision of education manuals to the personnel of law enforcement authorities on the international requirements for treatment of persons in the course of detention, as well as in preliminary detention facilities;
- (11) Providing the public with information regarding the unreserved prohibition against torture and ill-treatment.”

10. The Action Plan deriving from the Strategy provides for separate measures in order to fully implement this direction, and it is currently at the stage of elaboration under the coordination of the Ministry of Justice of the Republic of Armenia. The action plan has been drawn up through close collaboration of all the state authorities of the Republic of Armenia, international, non-governmental organisations and the society, and its summarised and final version will be submitted to the consideration of the Government of the Republic of Armenia in July of this year.

11. The issues raised are the major focus of interest of the management of the Police of the Republic of Armenia. This is proved by the fact that the Head of the Police of the Republic of Armenia has issued the Instruction N° 12-C of 3 March 2010 which assigned to the heads of the subdivisions of the Police of the Republic of Armenia conducting the proceedings to:

(1) Take all necessary measures to bring a lawyer upon the request of persons being apprehended to the Police on the grounds of Article 128 of the Criminal Procedure Code of the Republic of Armenia;

(2) Provide an opportunity to the apprehended person to give explanations at the presence of the lawyer, if the necessity of the person’s explanations or conducting operative inquiries has occurred prior to preparing arrest protocol or choosing the preventive measure;

(3) Strictly follow other requirements of the Decision N° 818-N of the Government of the Republic of Armenia adopted on 14 June 2007 “On approving the list of rights subject to notification arising from the restrictions of the human rights and freedoms and the notification procedure’.

12. In addition, in April 2013 the heads of territorial subdivisions of the Police were assigned once again by circular letter N° 2/1-1-1237 to undertake necessary measures aimed at ensuring strict enforcement of relevant legal acts (for example, when admitting a person to a police holding facility to notify promptly the person chosen by the arrested or detained person through available means of communication, etc.).

13. As regards the issue of exercising the rights of a person in practice from the very beginning of his/her deprivation of liberty, the process of proper exercise of the rights of such persons, as defined by legislation, is ensured by the body conducting the proceeding to the utmost level. In cases where deficiencies are revealed in this field, they receive

equivalent response, appropriate examination is carried out, the offenders are subjected to disciplinary or criminal liability.

14. Moreover, by attaching particular importance to the issues of ensuring the rights of the persons deprived of liberty and full implementation thereof in practice, a clear reference has been made to the issue of expansion of their scope in the Draft Criminal Procedure Code of the Republic of Armenia; accordingly, clear provisions regulating such relations have been envisaged which will actually serve as an additional guarantee for their application in practice.

15. The rights to afford detainees legal safeguards, including the rights to access to a lawyer, to an independent medical examination, to notify a relative, to be informed of their rights, and to be brought promptly before a judge, are stipulated by the Criminal Procedure Code of the Republic of Armenia.

16. It should be stated that on 19 January 2012 the Law of the Republic of Armenia "On making amendments and supplements to the Law of the Republic of Armenia "On the profession of advocate"" entered into force, by which the Office of Public Defender was established, the purpose of which was to afford free legal aid to a number of social groups, among them, family members of a military servant deceased (died) while protecting the borders of the Republic of Armenia; persons with disabilities of 1st and 2nd level of gravity; convicts; members of vulnerable families; participants of combat operations during the Great Patriotic War and during the protection of the borders of the Republic of Armenia; the unemployed persons; pensioners living alone; children deprived of parental care; refugees; persons that have been granted temporary asylum in the Republic of Armenia; insolvent natural persons. Free legal aid includes legal consultation, drawing up of statements of claim, applications, appeals and other procedural legal documents, provision of legal information, as well as representation or defence regarding criminal, civil, administrative and constitutional cases.

Information on the recommendations contained in paragraph 12 of the Committee's concluding observations

17. The Special Investigation Service of the Republic of Armenia is an independent body to which, pursuant to Article 190(6) of the Criminal Procedure Code of the Republic of Armenia, conducts the preliminary investigation of crimes committed in complicity with officials holding leading positions in the legislative, executive and judicial bodies, persons carrying out special state service in relation to their official position or committed by them.

18. For the purpose of prompt and proper response to a report of a person on incidents of torture and/or cruel treatment, by the protocol No 4 of the session of 10 August of 2012 of the Collegium of the Prosecutor's Office of the Republic of Armenia and by the order of the Prosecutor General of no 37 of 18 September 2012 the heads of all the subdivisions of the Prosecutor's Office of the Republic of Armenia were assigned to consider and decide on the reports received regarding the bodily injuries revealed in the course of medical examinations carried out when admitting persons to police holding facilities and detention facilities within the framework of their functions prescribed by Chapter 25 of the Criminal Procedure Code of the Republic of Armenia, to observe the reporting as a detection of physical traces and consequences of crime, and as reasons to institute a criminal case by the preliminary investigation and inquest body as defined by Article 176 (3) of the Criminal Code of the Republic of Armenia within the framework of their powers, thus, to decide on the reports within the framework of preparation of statements of the case separated from the main proceedings by making on each of them one of the decisions provided for by Article 181 of the Criminal Procedure Code of the Republic of Armenia or, in case of availability

of relevant grounds, immediately after deciding on the ground of subordination as prescribed by Article 190 of the Criminal Procedure Code of the Republic of Armenia, to send to the Special Investigation Service of the Republic Armenia through the Prosecutor General of the Republic of Armenia.

19. The above-mentioned proves that as regards the receipt of a report by a person or other factual data on incidents of torture and/or ill-treatment, the functions of conducting prompt, impartial and effective inquest and preliminary investigation, as well as of exercising prosecutorial control over it are already clearly regulated by legislative and secondary legislation acts in effect.

20. Pursuant to Article 152 of the Criminal Procedure Code of the Republic of Armenia, the prosecutor, as well as the investigator, upon the consent of a prosecutor, shall have the right to temporarily suspend the tenure of office of a suspect or accused who is a civil servant, in case there are sufficient reasons to assume that by holding the office he shall obstruct examination of the case in pre-trial proceeding or in court, compensation of the damage caused by the crime or shall engage in criminal activities.

21. That is, in case of suspending a person from the duties, he/she should first of all acquire a procedural status of a suspect or an accused; in this case where there are sufficient grounds to believe that he/she may obstruct examination of the case in pre-trial proceeding or in court by exercise of unlawful influence upon persons involved in criminal procedure, concealment or forgery of materials relevant for the case, or may commit an action not permitted by the criminal law, the measure of restraint, measuring up to the detention, may be imposed on the person.

22. During 2010-2012, incidents of cruel treatment (manifestations of violations) committed by police officers were qualified in the Special Investigation Service of the Republic of Armenia under Article 308 or 309 of the Criminal Code of the Republic of Armenia.

23. In particular, in the course of 2010, 5 similar criminal cases were investigated in the Special Investigation Service of the Republic of Armenia, 3 cases of which were referred to the court with an indictment, and 9 persons were brought before the court, while the proceeding with regard to 2 criminal cases were suspended under Article 31(1) of the Criminal Procedure Code of the Republic of Armenia.

24. In the same period of time, instituting a criminal case for 17 materials prepared in the Special Investigation Service of the Republic of Armenia was rejected, among them 9 cases were rejected due to the absence of a precedent, 6 cases were rejected because of the absence of corpus delicti, and 2 more cases were rejected because of availability of a decision on the same case that was not abolished.

25. In the course of 2011, 7 similar criminal cases were investigated in the Special Investigation Service of the Republic of Armenia, 2 of which were referred to the court with an indictment, and 3 persons were brought before the court, the proceeding with regard to 3 cases were suspended, 1 case was joined into the criminal case present in the proceeding, the preliminary investigation of 1 case continued in the following year.

26. In the same period of time, instituting a criminal case with regard to 12 materials prepared in the Special Investigation Service of the Republic of Armenia was rejected, among them 8 cases were rejected due to the absence of a precedent, 3 cases were rejected because of the absence of corpus delicti, and 1 more case was rejected because of availability of a decision on the same case that was not abolished.

27. In the course of 2012, 2 similar criminal cases were investigated in the Special Investigation Service of the Republic of Armenia, one of which was suspended, and the

preliminary investigation of the other case, in which 2 police officers were involved as an accused, continued in the following year (they were brought before the court).

28. For the same period of time, 43 materials were prepared in the Special Investigation Service of the Republic of Armenia, with regard to 2 of which criminal case was instituted, instituting a criminal case with regard to 34 cases was rejected, among them, 17 cases were rejected due to the absence of a precedent, 16 cases were rejected because of the absence of corpus delicti, and 1 more case was rejected because of availability of a decision on the same case that was not abolished. Overall 7 materials remained incomplete.

29. In the course of 2010-2012, 39 cases were processed regarding the use of torture, violence (both physical and mental), application of threat, as well as manifestation of cruel, disrespectful and degrading treatment in the Police of the Republic of Armenia. During the whole period of official investigation or examination of the case, the official powers of those officers were terminated by the order of the Head of the Police of the Republic of Armenia.

30. Under Article 118(1), Article 131(1), Article 258(3)(1), Article 258(4), Article 308(1), Article 309 (2) and (3) of the Criminal Code of the Republic of Armenia 9 criminal cases were instituted, 4 of which were discontinued (2 of them - under Article 35(1)(2) of the Criminal Procedure Code of the Republic of Armenia, 1 case - under 35(2) of the Criminal Procedure Code of the Republic of Armenia, and 1 case - under Article 35(1)(5) of the Criminal Procedure Code of the Republic of Armenia), and 5 criminal cases were referred to the court.

31. In the course of 2010-2012 with regard to the above-mentioned cases 39 official investigations were conducted as a result of which 37 police officers were subjected to disciplinary penalty, and the conduct of a number of police officers was considered during the operative consultations of various subdivisions of the Police of the Republic of Armenia, and those officers were subjected to severe reprimand.

32. In the course of 2010-2012, with regard to the facts of the use of violence against citizens by the police officers, a decision was made on rejecting the institution of six criminal cases under Article 35(1)(4) of the Criminal Procedure Code of the Republic of Armenia.

33. During 2012, 3 cases of cruel, disrespectful treatment and assault and 4 cases of battery, torture, inhuman or degrading treatment manifested against citizens by police officers were recorded.

34. As regards the inquest of crimes committed by the commissioned staff in the military forces of the Republic of Armenia, it should be emphasised that the Ministry of Defence of the Republic of Armenia does not influence upon the law enforcement bodies in systematic terms. The military police, after carrying out operational intelligence and inquest activities as prescribed by law, shall forward the examination of the case to the Investigation Service, the scope of the activities whereof is regulated by the Criminal Code and the Criminal Procedure Code of the Republic of Armenia. The actual supervision over the activities of the Investigation Service is exercised by the Military Prosecutor's Office. The Military Prosecutor's Office is not considered, in its turn, as a body functioning under the system of the Ministry of Defence; it functions under the system of the General Prosecutor's Office of the Republic of Armenia.

35. Within the framework of fight against crimes committed as a result of non-statutory relations in the armed forces of the Republic of Armenia a series of measures have been carried out. In particular, in 2012 the manual titled 'Military Leadership - Issues of Effective Management of Military Personnel' was elaborated, based on which the discipline of 'Military leadership' was introduced in military education institutions of the Republic of

Armenia. In senior schools a programme for ‘Military-psychological and social and legal preparation of pre-draftees’ is carried out among the students of pre-draft age, which aims at acquainting the future draftees with the issues of managing stress when taking the service, overcoming interpersonal conflicts, ensuring tolerance among the military personnel. These activities are carried out on the basis of the principles of continuity, effectiveness raising and results monitoring. It should be noted, however, that due to the availability of regular military service and intense military situation, absolute exclusion of such cases at this moment, unfortunately, is not realistic.
