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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report of Armenia under article 29, paragraph 1, of the Convention

Addendum

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

[Date received: 17 June 2016]

I. Definition of Enforced Disappearance

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

1. For the implementation of the presidential order NK-96A, dated 30 June 2012 on "Approval of activities of the Strategic Plan of the legal and judicial reforms for 2012 - 2016 and the list of measures envisaged under the program", the new draft of the Criminal Code was developed by the Ministry of Justice of the RA. Police of the RA officially submitted proposal to the authors of the project to include a separate corpus delicti for the forced disappearance of persons. In September 2016 the draft will be presented to the

* The present document is being issued without formal editing.
** The annex may be consulted in the files of the Secretariat.

Government of the RA for approval. Once approved, it will be sent to the National Assembly of the RA for discussion.

II. Registers of persons deprived of their liberty

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

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

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

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

2. According to the Article 29 of the RA Law on "Holding Detainees and Arrested Persons" the personal data files are running for each person deprived of liberty which includes dates and years of admission and release from detention.

3. The Article 66(2) of the Penitentiary Code of RA states that a personal data file shall be maintained for each convict. The personal data file shall include regularly updated information on the convict's person and the execution of his sentence, including information on measures of restraint applied in respect of the convict in the past, as well as the dates of admitting the convict to the correctional institution and releasing him or her from sentence. The personal data file shall be accessible for the convict and for persons authorized to have such access.

4. Moreover, all information included in personal data files of persons deprived of their liberty are regularly checked and kept up to date.

5. The personal cards of persons deprived of their liberty are regularly sent to the recording section of the detainees and arrested persons of the Penitentiary Department of the Ministry of Justice from the recording groups, departments and divisions of the Penitentiary Institutions. The information contained in those personal cards (the date of conviction, the date of the beginning of the punishment, the date of the end of punishment, the date of conditional release and etc.) entered into the computer.

6. During 2015-2016 disciplinary enquiries have not been recorded in the framework of Penitentiary Service of the Ministry of Justice of RA in the basis of the filing of personal data with errors and omissions.

7. It should be noted that about a year ago with the initiative of Penitentiary Service of the Ministry of Justice of RA the preparation process of the electronic management system of the information was launched.

8. Moreover, the specialists of Penitentiary Service of the Ministry of Justice of RA and Vxsoft Company in detail designed and developed "The Informational Register of the Detainees and Arrested Persons of the Penitentiary Service of the Ministry of Justice of RA" which is unprecedented in its scale and technical capabilities. The system includes all the necessary information concerning to the documents, conditional release, the changes on the regime of conviction, visits, labour and etc.

9. Arrested and detained persons are accepted in detention facilities of the police in accordance with the decision No. 574-N of the Government of the RA, adopted on

05.06.2008 on «Internal regulations requirements of the detention facilities of police of the RA». Thus:

(a) The detention protocol or the decision of the criminal prosecution authority, as defined by the Criminal Procedure Code of the RA, is the basis for accepting of arrested persons in detention facilities. The decision of investigator, prosecutor or judge is the basis for accepting detainees in detention facilities.

(b) The transit conveyances of detained and arrested persons are accepted in detention facilities in case the documents are available under this Regulation.

(c) The detainees are accepted in detention facilities around the clock. On duty police officer of the territorial police units (on duty officer of the detention facility of Yerevan city police department) checks the basis of accepting and keeping of the detainees, by questioning checks the authenticity of the passport data mentioned in arrest record or in arrest decision, after that makes appropriate registrations in the registry of detainees according to the Form No: 1 and in personal card according to the Form No: 17. The administration of the detention facility is obliged to inform immediately the person chosen by the arrested person about the accepting in detention facility or transfer from one institution to another, using possible means of communication.

(d) The persons in detention facility are photographed and their fingerprints are taken in accordance with Form No: 3.

(e) In case the bodily injury or obvious signs of disease are detect or detainee has a health complaint, on duty officer of police institution invites a medic, invited doctor immediately carries out the examination, which is open to the doctor chosen by the detainee. The medical examination is carried out beyond the hearing and vision of the employee of the detention facility, unless the doctor requests otherwise. The results of examination are recorded in the register in accordance with Form No: 12, in the personal file and the patient, as well as the body conducting criminal proceedings have to be informed on the results of examination.

(f) Each of detainees of the detention facility has a personal file, according to the Form No: 18, which includes the arrest and release dates (protocol of detention and release decisions), personal card, the acquisition protocol, the protocol of the list of clothing and personal items, reference on previous convictions, the search protocol, fingerprinting data, deliveries, applications for visits, money flow of personal account and other documents related to the detainee.

(g) In order to ensure the safety of the detention facility every person admitted to detention facilities is exposed to personal search.

(h) In case of detection of items which are subject to seizure during the personal search of detainee or the cell search, the seizure protocol is drawn up in accordance with the Form No: 2.

10. Persons enter and are kept in the detention facilities of the RA National Security Service on the basis of judicial documents (protocols or verdicts) drawn up exclusively in accordance with legislation. In this case entire data about the person is recorded in the “Register of persons kept in detention facilities of the RA National Security Service”. In cases when detained foreigners do not have identification documents (mostly in cases of illegal crossing of the RA state border by foreigners), their personal data is registered in the protocols and verdicts, as well as in the above-mentioned register on the basis of their oral statement. Afterwards the data is verified by operative subdivisions, Consular Department of the Ministry of Foreign Affairs of the Republic of Armenia and Interpol National Bureau of the RA Police, and in case of detection of non-compliance and errors in the data, corrections are made through respective judicial decisions and registrations and materials

are brought into compliance with the findings. There has been no case of keeping a person illegally or without registration in the detention facilities of the RA National Security Service and such possibility is completely excluded.

III. Right to reparation and the right to know the truth

Paragraph 27. The Committee recommends that the State party adopt the necessary legislative or other measures:

(a) To guarantee the right to reparation and to prompt, fair and adequate compensation of all persons who have suffered direct harm as a result of an enforced disappearance to obtain prompt, fair and adequate compensation and all the other forms of reparation, including restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition, without the need to prove the death of the disappeared person, in accordance with article 24, paragraphs 4 and 5, of the Convention.

(b) To include an explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person.

11. In addition to the previous information included in the report in respect of Article 24 of the Convention, the Articles 162.1 and 1087.2 of the Civil Code on non-pecuniary damage and its compensation should be also mentioned, as well as, the terms and conditions of compensation for non-material damage caused in the result of the violation of fundamental rights and unfair conviction, which are included in the Civil Code on May 19, 2014 (law number, HO-21-N). Moreover, the changes and additions were made to the same articles on December 21, 2015 by the National Assembly of the RA, extending the possibilities of citizens to request material or monetary compensation for damages in cases when their rights were violated and non-material damage caused by any state or local government body or official person (including the right to life, torture, inhuman or degrading treatment, the right not to be subjected to punishment, the right of personal freedom and immunity, respect for private and family life, the right to privacy, freedom of thought, conscience and religion, the right of free expression of their opinions). The importance of the amendments made was determined by the European Court of Human Rights in respect to Armenia In order to fully implement taken decisions. In particular the Article 162.1. of the Code the concept of non-pecuniary damage and its compensation characteristics are defined as follows:

(a) In the context of this code non material damage is physical or mental suffering that is caused to person by birth or by a decision violating the legally owned material or non-material property rights, by action or inaction.

(b) The person, or in case of his/her death or disability, his/her spouse, parent, adopter, child, adoptee, guardian, trustee have the right to claim damages for non-pecuniary damages in court, if the prosecuting authority or the court confirmed that in the result of action or inaction of the state or local government body or official person the decision violated, the following rights of the person guaranteed by the Constitution of the Republic of Armenia and Convention on “Protection of Human Rights and Fundamental freedoms”:

(i) The right to life.

(ii) The right not to be subjected to torture, inhuman or degrading treatment or punishment.

(iii) The right of personal liberty and security.

(iv) The right to a fair trial.

(v) Respect for private and family life, inviolability of the home

(vi) Freedom of thought, conscience and religion, the right of free expression of own opinions.

(vii) The right to freedom of assembly and association.

(viii) The right to effective legal protection.

(ix) The right to property.

(c) If the accused person is acquitted by the conditions provided by the Protocol 7 of the Article 3 of the "Convention on Human Rights and Protection of Fundamental Freedoms ", then he/she has a right to demand compensation for caused non-pecuniary damage (in terms of this Code, compensation for wrongful conviction).

(d) The damage to honor, dignity and business reputation is compensated in accordance with the Article 1087.1 of this Code, and non-material damage caused by violation of fundamental rights and unfair conviction is compensated in accordance with requirements of the Article 1087.2.

(e) Non material damage, caused in the result of illegitimate administrative action shall be compensated in the manner prescribed by law of the Republic of Armenia “On Administration Principles and Administrative Proceedings”. The full implementation of the issue of compensation for non-pecuniary damage was directly related to the determination of the compensation amount. In fact, these amounts did not correspond to the legal positions of the European Court. In particular, instead of the previously existing 500,000 and 1,000,000 AMD, depending on the alleged violations of the right, it is now expected to be 2.000.000 and 3.000.000 AMD. At the same time, the regulation also maintained that if the Court finds that in the result of the violation of the right person has a serious consequence; he will not be bound by that amount. Compensation for non-pecuniary damage in mentioned amounts are based on international practice and the case-law of the European Court. In addition, a person acquires the right to demand compensation for non-pecuniary damage in court not only as a result of action or inaction of the local government body or official decision that violated fundamental rights of that person, but also if the fact of violation was established by the prosecuting authority. Specifically, according to the Article 1087.2 of the Civil Code:

(i) The method, basis and amount of compensation for non-material damage caused by the violation of fundamental rights and unfair conviction, are determined in accordance with this Article and Article 162.1 of the present Code.

(ii) Compensation for non-material damage shall be done, regardless of compensation property damage.

(iii) Non-material damage shall be compensated, regardless the existence of fault of an official.

(iv) Non-pecuniary damage shall be compensated from the state budget if the violation of fundamental right laid down in Article 162.1 of this Code was done by local authority or public official, then non material damage is compensated from the budget of corresponding Community.

(v) The amount of compensation for non-material damages should be decided by the court, in compliance with principles of common sense, equitable (equitableness) and proportionality.

(vi) In determining the amount of compensation for non-pecuniary damage, the court takes into account the nature, extent and duration of physical or mental suffering, the consequences of the damage caused, the existence of fault causing damage, the individual characteristics of the person suffered by non-material damage, as well as other relevant circumstances.

(vii) The amount of compensation may not exceed:

- 3000 minimum salaries in case of violation of rights provided by the Points1 and 2 of the Part 2 of the Article 162.1 of the present Code, as well as Paragraph 3 of the same Article.
- 2000 minimum salaries , in case of violation of rights provided by the Points 3-9 of the Part 2 of the Article 162.1 of the present Code.

(viii) The amount of compensation for non-pecuniary damage may in exceptional cases exceed the maximum limit foreseen by Part 7 of this Article, if in the result of the damage severe consequences were caused.

(ix) Claim for compensation of non-material damage can be submitted to the court during one year from the time when person becomes aware of a violation of law as set out in part 2 of the Article 162.1 of present Code, as well as, during six months after the entry into force of the decision of the court on confirming the violation of rights, but if the violation is confirmed by the prosecuting authority, after the person becomes aware of it, not earlier than two months, but not later than within one year.

(x) Republic of Armenia or community, which compensate the damage caused by state or local government body or official decision in the result of action or inaction, has right of retrospective demand (regress) in respect to the person to whom the compensation amount was paid. The basis for subrogation claim is the existence of fault of the state or local government body official. With regard to the proposal mentioned in paragraph 27, subparagraph (b), we consider that the Article 59 of the Criminal Procedure Code of the RA clearly defines the right of victim to get acquainted with all materials of the case.