REPORT ON OBSERVANCE OF HUMAN RIGHTS IN THE RELATIONS BETWEEN CITIZENS AND POLICE IN ARMENIA AND GEORGIA

National Endowment for Democracy

Helsinki Citizens' Assembly-Vanadzor

Vanadzor
2012

REPORT ON OBSERVANCE OF HUMAN RIGHTS IN THE RELATIONS BETWEEN CITIZENS AND POLICE IN ARMENIA AND GEORGIA

National Endowment for Democracy

Helsinki Citizens' Assembly-Vanadzor

This report was prepared within the framework of the project "Training and Networking for Young Human Rights Activists" implemented by Helsinki Citizens' Assembly-Vanadzor with financial support from the National Endowment for Democracy.
The views, comments, and conclusions expressed herein do not necessarily reflect the views of the National Endowment for Democracy.
The project was implemented from March 1, 2010 to March 1, 2012.

Vanadzor - 2012

TABLE OF CONTENTS

From Initiators

In this report, the results of monitoring of relations between the police and citizens are summarized. The monitoring was held from October 2010 till January 2011. Monitoring was held within the framework of the project "Training and networking for young human rights activists" (March 1, 2010 - March 1, 2012), with the financial support of the National Endowment for Democracy.

Helsinki Citizens' Assembly-Vanadzor expresses gratitude to the trainers of the project - Yaroslav Kopchuk and Alina Pomorsky, experts of the Helsinki Foundation for Human Rights (Poland) with whose participation, the tools for monitoring the relations between the police and the citizens, have been developed; Olyona Volochay, intern of the project "Judicial Administration and Human Rights"(ITD Massachusetts) and the director of organization development "SeLeV Consulting Group" and to Olyona Grabovska, the trainer of «Dialogue» trainers' group.

Helsinki Citizens' Assembly-Vanadzor also expresses gratitude to the former Head of Police A. Sarkisyan, the former Head of Police Staff, E. Ghazaryan, and also employees of the Spitak, Gugark, Bazum, Vanadzor, Gavar, Arabkir, Shengavit, Nor-Nork, Kentron-Zeytun, Erebuni Police Departments for assistance during monitoring.

Helsinki Citizens' Assembly-Vanadzor expresses gratitude to the monitoring group for active and diligent conduction of the monitoring.

INTRODUCTION

Human rights, democracy and rule of law are the primary values of a democratic state. The countries aspiring to these values are obliged to ensure human rights protection; whether they are civil, political, economic, social or cultural rights, as it is foreseen by the Universal Declaration of Human Rights and was confirmed by the World Conference on Human Rights in 1993.

According to the data of the Ministry of Internal Affairs in Georgia, the reforms held in Georgia by the Ministry during recent years, considerably increased the trust of society towards the police and the number of crimes decreased as well.

In the Republic of Armenia, reforms in the police system were carried out in 2010-2011. It was planned to carry out reforms in the structure of the police system: in the sphere of education of police employees, in the field of traffic safety, reforms directed towards protection of the rights and freedoms of citizens, improvement of cooperation with other state structures and organizations, reforms directed towards increasing the trust towards the police, and towards the improvement of social and legal status of police officers. However, despite the reforms, there are still questions which demand additional efforts, surveillance, research and analysis. Among those are questions of observance of the rights and freedoms of a person in the relations between police and citizens. With the goal of doing research in the given sphere, HCA Vanadzor has been implementing the project "Training and Networking for Young Human Rights Activists" over the last two years. The main project goal is to increase the role of youth in human rights activity in the territory of the South Caucasus.

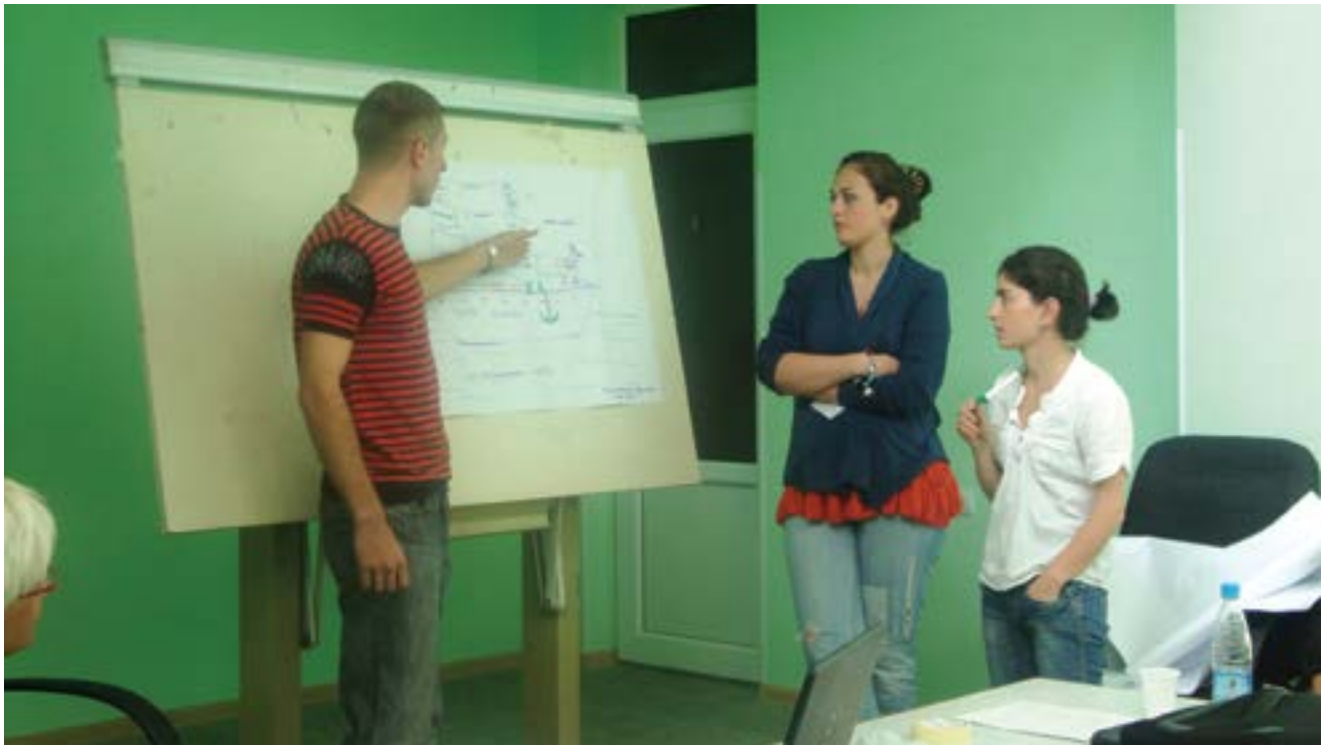
A monitoring group consisting of 17 young representatives of Georgia, Armenia and South Ossetia (7 from Georgia, 8 from Armenia, 2 from South Ossetia) has been established. In the course of this report preparation, 7 more participants have been involved (3 from Georgia, 4 from Armenia). Within the framework of the project, the following trainings directed towards the development and training

of the members of the monitoring group have been organized: "Human Rights Monitoring in the Relations between Police and Citizens", "Summarization of Monitoring Results and Report Writing on the Situation of Human Rights in the Relations between Police and Citizens of South Caucasus" and "Advocacy Planning."

During the trainings, the participants learned to identify the following monitoring goals:

- to plan monitoring
- to analyze a problem and to identify the reasons for the problem
- to supervise and interview the respondents

- to represent the general structure of the monitoring report
- to prepare the report contents
- to describe the situation of human rights and the encompassing facts
- to formulate conclusions and recommendations on monitoring results
- to structure the data and to prepare the resume of the monitoring report
- to explain the advocacy approach as a process
- to define the strategy of the activity of protection of public interests, and also the suitable types of actions to achieve changes
- to define accurate purposes in order to achieve changes



- to define key figures, supporters and opponents in the process of advocacy planning based on the goals set
- to develop an advocacy plan
- to use International and European standards of human rights for analysis of the problems and situations that arises in the region
- for planning and realization of effective actions on advancement, protection and education in the field of human rights

Over four months, from October 2010 till January 2011, monitoring of human rights and relations between police and citizens has been carried out. The monitoring aimed at studying the situation of protection of human rights in the context of citizens and police in the South Caucasus.

Conduction of monitoring in the RA Police Departments and interviews with police officers had been agreed upon with the RA Police. Unfortunately, it was not possible to get permission from the Ministry of Internal Affairs of Georgia for carrying out monitoring in the police departments of Georgia and holding official interviews with the employees of the Georgian police. However, thanks to the efforts of the Georgian monitors, it was possible to have interviews with four police officers, provided that they would remain anonymous.

It is important to note the fact that at the beginning of the project, it was planned to involve 36 participants from South Caucasus (8 participants from Armenia, 8 from Azerbaijan, 8 from Georgia and 4 participants from Nagorno Karabakh, 4 from Abkhazia and 4 from North Ossetia).

The absence of participants from Azerbaijan, Abkhazia and Nagorno Karabakh was due to a number of difficulties in the organizational and realization phases of the project. In particular, after distribution of the information on the project, in April-May, 2010, Armenian, Azerbaijani[1] and Russian mass-media (electronic newspapers and websites) published articles (”Color revolutions”[2], ”The Retinue will make a

[1] http://www.lidertv.com/az/news/0/105588.html, http://pia.az/index.php?l=az&m=news&id=379

[2] http://www.kr-eho.info/index.php?name=News&op=article&sid=4308&word=%D5%C3%C0

King," "Island Crimea" or "Where the bases for preparation of "colour" agents are"[3] etc.) discrediting the activity of HCA Vanadzor and the project "Training and networking for young human rights activists". The article with the title "Color Revolutions" also has been placed on the official website of the president of Abkhazia[4].

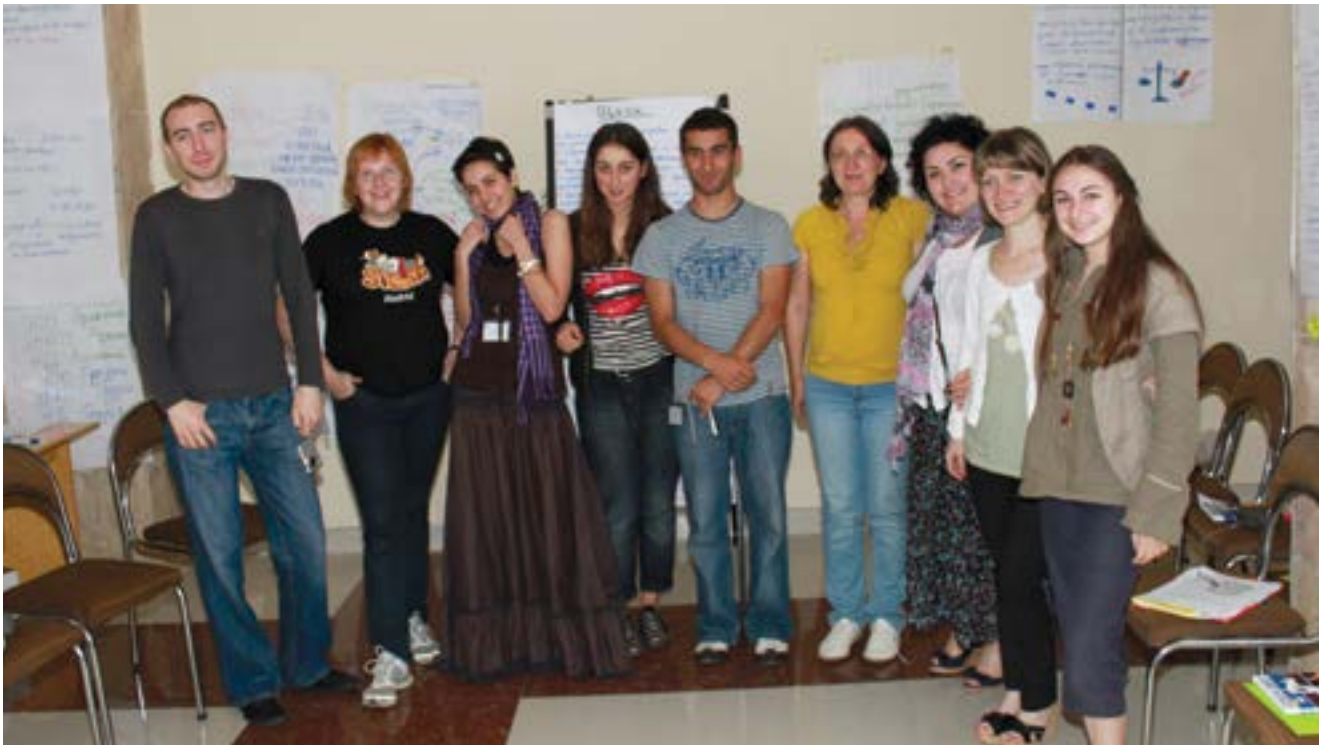
The authors of the articles, named HCA Vanadzor as a basis of preparation of "color" revolutions, and identified the project as a project directed towards the preparation of the so-called "color" activists from Abkhazia, Ossetia, Nagorno Karabakh, and Crimea.

The articles were followed by an open letter from the representatives of the Volgograd Regional Branch of the "Union of Armenians of Russia" addressed to the president of Armenia with the request to forbid the activity of the organization. It was published on the web-site of the news agency "Regnum."[5]

After publication of the mentioned articles, the participants from Azerbaijan, Abkhazia and Nagorno Karabakh refused to participate in the project.

Difficulties also arose while conducting monitoring in South Ossetia. At first, two participants from South Ossetia were involved in the project, whom had been taught monitoring skills. However, it became impossible to conduct a thorough monitoring of human rights in the relations between police and citizens in South Ossetia, and the involved participants refused to contribute in the preparation of the monitoring report.

In South Ossetia, within the framework of the monitoring, only interviews with persons detained earlier or persons who had been brought to the police stations and their relatives were conducted. According to the monitors, they didn't manage to find a way to co-operate with the police of South Ossetia, and the lawyers and NGO representatives (it should be noted that there are very few NGOs in South Ossetia) refused to be interviewed and provide data. Thus, within the framework of the monitoring in the territory of South Ossetia, it was impossible to collect credible and reliable information based on the



[3] http://www.golosarmenii.am/ru/19986/politics/3600/,www.regnum.ru./news/1286399.html

[4] http://www.abkhaziagov.org/ru/president/press/inosmi/detail.php?ID=30929

[5] http://www.regnum.ru/news/1287646.html/

fact that an objective report would not be possible. Moreover, the organization didn't manage to involve an expert who would do an analysis of the legislation regulating the police activity. Proceeding from the aforementioned, it was impossible to include analysis of the data of the monitoring conducted in South Ossetia. The information from the interviews with former detainees and their relatives is generalized and presented in appendix 1.

Monitoring of human rights in relations between police and citizens was conducted in Armenia, Georgia and, partially, in South Ossetia. This report presents the results of monitoring conducted in the countries of Georgia and Armenia.

This report presents the results of the monitoring of relations between police and citizens which was held in Georgia and Armenia by the HCA Vanadzor project group within the framework of the project "Training and networking for young human rights activists" implemented from October 2010 till January 2011".

The main point of the monitoring results are the questions on observance of human rights in cases of restriction of freedom, procedural guarantees of protection of rights, as well as legislative regulation of these issues in Georgia and Armenia.

Based on the monitoring results the report on "The Results of Monitoring Human Rights in the Relations between the Police and Citizens" was completed. On January 12, 2012, the report was sent to the RA Police in order to get their comments and suggestions related to the problems and their solutions proposed by the project participants, which were stated in the report. On February 13, 2012, a letter on behalf of the Head of RA Police was received, in which the RA Police stated that they were not interested in the monitoring results and further cooperation with HCA Vanadzor within the framework of the project[6].

[6] See Appendix N2

RESUME

Monitoring of observance of human rights in cases of restriction of freedom in Georgia and Armenia was conducted in 2010-2011 within the framework of the HCA Vanadzor's project, "Training and networking for young human rights activists." The purpose of the monitoring was to study the situation of observance and protection of human rights in the relations between police and citizens, by a group of activists who had been trained on the methodology of the Helsinki Foundation for Human Rights conducted monitoring.

During the monitoring, the following problems, requiring a solution, have been identified:

1. For full understanding of their status by the detainees or persons brought in, it is necessary to have accurate observance of the procedure of documentation during restriction of freedom. However, the monitoring results have shown that the absence of registration of the persons detained in the police station, causes misunderstanding by the detainees and persons brought in, of their procedural status, which contradicts the principle of certainty. Not following the procedure of documentation is an obstacle for care of persons in the police department. In this regard, we recommend to establish, by law, concrete mechanisms which will fix the exact moment and time of taking a person in custody; to provide registration of an entrance and exit of each person from a police station without fail, also registration of in what status the person was invited/brought.
2. In the legal system of the Republic of Armenia, calling a person in for interrogation in the procedural status of a witness, became a common practice, whereas the primary intention of the body carrying out the investigation, was to involve him/her as an accused. Bringing individuals illegally to the police departments, including on political grounds and without registration of the fact or representation of the bases for setting free, is of special concern. We consider that by legislative changes the evidence concerning the suspect, received during the interrogation of the suspect as a witness, should be recognized inadmissible.
3. During monitoring **in both countries,** cases of disproportionate application of force, cruel, and degrading treatment by the law enforcement bodies, have been revealed both during detention, and during interrogations. Thereupon signs of crimes prescribed by the criminal legislation can be revealed in the actions of law enforcement bodies. We consider it necessary to initiate official investigations into each case of disproportionate application of force by the law enforcement bodies.
4. In both countries, understanding by the detained and interrogated persons of their legal rights, remains a problem. In the majority of cases, during an explanation of their rights, their essence remains unclear for the detained/interrogated persons, which involves a risk of abuse by the law enforcement bodies.
5. The procedure of carrying out interrogations causes fears in both countries. There is still the practice of night interrogations in cases of extreme necessity, which creates a risk of violation of the right to defense and interferes with the possibility of regulation of interrogation, time, and duration, as well as puts the effective work of the law enforcement bodies under suspicion. In order to eliminate such risks, we urgently recommend making the current legislation regarding the time of carrying out interrogations, in compliance with the international standards, in

particular to forbid any possibility of carrying out night interrogations or to define the concept of "extreme necessity."

In the **Republic of Armenia,** it is necessary to provide appropriate technical conditions for carrying out interrogations.

6. In 2004, the mechanism of the procedural agreement, as alternative punishment, has been introduced in **Georgia.** However, a high indicator of mistrust by the courts has transformed the procedure of the procedural agreement into one of the forms of filling the budget. The attorney lost the function of the defender and received only the role as intermediary between the prosecutor and the accused. Without opposing the existence of the mechanism of the procedural agreement, we urge to develop programs directed towards the returning of trust to the courts and, accordingly, towards reduction, minimization of a percentage indicator of procedural agreements.
7. A considerable amount of cases which have been appealed in the international judicial instances in **both countries,** testifies to a higher degree of trust by citizens to international structures, rather than to the judicial system inside their own country. However, there is a problem of execution of decisions of the international judicial bodies, to which the governments and civil society should pay attention. For an appropriate provision of the guaranteed rights of the persons deprived of freedom, presence of not only judicial, but also effective extrajudicial mechanisms of protection both at the administrative and departmental level, and within the framework of constant democratic control, is important.
8. In **both countries,** there are problems with the realization of the mechanism of compensation of ethical harm. Consideration of the procedure of restoration of the reputation of illegally detained or arrested persons can become the first step in the Republic of Armenia. As to Georgia, it is necessary to return the practice of the possibility of initiating a civil suit in criminal cases or to provide the aggrieved person with the possibility of clearing them from state tax payment on cases connected with compensation of ethical harm.
9. Provisions for appropriate, safe and healthy working conditions for police officers and conditions of care of detainees in the **Republic of Armenia,** remains a problem. Poor provision of materials and technical equipment, and satisfaction of basic requirements for employees (such as the availability of drinkable water at the workplace) don't promote the increase of motivation to work. In Georgia, the infrastructure of all types of closed establishments has considerably improved. However, as the monitoring results show, the number of violations by the police in cases of restriction of freedom is still high in **both countries,** which testifies to the fact that working conditions aren't the basic factor for quality performance by the policemen of their duties.

MONITORING TOOLS AND METHODOLOGY

Monitoring was used from the methodology of the Helsinki Foundation for Human Rights (Warsaw, Poland). Tools for observation and interviews have been developed for monitoring.
The given tools have been distributed among the members of the monitoring group who have conducted studies by each individual, by means of interview and observation.

№	Title	Quantity	
		Georgia	Armenia
1	Questionnaire for interview with former detainees[6]	11	13
2	Questionnaire for interview with NGO representatives	10	7
3	Questionnaire for interview with the relatives of detainees[7]	9	11
4	Questionnaire for interview with police officers	5	15
5	Questionnaire for interview with attorneys	14	8
6	Observation cards for the police departments	2	11
7	Observation cards for the judicial sessions	10	16

The monitoring methodology was based on the following principles:

- In the studies, the method of the individual semi-structured interview (FACE-to-FACE) has been used In police departments and care places for detainees, the observation method was used. The monitoring group couldn't enter the police departments and isolation cells for temporary detention in Georgia, to observe the method of interviewing the police officers used, therefore it was possible to fill in some questionnaires, and based on this, the overall picture of the current situation in isolation cells for temporary detention, was established.
- Selection of respondents, police departments and judicial sessions was made based on casual selection.
- During the research, we tried to consider regional variety to have a clearer picture of the real situation, not only in the capital city, but also in the country as a whole.
- During the monitoring analysis, we also used the reports of various organizations and bodies (for example, reports from the National Defender of Georgia).
- We did not have the goal to carry out sociological research with full representativeness and minimum sociological error. The presented percentage ratio can differ from the indicators received as a result of sociological research. However, we are sure that even the single cases of human rights violations are quite strong signals for taking measures for their elimination.

Composition of Monitoring Groups

Monitoring was conducted by participants from Georgia and Armenia who participated in the development of the concept of research and have been trained. We thank the monitoring group for the contribution made in the preparation and conduction of monitoring and the writing of this report.

[7] Detained persons are all those persons, whose freedom has been in one way or another limited by police officers and who have been brought to the police department.

[8] Relatives of detained persons are the relatives of those persons, whose freedom has been in one way or another limited by police officers.

Peculiarities of carrying out monitoring

• Former detainees:

It was difficult to persuade the former detainees to give interviews. Mistrust and doubt in relation to the monitoring was felt. According to one of the monitors, the respondent agreed to meet him with great difficulty. "He avoided or was afraid of something. I think he was not sincere to me and either he did not tell me some things or did not tell everything till the end."

● Non-governmental organizations:

It turned out that, despite the urgency of the issue, there exist, few organizations working on the protection of human rights related to the relationship of citizens and police. In Georgia regional and central offices of three human rights organizations have been interviewed: Association of Young Lawyers, Center for Human Rights Protection and Article 42 of the Constitution. We would like to note that, despite our efforts, it was not possible to communicate with the office of the National Defender of Georgia. In Armenia, we held interviews with various non-governmental organizations, both specializing on protection of various rights, groups, and engaged in human rights activity as a whole. Unfortunately, all the NGOs with the representatives of which interviews have been held, were in Yerevan.

- Employees of police departments and observation in police departments
  In the strategy of the reform of the Criminal Law System adopted and based on the decree №591 of the Presidents of Georgia in 2009, it is stated: the Ministry of Internal Affairs supports interested non-governmental, international and official bodies in carrying out scientific (sociological) research on the theme of revealing the crime rate and social problems.

Cooperation with the Police of Georgia

Throughout the monitoring, the interviewers in Georgia twice tried to enter the police departments and observe them (Vake-Saburtlinski department in Tbilisi and a police department in Mtkheta). In both cases the monitors have been accepted favorably, but at the same time the departments explained that the permission of the Minister of Internal Affairs was necessary for access to the police department, the isolation cell for temporary detention, as well as for interviews with the police officers.

The participants from Georgia have been advised to address the Ministry of Internal Affairs with a request for corresponding permission. The monitors sent a letter to the ministry, in which they had described the purpose of the project and requested permission to monitor buildings, however no answer was provided. At the same time, a letter about the project was addressed to the Minister of Internal Affairs by HCA Vanadzor, but no answer was provided.

The participants from Georgia asked permission from the Center for Human Rights Protection for assistance in gaining access to police departments and they have shared, with us, their experience. The answer was as follows: "The minister is likely not to answer your letter. No statutory act obliges him to consider your request. It depends exclusively on his will." In article 60 of the law of Georgia "On Detention" it is said that "the minister has the right to give the right to access to detention establishments to an organization or an individual, and he personally defines the rules for access."

Cooperation with the Police of Armenia

HCA-Vandzor has addressed the head of the police, A. Sarkisyan, with a request to assist and carry out observations in a number of police departments in the Republic of Armenia as well as interview police

officers. At the initiative of the RA Police, a meeting was held with the project staff and monitors and with the head of the police staff, General-Major, Edward Ghazaran, aiming to discuss the monitoring goals and forthcoming actions. At the same time, the RA Police suggested appointing an individual responsible for unobstructed conduction of monitoring in the police departments. The RA Police had one condition: the monitor conducting monitoring or interviewing should inform the appointed responsible police officer, in advance, about the time and place, and who had the right to accompany the monitor in the Police department. Mr. Ghazaryan was also presented with the monitoring tool, in particular, the observation cards for monitoring the police stations and the questionnaires for interviews with the police officers.

- **Judicial Education**

The questions included in the questionnaire, in many cases, demanded additional specification. Some of the members of the monitoring group couldn't execute this requirement because they did not have a judicial education.

- **The Toolkit**

The tool was very extensive; it included a set of open questions. The same questions, repeated in different kinds of toolkit, were required for receiving the most trustworthy information. Some monitors had difficulties in carrying out interviews with various groups of respondents.

REVIEW OF THE GEORGIAN LEGISLATION REGULATING RELATIONS BETWEEN POLICE AND CITIZENS

INTRODUCTION

Since 2004, Georgia has instituted radical reforms in its national police, including the mass dismissal of corrupt officers and their replacement by new personnel; improvements in salary and working conditions; new training and recruitment procedures; and the creation of entirely new branches of the police modeled on western law enforcement services. These measures have resulted in dramatic reductions in corruption in the police and improvements in the level of discipline and service to the public. The overhaul of the police was in part a response to genuine popular anger at the extent of corruption and indiscipline in existing police service and demands for improvements in law enforcement service. Government of Georgia viewed reform of the police as

an essential element in its strategy of strengthening the Georgian state.

Despite seven years of largely successful reform, the Georgian police remain a hierarchical and nationally centralized organization subject to civilian control only at the highest level of the Ministry of Interior, whose Minister reports directly to the President of the republic.

The Ministry of Internal Affairs has primary responsibility for law enforcement. During times of internal disorder, the government may call on the ministry or the military. The ministry controls the police, which are divided into functional departments and a separate, independently funded police protection department that provides security and protection to both infrastructure sites and private businesses.

The following legislative acts are mainly regulating activities of police which bellow will be a subject for comparison with international standards:

- The Law of Georgia on Police (27/07/1993)
- Criminal Procedural Code of Georgia (01/10/2010)
- The Law on Assemblage and Manifestations of Georgia (12/06/1997)
- The Law of Georgia on Elimination of Domestic Violence, Protection of and Support to its Victims (25/05/2006)
- The Code of Police Ethics (Order of the Minister of the Interior #119, 26/01/2007)
- Typical Regulation, Routine of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia and additional Instruction regulating the activity of Isolators (Order of the Minister of Interior #108, 01/02/2010)

Accordingly, the comparison of the national legislation is presented in relation to the following international documents:

- ICCPR
- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- ECHR

- European Prison Rules
- Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Code of Police Ethics
- Council of Europe Committee of Ministers Recommendation R(97)20 on Hate Speech
- Council of Europe Committee of Ministers Recommendation R(85)4 on Violence in the Family
- OSCE/ODIHR - Venice Commission Guidelines
- Opinion No 547/2009 of the European Commission for Democracy through Law (Venice Commission)

The Law of Georgia "On Police"

The Law of Georgia on Police identifies core functions and responsibilities of the police in Georgia. It establishes the following tasks of the police: a) to protect the rights of individuals and legal entities from illegal encroachment; b) to exercise of preventive measures in order to prevent and suppress possible risks of crime and other illegal violations, also detection and investigation of such violations, search and arrest of the person suspected of crime, also elaboration of tactics and strategy of the combat of the crime; and c) to maintain public order and security.

Usage of specific tools by the police in accordance with the Georgian Law (Article 12) was examined and discussed by the European Commission for Democracy through Law (Venice Commission). After a careful revision and consideration the Venice Commission has issued an official opinion (No. 547/2009) identifying particular amendments to bring Georgian Law in line with the Council of Europe standards. Based on these recommendations the appropriate amendments have been adopted in the Georgian Law (Article 12). Particularly:

a) Paragraph 1: *While performing official duties, in order to protect public order and security, fight against crime and actions dangerous for public safety, the police shall have a right to use specific tools, such as: handcuffs and other retention tools, non-lethal weapons (including non-lethal shells), rubber batons, tear-gas, pepper gas, acoustical equipment, sound-and-light equipment for psychological impact, equipment for destruction of obstacles and coercive stoppage of transport, water jets, armored cars and other special vehicles, special paints, tasks dogs and horses, electrical equipment.*

b) Subparagraph (c): *"tear-gas, pepper gas, acoustical equipment and non-lethal weapon (including non-lethal shells) – shall be applied in order to repulse an attack against civilians, policemen, protected facilities; also in order to suppress mass and group violations of public order; while arresting a person who has committed a crime or actions dangerous for public safety or in order to force such a person to leave an occupied transport or a building used by the offender as a shelter".*

Article 9^1 has introduced the term stop and frisk. Wording of the addendum is as follows:

1. *A police officer is authorized to stop an individual if there is a reasonable suspicion that he has committed a crime.*
2. *The term of stopping is a reasonable term necessary for corroborating or dispelling a reasonable suspicion.*
3. *The police officer shall identify himself/herself to the person stopped, display his/her badge, explain the legal grounds for the stop and clarify the rights for appealing these grounds.*
4. *A police officer is authorized to perform a frisk of outer clothing of the person stopped based*

on reasonable grounds and for security reasons. If the surface search produced grounds for a search, the authorized individual performs a search in compliance with the regulations of the Criminal Procedural Code of Georgia.

5. *The person stopped is authorized to appeal the grounds and lawfulness of the stop in court once, according to the location of the stop and frisk within the term of five days and claim monetary compensation for illegal or/and unreasonable stop.*

It shall be noted that the institute of stop and frisk is common in a number of foreign countries. The procedure entails the right of a police officer to stop a citizen only if the police officer suspects that the citizen is armed and a threat to the police officer himself and others nearby. It shall also be noted that stop and frisk first of all is aimed at safety of the police officer himself and the purpose of the stop is a superficial search to find a weapon as opposed to corroborating or dispelling suspicions on alleged crime, as foreseen by the draft of law.

Hereby, it would be useful to distinguish "stop and frisk" from "search and seizure". Court order is necessary for detaining a person, except for the cases defined by the Criminal Procedural Code. Grounds for detaining are a reasonable suspicion that a person has committed a crime punishable by law with an arrest if other circumstances foreseen by the applicable law are evident. As for search, this constitutes a rude intrusion of privacy, paragraph 2 of Article 20 of the Constitution of Georgia allows search of a person if there is a "court decision or the urgent necessity provided for by law". The Constitutional Court of Georgia interpreted "*urgent necessity*" In its decision in the case of Georgian Young Lawyers Association and Ekaterine Lomtatidze following way: "*urgency refers to lack of time for obtaining court order and calls for immediate action*". Unlike stop and frisk, search and seizure does not need an automatic control of court and it depends on discretion of a police officer, whether there is enough time for obtaining court order or not. If we take the institute of stop and frisk in other countries into consideration, it significantly differs from search and seizure even with its purpose – protection of the police officer and the others nearby.

The institute of stop and frisk was recognized by the U.S. Supreme Court in 1968 in its prominent decision Terry v. Ohio. In the noted case the Supreme Court stated that it emphatically rejects the notion that terms "stop" and "frisk" are outside the purview of the Fourth Amendment because neither action rises to the level of a "search" or "seizure" within the meaning of the Constitution. "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly". Clearly "search and seizure" as defined by the Law takes place during "stop and frisk" and in such case grounds for such intrusion upon personal freedom should be defined.

When defining grounds for stop the law enforcement officer should be able to make reference to specific and articulable facts. These facts together should be giving the opportunity to justify intrusion upon personal freedom. There should be an immediate interest of the police officer in taking steps to assure himself/herself that the person with whom he/she is dealing is not armed with a weapon that could

unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. The U.S. Supreme Court remarkably distinguished "stop and frisk" from "search and seizure" both with applicable procedures and the main aim for the each. The court emphasized that there are no grounds for search and seizure foreseen by the Criminal Law during stop and frisk. During a criminal detaining the detaining officer should have reasonable grounds that the detained individual has committed a crime. The detaining is inevitably followed with restriction of liberty of movement, court review and possibly a sentence. During "stop and frisk" there is a reasonable suspicion that the individual is endangering the law enforcement officers and others with a weapon, as opposed to a suspicion that the person has committed a crime. In this case a preventive search (frisk) to find a weapon is performed, as opposed to a search associated with detention. The preventive search (frisk) is a slight intrusion upon a personal life and does not constitute an initial stage of criminal persecution.

The frisk is aimed at protection of the police officer who believes that the person is armed and dangerous regardless of whether he has probable cause to arrest that individual for crime or the absolute certainty that the individual is armed. It is important that the reasonableness of any particular search and seizure must be assessed in light of the particular circumstances against the standard of whether a man of reasonable caution is warranted in believing that the action taken was appropriate. Reasonableness should be defined in light of specific findings based on facts as well as experience of the police officer, as opposed to ordinary suspicion or "apprehension".

The court differentiates search from frisk. During stopping a person, frisk is not justified by any need to prevent the disappearance or destruction of evidence of crime. While search is justified by prevention of disappearance or destruction of incriminating evidence, the sole justification of frisk is the protection of the police officer and others nearby. The Law introduced the term of stop and frisk in the legislative space of Georgia, although it significantly differs from the institute of stop and frisk common in Western practice. Namely, paragraph 1 of Article 91 stipulates: "*A police officer is authorized to stop an individual if there is a reasonable suspicion that he has committed a crime.*" According to the international practice, a citizen is stopped only for the purpose of exploring outer surface of the clothing to dispel the reasonable ground that he is a threat to the police officer and others. The wording of the Law fails to mention the exploration of the outer surfaces of the clothing which should be the sole justification for the stop and should immediately follow stopping of the person. "A reasonable suspicion that he has committed a crime" may not serve as the basis for stopping a person in the street. It should be considered that reasonable suspicions that a crime has been committed can serve as the basis for launching an investigation and later for detaining the person, if suspicions are substantiated. Therefore, when a person acquires the status of a detained, a number of guarantees provided by the Criminal Procedural Code will be granted to him, term for his detaining will be limited and he will be brought to the court.

According to the January 29, 2003 decision of the Constitutional Court of Georgia (N2/3/182,185,191), "*a person can be considered as detained immediately after a person authorized for detaining restricts his/her freedom guaranteed by the Constitution of Georgia in cases defined by the law and on the basis of the applicable law*". The Law creates a threat of rude violation of constitutional rights and freedoms as a person's freedom is restricted for an unlimited term – "*The term of stopping is a reasonable term necessary for corroborating or dispelling a reasonable suspicion*", which fully depends

on discretion of the police officer and lacks court control. It produces a high risk of law enforcement bodies acting arbitrarily and abusing their authorities. Furthermore, the person stopped can't utilize rights guaranteed by the Criminal Procedural Code as he has no defined status. To the contrary, any information obtained by the police officer from the person stopped before "the term necessary for corroborating or dispelling a reasonable suspicion" expires and during his unofficial "interrogation" can be used against this person in the future.

2. Criminal Procedure Code

The new Code of Criminal Procedure which was adopted by the Parliament in October 2009 and entered into force in October 2010 significantly contributes to the progressive development of Criminal Justice System of Georgia at the same time bringing interesting novelties to the existing procedure. Main novelties of the Code of Criminal Procedure include but are not limited to:

- Simplicity of language, abolishment of bureaucratic barriers in criminal procedure, reduction of the code volume by half;
- Adversariality of criminal procedure ensured both during the investigation (investigative competence of the defense) and trial.
- Introduction of the uniform concept and a status of a defendant (defense);
- Voluntary questioning of a witness by a prosecutor/investigator instead of his/her interrogation.
- The whole criminal procedure is based on three evidentiary standards.
- Introduction of discretionary prosecution based on the public interest.
- Full disclosure of evidence by the parties.
- Transformation of operative-investigative measures into the covert investigative action and strengthening the judicial control over them.
- First introduction of a defendant to the magistrate court in 24 hours after his/her detention or indictment.
- Introduction of ten different types of non-custodial remand measures.
- Preliminary hearing is conducted within 60 days from initiation of prosecution.
- Jury trial composed of 12 jurors for certain categories of cases.
- Simplification of the process of appeal, cassation and proceedings related to newly discovered evidence.
- The suits related to the rehabilitation and civil suits are wholly transferred to the civil law system and are dealt with within the framework of civil proceeding.

The new CPC encourages accountability and professionalism in the police force by barring the use of illegally seized evidence and legally seized evidence that stemmed from an initial illegal action by police.

The above outlined and other progressive novelties will ensure speedy, effective and most importantly, fair criminal procedure subsequent to the entry into force of a new Code, which generally are in line with the articles 5 and 6 of the ECHR and relevant case-law of the European Court of Human Rights.

3. The Law on Assemblage and Manifestations

The Law on Assemblage and Manifestations is the core legislative document regulating organization of the assemblage and manifestations, as well as public expression of their views by citizens. The Law

governs relations arising from exercise of the Constitutional right to assemble publicly and without arms, both indoors and outdoors, without a prior permission. However, the Law establishes the obligation to notify the authorities in advance if an assemblage or manifestation will be held in public thoroughfare. The following blanket prohibitions regarding assembly and manifestation are currently in force in Georgia:

- There is a prohibition against organizing demonstrations inside and within a radius of 20 meters from the entrance of the Parliament, the presidential administration; the Constitutional Court, the Supreme Court, the ordinary courts, the Prosecutor's Office, the Police, penitentiary and law enforcement bodies; military units and sites; railway stations, airports and ports; hospitals; diplomatic offices; government buildings; local self-government buildings; enterprises, institutions and organizations of special regime or having armed guards;
- There is a prohibition against blocking buildings;
- There is a prohibition against blocking the traffic unless this is inevitable due to the number of demonstrators.

The OSCE/ODIHR - Venice Commission Guidelines state (paragraph 83) that "*blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies. Given the impossibility of having regard to the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be found to be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated*[9] "sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles, however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be" do a disservice to democracy and often even endanger it.

The discretion set out in the Law whereby the authorities may decide to restrict an assembly coming nearer than a certain distance up to a maximum of 20 meters to the entrance of a specific building should also be extended to these buildings, as it would allow the Georgian authorities to ensure a balance between the need for these institutions to function and be safe, which is an important element of public order and safety, and the individual right to freedom of assembly.

The law which is in force provides an absolute prohibition against holding demonstrations in some places (as listed above), however, establishes an obligation to submit a notification for assemblies to be held in public places (other than those in which it is prohibited). There is no possibility for the authorities to modify, for example for reasons of public safety, the modalities, the venue and the duration of the assembly as envisaged by the organizers. The notification is either accepted or refused, and the assembly is terminated if the conditions are violated. This leads us to think that the current system is a very rigid one, which does not sufficiently guarantee the exercise of the right to freedom of assembly.

The presumption in favour of holding assemblies is a very important notion; it is expressed in the First Guiding Principles of the OSCE/ODIHR-Venice Commission Guidelines. A corollary of this principle is that the broad spectrum of possible restrictions that do not interfere with the message communicated are available to the regulatory authority. As a general rule, assemblies should be facilitated within sight and sound of their targeted audiences. This means that the Georgian regulatory authorities

[9] Stankov and the United Macedonian Organisation Ilinden v. Bulgaria judgment (2001), para. 97

should not have only two options, either to accept or to refuse the holding of an assembly: when there are public order problems, they should be able to accommodate them and suggest appropriate alternatives (guided by the principle now stated in subparagraph h of Article 3) which would allow the demonstration to take place.

Article 4 paragraph 2 of the Law provides that "In organizing or holding an assemblage or manifestation, it is prohibited to call for subversion or forced change of the constitutional order of Georgia, infringement of independence or violation of the territorial integrity of the country, also to make appeals which constitute propaganda of war and violence and trigger a national, ethnical, religious or social confrontation".

According to the OSCE/ODIHR - Venice Commission Guidelines (paragraph 135) "calls for the imminent and violent overthrow of the constitutional order might provide a sufficient ground for restricting an event, whereas an assembly where non-violent change of the constitutional order is advocated would be deserving of protection". Consequently, the proportionality condition for stopping such an assembly is met when the "violent overthrow of the constitutional order called by the assembly participants is also "imminent".

It is worth noting that the OSCE/ODIHR - Venice Commission Guidelines (paragraph 135) provide that "Speech and other forms of expression will normally enjoy protection under Article 19 of the ICCPR and Article 10 of the ECHR". This is the case even where such expression is hostile or insulting to other individuals, groups, or particular sections of society. However, as provided by Article 20 of the ICCPR, "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Principle 4 of the Council of Europe Committee of Ministers Recommendation No R(97)20 further provides that specific instances of hate speech "may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the ECHR to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein". Even then, resort to such speech by participants in an assembly does not of itself turn an otherwise peaceful assembly into a non-peaceful or unlawful assembly, and the regulatory authorities should arrest the particular individuals involved rather than dispersing the entire event. They also set forth that "demonstrations supporting a military offensive against another sovereign state ... should not be deemed illegal even if such military action might itself be".

Article 13 of the Law as modified in July 2009 and currently in force reads as follows:

1. In case of a mass violation of Articles 4(2), 10[10]1[11]1 and 11[11]2 of this Law, an assemblage or a manifestation shall be halted immediately at the request of an authorized representative of a local government body.

[10] See above

[11] 1. An assemblage or manifestation must be held at the place and time indicated in the notification, in accordance with route and purposes specified therein; 2. Participants and persons responsible for organizing and holding an assemblage or manifestation shall comply with the requirements under this Law and obligations assumed in the notification; 3. Participants of an assemblage or manifestation shall be prohibited: a) To have arms, explosives, inflammables, tear gas, radioactive, paralyzing and poisonous substances or alcoholic beverages with them;

b) To hinder the work of public transport deliberately. 4. The authorities may halt an assemblage or a manifestation if the latter is being conducted with violations of the law.

[12] In case of full or partial blockage of the thoroughfare, the competent authorities may take the decision to restore transport movement if the assembly can be held otherwise due to the number of people. The obligation is introduced for the law-enforcement agencies to ensure the safety of persons and find an alternative traffic route if the carriageway is blocked due to the number of participants.

2. Where the circumstances referred to in Paragraph 1 of this Article take place, responsible persons shall break up an assemblage or a manifestation and take measures to drive the participants away. Participants of the assemblage or manifestation must leave the assemblage or manifestation immediately at the request of responsible persons or an authorized representative. 3. A decision on halting an assemblage or manifestation can be appealed in the court. The latter shall adjudge on lawfulness of the decision within three working days upon receipt of the appeal.

This provision is inconsistent with the presumption in favour of holding assemblies. As set out in the OSCE/ODIHR - Venice Commission Guidelines, "*the touchstone [for restriction] must be the existence of an imminent threat of violence*". Peaceful assembly should, in principle be permitted and facilitated. Article 13 paragraph 3 of the Law in force provides possibility to appeal against the decision on halting an assemblage or manifestation in the court. It is positive that a reasoned opinion of a court is required. Nevertheless, it is necessary to state in the law what remedy the organisers and participants have where an assembly has been improperly halted. The prompt and thorough investigation of the unlawful use of force by the police during assemblies, including in dispersal of the assemblies, should be ensured, and also the subsequent prosecution, if the situation so requires. It should be expressly provided that the appellant is entitled to call evidence and examine and cross-examine witnesses, including police witnesses.

4. The Law of Georgia on Elimination of Domestic Violence, Protection of and Support to its Victims

Georgian legislation regulating domestic violence issues is fully in compliance with the Recommendation R(85)4 of the Committee of Ministers of the Council of Europe on Violence in the Family.

Review of the current legislation of Georgia shows that it acknowledges the mechanisms for prompt and effective reaction to facts of domestic violence and provides victims with protection mechanisms (both legal and social). The legislation also defines additional mechanisms that should ensure the prevention of domestic violence and envisages their permanent and dynamic renewal.

The main focus of the legislation is protection of victims, introduction of effective and acceptable protection mechanisms (starting with granting of status and finishing with means of social protection). Specifically, in case of domestic violence the victim can address the relevant state bodies (police, court, etc.) and request issuance of protective/restrictive orders and restriction of certain actions on the part of abusers.

According to the law, the most important and specific administrative mechanism for elimination of domestic violence and protection of victims is protective and restrictive (restraining) orders that define temporary protection measures for victims of domestic violence. Protective and restrictive orders are specific legal acts that define protection measures for victims on the one hand and set limitations on certain actions of abusers on the other. According to the legislation, there are two kinds of orders - protective and restrictive - and they differ from each other according to the issuing body, validity period, determining factors, and specificities of issuing and enforcement. In particular, a protective order is issued by a court of the first instance according to administrative law mechanisms while a restrictive order is issued by an authorized employee of the police in order to ensure prompt reaction to the fact of domestic violence and is submitted to the court for approval within 24 hours.

The issuance and appeal of protective and restrictive orders and related issues are regulated by the

Administrative Procedures Code of Georgia, which defines the specifics of legal proceedings related to issuing the protective and restrictive orders, their requisites, and rules of their enforcement and appeal. Moreover, the status of victim of domestic violence can be granted by the Victim Identification Group, which allows the victim to benefit from all existing protections mechanisms, be placed in the crisis centre and/or shelter, obtain psycho-social rehabilitation, legal aid and emergency medical assistance. The National Referral Mechanism determines the entities participating in efforts to combat and prevent domestic violence, and protect and rehabilitate victims, as well define these entities' functions and powers. The entities participating in the National Referral Mechanism are: Patrol Police and District Departments of the Ministry of Internal Affairs, courts, prosecutorial bodies, the State Fund for Protection and Assistance of Victims of Human Trafficking under the Ministry of Labour, Health and Social Protection, Institutions of Health and Social Protection, the Interagency Council for the Prevention of Domestic Violence, international/local non-governmental organizations.

According to the National Referral Mechanism, the prevention of domestic violence and the protection and rehabilitation of victims are implemented in three main stages: identification of domestic violence; identification of victim and abuser; and protection and rehabilitation of victim.

Identification of domestic violence implies a set of legal and organizational actions that aim at revealing, identifying and evaluating the fact of domestic violence and implementing primary and emergency activities for its elimination. Law enforcement bodies (patrol/district police), within their mandate, identify cases of domestic violence.

According to the National Referral Mechanism, patrol/district police make determinations on victim identification and granting the status of victim. If these bodies are not addressed, the identification of potential victims of domestic violence is done by the Group Granting the Status of Victim of Domestic Violence under the Interagency Council for Prevention of Domestic Violence - Victim Identification Group.

Legal acts determining rules and conditions for the implementation of specific actions play an important role in the elaboration of measures against domestic violence. As mentioned above, the Presidential Decree #665 of October 5, 2009 approved the Identification Rule of Victims of Domestic Violence and determined the entities responsible for identification of victims of domestic violence.

According to the above rule, the patrol police department of the Ministry of Internal Affairs, territorial units of the Ministry of Internal Affairs and the court perform identification of victims of domestic violence. If these entities are not addressed, the identification of potential victims of domestic violence is done by the Group Granting the Status of Victim of Domestic Violence under the Interagency Council for Prevention of Domestic Violence - Victim Identification Group.

With the aim of improving the implementation mechanisms for protective and restrictive orders and enhancing their efficiency, relevant amendments were made to the Criminal Code of Georgia and Administrative Offence Code of Georgia, which spelled out administrative and criminal responsibilities in case of non-compliance and violation of protective and restrictive orders. In particular, a new norm (Article 1752) was added to the Administrative Offence Code of Georgia, which defines administrative responsibilities in case of non-compliance with requirements and obligations prescribed by protective and restrictive orders.

Administrative responsibility in case of non-compliance with requirements and obligations prescribed by the restrictive order is administrative detention for up to 7 days, or corrective labour for up to one

month and non-compliance with requirements and obligations prescribed by the protective order leads to administrative detention for up to 30 days, or corrective labour for up to three months.
According to the law, protocols on the above administrative offence are prepared by the bodies of the Ministry of Internal Affairs and the cases are considered by district (city) courts. In addition, the relevant bodies of the Ministry of Internal Affairs are authorized to ensure administrative detention of persons convicted of violating administrative law. According to the amendments, cases of administrative offence related to non-compliance with requirements and obligations prescribed by protective and restrictive orders should be considered within 24 hours.
In accordance with the amendments adopted, a new norm (Article 3811) was added to the Criminal Code of Georgia, which defines criminal responsibilities in case of non-compliance with requirements and obligations prescribed by protective and restrictive orders. In particular, non-compliance with requirements and obligations prescribed by protective and restrictive orders by the person accused of an administrative offense according to Article1752 of the Code of Georgia on Administrative Offences entails criminal responsibility. The offender is then punished with corrective labour or detention for up to one year.
The adopted law spelled out the conditions for buying or keeping armaments by the abuser during the validity period of protective and restrictive orders. In particular, the protective and restrictive orders envisage the restriction or prohibition of the alleged abuser's right to bear arms (including for work purposes) during the validity period of protective and restrictive orders, as well as a prohibition on buying or otherwise obtaining a license to buy weapons. It also lays out conditions for confiscating weapons owned by the abuser and restrictions on the storage of the abuser's weapon (including for work purposes).

5. The Code of Police Ethics

Police Code of Ethics of Georgia sets main ethical standards for the policemen and requires respect for human rights and act in conformity with Georgian legislation, based on principles of fairness and impartiality. It is fully in compliance with the UN Code of Conduct for Law Enforcement Officials.
Police Code of Ethics of Georgia contains general principles, regulates the interactive relationship among the police officers and their relations towards citizens, institutions and defines responsibility for the breaches of the Code. It represents the structure of the moral and ethical standards of the police and takes into account provisions set up by major international human rights documents.
In accordance with the Police Code of Ethics of Georgia a police officer uses force only when strictly necessary and to extend required for the performance of his/her duty. This provision, which directly repeats the text of the Article 3 of the UN Code of Conduct for Law Enforcement Officials, emphasizes that the use of force by policemen should be exceptional; while it implies that policemen may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient

to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities. This provision is constituted in more details under the Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Particularly: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Article 13 of the Law on Police of Georgia partially contradicts to above stated provision, as it establishes possibility of usage of the firearm as a matter of the last resort not only to prevent suppressing especially grave crime, but also in suppressing a grave crime. Also, the Law permits to use firearm by policeman in repelling assault on citizens' apartments, guarded facilities, facilities of state agencies, public organizations or private ones, as well as in protecting citizens from assault by dangerous animals. In addition, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 10) identifies that in the circumstances provided for under Principle 9, policemen shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the policemen at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

However, the Law on Police of Georgia (Article 13, paragraph 5) identifies that using firearm shall be preceded by a verbal warning thereon. Preliminary warning shoot is not obligatory as the Law constitutes that a policeman can make such shot in case of necessity.

The Law consists of a provision (Article 13, paragraph 6) which provides policeman with the right in concrete cases identified by the Law, to use firearm without preliminary warning. Particularly: (a) upon an unexpected armed attack by means of combat equipment, any kind of transport or machinery; (b) upon escape of a detainee or arrestee by a vehicle or out of a vehicle; (c) upon armed resistance of a criminal during his/her detention or arrest; (d) upon armed escape of detainee or arrestee; (e) upon escape of detainee or arrestee out of a vehicle, or to places of limited visibility and with forests; (f) upon giving the signal of distress or calling for additional support.

It should be mentioned that the Law (Article 13, paragraph 7) provides concrete restrictions on usage of firearms in the places, where there is a risk of injuring other persons, as well as in the inflammable and explosive places; also against the persons with clear signs of pregnancy, minority, disability, old age, save in the cases when they are armed or engage in a group assault endangering the life of a citizen or a police officer.

The Law identifies liability of the policeman to report immediately to his/her personal superior and the prosecutor about usage of firearm, which is in line with the provision established by the Principle 6 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Police Code of Ethics of Georgia establishes similar provision to the Article 5 of the UN Code for Law Enforcement Officials constituting that inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.

One of key aspects of the Police Ethics Code of Georgia, which is in full compliance with the UN Code

for Law Enforcement Officials, is related not only to the prohibition to commit any act of corruption, but also, to the rigorously opposing and combating all such acts.

Police Code of Ethics of Georgia identifies the General Inspection's Office of the Ministry of Internal Affairs as a responsible body for the day to day supervision on the execution of the requirements of the Police Code of Ethics and on the proceedings on violations. Based on the Order of the Minister the Permanent Commission is established reviewing the reports of the General Inspection's Office, developing recommendations for the Minister and reviewing specific cases of violation of the Police Code of Ethics of Georgia upon the request of the Minister. However, neither General Inspection's Office, nor the Permanent Commission are the independent bodies from the Ministry. On the other hand, the decision of the General Inspection's Office can be appealed towards the court.

In accordance with the European Code of Police Ethics disciplinary measures brought against police staff shall be subject to review by an independent body or a court. Disciplinary sanctions against police personnel are normally an internal police matter and are often of a minor nature. However, disciplinary measures may also be severe and sometimes it is difficult to draw the line between the criminal and the disciplinary aspects of a case. Furthermore, criminal proceedings and sanctions may be followed by disciplinary measures. The possibility of having disciplinary decisions challenged by an independent body, preferably a court of law has two main advantages. First, it would provide police personnel with a safeguard against arbitrary decisions. Second, it opens up the police to society (transparency), in particular, given that court hearings and judgments/decisions of courts are normally made public. Another, more legalistic aspect is that if disciplinary measures were subject to review by a court of law, the right to a fair trial, according to Article 6 of the European Convention on Human Rights, which in certain situations applies also to disciplinary matters, would always be safeguarded.

Typical Regulation, Routine of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia and additional Instructions regulating the activity of Isolators

In accordance with the Order of the Minister of Internal Affairs of Georgia (#108, 01.02.2010) temporary detention isolator of Human Rights Protection and Monitoring Main Division of Administration of the Ministry of Internal Affairs of Georgia is the structural subdivision of the Human Rights Protection and Monitoring Main Division, whose function is the temporary detention of those persons who have committed crime falling within the competence of Ministry of Internal Affairs or other crime or have been arrested under the administrative law. The Order establishes detailed aspects regarding scope of activities and functions of temporary detention isolators, its status, leadership and personnel, rights and obligations of the persons placed in the temporary detention isolators, and instructions regulating activities of the temporary detention isolators.

The Order consists of number of norms, which are not in line with European standards, particularly with the European Prison Rules and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Pursuant to the Additional Instruction Regulating the Activity of Temporary Detention Isolators (Article 9, paragraph 1), outdoor exercises are provided only to those persons with administrative charges, who are imposed for administrative punishment for the term of at least 15 days. It is recommendable that the Georgian authorities amend the document with a view to ensuring that anyone obliged to stay in a temporary detention isolator for over 24 hours is granted access to outdoor exercise. Otherwise, it

directly contradicts to the European Prison Rules (rule 27.1) and the CPT standards.
Additional Instruction Regulating the Activity of Temporary Detention Isolators does not contain any provisions regarding the family visits, which does not correspond to the European Prison Rules (rules 24.1 and 24.4), as well as to the CPT standards.

Conclusion

Review of the acting legislation of Georgia regulating activities of the police towards citizens, identifies, that although, due to number of amendments adopted in the core legal acts and accepting number of recommendations developed by the respective international organizations and their incorporation in the acting legislation, in majority cases these provided legal bases which is in line with European and UN standards, however, there are still some issues of concern, which need further consideration and bringing them in compliance with international standards.

Materials Used

1. Opinion No 547/2009 of the European Commission for Democracy through Law (Venice Commission)
2. Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding the visit to Georgia in 2010
3. Georgian Young Lawyers Association's findings on the Law on Police of Georgia
4. The Collection of Normative Acts on Prevention of Domestic Violence, Protection and Assistance of Victims of Domestic Violence in Georgia (UNFPA).

REVIEW OF THE LEGISLATION OF THE REPUBLIC OF ARMENIA REGULATING THE RELATIONS BETWEEN POLICE AND CITIZENS

Araik Ghazaryan
Artak Zeynalyan

I. Legislative Regulation of the Powers of Law Enforcement Bodies

General Definitions

The Police of Armenia is operating within the system of authorized bodies of state management of internal affairs, has the right to apply compulsion in cases, order and the limits provided by Article 1 of the RA Law "On Police."
According to the law, the objectives of the Police are to ensure:
1. security of a person in cases foreseen by this law;
2. restraint, prevention and precaution on of crimes and administrative offences;
3. discovery and disclosure of crimes; preliminary investigation on criminal cases;
4. ensuring of the public order and public safety;
5. protection of all types of ownership.
6. Rendering assistance to physical and legal bodies in protection of their rights and interests in the limits provided by the present Law.

Investigation agencies in the Republic of Armenia are:
- The Police,
- Commanders of military units, military associations and chiefs of military establishments on crimes committed by the military, and also on offenses taking place in the territory of the military unit or concerning the military of involuntary term service.
- Military police within its lawful powers,
- Bodies of life-saving services of Armenia,
- Tax services on affairs of tax offenses,
- Customs services on affairs of contraband and, in the cases provided by the law, violation of the right to intellectual property,
- Bodies of national security within their lawful powers,
- Criminally-executive establishments on crimes committed in the territory of the given establishments,
- The commander of the aircraft on the crimes committed during the flight.

Powers of the Body of Inquiry (Criminal Procedure Code, article 57)
- The head of the body of inquiry personally, and with the assistance of the officer of the body of inquiry ensures the exercise of the powers of the body of inquiry. The body of inquiry executes the following:
    - undertakes the necessary operative-investigatory and criminal procedure measures for detection of the crime and the persons, who conducted it, for prevention and the suppression of the

crime;

- prior to institution of the criminal case, implements examination of the crime site based on prepared materials, and appoints expert inquiry.
- institutes a criminal case, undertakes the proceeding of the case or sends it by subordination, or rejects the institution of the criminal case, as envisaged in this Code, the copy of the decision to institute or reject the case is forwarded to the prosecutor within 24 hours with the purpose of checking the lawfulness of the decision. Immediately informs the prosecutor or the investigator about the revealed crime and the initiated inquest;
- after having instituted the criminal case, to discover the criminal, the traces of the crime, implements urgent actions, examination, searches, monitoring of correspondence, mail, telegrams, etc., wire-tapping, seizures, investigation, arrest of the suspect and interrogation, and questioning of the injured and the witness, cross-examination, appoints expert inuiry
- within 10 days after the institution of the criminal case, and in the case of the discovery of the criminal and involvement, the case is forwarded to the investigator;
- carries out the assignments and instructions of the investigator, prosecutor on crimes under consideration of the investigator;
- registers statements made about committed crimes;
- brings to the investigation the persons suspected in the crime, examines and searches them, and sets free the persons detained without sufficient grounds;
- allows the prosecutor to inspect the activities of inquest body;
- provides the prosecutor and the investigator within their authority, necessary information demanded by them;
- takes measures to compensate the damages inflicted by the crime;
- interviews the witnesses of the case, familiarizes himself with the circumstances of the case, and the documents and cases which can contain information on the incident and persons related to it;
- demands contain information on the incident and persons related to it.
- demands to conduct checks, inventarizations, etc.
- organizes the implementation of the legitimate instructions of the court.

The head of the body of inquest is entitled to approve of the decisions made by the person conducting the investigation on the following: to institute the criminal case, reject institution of criminal case, arrest the suspect, or apply means of securing the presence of the suspect, to eliminate or change these means, to apply to the court with a motion to implement operative-investigatory measures.
The instructions of the prosecutor on the criminal cases, given pursuant to the rules, established by this Code are obligatory for the head of the body of inquiry.

The Police Activity and the Guarantees for Human Immunity *(Article 5, the RA law "On Police")*

The Police shall protect the life and health, as well as other rights and freedoms, property, legal interests of any person, regardless of citizenship, race, sex, language, nationality, religion, political or other views, social origin, property or other status.
The Police staff is prohibited to put to the torture, to do violence, exercise other cruel means humiliating

the human honour and dignity.
Restrictions of rights and freedoms by the Police are possible only in cases and order as specified in the law.
In each case of restriction of the rights and freedoms of a citizen, the Police employees shall be obliged to present immediately the grounds for restriction to him/her and explain to him/her his/her rights and duties in a simple and understandable manner in an understandable language, to familiarize and explain the rights and obligations, as well as to support in exercising the rights.
By a person's request he/she is familiarized with his/her rights and obligations in written. The list of rights and the order of informing about them are proved by RA Government.
The Police shall be obliged to enable the detained persons to exercise their rights to receive legal assistance, inform their close relatives and the administration of their working place or educational institution about their whereabouts from the moment of bringing in to the police station within three hours. If necessary, the Police shall take measures to render medical or other assistance to them as well as to eliminate any danger threatening the life, health, property of a person or the members of his/her family associated with the detention or arrest.
The Police shall be obliged to enable a person to get familiarized with the documents and materials directly connected with his/her rights and freedoms, if not otherwise foreseen by the law.
The Police shall not be authorized to collect, maintain, use and disseminate information concerning the personal and family life of a person except the cases defined by the law.

Funding and Material-Technical Provision of the Police (*Article 40, 41, the law "On Police")*
The Police shall be funded at the expense of the state budget of the Republic of Armenia and at the expense of assets received from other organizations and citizens against rendering services to them on a contractual basis.
The logistics, working, social and subsistence requirements of the Police shall be provided for at the expense of the state budget of the Republic of Armenia and assets received from services provided on a contractual basis.

The Control and Oversight of the Police Activity *(Article 42, 42.1, the law "On Police")*
RA President, the Government within their jurisdiction shall carry out oversight of the Police activity.
The National Assembly shall carry out oversight of the Police activity in the cases prescribed by RA Constitution.
The oversight inside the department in the Police shall be conducted in the order defined by the head of State Government Police Body.
The oversight of operational and investigatory activity of the Police shall be carried out in the order defined by Law.
Other state bodies and organisations shall not be entitled to intervene in operational and investigatory and criminal procedural activity of the policy, as well as in the investigation of cases of administrative offences.
The Prosecutor's Office shall exercise oversight of the lawfulness of pre-trial and trial held by the Police, as defined by Law.

The Responsibility of the Police Officer *(Article 43, the law "On Police")*

The Police officer failing to perform his/her responsibility or performing it in improper manner, abusing his/her position, as well as exceeding his/her powers, violating the Police officers code of ethics shall be subject to liability according to the procedures defined by the legislation of the Republic of Armenia. The damages of organizations and individual citizens caused by the illegal action or inaction of policy officers shall be subject to compensation according to the procedure provided by the civil legislation and the law "On Fundamentals of Administration and Administrative Proceedings" of the Republic of Armenia.

The illegal actions of the Police officers may be appealed to the superiors thereof or under court order.

The Grounds for Appointing Official Investigation *("RA Police Disciplinary Statute" 11.05.2005, N 85, article 18)*

The grounds for appointing official investigation are as follows:

1. Written reports, applications submitted by a Member of Parliament, state governmental, local self-governmental bodies, physical and juridical persons on an offence committed by a police officer
2. The prosecutor's report or petition about the conditions promoting to perform a disciplinary offence by a police officer or the reasons for it
3. Mass media report about the offence performed by a police officer
4. The protocols, made in accordance with RA Code on Administrative Offences, on facts of administrative offence performed by a police officer
5. Immediate revealing of an offence by the heads of police departments or their authorized representatives
6. The report of a police officer, the head of police department about an offence revealed in the Police which is addressed to an official authorized to appoint official investigation
7. The report of a police officer in the cases prescribed by point 5 of part 1 of article 19 of RA law "On Service in Police"

I. ENSURING HUMAN RIGHTS OBSERVANCE IN THE RELATIONS OF CITIZENS AND LAW ENFORCEMENT BODIES IN THE LEGISLATION OF THE REPUBLIC OF ARMENIA.

Immunity of the Person (Criminal Procedure Code, article 11)

- Everyone has the right to liberty and immunity
- No one may be taken into custody and deprived of his liberty except on the grounds and by procedure stipulated in this Code
- Arrest, keeping in custody, or forcible placement of a person with a medical or correction institution shall be allowed only by warrant of the court. A person may not be subjected to detention for more than 72 hours unless a relevant warrant is issued by the court
- Everyone who is detained or arrested shall be informed promptly of the reasons for his detention or arrest, as well as the factual circumstances and legal description of the offense, the commission of which is incriminated to him, or suspected in
- The court, as well as the agency for inquest, the investigator, and the prosecutor shall be obligated to promptly order the release of any detained person, if the detention is not lawful. The head of administration of a detention facility shall have no right to place, without a warrant of the court or any other grounds prescribed by this Code, any person into custody, and shall be obligated to release any person, whose detention period has expired
- Search or physical examination of a person, as well as other procedural actions interfering with the immunity of a person, can be conducted in cases and by procedure prescribed by this Code
- In the course of criminal proceedings, no one shall be subjected to torture, unlawful physical or mental violence, including the use of drugs, hunger, exhaustion, hypnosis, deprivation of medical aid, and any other cruel treatment. It shall be prohibited to use force, threats, fraud, violation of rights, and other unlawful methods while trying to obtain testimony from the suspect, the accused, the defendant, the injured party, the witness, and other persons participating in criminal proceedings
- It shall be prohibited to get a person involved in long investigative experiments or other procedural actions or the same causing physical sufferings or endangering his life or the life of other persons around, as well as to subject a person to any other tests of similar character
- In the course of criminal proceedings, it shall be prohibited to use methods that may endanger the life and health of people or the environment.

The Right to Defense of the Suspect and the Accused bodies of criminal prosecution, or provide any assistance to them (Criminal Procedure Code, article 19)

- Every suspect and the accused has the right to defense
- The body conducting the criminal proceedings, is obligated to explain to the suspect and the accused their rights and provide them with actual possibility to defend themselves against the charges by all means not prohibited by law
- The body conducting the criminal proceedings, is obligated to ensure that the legal representative of the suspect or the accused takes part in the case

- The suspect and the accused are entitled to defend themselves against the charges either in person or through the legal assistance of a defense attorney and legal representative. Participation of the defense attorney and the legal representative in the criminal proceedings shall not restrict the rights of the suspect and the accused
- The suspect and the accused cannot be forced to testify, submit any materials to the **Defense Attorney** (Criminal Procedure Code, article 68)

- Defense attorney is the attorney, representing the legitimate interests of the suspect or the accused at the proceedings of the criminal case, and offering him/her legal assistance by all means and manners, not prohibited by law.
- A person obtains the status of the defense attorney from the moment he undertakes the functions of representing the accused or the suspected with their consent. After undertaking the defense, the defense attorney must immediately inform the body in charge of criminal proceedings.
- The defense attorney ceases to participate in the proceedings of the criminal case in that capacity, in the following cases:
  - the suspect or the accused canceled the agreement with the latter;
  - he/she is not authorized to participate in the proceedings of the respective case;
  - the body, conducting the criminal trial, dismissed the defense attorney from the participation in the criminal proceedings, in the view of revealed circumstances, excluding his/her participation in the criminal proceedings;
  - the body conducting the criminal trial, accepts the suspect's or the accused person's refusal from the defense attorney.

Obligatory Participation of Defense Attorney (Criminal Procedure Code, article 69)

The participation of the defense attorney in the proceedings of the criminal case is obligatory in the following cases:

- the suspect or the accused expressed such a wish;
- it is difficult for suspect or accused to exercise the right to defense, belonging to them themselves because of being deaf-mute, blind, deaf, other essential violations of the functions of speech, hearing, sight, because of lengthy severe illness, and also idiocy,
- the suspect or the accused has mental illness or temporary mental disorder
- the suspect and the accused have no command or sufficient knowledge of the language of the criminal proceedings;
- the suspect or accused had been under age at the moment of the incident, the involvement in which is incriminated to them;
- the accused is a person drafted for military service;
- there are discrepancies in the interests of the suspects or the accused, meanwhile one of them has a defense attorney;
- the criminal prosecution is conducted with respect to a person, to whom is incriminated the commitment of a deed, forbidden by criminal laws, in the state of insanity;
- the suspect or the accused are incapacitated

- summary trial has been conducted
- the court applies the sanction foreseen by point 2 of the first part of article 314.1 of this Code

The participation of the defense attorney in the **proceedings of the criminal case** is obligatory when:

- From the moment of expression of the will by the suspect or the accused to have a defense attorney: in cases prescribed by Point 1, Part 1 of this Article;
- from the moment of the announcement to the suspect on the resolution of the body of criminal prosecution on the detention, the presentation of the protocol of detention or the decision on the selection of the precautionary measure, or upon indictment: in cases, prescribed by Law;
- from the moment the disease was revealed : in cases, prescribed by Law;
- from the moment of the indictment: in cases, prescribed by Law;
- from the moment of such circumstances were revealed: in cases, prescribed by Law
- from the moment of applying the sanction: in cases, prescribed by Law

The expression of the wish by the suspect or the accused to have a defense attorney is not a circumstance, pre-determining the obligatory manner of the participation of the defense attorney in the criminal case proceedings, if they had had a defense attorney, appointed for them, but had declared a rejection from defense attorney, accepted by the body conducting the criminal trial

The obligatory participation of defense attorney in the proceedings of the criminal case is ensured by the body, conducting the criminal trial

In case prescribed by point 11 of the first part of this Article the court does not accept from the defendant the refusal from the attorney and appoints an attorney or keeps the powers of the appointed attorney a prescribed by Law.

Invitation, Appointment, Substitution of Defense Attorney and Other Grounds of his/her Participation in the Criminal Trial (Criminal Procedure Code, article 70)

The participation in the proceedings of the criminal case in the capacity of defense attorneys is implemented in the following manner:

- upon the invitation by the suspect, the accused, the legitimate representative thereof, the relative, and also upon the invitation of other persons upon request or consent of the suspect or accused;
- by appointment of the Union of Lawyers of the Republic of Armenia at the request of the body, conducting the criminal trial.

The body, conducting the criminal trial, is not entitled to recommend whoever for the invitation of specific defense attorney.

The body, conducting the criminal trial, demands from the Union of Lawyers of the Republic of Armenia to appoint a lawyer as a defense attorney in the following cases:

- upon the motion of the suspect or the accused;
- in the case, when the participation of the defense attorney in the criminal case proceedings is obligatory, but the suspect or the accused have no defense attorney.

The body, conducting this criminal trial, **is entitled to offer** the suspect or the accused **to invite another defense attorney themselves.**

The body of inquiry, the investigator, the prosecutor, the court have the right to offer the suspect and the accused to invite another defense attorney themselves, or to appoint the defense attorney through the Union of Lawyers of the Republic of Armenia in the following cases:

- upon impossibility of the defense attorney to arrive for the participation in the first interrogation of the suspect or the accused, taken to imprisonment, within 24 hours from the moment of acquiring the status of the defense attorney or in the case of not arrival within the same time frame; (not official copy)
- upon impossibility of the participation of the defense attorney in the criminal case proceeding for more than 3 days.

The suspect and the defendant may have several defense attorneys. The court proceeding, where the participation of the defense attorney is necessary, cannot be recognized as illegitimate, because of the participation not all of defense attorneys of the suspect or the accused.

More than one suspects and defendants of the same criminal case may have one defense attorney, with the exception if there is contradiction between the interests of the defendants, as well as in cases when there is a risk that the contacts with the defense attorney can create obstacles for realizing justice.

Refusal from Defense Attorney (Criminal Procedure Code, article 72)

The refusal from defense attorney means, that the suspect or accused have an intention to conduct their defense, without any legal assistance from the defense attorney. The declaration of the suspect or accused from the defense attorney is reflected in the protocol.

The refusal from defense attorney is accepted by the body, conducting the criminal trial, only, if the the suspect or the accused declared that of their own accord, voluntarily or in the presence of a defense attorney, who might be appointed as a defense attorney has already been appointed. The refusal from defense attorney is not accepted, caused by the absence of the means for the payment for legal assistance. The body, conducting the criminal trial, is entitled not to accept the refusal from the defense attorney, and to appoint a defense attorney or to keep the appointed one, in the cases, when the attorney's participation is obligatory prescribed by Law.

The suspect and the accused are considered as representing themselves, from the moment of the refusal from defense attorney, which does to deprive from his/her rights the defense attorney, appointed later or not dismissed from the participation in the proceedings of the criminal case by the body, conducting the criminal trial.

The suspect and the accused, refusing from the defense attorney, are entitled to change their position on this issue after the acceptance of such refusal at any moment of the proceedings of the criminal case. In this case the participation of a new defense attorney is not a basis for the resumption of the criminal case.

Grounds for the Precedence

"What concerns refusing from legal aid - the cases of having the right to defense attorney or refusing from an attorney, which are permitted by RA Criminal Procedure Code, then the Court of Cassation finds that the body conducting the proceeding shall accept refusal of a person only in the cases when after considering the person's age and the reasons for refusal from defense the body conducting the proceeding will come to the conclusion, that:

a) *He/she expressed such a wish with his/her own will, in his/her own initiative and it is not forced by the case conditions*
b) *He/she is able to fully realize the consequences of his/her behavior*
c) *The person is capable of self-defense*

Whereas, from this case it is obvious that during the trial in the Court of Appeal defendants' refusal from defense was not their subjective willfulness but an action they had to perform due to the fact that the attorneys had not attended the court sessions. The Court of Cassation has already mentioned that the attorneys had not been present because they had not been notified by body conducting the proceeding about the time and place of the court case."

(Court of Cassation, decision 0436/01/08, paragraph 20)

Legal Status of Arrestees and Detainees (Article 12, the Law "On Treatment of Detainees and Arrestees")
Arrestees and detainees shall have the rights, freedoms and responsibilities of citizens of theRepublic of Armenia with restrictions defined by this and other laws of the Republic of Armenia.

Guarantees of protection of the rights and freedoms of arrestees and detainees shall be defined by this law and internal regulations. While exercising their rights and freedoms, arrestees and detainees shall be required to observe the procedures and conditions for keeping arrestees under arrest and detainees under detention, as well as the rights and legal interests of other persons.

Foreign citizens and persons without citizenship arrested or detained on the territory of the Republic of Armenia shall possess the same rights, freedoms and obligations as all citizens of the Republic of Armenia, unless international treaties and laws of the Republic of Armenia have otherprovisions.

Rights of Arrestees and Detainee (Article 13, the Law "On Treatment of Detainees and Arrestees")
Arrestees and detainees shall have the right:

- to receive information in his/her mother tongue or other language he/she is fluent in about his/her rights, freedoms and responsibilities;
- to be treated in a polite manner;
- to complain about violations of his/her rights and freedoms, both personally and through his/her attorney or legal representative to the administration of the places of arrest or detention, to their superiors, to the court, to the prosecutor's office, to central and local government

bodies, public organizations and parties, the media, as well as to international bodies or organizations involved in protection of human rights and freedoms;

- to protect his/her health, including to receive sufficient food and urgent medical aid;
- to social security;
- to receive legal assistance;
- to personal safety;
- to freedom of thought, conscience and religion, political or other opinions;
- to communicate with the outside world;
- to rest, including the right to outdoor walks or physical exercise and to an 8-hour night sleep, during which it shall be forbidden to involve him/her in court or other activities, except incases specified by the Criminal Procedural Code;
- to be called by his/her first or last name;
- to request a personal meeting with the head of the place of arrest or detention, or with bodies monitoring or supervising the activities of these places;
- to possess documents and records concerning the criminal case or the protection of his/her rights and legal interests, excepts documents and records that contain state or professional secrets or other confidential information protected by law;
- to participate in civil law actions.

Arrestees shall also have the right:

- to receive education and to be engaged in creative work;
- to work;
- to purchase food and articles of prime necessity from the shop or kiosk of the place of arrest or to obtain them with the help of the administration;
- to receive and send money transfers.

Arrestees or detainees shall also have other rights defined in the law.
Arrested and detained foreign citizens shall have the right to establish and maintain contacts with diplomatic missions and consular services of their countries in the Republic of Armenia; in the absence of such, they have the right to establish and maintain contacts with diplomatic missions and consular services of those countries, which have undertaken the protection of these persons' interests.

Responsibilities of Arrestees and Detainees (RA Government's Resolution, 05.06.2008, N 574-N, Article 14, the Law "On Treatment of Detainees and Arrestees")

Arrestees or detainees shall be required:

- to behave in a lawful manner, to observe the procedures and conditions of arrest or detention as set out by this law, internal regulations and other legal acts;
- to carry out all lawful demands of the administration of places of arrest or detention;
- to behave in a civilized manner towards employees and other persons in places of arrest or detention;
- not to hinder the performance of professional and public duties by employees of places of

arrest or detention and by other persons ensuring law and order in these places;
- not to take any actions that endanger their own lives and health, as well as those of others.

Arrestees and detainees have other responsibilities defined by Law.

Apart from the rights prescribed by Law detainees have the right to manage the time ensured for him by the daily schedule. While exercising detainees' rights the rights and interests of other persons shall not be violated.
The administration of the detention facility applies the detainees by calling "You" and calls him/her "Detainee" by adding his/her surname. Detainees call the employees Sir or Madam by adding the surname and the title.
The sanitary and personal hygienic conditions in the cell shall be ensured by detainees, who makes his/her bed and shall have neat appearance.
The detainee is prohibited to:

- Possess or hide articles, food prohibited by this Rule and use them
- Throw articles out of the yard or take articles in that area
- Come close to the watch slot of the cell door and close it
- Spoil the articles delivered to him/her for use and the property of the detention place, make notes on the walls
- Make use of self-made electric equipment
- Keep animals, fish and birds
- Use alcoholic drinks and drugs
- Be occupied with gambling
- Keep money and expensive things
- Shout or break silence in some other way
- Make a fire in the cell
- Repair the toilet and lighting of the cell without administration's permission
- Block the sewerage system
- Remove from the walls the extracts from the legal acts, information lists, post pictures or paper
- While moving in the territory of the detention place come out of the line, smoke, speak, stop while passing by the cells, drop or change with articles, look through the watch slots, make notes on the walls of the corridors or the staircase bars
- Throw away articles from the cell window, stand on the window sill

Minimum Standards of Treating Arrestees and Detainees

Meetings with Attorney, Close Relatives and Other Persons (Internal regulations of the "Police Detention Centers of the Republic of Armenia" approved by RA Governments resolution #574-N, 05.06.2008, **VIII Chapter,** (Article 15, the Law "On Treatment of Detainees and Arrestees")
From the moment the criminal prosecution body's decision about arrest, the arrest warrant or a decision on choosing detention as preventive punishment are announced, arrestees and detainees shall receive private and hindrance-free meetings with their attorney; the duration and the number of meetings shall

not be limited; they shall also have meetings with their legal representative upon permission of the body conducting the criminal proceedings. Meetings with a lawyer acting as attorney in the case shall be permitted upon presentation of an ID and document issued by the Bar confirming that the bearer is in fact an attorney at law.

Meetings of arrestees and detainees with their attorneys shall be held in a place where employees of the places of arrest and detention can see, but cannot hear them. Meetings of arrestees and detainees with close relatives, and in case of detainees – also meetings with representatives of the mass media and other persons, shall be permitted by a decision of the head of the place of arrest and detention.

The detainee or the arrestee, and in case of agreement his/her attorney as well, has the right to claim forensic medical examination.

Meetings of detainees and arrestees with their close relatives, and the meetings of arrestees with the representatives of mass media and other persons, are permitted by the decision of the head of detention facility. Detainees are not provided with meetings with the representatives of mass media and other persons, except for the cases prescribed by Law.

In the interests of investigation, meetings of arrestees or detainees with close relatives, representatives of the mass media or other persons may be forbidden by a decision of the body conducting the criminal proceedings; this body must notify in writing the administration of places of arrest or detention of this decision.

Meetings with close relatives, representatives of the mass media or other persons shall be held under the surveillance of employees of places of arrest or detention. Any attempt by these persons to hand over to arrestees or detainees any forbidden articles, any materials hindering the investigation of the criminal case or helping to commit a new crime, imparting or attempting to impart information may lead to premature termination of the meeting.

Arrestees shall receive at least one meeting of up to an hour with close relatives.

Detainees shall receive at least two meetings of up to three hours in a month with close relatives, representatives of the mass media or other persons at least two meetings per month with up to three hours duration.

The detainees are allowed to meetings with their lawyers in private. The duration and number of these meetings are not limited

The visits are allowed by the detention facility governor with an available ID. The meeting with the lawyer is allowed only if he represents the lawyer submits a proper document about his being the detainee's lawyer. The lawyer must also present a document attesting to his being lawyer issued by the association of lawyers

To ensure the safety of the detainee and the lawyer visual surveillance is organized

Meetings are made under the supervision of the detention facility employees. During the visits, it is prohibited to deliver any item. In the event of such an attempt, the visit is terminated prematurely

Not more than three adults people and three minors are allowed to visit the detainee at a time, unless the body conducting the criminal proceedings has prohibited it

The detainee is beforehand informed about the meeting of at least 1 hour with the close relative (parents and children, siblings and siblings with common mother or common father, aunts, uncles and cousins, grandparents and grandchildren, adopters and adopted, as well as parents of spouses

The close relative shall submit an application and ID to the head of Police in order to meet the detainee. The meeting with the close relative can be held with a presence of an interpreter if necessary
The visitors and the detainees are explained the rules of conduct during the meeting. They are also notified that in case of violating the internal rules the meeting will be stopped ahead of time. In case of not following the supervisor's instructions the officer on duty of the regional police department is informed about it (in Yerevan this is the officer on duty in Yerevan Police detention center)
Special visit rooms are furnished at the detention facilities. The visits with detainees kept separate, must be organized to rule out their communication
The administration makes a note about the visit in the register book in accordance with #9 form
It is prohibited to bring a detainee out for meeting:

- during the shift change
- during the meal time
- during the get-up and release time
- while conducting sanitary-epidemic events
- during emergency

In case of refusing from a meeting it one phone talk with a duration of 10 minutes can be arranged based on written application by the detainee, if the body conducting the criminal proceedings did not prohibit it
A phone call, including a long-distance call is available for the detainee according to the schedule defined by the head of Regional Police department (in Yerevan this is the officer on duty in Yerevan Police detention center). The call is made under visual surveillance of the administration representative but is not heard.
The call is made at the expense of the detainee in accordance to the current tariffs. The process of making use of the phone call is recorded in a registry, where details about the detainee and the frequency and duration of the call are mentioned.

Contacts of Arrestees and Detainees with Family Members and the Outside World (Article 17, the Law "On Treatment of Detainees and Arrestees")

The administration of places of arrest and detention shall create appropriate conditions to ensure that arrestees and detainees get contacts with their family members and the outside world. For this purpose, meeting rooms, centers for using possible means of communication, possible conditions for using mass media shall be created.

Arrestees and detainees shall be permitted to conduct correspondence at their own expense without any limitations on the number of letters and telegrams.
In the interests of investigation, phone talks of arrestees or detainees may be forbidden by a decision of the body conducting the criminal proceedings; this body must notify in writing the administration of places of arrest or detention of this decision.
Correspondence shall be conducted through the administration of places of detention; it is subject to external examination without reading the contents to exclude the transfer of forbidden articles and materials.

Correspondence may be censored only upon a court decision. Censorship shall be performed by the body conducting the criminal proceedings.

Letters received for detainees in their absence due to their transfer to another place shall be sent to the new place where the addressees currently are located.

The administration of places of detention shall create appropriate conditions for detainees to use newspapers, magazines and other literature. In places of detention, cells shall have radio receivers installed; TV sets may also be installed.

Detainees, except those who are charged with particularly grave offences, may be granted short term home leaves in cases of death or serious life-threatening illness of a close relative or significant material losses incurred by the detainee or his family because of a natural disaster.

Juvenile detainees shall be granted short-term home leaves only when accompanied by relatives or other persons.

Short-term home leaves shall be of up to seven days in duration, excluding the time required for the journey back and forth.

Short-term home leaves shall be granted by a decision of the body conducting the criminal proceedings.

Applications for short-term home leaves shall be examined within one day. The time of a short term home leave shall be counted as part of the total time under detention.

Expenses incurred during short-term home leaves shall be borne by detainees.

Proposals, Applications, and Complaints from Arrestees and Detainees and Procedure for their Examination (Article 18, the Law "On Treatment of Detainees and Arrestees"; Internal regulations of the "Police Detention Centers of the Republic of Armenia" approved by RA Governments resolution #574-N, 05.06.2008, **VII Chapter)**

Arrestees or Detainees may submit their proposals, applications and complaints every day, both in writing or orally. The bodies and officials examining the proposals, applications and complaints from arrestees and detainees are required to examine them in accordance with the procedures and within timeframes set out by the legislation of the Republic of Armenia and to inform the arrestees and detainees about their decisions.

Proposals, applications and complaints about decisions and actions by the administration of places of arrest and detention shall not suspend the implementation of these decisions and actions.

Proposals, applications and complaints addressed to the prosecutor, the judge, the defense lawyer, and the bodies supervising the places of arrest and detention shall be sent to the addressee in a sealed package within one day.

Persecution of arrestees and detainees in any form for submission of proposals, applications and

complaints about violations of their rights and legal interests shall be forbidden. Persons allowing such persecution shall be punished by law.
The representatives of the detention facility administration visit cells every day and receive written and oral suggestions, applications and complaints from the detainees. Suggestions, applications and complaints addressed to the detention facility administration are registered in a log in accordance with #20 form and reported to the chief of the detention facility (In Yerevan police detention facility to the head of detention facility). The latter takes measures for the resolution of these suggestions, applications and complaints

Suggestions, applications and complaints addressed to state bodies, self-governmental bodies, public associations are sent through the detention facility administration, the lawyer or the legal representative

Complaints against the decisions and actions of the criminal prosecution bodies, as well as the suggestions, applications and complaints addressed to the bodies supervising the detention facilities, are sent to the addressee within 1 day

The suggestions, applications and complaints about the decisions and actions of the detention facility administration do not suspend the execution of these decisions and actions

The responses to the suggestions, applications and complaints, with signatures, are announced to the detainees and attached to their files
The suggestions, applications and complaints are sent at the expense of the sender. In case of absence of money on the account of the detainee, (in accordance with #7 form) the costs can be incurred by the detention facility. Temporary termination or restriction of suggestions, applications and complaints is not allowed.
The persecution of arrestees for submitting suggestions, applications and complaints about the breach of their legitimate interests and rights is prohibited. The persecuting official is subject to liability as prescribed by the law.

Living Conditions for Arrestees and Detainees (Article 20, the Law "On Treatment of Detainees and Arrestees"; Internal regulations of the "Police Detention Centers of the Republic of Armenia" approved by RA Governments resolution #574-N, 05.06.2008, **II, XIV Chapters)**

Appropriate living conditions in compliance with sanitary-hygienic norms and fire safety requirements shall be created for arrestees and detainees.
The living space allocated for arrestees and detainees shall comply with construction and sanitary-hygienic norms set for communal dwelling areas. The size of the living space allocated for arrestees and detainees shall not be less than two-and-a-half square meters per person.

Arrestees and detainees shall get individual sleeping space and bedding.
Arrestees and detainees shall wear their own clothes. If necessary, they shall be provided with uniforms relevant to climatic conditions and their gender.

The following is provided to detainees for personal use

- Sleeping place;
- Bed-clothes;
- Kitchen kit (plate, cup, spoon either plastic or aluminum)
- Soap Toilet paper
- Stationery (paper, pen)
- newspapers
- Items for cleaning the cell under the facility administration supervision

The cells at the detention facility are provided with:

- Table, chair
- Toilet
- Drinking water tap
- Cabinet for everyday items
- Radio
- Trash can

Detainees have the opportunity to take a shower at least once a week; its duration cannot be less than 15 minutes.

In the dormitory facilities the temperature must not be lower than 18oC.

Pregnant women or persons with young children are accommodated in a way to have minimal contacts with others. One-tier beds are installed in such cells for Pregnant women or persons with young children. Each child is provided with bed. The cells are provided with hot water.

The woman detained during the childbirth, must be transferred to a medical institution and be under relevant supervision. In case the detainee is transferred to the maternity ward the administration of the detention facility should inform the body conducting the legal proceedings and her relatives

Pregnant and breastfeeding women, as well as juveniles are provided with food norms defined by RA government

In the event the person with a child is ill, does not perform parental duties, treats the child with cruelty, or regularly breaches the internal regulations, the detention facility administration is entitled to temporarily hand the child over to the relatives or to a children's institution, or to file a motion on the termination of parental rights to the court

The person by his/her initiative can hand over the child to relatives or other persons. In particular, the detention facility administration must assist this person as much as possible.

To hand the child over to the relatives, it is necessary to clarify with the detainee who can undertake the childcare. If the detainee has no relatives, the administration takes measures to place the child in a children's institution.

Juveniles are provided with one-tier beds. The site for rounds must be adapted for physical exercises and sports.

Medical-sanitary Aid, Personal Hygiene (Article 21, the Law "On Treatment of Detainees and Arrestees"; Internal regulations of the "Police Detention Centers of the Republic of Armenia" approved by RA Governments resolution #574-N, 05.06.2008, **IV Chapter, XVII Chapter)**

Medical-sanitary aid to arrestees and detainees shall be provided in accordance with the legislation of the Republic of Armenia and internal regulations. Medical-sanitary and medical-preventive assistance of arrestees and detainees is organized in accordance with the legislation regulating the Healthcare sphere. The order to organize the medical-sanitary and medical-preventive assistance of arrestees and detainees, to make use of medical institutions service and involve the medical staff in it is defined by RA Government.

The administration of places of arrest and detention shall ensure that sanitary-hygienic and anti-epidemic requirements aiming at maintaining the health of arrestees and detainees are met.
Places of detention must have at least one doctor of general specialization.

Arrestees and detainees needing specialized medical aid shall be transferred to a specialized or a civilian medical institution. The procedures for rendering medical, including psychological, aid to arrestees and detainees, their stay in medical institutions, as well as the involvement of employees of such institutions in medical services shall be set by the authorized body.

If any bodily injury is detected on arrestees or detainees, the medical personnel of place of arrestor detention shall examine the arrestee or detainee immediately. The results of this medical examination shall be recorded the personal file in accordance with specific procedures and reported to the patient, as well as to the body conducting the criminal proceedings.

In case of serious illness or death of arrestees or detainees, the medical employee of the places of arrest or detention or an invited medical expert shall immediately carry out medical examination where the doctor selected by the arrestees or detainees can be present. Medical examination is carried out without the hearing surveillance of the administration employee, and if the doctor does not claim, without visual surveillance as well. The results of the medical examination are recorded in the personal file as defined by order and the patient, as well as the body conducting the criminal proceedings are informed about it.

In case of serious illness or death of an arrested or detained citizen, the administration of the appropriate institution shall immediately inform the close relatives, the body conducting the criminal proceedings and the supervising prosecutor.

In case of serious illness or death of an arrested or detained foreign citizen, the administration of the appropriate institution shall immediately inform its superior body, which in its turn shall inform the interested departments, including the appropriate country's diplomatic mission or consulate.

Once all the actions provided for by the law are taken, the body of the deceased shall be handed over to the person who has claimed it, while preference shall be given to close relatives. If the body has not been claimed within three days, the deceased shall be buried at the government's expense.

In case a serious illness is discovered in arrestees or detainees, which may lead to that person's mental

disorder or death, the head of the appropriate institution shall use a doctor's conclusion as a basis to petition the body conducting the criminal proceedings and the prosecutor overseeing the process, about reversing or changing the form of punishment.

Arrestees or detainees shall have the opportunity to satisfy his/her sanitary and hygienic needs in conditions that do not humiliate their human dignity. Conditions and rules for their personal hygiene shall be defined by the internal regulations.

It shall be forbidden to subject arrestees or detainees to any medical or scientific experiments regardless of whether or not they have given their consent.

First medical aid to arrestees shall be provided by a medical worker of the detention place or by an ambulance specialized service.

The anti-epidemic supervision in the detention place on contractual basis is held by the police medical institution adjacent to RA Government or by state anti-epidemic bodies.

Detainees needing specialized medical aid (with mental disorders or serious infectious diseases) are not allowed to be in the detention place. Such persons shall be transferred to a specialized or a civilian medical institution by the written conclusion of the medical worker of the detention place or the ambulance and the decision of the head of police body.

The procedures for rendering medical, including psychological, aid to arrestees and detainees, their stay in medical institutions, as well as the involvement of employees of such institutions in medical services shall be set by the authorized body.

The medicine prescribed for the detainees are kept with the person on duty and is taken only in his/her presence. Each detention facility shall have a medicine box with various medicines. The types of medicine in the box is defined by the police medical institution adjacent to RA Government.
The employees of the detention place provide first aid to injured arrestees or the ones who made a suicide attempt.

Persons brought to the detention place undergo sanitary-hygienic procedures in a special room. In case pediculosis is found out, the administration shall immediately inform the state sanitary-epidemic agency.

The cells are cleaned with disinfection stuff on daily basis and the rooms where food is warmed up are cleaned after the food is delivered each time. All the rooms and cells undergo capital cleaning once a month.

The employees on duty deliver the food. The detainees eat their meal in the cells. The dishes are washed up with disinfection stuff in the room where food is warmed up.

The oversight of the sanitary conditions of the detention place is conducted by the police medical institution adjacent to RA Government and state sanitary-epidemic bodies.
Medical-sanitary aid to detainees or convicts shall be provided in accordance with the legislation of the Republic of Armenia.

The conditions of maintaining the personal hygiene of the arrestees or convicts are ensured by the administration of the detention place or the correction institution in accordance with the criteria set by the legislation of the Republic of Armenia.

An essential condition for ensuring the personal hygiene of the arrestees or convicts is the daily cleaning up of the area, building and constructions of the detention place, as well as the cells, utensils and other articles.

Arrestees and convicts shall obey the rules of maintaining their personal hygiene the oversight of which is conducted by the administration of the detention place.

Each arrestee and convict shall be responsible for the cleanness of his/her cell and dwelling place. He/she shall keep clean the personal belongings, shall take a bath at least once a week, and in case of possibility more often, if it is necessary for the general hygiene; shall look neat and shall have a clean bed. To keep the conditions and rules of the personal hygiene of the arrestees and convicts the administration of the detention place or the correction institution provides necessary means for the arrestees and convicts, including cleaning stuff.

SECTION 1. HUMAN RIGHTS IN CASES OF RESTRICTION OF FREEDOM IN ARMENIA

General Issues of Law

According to Part 2 of Article 7 of the RA Criminal Procedure Code, no person may be detained, arrested, searched, or subjected by any other measure of procedural coercion except on cases as prescribed by law. Only by court decision, may a person be taken into custody, be detained, or be forcefully brought to medical or other institutions. Before receiving the court decision, the citizens cannot be deprived of freedom for more than 72 hours after detention. Cases of freedom of restriction prescribed by law in Armenia are bringing in and detention.

According to Article 153 of the RA Criminal Procedure Code:

1. Bringing in the suspect, the accused, the defendant, the witness and the aggrieved in cases of failure to appear before the investigation - is forcibly bringing in the body performing the criminal procedure and for implementing relevant procedure activities in relation to him/her as prescribed by the present Code which may be accompanied by temporary restrictions of the rights and freedoms of the persons brought in.
2. Bringing in is carried out based on the justified resolution of the body of inquiry, the investigator or the prosecutor who is carrying out the proceedings. In cases of justified reasons for not appearing at the appointed time, the suspect, the accused, the defendant, and also the witness and the aggrieved, are obliged to inform the body which called them.

   Article 128 of the RA Criminal Code defines the concept of detention: it is taking an individual into custody for the purpose of prevention of his/her escape after committing a crime or prevention of committing a crime, bringing to the inquiry body or body of the preliminary investigation for short-term detention in the places and conditions established by law, preparing of a corresponding protocol, and informing an individual about it.

Only the following persons shall be detained:

- a person suspected in a crime for commitment of which he may be arrested, put into a disciplinary battalion, imprisoned for life or for a certain period of time;
- a suspect who violates the terms of the precautionary measures taken against him/her.

Detention is carried out on the basis of:

- 1) suspicions in immediate commitment of crime,
- 2) an order of the body of the criminal persecution.

Based on the logic of the given legal norm, it is possible to detain only the person suspected of performance of a criminal act or in cases where punishment is in the form of arrest or imprisonment, is foreseen for this crime. The detention purpose is prevention of committing a crime and prevention of escape after committing it, taking into custody or being handed over to the body carrying out investigation or prosecution, making up a corresponding protocol, and informing about it.

Detention is carried out based on direct suspicion in committing the crime or based on the decision of

the body, which is carrying out the criminal prosecution.
In the first case, the law establishes the following conditions:

- the person was caught while committing an act forbidden by law, or right after it is committed
- eyewitnesses directly point to this person, as the one committing the punishable act
- obvious signs are found on the person or on his/her clothes, on other subjects used by him/her; or in his/her apartment or car, which testifies to his/her participation in the criminally forbidden act.

There are other bases to suspect a person of committing a crime such as the person, who has made an attempt to disappear from the scene of the crime or from the body which is carrying out criminal prosecution, or who has no permanent residence, or lives in another place, or whose identity isn't established.
There are other bases to suspect the person in committing a crime (for example, an attempt to disappear from a place of the crime or from the body which is carrying out criminal prosecution, absence of a permanent residence, residing a residence that is not permitted, or it is impossible to establish an identity).

The Monitoring Results

As a result of monitoring, various violations of the rights of detainees and persons brought in have been identified: which concern protection of legality during detention and bringing in, and actual absence of the minimum conditions provided by the law in the places of detention for detainees. For the systematized and full representation of the monitoring results, it is necessary to distinguish three considerably independent situations on the legal regulation of detention and bringing in.

1. Observance of rights during detention and bringing in.
2. Observance of the rights of detainees in police stations.
3. Observance of the rights in detention places of detainees.

These three situations have various modes of legal regulation and legal content. In the first two cases, the monitoring content consists of the legality of the bases of detention and bringing in; protection of the rights of persons as established by law; observance of terms; presence of the corresponding form of clothing of the police officers during the course of detention and bringing in; the proportionality of application of force, etc. In the third case, monitoring includes protection of the rights of the persons maintained in places of maintenance of detained persons according to the specifications established by law.

The Procedure of Bringing in a person.
The First Contact

During the monitoring carried out in the Republic of Armenia, 13 arrested persons, (one of them came to police department on his own) have been interrogated; in the other 12 cases the persons have been brought in by the police officers.
To the question **"How were you treated, whether or not you were called by name or by**

something different?": 8 former detained persons responded that they were called by name, 4 said by rude expressions, and one person said that the policemen just asked questions.

Readiness of the person to answer the questions of the police officer depends on whether he understands that it is a police officer in front of him/her. To avoid cases of abusing position, the police officer, coming into contact with any person, **should introduce him/herself and show a certificate.** From the interviews with detainees, it became clear that out of 13 detained persons only in 5 cases the law enforcement officers were in corresponding uniforms, in the other 6 cases the representatives of the law enforcement bodies were in civil clothes, in one case the person came to the police department himself. Only in 8 cases out of 13, the law enforcement officers introduced themselves and showed certificates, in 4 cases they introduced themselves and in 3 cases, 4 they showed their certificates.

According to the Order of the explanation of the rights during restriction of the rights and freedoms of a person confirmed by the Government's order, the police officer, during the restriction of the rights and freedoms of the person, should introduce him/herself, by informing about his position, rank and surname.

The RA Legislation does not define to show a certificate while restricting freedom.

According to the RA law "On Police "during ensuring protection of a public order, police officers are obliged to wear clothes of the established form in which the name tags are attached on a visible place, to identify the police officer."

On June 1, 2011, by order of the Head of Police at RA Government, the order of granting the police officer a uniform, the terms and order of its wearing, is confirmed. According to Part 2 of the conditions and order of wearing a uniform, during service, the police officer wears a uniform confirmed by Governmental Order Number 425 - N "On Definition of the Description of the Uniform of the Police Officer and Terms of Wearing It" which corresponds to the appropriate rank, except for cases, when during service, there is a necessity to wear civilian clothes.

According to Part 2, Article 7 of the Criminal Procedure Code, no person may be detained, arrested, searched, taken into custody, or subjected by any other measure of procedural coercion or conviction or other restriction of his rights and freedoms except on the grounds and by procedure prescribed by law.

That is to say, in cases when the law enforcement officers, who brought people in, were not in their uniforms and did not show relevant documents, the legality of bringing in is under suspicion; if the police officers do not wear their uniforms and do not show their documents, which will prove the fact that they are law enforcement officers, the person may not know for certain, whether or not the employee is a policeman or civilian. We may conclude from this, that the person cannot obey the requirements of someone if he/she is not sure that the requirements were made by a police officer.

Observance of Procedural Norms in Cases of Freedom Restriction
Knowledge and informing

The standards on this question are quite extensively presented in the practice of the European Court of Human Rights. In particular, in one of the decisions of the European Court of Human Right it is specified:

"The court notes that Part 2 of Article 5 prescribes minimal guarantees according to which everyone

who is deprived of freedom, must know the reasons for it. This norm is a component of the defense mechanism provided by Article 5: according to Part 2 any detained person must be informed in a clear and understandable language about the legal and actual bases for detention so that he/she, proceeding from the appropriateness, can apply to court to appeal the legality of detention according to Part 4." This information must be provided immediately, so that it is informed to the police officers who carry out detention (See: Fox, Campbell and Hartley v. the United Kingdom, decision from August 30, 1990, ch. 182, art. 19, Part 40, Murray vs. the United Kingdom), decision from October 28, 1994,ch. 300-A, art. 31, Part 72).

The domestic legislation of the Republic of Armenia also regulates relations in this sphere. According to Article 63 of the RA Criminal Procedure Code, the suspect has the right to know, what he/she is suspected of, to know the content of suspicion, the factual side and legal qualification of the deed attributed to him/her. According to the current legislation, each detainee or arrestee is immediately informed about the grounds for arrest or detention as well as the actual circumstances and legal qualification of a crime of which he/she is suspected of or accused. According to Article 63 of the RA Criminal Procedure Code, the detained person has the right to know, why he/she has been detained and of what he/she is suspected of.

An important element of the issue of being informed is the right to be acquainted with the rights and duties and the right of the detained person to inform the persons he/she specified about his/her location (whereabouts). According to Article 16 of the RA Constitution, anyone who is deprived of his/her freedom shall in a language comprehensible to him/her immediately be informed of the reasons for this and of an indictment brought against him/her. His/her family or any person chosen by him/her shall be immediately notified.

According to Article 13 of the RA law "On the Treatment of Arrestees and Detainees" arrestees and detainees shall have the right to receive information in his/her mother tongue or other language he/she is fluent in about his/her rights, freedoms and responsibilities.

According to Article 63 of the RA Criminal Procedure Code, among the rights of the detainees is the right to make a phone call.

At the same time, the list of the rights which are subject to an explanation at restriction of the rights and duties of the person and the order of explanation of these rights are confirmed by the RA Government's Order Number 818-N from June 17, 2007.

11 out of the 13 interrogated former detained persons, declared that policemen hadn't informed them about their rights, in 2 cases they had been informed; - in one case it was the investigator who informed, and in both cases the detainees received the information in written form.

Another important aspect, is the studying of the question of where and when the detention reasons were explained. Four of the detainees, have informed, that during detention they were not explained the detention grounds. In seven cases they received explanations, in one case it was explained in the police department.

It is important to pay attention to the question on how clearly and easily the reasons for restrictions of freedoms are represented. The results have shown that 10 of the interrogated detainees understood the bases, and for two detainees, the explanation wasn't clear. Only in two cases the detainees were explained the grounds during detention; in other cases it was done by the investigator, in the police department.

According to the above stated Government's order, the law enforcement officers should notify the detainees and persons brought in that they **have the right to demand, that within 3 hours at the moment of being brought to the police station, persons, of their choice**, are informed about their whereabouts. Of the 13 interrogated, persons who were detained or brought in, only in one case the person was verbally informed that he/she had the right to a call. In the other 12 cases, the persons hadn't been explained this right (in two of the specified 12 cases detention was carried out in the presence of a relative or acquaintance).

As a rule, detainees asked to get permission for a call. In three of the specified cases, detainees were not given the possibility to exercise their right to inform someone of their choice about the fact of restriction of freedom; in the other cases, the persons were given the possibility for it. Detainees exercised this right in the police station after having been brought in to the police department. 5 former detained persons noticed that they made a phone from the department, 2 persons said that they called with the phone of the policemen, in one case the police officer called, and the others said that they called on their own phones. In one case, the conversation lasted 20 seconds, and in another case, it lasted 1 or 2 minutes. During this time, they had the possibility only to inform that they were in the police station or on the way to the police station, and they did not mention anything about the reasons.

Four attorneys, whose clients had been brought in from home, informed that after detention the persons were informed about the right to inform persons at their discretion, about the fact of detention.

3 attorneys, whose clients had been detained, not in the presence of their relatives, informed that the police officers didn't inform the detainees and persons brought in, about the right to inform someone about their whereabouts. However, two of the clients of the specified attorneys called their relatives, without being informed about their right by the police officers.

The Position of the RA Police

Fifteen police officers, who were interviewed from various departments, have provided comments relating to the right of a detainee to make a phone call. According to an employee of the Spitak Police Department, detainees have this right and the police allow them to have it.

Employees of Arabkir, Shengavit, Nor Nork, Erebuni, the Kentron police departments of Yerevan and the Vanadzor Police Department of Lori region, stated that they allow a call to be made, if the detainees express such a wish.

The employees of Bazum and Gugark Police Departments Vanadzor Police of Lori region and the Shengavit Police Department of Yerevan stated that during the interview when, the person is first brought into the police station, he/she is informed that he/she has the right to a phone call and inform his/her relatives about their whereabouts.

An employee of the Bazum Police Department stated, that even if the detainee didn't wish to make a call, they were made to do it.

An employee of the Goris Police Department stated that they allowed detainees to call only when it didn't interfere with the process of investigation and there was no threat for an information leak.

An employee of the Kentron, Nor Nork, Arabkir and Zeytun departments of Yerevan Police stated that they informed about the right to a call after the persons were brought into the police station.

The RA Legislation guarantees each detainee and arrested person the right to receive legal aid. The RA Legislation provides the obligation of the law enforcement body to explain the existence of the granted

right to the person whose freedom is limited. 10 of the interrogated 13 detained persons indicated that they had not been informed of their right to legal aid; one of the interrogated persons came to the agency with an attorney, and two persons had been informed of their rights. In one case, police explained the right to the person after detention, and in the second case, they informed the person about his right at the first interrogation.

Six of the eight interviewed attorneys said that their clients had been informed about the right to free legal aid during interrogation. In the other two cases, when brought into the police department, they were not informed about this right. The detainees mainly made use of the services of a private attorney. Only in two cases, they made use of the service of public defenders. All former detainees, who had attorneys, stated that they were satisfied with this service.

Definition of the Procedural Status

As a result of monitoring, various violations of the procedure of detention established by law,have been identified. **In the RA Legal System, it became customary to call a person to the interrogation in the procedural status of a witness whereas, the body carrying out the investigation at first intended to involve the person as an accused.** Very often, there are cases when the person receives a notification for a call to interrogation as a witness and by law he/she is obliged to give evidence (for a suspect and accused giving evidence is a right, and not a duty), and after interrogation his/her status changes from the status of a witness to the status of a suspect or accused. A visible example of this situation is the time of detention mentioned in the decision on detention of Tigran Arakelyan on July 5, 2009. Tigran Arakelyan had been called to interrogation as a witness and the interrogation began at 13:00. After interrogation, there was a decision on his detention, in which detention time was mentioned as 13:00. Therefore this proves that the decision on detention was accepted before T. Arakelyan's interrogation as a witness.

Though Article 22 of the RA Constitution states that no one shall be obliged to testify about himself/herself, his/her spouse or close relatives and everyone has the right to be interrogated in the presence of his/her attorney, such guarantees provided for the witness cannot change his/her right to refuse to give testimonies.

In the RA legal practice, there are also widespread cases when the person interrogated as a witness, subsequently becomes an accused. This testifies that preliminary investigation bodies deliberately interrogate the suspect as witness, since, according to the RA Legislation; giving evidence is a duty for a witness, and it is a right for a suspect and accused.

We therefore consider that legislative changes regarding testimonies, concerning the suspect, and received during interrogation of the same suspect as a witness, should be recognized as inadmissible. We also believe that the testimonies received as a result of interrogation of the person as a witness should not be noted as the basis of the person's detention. The question of admissibility of testimonies during the pre-judicial process is subject to the regulation by the prosecutor, as the prosecutor confirms accusation and protects it in court.

Often there are cases when the citizen (during detention or in another situation) shows resistance to the employee of the law enforcement body, which is additionally qualified as a crime. Practice shows that this resistance often bears lawful character, as it is directed against illegal or disproportionate

actions of the employee of law enforcement body who carries out these actions in civilian clothes. At the same time, it doesn't hinder that the actions of the persons who resist the disproportionate actions of employees of law enforcement body are qualified with the features of a crime prescribed by Article 316 of the RA Criminal Code.

There was an example of such a situation with the case of A. A, which was studied within the framework of the monitoring, during an investigation conducted in Gegharkunik Region. According to the data presented by A, A's relatives, on July 11, 2010, during a holiday of Vardavar, were involved in a small quarrel over haymaking activities between A and one of A's acquaintances. The Policemen became involved in the quarrel and beat A. Both A. and the acquaintance as they were trying to protect themselves. After being in the hospital, A was brought in to the Gavar Police Department where he was accused of a crime with Part 2 of Article 316 of the RA Criminal Code.

Detention Terms

According to Article 128 of the RA Criminal Procedure Code, detention may not last more than 72 hours after the moment of detention. By Article 128 of the RA Criminal Procedure Code it is established that the detention performed on the bases specified, cannot last longer, than 72 hours from the moment of being taken into custody. Accusation within 72 hours from the moment of bring in to custody, should be brought against the person detained on the bases provided by Part 1 of the present Article. No accusation in the specified term may be brought against the suspect if within 72 hours from the moment of being brought in to custody he/she is released from custody, owing to application of preventive punishment, which has not been connected with the maintenance in freedom or not choosing a preventive punishment. In the second case, it is understood that if the testimonies collected on criminal cases provide a chance to assume that the person has performed an action forbidden by the criminal legislation, and, his/her whereabouts is unknown, the body which is carrying out criminal prosecution, has the right to make a decision on detention of this person.

From case law of the European Court of Human Rights and the latest changes in the RA Criminal Procedure Code, it should be noted that it is necessary to consider the actual moment of taking into custody as the moment of the arrest, and that the report should be made within the following 3 hours. Within 72 hours, the body, which is carrying out the investigation, should initiate the necessary procedural actions: reception of testimonies, interrogation, etc. After the specified actions, in the presence of sufficient conditions, the body carrying out inquiry should make a decision on initiating a criminal charge.

Thus, detention can't last more than 72 hours after being taken into custody.

Throughout the monitoring conducted within the framework of the project, and during the interview with the lawyers, monitors asked a question related to the terms within which the person has been set free or involved as a suspect after being brought in. Three of the seven attorneys said persons responded that detainees were released before the expiration of the three hours after they had been brought in. In one case, the person was released in five hours, in another case – in 3 days. In one case, the attorneys noted that in four days, after detention, the suspect was taken into custody. There was also a case when, after the person had been brought in, he was taken to hospital, and then 28 days later he was detained.

We may conclude that not in all cases there were violations of the terms of the person's custody. Basically, the police maintain the 72-hour term of the maintenance of the person in custody (according to the data provided by the attorneys, interviewed during the monitoring). Despite this, there are cases when restriction of a person's freedom by law enforcement bodies lasted more than 72 hours, which was a violation of Article 62, 129 of the RA Criminal Procedure Code.

Documenting of cases of restriction of freedom

As procedural actions on detention, and being brought in are actions to be recorded, performance of these actions, by law enforcement bodies without proper documentation, is a serious violation of the law, and in no way can it be justified. Absence of documents does not give the possibility to challenge the legitimacy of actions, to make appropriate investigation on a case or to call those guilty to responsibility.

Article 131.1 of the RA Criminal Procedure Code defines the order of detention, in accordance with which it is mentioned in the protocol, the time when it occurred (day, month, year, hour, minutes), the detention time, place, intent and purpose, the Article of the RA Criminal Code by which the crime is defined, what actions or activities the person is suspected of, the results of his/her personal search, as well as the statements of the detained person and the petition of the suspect.

Within 12 hours after preparation of the report of detention, the body of inquiry or the investigator notifies the prosecutor in . Based on the logic of the given Article, after bringing the person suspected of the crime to the body of inquiry, to the investigator or the prosecutor, a report on detention of the suspect should be made within 3 hours, a copy of which is given to the detained person. This procedural action is an indispensable condition and the law does not foresee any exceptions.

According to Article 131 of the RA Criminal Procedure Code, after bringing in the person suspected of committing a crime to the body of inquiry, a report on detention of the suspect should be written within 3 hours, a copy of which is given to the detained person, and according to Article 63 of the RA Criminal Procedure Code, the suspect has the right, in an order established by the Criminal Procedure Code, after detention, to receive free of charge, a copy of the decision on detention, or selection of the precautionary measure, and after making the report on detention.

With the purpose of reviewing the question on whether procedural actions of bodies of inquiry and preliminary investigation are documented, during the monitoring the following questions were asked of former detainees, relatives of the former detainees, and attorneys who in some way participated in the case as a defender:

- *Whether or not the person signed a document? If yes, what document?*
- *Whether or not he/she was presented with a report on being brought in? If yes, when?*

To the question, **whether police officers presented legal grounds for bringing in** and the report on it: four of eight interrogated attorneys answered that the persons who were brought in had not been informed about the grounds and they had not been presented with the report. Hence, they didn't have the opportunity to get familiarized with the report or to sign it. Other lawyers stated that persons had been informed about the grounds and they had been presented with the report. They were given the opportunity to be familiarized with the certificate and in four cases, they could sign the report. Four of the interviewed attorneys said that the indications of witnesses had been presented as the detention

grounds.
The answer to the question, whether they had been provided with the decision on being brought in or with the report, was negative in 7 cases (see table 1).

Table 1.

Has the person been provided with the decision on being brought in or with the report?						
	Number of Interviewees	**Yes**	**No**	**I don't know**	**No answer**	**Negative answer**
Former detainees or persons who were brought in	13	1	7	0	5	7
Interviewed relatives	11	2	6	3	0	6
Attorneys	8	4	4	0	0	4

One of the interrogated relatives, whose underage son has been brought in, pointed out that (citation) *"No report has been made, the head of the department of juvenile cases said that he would not make a report or register my son, he is doing me a favor."* This juvenile had been kept in actual custody for more than 8 hours.
During the monitoring, interviews were conducted with eight attorneys who have been involved as the defender from the moment of being brought in. Six attorneys stated that their clients, both during and after being brought in, were not given a copy of the decision on being brought in or a report on it. Two attorneys said that after being brought in, their client was only given the report.
Of 13 former detainees, only two said that they had been provided with the decision and the detention report; one stated that he received the documents after the case had been closed, one stated that the documents were handed to his defender.
The relatives of the persons detained and brought in, confirmed that the report copies had not been given to everyone. Six of the eleven interviewed relatives answered that detention reports hadn't been given to the detained persons, two answered that the report had been given to them, and three couldn't answer the question.
When there is a case that within 3 hours from the moment of deprivation of the person's right to freedom by the inquiry body or the investigator or if the prosecutor does not make the detention report, we may say that violation of the norms established by criminal-procedure legislation, took place.

Proportionality of application of force and special means during detention and bringing in
According to Article 17 of the RA Constitution, no one shall be subjected to torture, inhumane or degrading treatment or punishment. Detained persons shall be entitled to humane treatment and respect of their dignity.
According to Article 3 of the European Convention of the Protection of Human Rights, no one shall be subjected to torture or to inhumane or degrading treatment or punishment.
According to Part 7 of Article 11 of the RA Criminal Procedure Code, in the course of criminal proceedings, no one shall be subjected to torture, unlawful physical or mental violence, including the use of: drugs, hunger, exhaustion, hypnosis, deprivation of medical aid, and any other cruel treatment. It shall be

prohibited to use force, threats, fraud, violation of rights, and other unlawful methods while trying to obtain testimony from the suspect, the accused, the defendant, the injured party, the witness, and other persons participating in the criminal proceedings.

According to Article 5 of the law "On Police", the police staff is prohibited to apply torture, to perform violence, or to exercise other cruel means, or humiliating human honor and dignity. Such actions create liability, as specified in the law. The police shall be obliged to enable the detained or arrested persons to exercise their rights to receive legal assistance, inform their close relatives and the administration at their work place or educational institution or about their whereabouts within three hours at the moment of bringing them in. If necessary, the police shall take measures to render medical or other assistance.

Article 10 of the Disciplinary Charter of the RA Police confirmed by the RA Law on 11.05.2011 prescribes that:

4. The police officer is obliged:

b/To respect the Constitution and Laws of the Republic of Armenia, the customs and traditions of the nation,

i/To know and to respect the rights and duties of the person, to show restraint, and cultural, appropriate and respectful relations relating to all citizens.

In Article 2 of the law "On the Treatment of Detainees and Arrestees" it is stated that:

"Arrestees and detainees shall be kept under arrest or detention on the basis of the principles of legality, equality of arrestees or detainees before the law, humanitarianism, respect for human rights, freedoms and dignity, and in compliance with the Constitution of the Republic of Armenia, the Criminal Code and the Criminal Procedural Code of the Republic of Armenia, and the well-known principles and norms of International Law."

Thus, the current legislation of the Republic of Armenia, forbids application of physical violence against detainees and arrestees, or brutal and degrading treatment." For disclosing cases of violations of the rights of the persons deprived of freedom, calling those guilty to liability, the presence of corresponding systems of consideration of statements and complaints is of great importance.

In a number of international agreements, prohibition of application of tortures in detention places, (European convention on fundamental rights and freedoms of a person, Convention against torture, other Cruel, Inhumane or degrading

treatment or punishment, etc.) is especially emphasized.

Within the framework of the monitoring, interviews with NGO chairpersons and representatives have been conducted. From an interview with the chairperson of the NGO "Shahhatun, Women's Movement, Support to Democracy" it was discovered that citizens who applied to them regarding illegal actions of the police officers said that violence has been used against them, not only during the time they were brought in and detained, but also after it. The chairperson of the organization "Journalists for Human Rights" said during the interview that detainees and persons brought in were often subjected to physical force.

The senior editor of the Civil Society Institute said that the detainees who applied to them stated that they had been subjected to violence by police officers. The employee of the non-governmental organization "Helsinki Committee" said it happens so often that "if a person is taken into the police department, it means that he/she will be beaten."

To the question **"Whether or not physical violence or torture was used"** five out of seven attorneys responded that there had been no signs of violence on the bodies of detainees who had applied to them. In two cases, there were traces of physical violence on the bodies of detainees. Seven of thirteen former detainees noted that while detaining, police officers applied physical force, special means (bludgeons, handcuffs) or threat fire-arms.

Examples from practice

The following examples from practice, illustrate how the law, during detention and bringing in, is followed. In particular, during implementation of procedural actions in relation with S. V, V. G., the requirements of the law on police wearing corresponding uniforms and the proportionality of using force, have been severely violated.

According to the wife of S. V, who was brought in, the policemen in civilian clothes, without a judgment rushed into their place during the night, and hit her husband on the head as he was lying in his bed. They took the wife to another room, and started to search the house in order to detect narcotics. There were no witnesses to this search by the police, and they were not allowed to call the neighbors as witnesses to the search. In the end, a person in a policeman's uniform joined them who initiated a protocol on the search. However, there was no decision on a search. L. M, S. V's wife, appealed the actions of the police officers to higher instances – to the Prosecutor's office, and bodies out of the administrative system: Human Rights Defender's Office, human rights NGOs, etc. According to L. Mnatsakanyan, there were no real actions taken by them concerning the appeal. The only action was that the complaints were registered and they promised to investigate , but the wife did not receive any answers.

The actions performed in the relation to S. V. can't be considered as detention, as according to Part 3 of Article 128 of the RA Criminal Procedure Code detention is carried out on the basis of:

- Suspicions in immediate commitment of crime,
- An order by the body of the criminal prosecution.

In this case there can't be direct suspicion, and for detention of the person on the basis of the decision of the body which is carrying out criminal prosecution according to the law there should be a decision about detention whereas no decision had been presented. The police officers were without their uniforms, which is a violation of Article 12 of the law "On Police." According to this law, while ensuring public order, the police officers are obliged to wear corresponding uniforms, on which there are visible badges to identify the police officer. The use of force in this case was not proportional, and during an investigation this can be qualified as inhuman and degrading treatment.

The case of T. A. is an example of realization of criminal persecution for resistance against disproportionate actions of the law enforcement officers. In this case, after serving detention from July 5 until October 8, 2009 the case proceedings were stopped because of the absence of corpus delicti. According to T. Arakelyan, about 20-25 representatives of a political opposition group were distributing leaflets to citizens on July 2, 2009. Employees of the special force of the Kentron Police, who were in civilian clothes, attacked them on Abovyan Street and began beating them without saying anything. During the fight, some of the policemen in civilian clothes got injured and T.A. was charged by the provisions of Part 2 of Article 316 of the RA Criminal Code (Violence or threat of violence, dangerous for life or

health, against a representative of authorities or close relatives, related with performance of his official duties, as well as hindrance to the representative of authorities in the execution of duties under law). Although the investigation into the case has concluded, T. A has not received any compensation for the illegal actions against him.

It is important to underline that fair and appropriate investigation of cases with participation of law enforcement officers is initially put in danger, if these cases are investigated within the framework of the department which employees, probably, performed violations. The significance of an appropriate investigation into cases of force used, including possible use of torture, is underlined in the documents and accepted by the international bodies. Among such documents are the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and the guidebook on the implementation of those principles[13]. It was underlined by the resolution of General Assembly of UN on February 19, 2009.

Within the context of the legal special case specified above, it is necessary to pay attention to the following general tendency: bringing illegally persons to the police departments based on political grounds and without registration of the fact or representation of the bases for restriction of freedom. Similar situations have been presented by the detainees V.G. and G. T.

V.G. insists that on February 19, 2010, in a group of between 10-15 young men, they walked to the Central Election Commission in protest against falsified results of presidential election presented by the Central Election Commission in 2008. The event was peaceful which can be seen on video materials. On their way, they were attacked by the employees of the special group (red berets), who beat V.G. and some others and took them to the police department. After being kept in the police station for several hours, without making any document, they were released. They were not provided with any explanations or legal documents justifying the police actions.

G. T. presented a situation when in the town of Ijevan, during an event organized by the opposition, police officers hindered organization of a political event, thus violating their rights to free of movement. During the incident, the police officers acted with malice. During the clash, the policemen demanded, that G. T. get into the police car, insisting that he had pushed one of them which was qualified as use of violence against a police officer. Within 20-25 minutes after bringing G. T to the police department, he was taken back by car, without any explanations or representation of legal justifications of their actions.

The Conditions of Detention in Cases of Restriction of Freedom

The violations of detainees' rights are widespread; in particular, while be held in places of detention. As a rule, it is a violation, when the conditions of the detention places for detainees are not kept in accordance with those provided by law (absence of sufficient ventilation, insufficient space in the cells, problems connected with food, water and sanitary articles, violations connected with walk/rounds of detainees, etc.).

According to Article 13 of the RA law "On Treatment of Arrestees and Detainees" the detainees shall have the right to rest, including the right to outdoor walks or physical exercise and to an 8-hour night sleep.

[13] See Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Recommended by General Assembly resolution 55/89 of 4 December 2000 (http://www2.ohchr.org/english/law/investigation.htm); Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Istanbul Protocol. United Nations High Commissioner for Human Rights New York and Geneva, 2004 (http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf):

Article 20 of the same law states that appropriate living conditions in compliance with sanitary and hygienic norms and fire safety requirements shall be created for arrestees and detainees.
The living space allocated for arrestees and detainees shall comply with construction and sanitary and hygienic norms set for communal dwelling areas. The size of the living space allocated for arrestees and detainees shall not be less than four square meters per person (Part2 Article 20 of the law "On Treatment of Arrestees and Detainees"). Arrestees and detainees shall get an individual sleeping space and bedding.
In practice, however, conditions in detention places essentially differ from the standards established by law and other legal acts. As T. A. and D. K. stated, there were always 17 to 20 persons in the cell, therefore there were not enough beds and they had to sleep by taking turns. The area was very small and there was a constant smell of sweat and garbage There was one window approximately 30/70 cm , which, did not provide adequate air circulation, and there was no system of ventilation. Though there was cold water on schedule, but because of the unhygienic condition of the ???, the water was unusable for drinking. There was no hot water at all. The relatives brought water and food. The bread was of poor quality. Sanitary articles were not provided, either. In spite of the fact that detainees should be allowed a walk every day, as a rule, there was an excuse that there was a state of emergency and there would not be any walks. However, they didn't explain why there was a state of emergency. As D. Kiramidzhyan stated, they, they lied.

Conclusions

1. Restrictions on freedom by police officers can happen in the Republic of Armenia at any time and in any place. However, non-observance of documenting procedures during freedom restriction leads to uncertainty of the procedural status of these persons, which in its turn attracts subsequent violations and the impossibility of restoration of the violated rights. In particular, a person brought into the police department is held in custody and this fact is not registered.
2. During monitoring, contradictory information on the forms of realization of the person's right to a phone call from the police officers and from the former arrestees and lawyers was received.
3. When the law enforcement officers weren't in uniforms while bringing a person into the police station and did not present corresponding documents, the legality of their actions are put under question: if policemen don't wear uniforms and don't present their certificate, which would prove that they are law enforcement officers, the person can't know for certain, whether the employee is a policeman or a civilian. From this it is possible to make a conclusion that the person may not obey the demands of the person if he/she is not sure about his/her being a police officer.
4. In the Republic of Armenia, when a person enters the police station it is not registered, therefore it becomes impossible to verify the duration of a stay in the police department.
5. In the legal system of Armenia, it has become common practice to call a person to interrogation during the procedural status of a witness, whereas, the primary intentions of the body carrying out the investigation is to involve him/her as a suspect or accused.
6. International standards in the field of human rights, proclaim an absolute prohibition to use

torture, other cruel, inhumane or degrading treatment and punishment. In all those cases when police officers violated these rights, it is possible to say that a violation of the right occurred guaranteed by the European Convention of Human Rights, the RA Constitution, the Criminal Procedure legislation, which is forbidden in the Convention and other international documents.

7. Considering that the actions for bringing a person into the police station or for detention are mainly performed by police officers (all the actions on the specified cases were performed by police officers), the absence of appropriate police clothes should be considered as a violation of law and at least an official investigation should be conducted. As to proportionality of application of force and bringing in persons without registration in the order provided by the law, here there may be signs of crimes in the actions of the law enforcement officers, as prescribed by Article 308-309 of the Criminal Code of Armenia (abuse of official authority and exceeding official authorities). There are also other articles which can be identified as a result of appropriate public prosecutor's control and investigation from other bodies (for example, Special Investigatory Service), as well as by other Articles, which can be identified as a result of prosecutor's control and investigations of other bodies (for example: Special Investigative Service).

Recommendations

1. To establish by an RA Criminal Procedure Code, the sphere and actions, carried out by the body of inquiry before initiating a criminal case.
2. To establish in the law concrete procedures by which the absolute time of a person's being taken into custody is fixed. To provide registration, for the entry and exit of each person from the police department without fail, as well as the registration of in which status the person was invited / or brought in.
3. By legislative changes , evidence concerning the suspect, received during the interrogation of the suspect as a witness, should be recognized as inadmissible.
4. Within the framework of extrajudicial procedures of restoration of rights, it is important to solve the issue of compensation of material harm to the detainees (and arrestees) and to the persons being brought in, and the carrying out of official investigations concerning the persons who made such decisions.
5. To provide professional training for law enforcement officers on issues relating to carrying out of inquiry without application of any types of violence. To organize professional retraining courses on detention and bringing in.

Interrogation

Interrogation, as one of the phases of investigation, makes a person practically dependant on the activities of the police employees. Point 2, Part 4, Article 55 of the RA Criminal Code proclaims that the Investigator has the right to interrogate the suspect, the accused, the injured, the witness, appoint expert examination, conduct observations, searches, seizures, and other

investigatory actions;

For the purpose of studying the situation of the maintenance of human rights in this sphere in Armenia, and within the framework of the monitoring, observation was held in six police departments in Yerevan, and in Vanadzor, Goris, Spitak and the Bazum Police Departments.

1. Practical Conditions: the location of interrogation and the person present at interrogation.

According to Part 3 of Article 212 of the RA Criminal Procedure Code, the accused is interrogated at the place of preliminary investigation, or when necessary, at his/her whereabouts. That is to say, the RA legislation does not foresee the necessity for having ***specially equipped places for interrogation.*** *At the same time, the interrogation, which is held in any room in the police station, cannot be effective, as technical equipment is needed to have quality interrogations.*

As a result of the monitoring, we have come to the conclusion that in the police stations, where we held observations, there were no specially equipped interrogation rooms. The interrogations were mostly held in the study rooms of the investigators. Taking into consideration the fact that several investigators work at the same time in one study room, the interrogations are usually held in the presence of persons who don't have a relationship to the case. Moreover, during the monitoring, there have been cases when the interrogations were held in the presence of operative police officers, employees of the Special Forces, etc. – persons who are not authorized to be present. In particular, in answer to the question **"who conducts interrogation?"** the police employees said: *"It is not definitive; it may be by me, the investigator, or the operative police officer."*

Within this given context, it is important to consider the question of how many people are present during the interrogation. As one of the former detainees stated: persons participated in his interrogation: inquiry officer, operative police officers, and employees of the Special Forces; all of them were involved in the process of obtaining evidence. In another case, in spite of the fact that the interrogation was being held by one investigator, 3-4 persons were regularly present. In another case, the following persons participated in the interrogation – inquiry officer, investigator, the head of the criminal department, and the head of police.

Therefore, there are cases in the practice of the RA Police, when interrogation is conducted in the presence of unauthorized persons, who have no relation to the case.

2. Time and Duration of Interrogation

According to Article 205.1 of the RA Criminal Procedure Code, interrogation cannot last more than 4 hours without time out breaks, and the interrogation of a juvenile or a person with mental or other serious illness can't last more than two hours. Continuation of the interrogation is allowed after providing the interrogated person with a necessary break for rest and having a meal, for not less than one hour. The general duration of interrogation during the day can't exceed eight hours, and for the juvenile and the person, suffering mental or other serious illness it can't exceed six hours.

According to Part 1 of Article 212 of the RA Criminal Procedure Code the investigator must interrogate the accused within 24 hours from first bringing in the accused, and in case of avoidance by the accused and searching for the accused, within 48 hours after he was detained.

According to Part 2 of Article 212 of the RA Criminal Procedure Code, the interrogation of the accused,

except in urgent cases, is conducted during daytime hours. According to Part 48 of Article 6 of the RA Criminal Procedure Code "night time" means the period between 10 p.m. and 7 a.m. of local time.
In fact, in spite of the restrictions prescribed by law relating to the duration and time of interrogation, cases of violation of those requirements have been recorded. In particular, in three cases of seven, interrogation lasted from 5 to 6 hours, in the other three cases from 1.5 to 2 hours. Thus, in three cases the duration of interrogation exceed the norm prescribed by law.

One of the thirteen former detainees, with whom interviews were held, said that the interrogation lasted about 6 hours. Two former detainees said that the duration of interrogation was 5 hours. One out of seven former detainees said that the interrogation was conducted after 22:00 and it was not an urgent case.

Interviews with eight interrogated attorneys revealed that interrogations were mainly held in the afternoon and lasted not more than three hours. There was one case when an interrogation started at night and lasted till morning.

All seven interrogated employees of non-governmental organizations confirmed that people who had applied to them complained that they had been interrogated with violations of the law. According to one of the NGOs, the duration of interrogations were violated in all cases when persons were subjected to violence. These have become frequent in the cases, connected with March 1 events (death of people during mass protest actions of opposition against the results of presidential election on February 19th, 2008). At that time interrogations lasted about 7-8 hours.

Despite the aforementioned, all 15 interrogated police officers said that in their practice there were no cases of violations, they never held interrogations after 22:00 and they did not last more than four hours.

3. Unlawful Treatment during Interrogation.

Part 7 of Article 11 of the RA Criminal Procedure Code prescribes: *In the course of criminal proceedings, no one shall be subjected to torture, unlawful physical or mental violence, including the use of drugs, hunger, exhaustion, hypnosis, deprivation of medical aid, and any other cruel treatment. It shall be prohibited to use force, threats, fraud, violation of rights, and other unlawful methods while trying to obtain testimony from the suspect, the accused, the defendant, the injured party, the witness, and other persons participating in criminal proceedings.*

According to Part 2 of Article 5 of the RA law "On Police", The Police staff is prohibited to subject a person to torture, to perform violence, exercise other cruel means humiliating the human honor and dignity. Such actions create liability, as specified in the law.

According to Article 1 of the Convention against Tortures, Other Cruel, Inhuman or Degrading Treatment or Punishment, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

Interrogation of the detainees, the accused, and reception of explanations from witnesses, should be carried out with observance of the specified laws.

For the purpose of compiling the data on these issues, interviews with persons who in the past were brought in, and also with detainees, their relatives, attorneys, NGO representatives working in sphere of human rights and police officers were conducted.

According to NGO representatives working in the sphere of human rights, citizens often complain about the illegal actions of police officers. They think that in most cases, citizens, while being held in the police stations, are subjected to either physical or psychological violence or pressure. Both suspects, accused, and witnesses, are quite often subjected to beating with the intention of being forced to give testimonies.

The employees of one of the organizations testified that physical violence and psychological pressure are so common that there are stereotype amongst people: **"If a person has been taken to the police station, then he/she will be beaten."** According to one of the attorneys, his client has been beaten by 3-4 police officers during interrogation.

Persons who have been brought to the police station as well as detainees noted during the interviews that physical violence and threats were applied towards them, as well as degrading comments made by the police officers.

To the question of "what are the main violations for which citizens apply to you" the following answers were provided:

- Application of violence for the purpose of receiving testimony
- Detainees are not explained their legal rights
- Violations of the right to defense along with violations of the legislation

Despite the fact that during interviews with relatives they haven't been asked questions on application of ill-treatment towards the detainees, persons brought into the police station, two of the interrogated relatives informed that their sons had been subjected to physical violence and psychological pressure while being in a police station.

One of the interrogated persons, as proof of what he had said, showed photos where traces of physical violence could be seen.

According to the mother of one of the persons brought in to the police station her son spent a lot of time lying in bed because he couldn't sit and could hardly walk for almost 2 weeks after being released from the police.

To the question whether they appealed to the Office of Public Prosecutor or to the law enforcement bodies, one mother responded that in the beginning they were afraid, and didn't know to whom or where it was possible to address this situation. The other mother insisted that her two sons had been subjected to beatings in the police station for the purpose of giving testimony. It is important to specify, that during these interviews the case was already in court. To the question, of whether the actions of the investigative body have been appealed and whether this issue will be raised, the citizen responded that she is powerless against the police, as well as the court and she isn't going to bring up this question as she is afraid for the life of her sons.

During the monitoring of court trials on various criminal cases, facts of application of physical force by

the law enforcement bodies during interrogation were also recorded.
We consider that it is worth mentioning one of the actions of the court proceedings in more detail. Four of the eleven defendants declared in court about application of violence and psychological pressure during interrogation:
The first defendant declared during the legal proceedings that he had been subjected to beatings, and was forced to present evidences and mention the names of some people. He declared that his younger brother was kept in the police station as a hostage to give testimonies and to confess. He also declared that during the time he was brought to the penitentiary there were bruises on his back, but being afraid, he said that he had fallen from a tree a week before. He also said that the testimonies he gave earlier, were not true.
The second defendant admitted to the committed crime in the beginning and also stated that the accused on the case committed the mentioned crime. However, during the third judicial session he denied the information he had provided, as they were taken under threats and beatings (he was cruelly beaten for five days). He said that the policemen had asked him in the mornings, whether his clothes were clean or not, as it was necessary to wipe up the floors. Then they knocked him down and by kicking him, they by force, dragged him on the floor. He was also cruelly humiliated. He declared that "little time remains to commit a suicide." He also pointed out that he had been threatened. They told him they knew his address and that he had a baby and a "pretty wife." The defendant also mentioned the names of the policemen who had threatened him.
The third defendant did not say he had been subjected to beatings, but he mentioned that he had been treated cruelly.
The fourth defendant stated that during detention, he injured himself with a knife, by cutting his stomach and veins in order not to be subjected to beatings (the defendant's mother told this).
The rest of the defendants did not say anything about violence during the trial; however, during a conversation with their relatives, the relatives said their sons had been cruelly beaten. To the question why they did not say anything, the answer was: "it is of no use mentioning it, it may get even worse to say anything about it."

4. The Right to Defense

According to Article 20 of the RA Constitution, everyone shall be entitled to legal assistance. In cases as prescribed by the law, legal assistance shall be provided free of charge. Everyone shall have a right to the assistance of a legal defender from the moment of his/her arrest, subject to a security measure or indictment.

The Right of the Suspect and Accused to a Defense

According to Part 28 of Article 6 of the RA Criminal Procedure Code, "defense" means procedural activities conducted by the defense party with the purpose of refuting or reducing the charge, defending the rights and interests of the persons incriminated in the commitment of acts prohibited by Criminal Code, as well as promoting rehabilitation of persons who have been subjected to unlawful criminal prosecution.
According to Article 19 of the RA Criminal Procedure Code, every suspect and accused has the right

to defense. The law enforcement body conducting the criminal proceedings is obliged to explain to the suspect and accused their rights and provide them with an opportunity to defend themselves against the charges, by all means, except those prohibited by law. The body conducting the criminal proceedings is obliged to ensure that the legal representative of the suspect or accused takes part in the case. The suspect and accused are entitled to defend themselves against the charges either in person or through the legal assistance of a defense attorney and a legal representative. Participation of the defense attorney and the legal representative in the criminal proceedings shall not restrict the rights of the suspect or the accused.

According to Part 1 and 2 of Article 63 of the RA Criminal Procedure Code, the suspect has a right to a defense. The body, conducting the criminal proceedings, provides the suspect with the opportunity to implement the right to defense; he/she is entitled to, by all means and remedies, which are not prohibited by law. According to Point 4 Part 2 of the same Article, the suspect has a right to refuse participation from a defense attorney, from the moment of presentation to him/her, the resolution of the body of the criminal prosecution, on detention, the protocol of detention or the resolution, on selection of the precautionary measure, and the opportunity to conduct the defense himself/herself. According to Point 6, the suspect has the right to be interrogated with the participation of a defense attorney.

According to Part 1 of Article 65 of the RA Criminal Procedure Code, the body conducting the criminal proceedings, provides the accused with the opportunity to implement his/her right to defense by all means and ways, not forbidden by law. According to Point 5 of Part 2 of the same Article, the accused has the right to be interrogated with participation of a defense attorney. According to Point 5, the accused has the right to have a defense attorney from the moment of indictment.

The Right of the Witness to a Defense

According to Point 10, Part 5 of Article 86 of the RA Criminal Procedure Code the witness has the right to arrive at the body, where the criminal investigation is taking place, with an attorney.

According to Part 5 of Article 101 of the RA Criminal Procedure Code the body, conducting the criminal trial, and the person, conducting the investigation or other procedural action, are obliged to explain the obligations and rights to the witness; to a search, the interpreter, the expert prior to the beginning of investigatory or other procedural action. The obligations and the rights of the witness may be explained to him/her once prior to his/her first interrogation by a body, conducting the criminal trial and repeatedly at the court session.

According to Part 6 of Article 206 of the RA Criminal Procedure Code, if the witness was at the interrogation with an attorney who had been invited by the witness, for the purpose of providing legal assistance, the attorney has the right to be present at the interrogation, but has no right to ask the witness any questions or to make comments on his/her answers. In cases where the body carrying out the investigation, asks, questions, or carries out actions, which violate the rights of the witness, provided by Part 5, Article 86 of the RA Criminal Procedure Code, the attorney has the right to make statements which are to be included in the interrogation report.

Legal regulation of the participation of the defender during explanations of the participants of the process before initiating the criminal case

According to Article 180 of the RA Criminal Procedure Code, the examination procedure of reports about crimes must be considered and resolved without undue delay, and when necessary to check the legitimacy of the reason or reasons for the initiation of prosecution and the sufficiency of the grounds, no less than in 10 days after their receipt. Within this period, additional documents can be requested, explanations and other materials, as well as the examination of the crime scene. If there are enough grounds to suspect individuals of the crime, they can be brought into the police station for a personal inspection, and also samples for testing can be taken and an examination can be ordered.
According to Article 55 of the RA Criminal Procedure Code, the investigator has the right, prior to the institution of the criminal case, to conduct an inspection of the site and to appoint expert inquiry; to interrogate the suspect, the accused, the injured, the witness and to appoint expert examinations, conduct observations, searches, seizures, and other investigation actions. Anyway, the investigator is entitled with the right to conduct interrogation of a witness or aggrieved, but he/she is not eligible to conduct other investigative actions to get information from the witness or the aggrieved.
Concurrently, Part 35 of Article 6 of the RA Criminal Procedure Code provides the right to participants and applicants , before initiating a criminal case, to present verbal or written argument to testify their claims or the claims of the represented person, as well as oral or written messages of other persons.
Thus, on the one hand the participant of the process has the right to give explanations, on the other hand, the investigator, according to Article 180, can demand explanations. However, Article 55 in which the powers of the investigators are defined does not foresee liabilities for the investigator to receive explanations, but he is authorized to interrogate witnesses and other participants of the process. However, there is still a question on how the participation of the defender or the legal representative, during the explanations of the participants of the process, is regulated.
For the purpose of studying this sphere, interviews with former detainees and persons being brought in, their relatives, attorneys, and police officers have been conducted and trial monitoring was held.
10 of the interrogated 13 detainees and persons brought in informed that they **had not been informed about their legal right to make use of an attorney's service.**

In Only one case, the detainee said that he had been informed about this right after detention, and the other respondent said that the investigator told him about his right when he gave evidence for the first time. In another case, the person being brought in came to the interrogation proceedings with an attorney. One of the respondents, who was detained in the police station for 5 hours, and who asked the policemen to give him a chance to call his relatives to inform about his whereabouts, responded to the question on whether he had been informed about the right to have an attorney. He replied that he did not need one. As no legal document on this case has been made, it is not clear what legal status the person brought into the police station had. In one case the person was informed about this right within 7-8 hours after he had been brought into the police station.
In three cases, the relatives informed that the person brought into the police station, the detainee or their relative had been informed about the right to make use of an attorney's services. In one case, the sons of the interrogated woman already had an attorney,, in the other eight cases the relatives informed that either they had not been informed or the persons brought in to the police station and the detainees already had an advocate. In one of case the person was taken to the police department

saying that they should receive explanations from him concerning an incident. They didn't explain any rights in the police station. The rights, including the right to make use of attorney's service were explained a month later, in the Special Investigative Service where the case was transferred.

The defense of the persons interviewed by us was provided by both private lawyers and public defenders. As the data of monitoring indicates, the interviewed quite often were dissatisfied with the services of the attorneys. In one case, according to the detainee, the public defender who protected his/her interests, persuaded him/her to plead guilty for an act which he/she had not done, saying that "if I do not admit, I will be deprived of freedom for 4 years and if I admit I will be deprived of freedom for 3 months."

In two cases, the persons whose defense was provided by a public attorney, refused his services and hired an attorney. In one case the citizen refused an attorney's service who dealt with the case in the pre-judicial process, so hired another attorney.

As practice shows, the first interrogations are held in the absence of the attorney. So, the person is invited or taken to the police department under the pretext of receiving explanations before initiating a criminal case. In this case, the body, which is carrying out criminal prosecution, doesn't consider that explanation of the rights of the person brought in or invited as a responsibility or duty.

Conclusions

1. In all of the monitored police stations, there are no interrogations rooms , furnished with corresponding equipment or technology. Interrogations are held in the investigator's room where the conditions are not adequate for interviews.
2. Practice of duration and time of carrying out interrogations in the Republic of Armenia exceeds the norms established by the law. Absence of corresponding mechanisms of control creates difficulties in proving the presence of the specified violations by the law enforcement bodies.
3. The NGO representatives mention frequent cases of application of unacceptable methods and means at interrogation (psychological, physical): degrading or inhumane treatment, physical force and psychological pressure.
4. There is a problem of absence of explanation or untimely explanation of the rights to a legal defense by the body which is carrying out the criminal proceedings. There is also no mechanism or an opportunity for an attorney's participation for providing explanations before initiating a criminal case.
5. Among citizens, there is a contemptuous attitude, hatred, and sense of fear towards the law enforcement bodies that follows with an absence of respect and trust. For this reason, citizens seldom inform on violations of the law during interrogation, on cruel and degrading treatment and do not trust in the likelihood that their rights will be protected in court.

Recommendations

1. To direct efforts towards the creation of special interrogation rooms and the necessary technical equipment for questioning in police stations..

2. To provide a timeline and duration of interrogations.
3. To provide implementation of the current legislation and the international standards on eradication of cases of cruel, inhumane and degrading treatment with detainees, by introduction of effective mechanisms of prevention and response to such cases.
4. To take appropriate measures on professional retraining of police officers who carry out interrogations, with the aim to eradicate the practice of application of prohibited, cruel and inhumane treatment.
5. To develop and introduce mechanism of providing a requirement of the participation of an attorney during the giving of explanations before the initiation of legal proceedings.

SECTION 2. HUMAN RIGHTS IN CASES OF RESTRICTION OF FREEDOM IN GEORGIA

During monitoring in Georgia, the existing Code of Criminal Procedure changed and the new one came into force. The offered analysis of this right is carried out based on the new norms.

The Right to Defense

The right to defense, as proceeding from its core, is necessary to interpret as protection of the interests of the accused. The procedure code of the criminal law in Georgia recognizes the rights of the accused, connected with all circumstances necessary for creation of fair conditions and protection of the rights of the accused. One of the most significant is the right to an attorney.

Criminal trials, ensuing from its specificity, demand special awareness, and without an attorney, the accused can't be guaranteed procedural protection. In the Criminal Procedure Code, it is specified that the accused is not obliged to have an attorney, but has the right to an attorney. However, in Article 45 of the same code there are exceptional cases when the accused is obliged to have an attorney, and in cases of a lack of financial means, he/she can make use of services of an attorney provided by the state. This norm basically is directed towards the socially unprotected stratum of the population which does not have opportunities to have an attorney to protect their interests at their own expense. If the accused wishes, he/she can protect himself/herself independently at the investigation and court stages, except in cases, as prescribed by the law.

The right and in some cases, the obligation to have an attorney, is defined by the legislation. The law defines the rights and obligations of the attorney. According to Article 44 of the Criminal Procedure Code and the defined order, the attorney has the right to get familiarized with testimonies of the party of the charge, to receive evidences and copies of materials of the criminal case, as well as to make use of all rights of the accused and all the others provided by this code. The attorney can't make use of those rights with which, proceeding from the character of these rights, only the accused can make use of.

The monitoring, conducted in Georgia, has shown that the norms of the Procedure Code are basically well formulated and the attorney has an authentic opportunity to carry out the protection of interests of the accused. Though, the questions which arisen and the basis of monitoring are conditioned not by the provisions stated in the code, but by hoe legislation is applied in practice and by how the right to defense is reflected in the Criminal Procedure Code of Georgia.

The Procedure of Restriction of Freedom

From the moment of detention, the accused undergoes necessary time periods and a phase, until his/her guilt or innocence is proved. According to Article 5 of the Criminal Code of Georgia, the innocence of presumption is acting – the person is considered innocent, until his/her guilt is proved by judicial verdict. Proceeding from all the before mentioned, for the establishment of guilt, from the moment of detention to imprisonment, the person must undergo steps during which the attorney should carry out protection of interests of the accused and to observe the procedural actions which are carried out by the law enforcement bodies.

From Detention to the Police Department

When being detained, the person is transferred to the department where the implementation of the investigation and related actions are carried out. This may be combined in two main stages: the detention of the person and his/her transfer to the police department.. Chapter 18 of the Criminal Procedure Code of Georgia provides a detention disposition; in particular, the detention is a short-term restriction of freedom of a detainee. According to the current Criminal Procedure Code of Georgia, unlike the previous one, the person is considered accused from the moment of detention. During detention, it is necessary to acquaint the detainee with his/her rights. During detention, it is admissible to carry out a personal search of the detainee, which is carried out based on the resolution of the prosecutor or in cases of extreme need, without this resolution. Respectively, at a detention stage, three main stages were identified: detention procedure, familiarity with rights, and search, and transfer to the department.

Detention Procedure

According to the previous code, during detention, the person was considered a suspect and his/her recognition as guilty took place only after the tangible accusation made by the prosecutor, relative to an actual crime. By the current Criminal Procedure Code of Georgia, the notion of suspect is withdrawn and the detainee is considered accused from the moment of detention (Article 170 of the Criminal Procedure Code of Georgia). According to article 169 of the Criminal Procedure Code of Georgia, the basis for recognition of guilty, in the investigation stages, is a set of collected substantiations, sufficient for the assumption that the person has committed a crime.

11 persons, who had been detained earlier, were interrogated: 3 respondents reported that police officers did not introduce themselves and didn't show their certificate, in 4 cases they introduced themselves and showed certificates, in the other cases the respondents refused to answer. In most cases, the police officers were in uniforms, in their official car with an inscription, «police» although there was a case when the police officer was in civilian clothes, and there was one case when there was no identification mark on the police car.

The policemen mainly called the detainees by name: one of them remembers that he was treated in a rather humiliating way and seven of the interrogated, refused to answer.

Acquaintance with the Rights

During detention, the accused is given corresponding rights, in particular, the law enforcement officers are obliged to acquaint the person with his/her rights, including, the right to an attorney, the right to keep silent and the right not to answer questions (Point 2, Article 38 of the Criminal Procedure Code of Georgia).

The question of providing detainees with information by the authorized persons about detainees' rights is still a problem. In this sense, the investigative bodies did not undertake effective measures, which would eliminate this problem. The list of the rights, along with the certificate of detention, is usually *formally transferred to detainees,* or the fact of its transfer is confirmed, with a signature on the certificate.

As a result of monitoring, in 3 of 11 cases, detainees were not familiarized with their rights; six detainees were informed about their rights verbally and for two detainees it was difficult to remember.

Two respondents noted that it was unclear to them what their rights were, and four insisted that everything was definitely clear to them.

In 4 of the 11 cases, detainees weren't told that they could **phone their close relatives**, five detainees were informed they could and one could not remember if he was informed. Two detainees remembered that, although they wanted to phone they couldn't. They remembered that their personal belongings and mobile phones were confiscated just after detention. From those who could call, three made use of the phone in the police station and three used their own mobile phones. The call, in most cases, lasted no more than 5 minutes and was limited only to information exchange.

Three respondents remembered that they were not informed about **the option to make use of a public defender's services**. Six respondents mention that just after detention, they were informed about the option to make use of either a public defender's or a private attorney's service.

Two respondents made use of a private attorney's service, justifying that they did not trust the public defender. Three of the respondents were happy with the services rendered by attorneys and two were not.

One of respondents remembers that he did not make use of an attorney's services at all, *as he didn't know that according to the law, he had that right.*

In all cases, detainees had the right and the opportunity to ask questions to which they received adequate answers. Only one respondent remembers that the police officers did not provide any answers to his/her questions.

Law enforcement bodies conduct a search while taking testimonies, which is carried out based on a court decision and in exceptional cases when it is extremely necessary, based on the prosecutor's decision and it is necessary to acquaint the accused with the specified decision. Article 121 of the Criminal Procedure Code of Georgia, defines a personal search of a detainee, which is held when there is a justified assumption that the detainee has a weapon or is going to get rid of the evidence confirming his/her participation in a crime. The person in charge who performed the detention has the right, by an order provided by the code, to conduct a personal search without a court decision and without the investigator's decision, which is mentioned in the detention report. In this case, a certificate about the personal search isn't made, and its legality is verified by court.

Transfer to the Department

After detention, the detainee is transferred to a department where a procedure established by law is realized for recognizing him/her guilty or innocent. The transfer to the police department means that the preparation of a report should be made.

Transportation – transportation is by patrol car or by a corresponding car of the law enforcement bodies.

Transfer to the department, registration and preparation of a report on detention – upon transfer of the detainee, a detention report is prepared; where the time, detention place, personal identification and personal information is included.

The role of the attorney at this stage is rather insubstantial as the specified actions are carried out

by the law enforcement bodies such as: detention, acquaintance with the rights, search, and transfer to the department. The presence of an attorney is not necessary for the implementation of these actions. The law enforcement bodies have the right to carry out the specified procedures without an attorney. The lawyer only checks and watches procedural sequence of actions of the law enforcement bodies so that they do not perform any illegal actions.

From the Police Department to the Court

Interrogation

After detention, detainees are taken to the police department where the interrogation takes place.

According to the previous Criminal Procedure Code, the investigator and then the prosecutor were obliged to conduct interrogation. Today, according to the current Code, before the court *trial the accused may not be interrogated at all* as there is already an accusation brought to him/her from the moment of his/her detention, and thus the prosecutor is not obliged to conduct interrogation.

From the questionnaires we can see that in many cases **the attorney was not present at the interrogation (in 7 cases out of 11 detainees)**. The policemen deny this fact. As it is impossible to prove the facts of presence/absence of the attorney, it is necessary to develop a mechanism, allowing to trace cases of absence of the attorney at interrogation and to respond to such cases.

At the same time, it is necessary to note that an absolute majority (80 %) of the interrogated respondents, who are attorneys or police officers, confirm that the investigator conducts interrogation. One of the attorneys also noted that interrogation was conducted by an investigator and two operative police employees.

However, it is necessary to note that during monitoring the problems connected with interrogation were clearly identified. In particular, the attorneys and accused explain that **interrogation of a person quite often takes place during time off or at night**, which is forbidden by the current Criminal Procedure Code. According to Sub-point 17 of Article 3 of the Criminal Procedure Code, night hours are considered from 22.00 to 06.00, and are forbidden. Accordingly, interrogation is one of the investigatory actions, and except in exceptional cases, its occurrence at night is forbidden, but in reality it often happens.

The monitoring results showed that interrogations at night are qualified as exceptional and are represented as an urgent or extreme necessity. Interrogation at night creates additional problems for the accused. In particular, the attorney of the accused has the right to be present at any investigatory action. During night hours, it was impossible to contact the attorney and very often the attorney was absent during the first hours of detention. As a result, the interrogation of the accused took place without an attorney, or a public defender who was formally appointed for the accused to avoid procedural violations. Today under the current legislation, the specified question is to some extent settled from the viewpoint that no one is obliged to carry out interrogation, and interrogation of a person is carried out at the judicial stage.

The respondents noted that in three cases, interrogation was carried out in an interrogation room, in four cases it was conducted in the investigator's room, in one case in the cell, in another case in an ordinary room, and one person was chained by handcuffs to a chair. The detainees had no right to leave the room or to move freely. In six cases, detainees wished to solve their toilet need which was done under the supervision of a policeman. In one case, the request was not satisfied.

In four cases, medical examinations of detainees were carried out; two of them said they didn't need it,, and seven were examined by the doctor. The medical examination was mainly held by the policeman on duty and was of a superficial character.

The interrogated representatives of non-governmental organizations confirm that **in 50 % of cases, use of force or psychological pressure took place.**

The interrogated former detainees and attorneys noted that in most cases, **during interrogation, detainees demanded nothing;** however, in several cases they asked for water and cigarettes. Their requests were generally satisfied, however there was a case when the question of a detainee was not answered, therefore we don't know, whether his/her request was satisfied or not, but the question which remained without an answer, naturally, raises doubts.

The duration of interrogation. Chapter 37 of the Criminal Procedure Code of Georgia, which was in effect until 2010, was called «Interrogation». All those distinctions, which should be considered by the prosecutor or the investigator, were described there, for ensuring justice during interrogation. Article 302 of this Code regulated duration of interrogation in the following way: interrogation should not be carried out for more than 4 hours. It is admissible during the day to interrogate the person several times with use of not less than hourly breaks for a rest. During the day, the general duration of interrogations, , should not last more than 8 hours.

Despite this ruling, during monitoring interviews we dealt with another reality. In particular, the prosecutors never consider four hours a maximum duration of interrogation as interrogation began in the morning and could proceed all day and into the night. Changes were made to the code, and chapter «Interrogation» is completely removed. Accordingly, the time and duration of interrogation is not regulated any more.

As it has already been noted in the current legislation, the prosecutor does not have a duty to conduct an interrogation of the accused, but at the same time, it is not forbidden. Accordingly, it develops a deadlock – if the Code doesn't regulate the order and the duration of carrying out interrogation, then in compliance to what the interrogation of the person by the prosecutor is carried out as interrogation can be conducted by the investigator as well. It is also unclear, what the maximum duration of interrogation is without a rest break. The answer to this question and respectively, whether such a regulation of legal relations will become obligatory or not, will show in future practice.

The Treatment of Detainees

According to the information received from the chairman of the Department on Execution of Punishments at the Ministry of Execution of Punishments, Probation and Legal Aid, throughout 2010, 856 people with different traumas have been placed in detention places of the Department on Execution of Punishments, 85 of them explained that they had got injuries in the course of detention. Of the persons arriving in 2010 at the isolator cells of temporary detention of the Head Office on Protection and Monitoring of Human Rights of the Ministry of Internal Affairs of Georgia, 466 had injuries, 71 of them had a claim against the law enforcement agencies. For the reporting period during conduction of monitoring by the members of special preventive group of monitoring in the isolator cells of temporary detention some cases have been identified when detainees pointed out inadequate treatment towards them by the police officers.

It is necessary to note that frequently people, who were subjected to physical violence and cruel

treatment by the police before or after detention, **are afraid of disclosure of such data.** It is, most likely, caused by the fact that they are afraid of complications of their situation during the investigation that becomes the psychological tool for the law enforcement bodies. And one of the interviewed attorneys noted: "During Shevardnadze times we had more "manly methods" of tortures, at least we used physical force, but now the employees of the Ministry of Internal Affairs are using methods of psychological pressure."

However, at the same time, it is necessary to add that with the aim of prevention of human rights violations by police officers, the state organizes more and more actions that leads to positive results. **It comes to prove the fact that in the police stations, cases of beating or ill-treatment with detainees considerably reduced,** while earlier it was inevitable and was used as the standard method used by the policemen.

Conclusions

1. During detention the policemen mainly followed the legal rules. At the same time, refusal of the majority of detainees to describe the behavior of the police officers during detention does not enable to fully analyze the situation in the this sphere.
2. In most cases during detention the policemen inform the detainees about their rights, however, for many people these rights remain unclear and therefore people can't understand, whether their rights are violated or not. Hence, there is a risk of abuses by the police in relation to the detainees who do not understand the essence of the rights.
3. Respondents note that interrogation of detainees is mainly conducted in the afternoon, however there are facts when interrogation was conducted either in the evening or at night. Conduction of investigatory actions at night creates a risk of a situation when interrogation of detainees can be held without an attorney. Besides, conduction of interrogation at night causes doubts for effective work of law enforcement bodies.
4. Changes have been made in the current Criminal Procedure Code and the chapter «Interrogation» is completely taken out. Accordingly, time and duration of interrogation are not regulated any more.
5. The high indicator of procedural agreements prove the mistrust of citizens towards the court.
6. In 2004 in Georgia, the mechanism of the procedural agreement has been introduced which, certainly, is a good step. The institute of procedural agreements is humane, as this is really very humane and alternative punishment. However, today, the procedural agreement became an effective form of filling of the budget and along with this, it reduced the role of the attorney. The attorney lost the function of a defender and got a role of a mediator between the prosecutor and accused, and also a role of a courier who very effectively combines transfer of documents from one establishment to another.
7. Excess of force by the police during detention is still a problem, which is proved both by the stories of respondents during monitoring, and the report of the National Defender, which is in its turn based on evidences of detainees, as well as on the records about external examination of detainees carried out during placing them at the isolator cells of temporary detention and a places of the execution of punishment.

Recommendations

1. To make the current legislation of Georgia regarding the time of carrying out interrogations into compliance with the international standards. To forbid in the new Criminal Procedure Code of Georgia the possibility of carrying out night interrogations in exceptional cases, or to define the concept of "extreme need."
2. To settle at legislative level the procedure of interrogation regarding the time of its carrying out and duration, by introduction of necessary changes into the Criminal Procedure Code of Georgia.
3. To develop a mechanism, allowing to trace the cases of absence of an attorney at interrogation and to react to such cases.
4. To carry out actions directed towards the eradication of cases of excess of powers by law enforcement bodies during detention.
5. To carry out explanatory work with the population about the rights of detainees.
6. To carry out actions directed towards the returning of trust to courts and accordingly reduction of procedural agreements percentage to a minimum.

SECTION 3. PROTECTION AND RESTORATION OF VIOLATED RIGHTS

Legal proceedings in questions connected with restriction of freedom in Georgia

Everyone has the right to apply to court for protection of his/her rights and freedom. The specified right is defined in the Constitution of Georgia and Article 42 of the Constitution is a guarantee for restoration of the violated rights. According to the same Article, the right to defense shall be guaranteed. According to a principle of distribution of authorities, the court is an independent body and no governmental structure should have an influence on it. In the European system of human rights, the right to fair court is provided by Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The legal decision of the judge should be proved according to the law. The law of Georgia "On Common Courts" specifies: "A judge in his activities is independent." The judge assesses the actual circumstances and makes decisions only based on the Constitution of Georgia, the principles and norms recognized by the universal international law, according to other laws and based on internal belief. Nobody has the right to demand from the judge to report on a concrete case. Any influence on a judge or interference in his activities with the purpose of affecting decision-making is prohibited and is punishable under a law. An important point also is observance of the principle of competition of the parties.

Primary representation of the accused person to court, preliminary judicial session and judicial proceedings

Not later than 48 hours from the moment of detention, the prosecutor of the investigation location presents to the judge council mi datavora a petition for use of preventive measures (preventive punishment). If the petition defined by this article is not presented to the judge within 48 hours from the moment of detention, the detainee should be immediately released (Article 196 of the Criminal Procedure Code of Georgia). From the moment of representation of the petition for use of preventive measures within 24 hours and not later, at the session of the first representation of the accused to court with participation of the parties, the judge council considers the case and passes a decision. The specified session proceeds continuously (Article 197 of the Criminal Procedure Code of Georgia).

On a preliminary court session the judge finds out, whether or not the accused recognizes his/her fault, whether or not he/she considers herself(himself) guilty of the crime and to what extent, as well as the possibility of the conclusion of the procedural agreement. And if the accusation changed after its primary representation to the judge, at the preliminary meeting the judge explains to the accused the essence of the accusation and according to it the punishment measure (Article 219 of the Criminal Procedure Code of Georgia). At the preliminary meeting, the case is prepared for the main hearing and in case a procedural agreement is not achieved, proceeding from the accusation essence, the question on whether the case will be considered by the jury is raised. Here we will note that in Georgia, after the new Criminal Procedure Code entered into force, the adjudication of the case is possible to be done

by the jury; however there is no practice of adjudication of the case by the jury yet. It is hard to say what's the reason- the restraint and the factor of trust or it is as the law defines both parties declare about their refusal from the adjudication of the case by the jury.
At the preliminary meeting, there is a representation of the proofs and petitions by the parties. After the court is convinced that the evidences presented by the parties give all grounds to assume that the crime has been committed by the person, the court passes to the main judicial proceedings of the case (which will be noted within 14 days after the preliminary hearing and not later, except when there is need for term extension – Article 225 of the Criminal Procedure Code of Georgia). Judicial proceedings of the cases means direct establishment of the guilt and adjudication, interrogation of witnesses to express arguments and their proofs.

Audio and Video Recording

The course of trials in Georgia is public for all. Though according to Point 4 of Article 13 of the Organic law "On Common Courts" filming and photography, audio- and video recording at a court session and in the trial hall is prohibited except when this is done by the court or the person authorized by court. The court can itself distribute the films, photos, video materials itself if it does not contradict the law. Stenography and audio recording of the trial is resolved in an order established by court. This right can be limited by a motivated judgment. A deviation from what was specified and recording of processes is possible based on the petition of a party.
In this regard, the current practice is interesting: the court seldom satisfies the petition to make a video at the court session. The legislation gives the chance to the party to make a video at the court session when the petition is satisfied. In practice, the judge often considers groundless the requirement of the party about recording. Here it is necessary to note that the party is meant as the defense party, as the prosecutor's office almost never puts forward such a requirement, and in case of promotion of this requirement, it will be satisfied by all means. This is another confirmation of the fact that the principle of equality of the parties in the court is quite often violated. In case of video recording, probably, the judge and the accused party will be more attentive so that there is no deviation from the law. The court enables inquiry only for stenography. In the specified record probably there won't be actions stated which violate the law.

Principles of competitiveness and equality of the parties

Initially criminal trial is carried out based on a principle of equality and competitiveness of the parties. The party has the right in an order established by the Criminal Code, to put forward a petition, by means of court to request, present and study all corresponding proofs (article 9 of the Criminal Procedure Code). As we can see, the law regulates the principles of equality and competitiveness rather well. The legislation does not put the accused party on a losing position and enables him/her with all those rights which the accused party has. Also in case the accused (or his/her attorney) cannot carry out by own efforts necessary actions for obtaining proofs, it is possible to be done by court.
In a reality, in court there is a tendency when the petition of the defendant's attorney in most cases is not satisfied which has been revealed as a result of the monitoring. In particular, the petitions submitted by the attorney are ignored which interferes with the fair legal investigation into the case and all this directly influences the final decision of the judge. So, in 4 cases of petitions, the court didn't

undertake any actions, in one case the attorney declared that his client was afraid to declare violations of his rights. It is a direct violation of universally recognized principles of human rights, and violation of Article 6 of the European Convention.

Because of the above-stated circumstances, the attorney cannot carry out effective protection of the accused, and the trust factor towards the court decreases, as there is obvious judicial partiality. Namely, when the accused does not see a serious role of the attorney in the protection and the independence of the court then he/she actually has to refuse from own correctness and to make a procedural deal with the prosecutor so that to reduce a little the injustice and to reduce illegal punishment.

Unfortunately, from the carried out monitoring it is obvious that there is no reaction from either the higher bodies or the court to **the complaints and petitions of the attorney** concerning procedural violations of law enforcement agencies. The tendency is that actions of the law enforcement officers of Georgia are considered as faultless. Many petitions which the defense party shows to the court for protection of the client, are ignored by the court which clearly shows partiality from court. Unfortunately, it is necessary to note that the role of the judge decreased together with the attorney. The judge takes the direct instruction from the prosecutor's office and does not make a decision based on the law and own internal belief. There are no mechanisms and levers for disclosure of partiality of judges. The fact of a ban of implementation of audio and video materials without the permission of court gives the chance to the judge to operate bravely, and to allow violation of a principle of equality and impartiality. The above-stated actions violate human rights, in particular the right to defense, there are no means of effective protection, despite the law, and the role of the lawyer is almost depreciated. Unfortunately, the only thing is the independence of court and impartiality of the judge necessary for protection of a principle of competitiveness, for protection of equality, for making independent resolutions or judgments so that the court would deserve trust of each person, would be the guarantor of protection of the right of each person.

The Procedural Agreement

The basis of passing a decision without judicial adjudication is the procedural agreement. The basis of the procedural agreement is an agreement on guilt or the degree of punishment. The possibility of offering procedural agreement is provided by the legislation of Georgia; both for the prosecutor, and for the accused, on their own initiative. In cases of agreement on the punishment, the accused does not oppose the charge, and in cases of agreement on a charge, he/she recognizes fault (Chapter 21 of the Criminal Procedure Code of Georgia).

It is necessary to notice that the procedural agreement cannot be completed without an attorney. The specified right of the accused to have an attorney develops into a duty. There is a problem in cases where the person refuses to have an attorney; because of the absence of the means for retaining an attorney, therefore demands appointment of a free defender. However, at the same time, he/she demands procedural agreement and is ready, according to the contents of the procedural agreement, to pay the duty in exchange of a less severe punishment. The law directly does not regulate this specified case. One of the interviewed attorneys mentions: "As an attorney and a professional, I feel very humiliated when an absolutely innocent defendant asks me to reach a procedural agreement and not try to prove his/her innocence."

Proceeding from the reality existing in Georgia, in **most of the criminal cases, ends with a con-**

clusion of a procedural agreement between the accused and prosecutor's office. The interest of the prosecutor's office in the existence of such a procedure is unilateral and rather clear: the procedural agreement means payment by the accused, and by the prosecutor's office. It means certain compromises instead of this duty. Following the existing policy, it is profitable for the budget, and thus it is the prosecutor's office, that in most cases, agrees to reach a procedural agreement.

As to the other party, the accused, it is necessary to consider two situations: 1) the achievement of a procedural agreement is carried out when the person pleads guilty. 2) There is a probability that the procedural agreement is caused by mistrust towards the court. The second thesis will be considered later in this document when we touch upon the question of the high percentage indicator of procedural agreements. At present, we will note that some misunderstanding takes place in some cases, in particular, often in cases where the accused and the members of his/her family consider, that after the procedural agreement, when the party pays the duty defined by the agreement, the accused is released from the charges and the conviction accordingly does not refer to him/her.

The percentage indicator of procedural agreements increases every year in Georgia. In 2006, the indicator of cases of procedural agreements was 28 % and by the data of the first quarter of 2010 it was already 71.6 %[14]. What causes such percentage indicator and its annual growth in Georgia? As it has already been noted above, the main reason is mistrust of society towards the court. The accused has no guarantees of protection of his/her own innocence. The person prefers to recognize his/her guilt and to pay the state tax rather than fight for protection of fairness. In that case, what role does the attorney play? What is their advice? Thus, the attorney has only one role since the procedural code refers that for making a procedural agreement the participation of an attorney in the case is obligatory, his/her role is the implementation of this obligation. The attorney's role is in fact, just a technical one as his/her name is fixed in the case.

In this regard, the more deals that are made the more profit for the state budget. At the same time, the percentage indicator of not accusing verdicts almost equals to zero in Georgia. In particular, in 2005, 9168 accused had been presented in the first judicial instance, only 796 (8 %) got a verdict of not guilty. In 2009 the number of the accused grew almost double to 18,354 while the verdict of not guilty was declared by only 18 persons, which makes 0.1 %[15]. It is generally caused by a high indicator of procedural agreements.

The Aggrieved Person

Chapter 7 of the Criminal Procedure Code of Georgia defines the status and rights of the aggrieved in criminal law. In the former Criminal Procedure Code, the concept of the aggrieved and his/her participation in a criminal trial was regulated in a different way:

- **Lack of status of the aggrieved.** According to the current legislation, the aggrieved is actually equal with the witness, and accordingly all rights and all duties of the witness (Article 56 of the Criminal Procedure Code of Georgia) are granted to him/her. The prosecutor makes a relevant resolution about the recognition of the person or his assignee (in case of death of the aggrieved his assignee participates in the case to whom automatically pass all rights and duties of the aggrieved) as an aggrieved. The status of an aggrieved as a trial party does not exist.

[14] Research of the Foundation "Transparency International Georgia" http://www.osgf.ge/files/publications/2010/Plea_Bargaining_in_Georgia_-_Negotiated_Justice_-_GEO_(2).pdf

[15] See the same source

He/she gets certain rights; as the right to get information during the course of the process, as well as to receive information on whether the conclusion of the procedural agreement with the accused has taken place. The aggrieved person also has the right to demand reimbursement of the money spent during judicial proceeding.

- **Restriction and cancellation of preceding rights existed earlier.** After the Criminal Procedure Code of Georgia entered into force on October 1, 2010, certain rights of the aggrieved were restricted. In order to define these rights, we will use the previous Criminal Procedure Code. In particular, the Criminal Procedure Code, which functioned until 2010, which recognized the concept of *civil claimant in criminal trials*. The person was considered a civil claimant who directly suffered property, physical or psychological harm as a result of the crime and who made a claim for compensation damages, by civil lawsuit on criminal charges. What is meant by civil claimant and what has changed for the aggrieved after the changes? By the new Code the aggrieved who is deprived of the right to start a civil lawsuit, actually receives more damages and appears in an inferior situation. Earlier, when his/her case was considered during the criminal proceedings, the aggrieved didn't have to pay the state tax as his/her case was settled together through the proceedings of the criminal case and along with the judgment of the accused, the reimbursement decision for the aggrieved was made separately. Today, when the aggrieved person is equal to the witness, in the judgment, it is only indicated that there is an aggrieved in the case who has suffered a certain damage and after that the aggrieved should address the committee of civil cases for consideration of the case. On the basis of the decision, an execution paper is given performance paper. The aggrieved has to submit the case to a civil court, which is again connected with additional attorney expenses or other non-procedural expenses. At this time, it is necessary to note that under the circumstances of persons released from payment of the state tax, there are persons who have submitted a claim with the requirement about compensation of the loss of property caused by the crime, on the basis of Article 46 of the Civil Procedure Code, and Article 5 of the Law of Georgia "On Duties". At the same time, a person is not released from tax payment when applying to the court with the claim of compensation of moral harm.

Recognition of the violated rights at the international level

When persons are not able to reinstate their violated rights within a national defense framework, they address the international mechanisms for means of protection of human rights where the independent and impartial court, or authorized body,conduct fair and impartial judicial examination. A considerable amount of cases, which have been appealed in the international judicial community, testifies to the higher degree of trust of citizens feel towards the international structures, than towards the judicial system within their own country.

The inactions of state bodies and courts, concerning recognition and restoration of the rights of detainees and persons brought in, and persons brought before the investigatory body, makes people address the European Court of Human Rights for restoration of their rights.

Let's consider the following example. A person made a report of a crime on the actions of law enforcement officers in the local police department. The person bought cheese from one of his fellow villagers, but did not pay for it in a timely manner. A month later, the son of the person who sold the

cheese (an employee in a local police department), took him away by car, with another employee. They proceeded to beat him and demanded to be given money for the cheese. The injured person applied for medical aid in the local medical center. The Special Investigatory Service refused to initiate a criminal case. The decision was appealed in the Prosecutor's office, which kept the decision of the investigatory body by justifying that the injured person's statement had no basis. The decision of the Special Investigatory Body was appealed in the Court of Common Jurisdiction, which rejected the statement, and then this decision was appealed in the Court of Appeals. The Court of Appeals also rejected the complaint and upheld the judgment of the First Instance Court. The Court of Cassation, where the decision was appealed, returned the complaint without any justification of the decision.

Thus, without having found ways of restoration of the violated rights by national procedures and mechanisms of restoration of the rights, the applicant sent the complaint to the European Court of Human Rights. It is important to note that the police officer was called to disciplinary liability during that time.

In another case, a statement on human rights violation of personal immunity and absence of fair judicial means was sent to the European Court. The person had been detained in a police station for 14 hours. A statement about illegal care of the person in custody, about ill-treatment towards him and on forcing him give false testimonies, was sent to the Special Investigatory Service. The Special Investigatory Service made a decision to refuse initiation of a criminal case for absence of Corpus Delicti. The decision was appealed in the Court of First Instance, which rejected the complaint, justifying that the applicant missed the deadline for appealing the decision of the investigatory body as the decision is subject to appeal within a month after the decision was made. However, the court did not take into consideration that the decision of the investigatory body had not been sent to the applicant, and the applicant himself had applied in writing to receive the decision. The monthly term for reference to the court from the date of reception of the decision from the investigatory body had not been violated. The judgment of the Court of First Instance has been appealed in the Court of Appeals, which rejected the statement, and then the Court of Appeal's decision has been appealed in the Court of Cassation, which returned the statement.

We consider it important to note that in 2007, the European Court of Human Rights made a decision against Armenia on Misha Harutyunyan's case in which the court recognized a violation of the right to fair proceedings by Part 1, Article 6 of the Convention. The court also noticed, that regardless of what influenced the testimonies, which were received as a result of torture, the use of such testimonies already made the judicial proceedings unfair. Thus, there was a violation of Part 1, Article 6.

It is necessary to underline that the procedure of the recognition of the violated rights at the international level is impartial, fair, and ineffective:

- In particular, the procedure of recognizing violated rights at the international level is not effective. The main reason is that the urgency of the problem can pass as a case can be accepted into proceeding within a 3 year period. For example, in cases where the person is sentenced to imprisonment, with the violation of the law, and doesn't agree with the court verdict, it will take years to restore the violated right and the person will have to spend several years in the penitentiary. In our opinion, if it is established that the court verdict is contradicting the law, even the compensation of moral and material harm can't fully compensate time wasted in the penitentiary by the person.

- The next important issue is the problem of performance of decisions of the international judicial bodies in Armenia. In particular, if the European Court of Human Rights makes a decision against Armenia and set, for an example, the shortcomings of the legislation of Armenia in the field of providing first medical aid to the detained person. A question may arise: how obligatory the performance of the decision of the European Court of Human Rights is and how it should be executed. Whether or not legislative changes for elimination of shortcomings in the field should be made, or whether law enforcement bodies should apply the decisions of the European Court of Human Rights as case law, and, how obligatory the performance of the decisions is evident. The specified questions are being discussed very actively at present in legal structures of Armenia; however, it is clear that there are problems also in the field of international recognition of violated rights.

Considering the problems outlined in the previous paragraphs, on the international recognition of violated rights, it is possible to make the following conclusions:

- The presence of any alternative procedure on human rights protection will influence human rights protection restraining human rights violations by various bodies.
- The decisions of the European Court of Human Rights against the Republic of Armenia indicate that human rights violations take place in Armenia, and the quantity of the complaints that are accepted for consideration, indicates that violations continue.
- No matter how impartial and fair the means of human rights protection are, they cannot be the only decisions for human rights protection. In our opinion, development of the domestic legislation, law-enforcement and judicial system are far more important than applications and complaints to the international instances.
- It is also necessary to correctly and effectively use the conclusions concerning Armenia, which are made by the international instances. In particular, these materials should be used for improvement of the legislation, increase of efficiency of state structures' activity, calling officials to liability that have performed violations and with a view of improvement of the system of human rights protection.

Extra-judicial mechanisms of human rights protection in Armenia

In carrying out research and the formulation of conclusions concerning the level of development of society, presence of democratic institutes and their efficiency in the country, an important indicator is the legislation on the procedure of carrying out criminal prosecution of members of society by law enforcement bodies, the practical application of this legislation during procedural actions, security of the rights of pursued persons, including procedures of restoration of the violated rights and degree of their protection.

For appropriate provision of the guaranteed rights of the persons deprived of freedom, the existence of not only judicial, but also effective extra-judicial mechanisms of protection at administrative and departmental levels (the public prosecutor's supervision, subordinated level), as well as within the framework of continuous democratic control (Office of the Human Rights Defender, Public Monitoring Group at detention places, human rights NGOs, etc.) is important.

The international community emphasizes that persons deprived of freedom, being under continuous control of state authorities and generally in a closed regime, are most vulnerable from the point of

view of application of possible illegal actions and torture against them by dishonest employees and law enforcement agencies. From the moment of being brought in or being taken into custody , the person achieves the so-called "physical immunity." From this moment the state has a duty to protect the rights of this person guaranteed by law in any case, and the corresponding officials bare the responsibility for violation of his/her rights. For example, in the case of Ribich vs. Austria, the European Court of Human Rights noted that "any use of physical force against the person deprived of freedom, which wasn't extremely necessary because of his own behavior, humiliates human dignity and is a violation of Article 3 of the Convention. The court reminds again that the difficulty of carrying out investigations and irrefutable difficulties of fight against crime shouldn't lead to restrictions of protection of physical immunity of the person."[16]

Developing the idea of the constitutional state, Article 3 of the RA Constitution proclaims that:

The human being, his/her dignity, and fundamental human rights and freedoms, are an ultimate value. The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of International Law.

The state shall be limited by fundamental human and civil rights as a direct applicable right.

Article 17 of the RA Constitution states that "No one shall be subjected to torture, as well as to inhumane or degrading treatment or punishment. Arrested, detained or incarcerated persons shall be entitled to humane treatment and respect of dignity." In respect of the Constitution, these actions are unconditionally prohibited, as inappropriate to human essence, its values.

Based on the Constitution and Article 9 of the Criminal Procedure Code of the Republic Armenia, for all the bodies and employees participating in the criminal proceedings, there has been established the imperative obligation: respect for the rights, freedoms, and dignity of a person is mandatory for all bodies and persons participating in criminal proceedings. The specified tasks put before the State, start with standard norms and the principles concerning inalienable rights of the person, the conscious judgment and which practical application is a pre-condition of establishment of a principle of constitutionalism and formation of the constitutional state.

Undoubtedly, the most effective means of human rights protection is a judicial one. At the same time, in the RA Legal System there are no real and effective means of judicial control concerning decisions on detention and bringing in (as, for example, on arrest). For example, the right to apply to the court can't concern the basis of detention or the household conditions of the detention places established by law, as the law doesn't provide the opportunity of applying to court on such a matters. Therefore, in certain cases there are no judicial mechanisms of human rights protection, as a consequence of which the existence of extra-judicial mechanisms of protection of the rights of detainees and the persons brought in, gains essential significance. In such conditions, mechanisms of departmental supervision and public control over the actions of law enforcement agencies have great importance. The RA Legislation provides both mechanisms. Moreover, according to Article 13 of the RA law "On the Treatment of Detainees and Arrestees, the person detained or arrested has the right to:

3) to complain about violations of his/her rights and freedoms, both personally and through his/her attorney or legal representative to the administration of the places of arrest or detention, to their

[16] See Conclusions and Recommendations of the UN Committee against Torture: Second Periodic Report of the Russian Federation due in November 14, 1996

superiors, to the court, to the prosecutor's office, to central and local government bodies, public organizations and parties, the media, as well as to international bodies or organizations involved in protection of human rights and freedoms.

Despite the extensive framework of subject-addressees defined by the law for submission of complaints, in practice only, the prosecutor is authorized to make real actions and in some limited cases, administration of a detention place. As to the judicial protection of detainees and the persons brought in, it should be noted that according to Article 103 of the RA Criminal Procedure Code, a three-day period of appealing decisions and actions of the body of criminal prosecution is established. At the same time, for the appeal of some procedural actions of the Criminal Procedure Code, various terms are provided. According to the same 103 Article of the RA Criminal Procedure Code, the decisions and actions of the bodies of criminal prosecution in the cases provided by this code can be appealed in court; however, it has not established separate terms for the appeal in cases of detention and being brought in. Therefore, the three-day period of appeal extends also on the decisions of detention and being brought in.

Another mechanism of extra-judicial protection of human rights is public control by means of the office of the **Human Rights Defender** and non-governmental organizations; however, the latter do not possess devices of administrative influence, therefore, their activity can have only a supporting role.

As it has been specified, among extra-judicial protection framework of the rights of detainees and persons brought in, a real mechanism is the **prosecutor's supervision** which, actually, is the only real possibility of appealing and, whenever possible, elimination of violations which were taking place during the pre-judicial process. According to Article 46 of the law "On the Treatment of Detainees and Arrestees" monitoring of observance of laws in places of arrest or detention, shall be done by the Prosecutor General and the subordinate prosecutors, in accordance with procedures set out in the RA Law "On Prosecutor's Office." In accordance with Article 103 of the Constitution, and Article 4 of the Law "On Prosecutor's Office", the Prosecution shall, in the cases and procedure stipulated by law: supervise the lawfulness of inquest and investigation; Prosecutor's supervision gains a practical meaning in the regulation of Article 131 of the Criminal Procedure Code of Armenia, according to which:

3. After making the protocol/report on detention, within 12 hours, the body of inquiry or the investigator notifies the prosecutor in a written form.

According to Article 52 of the same code:

1. *The prosecutor is a state official, who conducts, within the limits of his/her competence, (…) at all stages of the criminal procedure, the criminal prosecution, supervises the legitimacy of the preliminary investigation*

And according to some Points of Part2 of Article 53 the following is included in the competence of the prosecutor:

6) to give written instructions to subordinate prosecutor, investigator, and the body of inquiry on the decisions passed and on implementation of investigatory and other procedure actions;
9) to resolve the appeals against the decisions and actions of the subordinate prosecutor, investigator and the body of inquiry, with the exception of appeals the consideration of which is in the competence of the court.

At the same time, the law does not provide the prosecutor with the right to independently make decisions on detention or bringing in the person, to cancel or change the decision of the body conducting the

investigation. The prosecutor, within the procedural management, has the right to instruct the body which is carrying out the investigation. The instructions are obligatory to execute though the body which is carrying out the investigation, can challenge it before the higher prosecutor. According to Article 25 of the RALaw "On Prosecutor's Office" *the prosecutor supervising the lawfulness of inquest and investigation shall, in cases stipulated by law, have the right to make a decision on removing from the proceedings the person carrying out the inquest or investigation, but may not take a decision on appointing a new person.*

No procedural subject is provided with such decisive powers by the law, which gives grounds to insist that the prosecutor's office is almost the only body, which can carry out effective extra-judicial supervision of protection of detainees and persons brought in.

With a number of international treaties the states are recommended to establish a system of immediate consideration of statements and complaints of the detainees, arrested and persons deprived of freedom, [17] to discuss the question of creation of national mechanisms of verification of statements on torture in prisons and in places of preliminary arrest, to support independent observers while visiting places of imprisonment[18], etc.

In practice when obtaining a complaint about use of torture or other illegal methods, the RA Minister of Justice, as a rule, appoints a so-called **official investigation** in order to check the questions specified in the statement. "Official investigations," in fact, are inter-departmental checks which results are the basis for calling the government official to a disciplinary responsibility. The established practice is inapplicable when official investigations on the reports of torture are replaced with investigation of procedural type defined by the RA Criminal Procedure Code. The departmental act made as a result of official investigation, as a rule, gains the power of incontestable proof that, actually, isn't subject to cancellation and isn't checked in comparison and consideration to other proofs.

We consider that any complaint about application of torture of the accused is necessary to immediately send to the **Department on supervision of legality of punishments and other compulsory measures of the RA Prosecutor General's Office** which should check the circumstances specified in the report. For these purposes prosecutors of the specified Department are authorized according to Part 4 of Article 29 of the RA law "On Prosecutor's Office":

- At any time, without any hindrance, to visit all places in which persons deprived of liberty are kept;
- To interrogate persons subjected to a sentence or other compulsory measures;
- In case of doubt that the rights and liberties of persons subjected to a sentence or other compulsory measures have been breached, to demand explanations from officials on actions taken by the latter or their inaction.

According to Point 27 of Regulations of the Prosecutor's office "The Prosecutor General's Office, in the sphere of carried out supervision of legality of application of punishments and other compulsory measures, within implementation of the liabilities provided to it by law, in an order provided by legal acts, provides direct supervision on the application of punishments and other compulsory measures, and supervises the work in the sphere of punishments and other compulsory measures." In addition, the Department presents the conclusions to the Prosecutor General or the deputy Prosecutor General about legality and validity of reports, petitions, statements of claim, provides protection of the rights

[17] See Committee against torture. 7th session 6- 24 November 2006

[18] See Committee against torture. 7th session 6- 24 November 2006

and legitimate interests of persons in places of application of punishments and other compulsory measures during deprivation and freedom restriction, use of physical force, special means and weapons provided by law.

Therefore, we find that reports and complaints about circumstances of violence against detainees, should be examined by the prosecutor's mechanism, and if the claim is justified it should be sent to the RA Special Investigatory Department with the purpose of preparing evidence for the case and the solution for initiating legal proceedings in the order established by the RA Criminal Procedure Code.

Concurrent with administrative and departmental means, it is important as well other mechanisms of extra-judicial protection of human rights: continuous and active control. Although at this time, there are no functional devices for direct protection of the rights of detainees and arrested persons; an opportunity should be provided for public supervision of the process. Existence of democratic effective control related to protection of the rights of persons deprived of freedom or considerably limited in freedom (including the persons detained and being brought in) is a characteristic of established civil societies. In Armenia, there are some functional mechanisms for carrying out public control concerning the protection of the rights of persons deprived of freedom: the Institute of the Human Rights Defender, the supervision which is carried out by various non- governmental organizations and independent groups, and,, journalistic activities.

According to Article 47 of the RA Law "On Treatment of Detainees and Arrestees", public supervision of activities in places of arrest and detention, shall be carried out by a group of public observers established by the head of the appropriate authorized governmental body. The procedures for public supervision of activities in places of arrest and detention, as well as the composition and powers of the group of public observers, shall be defined by the head of the appropriate authorized governmental body. The number of members in the monitoring group should not exceed twenty-one. The liabilities of the public monitoring group are defined for a three year period.

Experience shows that in the list of mechanisms for democratic control, public control is the most reliable. This differs from different means of control by the fact that they act not with business or professional motives, but on a voluntary basis. The level of their interest is defined by a high level of political consciousness that defines efficiency and objectivity of supervision.

Public control is the most active means of democratic control. If all other state authorities organize their activity based on complaints and statements, public control is more of an initiative, therefore the prepared reports possess a higher level of reliability. In a number of democratic states, the state authorized bodies make use ofthe help of public organizations and mass media while organizing their supervising activity.

The possibility of receiving compensation in case of illegal detention or arrest

The research carried out by this group, indicates that in Armenia there is a large number of cases of illegal and unreasonable detentions and arrests. At present there is no tangible mechanism for receiving compensation in cases of illegal detention or arrest. During detention and arrest, the person undergoes both financial and moral harm.

Especially important, is the need for mechanisms of compensation for moral harm, as illegally detained or arrested person, sometimes feel a need for rehabilitation after the harm caused to his/her spiritual peace. The need for compensation is also important from the viewpoint of increasing the efficiency of

the activity of law enforcement agencies. In particular, if each law enforcement officer clearly realizes that as a consequence of each illegal action, an individual will get compensation that will negatively be reflected in the work, only then will the number of illegally detainees or the arrested persons will be considerably reduced.

Our research indicates that in Armenia, there are no cases of compensation for harm to the person, because of illegal detention or arrest.

In our opinion the specified problem is present not only in Armenia, but also in many countries of the world. As long as law enforcement agencies have the right to detain an ordinary citizen for a certain term (72 hours in RA) without any justification, then it is difficult to speak about payment of possible compensation because of illegal detention. In particular, how it will be possible to prove that the detention was illegal, or what harm is put to the person because of this detention.

It should be noted that cases of illegal arrest are far more dangerous, as they are like punishments in their character and in the sense of the regime, are more severe than the conditions of convicts. As Armenia courts often use arrest as a precautionary measure, it becomes obvious that system changes in this sphere are necessary. In our opinion, compensation of harm caused to the person in cases of groundless arrest, should become a mandatory component of reforms.

It is also necessary to emphasize the fact that in cases of illegal detention, and, especially, in cases of illegal arrest, the harm suffered by the person has a deeper character, than it may seem at first. As a result of a person being deprived of freedom, he/she isn't given the opportunity to be engaged in an activity in which the person wishes to be engaged. This negatively impacts the possible income of the person, and, respectively, the welfare of the person and welfare of the family. However, in our opinion, the moral harm suffered by the person, and, especially, the harm, caused to ones reputation, is most serious as all this can negatively impact the person's future business and personal life.

Conclusions and Recommendations

1. The legislation of Georgia regulating the legal proceedings of the protection of the rights of people with limited freedom, in general, meets international standards. As for the practice of implementation of the laws, the main problems arises in questions of observance of the principle of equality of the parties involved in the process.
2. While the requirement of receiving permission from the judge prior to making videos in the court, is rationally justified and doesn't contradict the standards of human rights protection and the need of observance of the right to privacy;however, the ban on making an audio recording is a restriction which proportionality can raise doubts.
3. The reduction of an attorney's role in a trial intensifies doubts of the defendant towards the independence of the court and forces the person to register for the procedural agreement, even in a case where the person does not recognize fault. For ordinary people it is not clear whether the procedural agreement provides for removal of a criminal record. The procedural agreement doesn't promote behavioral or relationalchange and is only an additional source of profit for the state or local budget.
4. A large number of cases appealed in the international judicial instances, testifies to a higher degree of trust of citizens towards international structures, than to the judicial systems in both countries. However, there is a problem of implementation of decisions of the international

judicial authorities.

5. In the RA Legal System, there are no real and effective means of judicial control concerning decisions on detention and bringing in (as, for example, on arrest), existence of not only judicial, but also effective extra-judicial mechanisms of protection both at administrative and departmental level, and with continuous democratic control which is important for appropriate provisions of the guaranteed rights of persons deprived of freedom. However, in Armenia, the only body which can carry out effective extra-judicial supervision for the protection of detainees and persons brought in, is the prosecutor's office which testifies to the low level of development of other mechanisms of protection.
6. Compensation for moral harm is a necessary factor for restoration of justice. The practice of compensation for moral harm in the Republic of Armenia is not developed sufficiently. Procedures for the consideration of the restoration of a reputation of an illegally detained or arrested person should become the first step in the Republic of Armenia. A necessary condition for correct and effective application of the institute of detention and arrest is the representation of full compensation; both financial, and moral.
7. When the new Criminal Procedure Code of Georgia came into effect, the procedural status of an aggrieved practically disappeared from practice. It creates certain problems, in particular, a need for payment of state tax on cases connected with compensation of moral harm.

SECTION 4. WORKING CONDITIONS OF POLICEMEN AND CONDITIONS FOR THE CARE OF DETAINEES

Working Conditions of Police Officers in the Republic Armenia

International Standards Concerning the Labor Law

Numerous international treaties and conventions state the rights which are directed towards protection of the rights of employees and provisions for a safe and healthy working atmosphere.

According to Part 1 of Article 23 of the Universal Declaration of Human Rights, everyone has the right to work, to freedom of choice of employment, to just and favorable working conditions and for protection against unemployment.

With Part 1 of Article 6 of the International Covenant on Economic, Social and Cultural Rights, it is prescribed that the States Parties of the present Covenant, recognize the right to work, which includes the right of everyone to have an opportunity to gain a living by work which they freely choose or accept, and will take appropriate steps to safeguard this right.

Part 7 of the same Covenant prescribes: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work, which ensure, in particular:

a) Remuneration which provides all workers, as a minimum, with:

i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women, being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

According to Point 24 of the General comments Number 16 of Article 7 of the Pact of the Committee on the economic, social and labor law the ai point) obliges the participating states to respect and provide the right of everyone to favorable and fair conditions, and to recognize, among other rights, the right to fair compensation and to equal compensation for work of equal value.

The internal law concerning the labor law

It is declared in Article 32 of the RA Constitution that everyone shall have the freedom to choose his/ her occupation. Everyone shall have the right to fair remuneration in the amount no less than the minimum set by the law, as well as the right to working conditions in compliance with safety and hygiene requirements.

The Labor Code regulates labor legal relationships, and also defines conditions of safety and protection of the health of workers. In particular:

Article 242 declares that the safety and health of employees is a system of maintaining the life and health of employees during the work activity, which includes: legal, socio-economic, organizational, technical, health, medical, preventive, rehabilitation as well as other measures.

Article 243 declares that during work every employee must be provided with proper, safe and health-friendly working conditions as set by the law.

According to Article 244, the employer is liable to ensure normal working conditions so that the employees can fulfill the norm of work. These conditions are as follows:

1) Correct operation of mechanisms, equipment and other means
2) Provision of technical documents in a timely manner
3) Adequate quality and timely provision of materials and tools required for work
4) Provision for production: electricity, gas and other types of energy
5) Working conditions, which are secure and harmless for health (adherence to safety norms and rules, adequate lighting, heating, air conditioning, ensuring that the noise does not exceed the defined minimum level, radiation, vibration and other dangerous factors which may have negative impact on the health of the employee).
6) Other conditions necessary for the conducting certain activities.

Article 245 defines how the study rooms should be equipped: *The workstation and working environment of every employee must be safe, comfortable and non-harmful to health, as well as designed according to the requirements laid down in normative legal options for safety and health at work.*

According to Article 246, it shall be permitted to use only work equipment, which is in good working condition and meets the requirements established in legal acts on safety and health at work.

According to Article 251, in accordance with the procedures established by normative legal acts on ensuring the safety and health of employees at work, appropriate rest areas, changing rooms, locker rooms for clothes, foot wear, and personal protective equipment, sanitary and personal hygiene, and premises with washbasins, showers, and lavatories shall be installed in organizations. The requirements for the design of such sanitary and personal hygiene premises must be established in normative legal acts to ensure the safety and health of employees at work, taking into account the nature of activities, material used, and the number of employees.

Conditions in the premises of police departments where observation has been conducted

One of the monitoring purposes was to clarify to what extent the working conditions of police officers correspond to the requirements established by international and domestic legislation.

The monitors carried out observation of the working conditions of the police staff in Shengavit, Kanaker-Zeytun, Arabkir, Kentron, Nor-Nork, Erebuni, Vanadzor, Gugark, Bazum, and the Goris Police Departments.

The departments were located in 2-4 story buildings. The monitors estimated the cleanness in the premises as "average clean."

The building of the Shengavit Police Department consists of three floors which are disproportionately equipped. The third floor is in good condition; however, the medical preventative department was under repair during monitoring. The general condition of the entire building was unsatisfactory: it is very old, does not have a security fence surrounding the property, and does not have corresponding conveniences for effective and efficient work by the police officers. The equipment is in an unsatisfactory condition.

The Kanaker-Zeytun Police Department is in Zeytun, Yerevan. The building is in very bad condition, especially, the first floor which is only partially used; however, all other floors are in use.

The building of the Arabkir Police Department is adjacent to Azatutyun Avenue. The building is three stories and all three floors are used by the police. The building grounds are fenced on all sides. There is a separate guardroom in the yard where one must obtain a permit to enter the building.

Inside the fenced in area, there are parking spaces for the police officers. In general, the building is

repaired as during the observation, the building was being repaired. The building is equipped and the furniture is in normal condition.

The building of the Nor-Nork Police Department is located in a neighborhood of residential buildings. The 2nd and 3rd floors of the three-story building are in use. The building is isolated and not accessible, in particular to inhabitants of the suburbs of Nor Nork.

The building of the Kentron Police Department is in a neighborhood of residential buildings, next to the St. Sarkis Church. The building is two-story, rather old, and not repaired. It is convenient for inhabitants of the community.

The building of the Gugark Police Department is on the main road leading into the Village of Gugark in Lori region. The building was used in the past as bank. On the left side of the building which has a separate entrance, there is the Department of the Traffic Police.

The building of the Bazum Police Department is is two-story building; however, only part of the first floor is used as a Police Department. The police share the building with the Passport and Visa Department, which has a separate entrance. A condominium, dental clinic, laboratory each has a separate entrance and is located on the second floor. The corridor and mainly the study rooms of high ranking employees are repaired.

The Goris Police Department is in the central part of the City of Goris on the Goris - Kapan route. It serves the City of Goris and 24 rural communities. In the same building, there is the courtroom and prosecutor's office. The building needs urgent repair, the offices are very small and are equipped with old furniture. According to the Chief of the Goris Department, a separate building for the court is under construction and ssoon the court and prosecutor's office will re-locate to the new building. Repairs to the Goris Police Department are delayed.

The building of the Spitak Police Department has been recently constructed. It is a two-story building located on the motor route of Yerevan - Vanadzor, at a distance of 300M from the city center.

The building of Vanadzor Police Department is a three-story building isopposite the central market and in need of repair.

For the most part, the Police Departments are heated by means of a central heating system. The Vanadzor, Nor-Nork and Kentron Departments are heated by electric heaters. In the Bazum Police Department, the offices were heated at the personal expense of each employee andeveryone was responsible for heating the study rooms. In the Bazum Police Department, it was very cold, and according to monitors, under such conditions it was simply impossible to work.

Overcrowding of Interrogation Rooms

In the Shengavit Police Department there are 37 study rooms for 300-323 employees. 3-4 employees work together in one room.

About 60 policemen work in the Nor-Nork Police Department and 2 to 4 employees work in one room; however, one of the rooms is provided for local policemen who generally perform their duties outside of the building.

In the Ketron Police Department 2-4 employees work in one study room andone room is provided for 25 local policemen who generally perform their duties outside of the building.

The Erebuni Police Department has 56 rooms where 3-4 investigators and inspectors, as well as 6-7 police officers work in one room.

In the Vanadzor Police Department, 2-4 policemen work in one room and one of the rooms is provided for 15 local policemen who generally work outside of the building.

Materials and Technical Equipment of Interrogation Rooms

In all the police departments where observation was carried out, there was a lack of material and technical equipment. The employees equip the rooms at their own expense, where they attempt to create practical working conditions. Whereas according to Article 41 of the Law "On Police" the state budget of the Republic Armenia and off-budget funds shall ensure the material support, satisfaction of labor, social and household requirements, the expenses are made from the means of services rendered on a contractual basis. In practice, the law requirement is not followed therefore the right of police officers to work in efficient and effective working conditions is violated. In all the police departments where observation was carried out, there was a lack of computers. The majority of available computers were bought at the personal expense of employees. According to employees, they buy paper, pens, pencils, all which are necessary for performance of their work, at their own expense.

In the investigators' rooms, generally there are no printers and no internal telecommunication system to keep in touch with each other. In the Vanadzor Police Department telephones are connected in parallel which interferes with normal work.

The furnishing of all rooms in the police departments where observations were carried out, strongly differed from each other. Offices of chiefs and high-ranking employees were equipped and repaired better than other rooms, which testifies to the fact that there is discrimination in relations and working conditions. It is considered necessary to create identical working conditions for all employees and to provide them with the necessary material means for the purposes of overall good job performance.

Problems which have been observed by police officers

Police officers, as a whole, are dissatisfied with working conditions. Listed below is a number of problems that police officers complain about and which interfere with their normal work:

- Low wages
- Poor and insufficient equipment of study rooms
- Absence of Computers
- Absence of radio connections in the Goris Police Department

In particular, investigators complain about lack of computer equipment, also about limitations on international calls. Some also complain about lack of social privileges and some about insufficient regulation of their activity concerning the law. Operative workers complain about lack of technical equipment.

The employees of the Nor-Nork Police Department complain about a significant number of complaints and statements from citizens and consider that if submission of complaints and statements in police departments were carried out on a paid basis, as in court, the number of unreasonable complaints and statements would be reduced.

All interrogated policemen say that physical tension in their work is high in spite of the fact that they consider that the salary they get under the current conditions of Armenia is high. However, if to compare their salary to the salary of policemen in the European countries, it is low, especially considering that they generally buy material and equipment at their own expense.

The employees of the Ketron Police Department consider that they deserve the rank of heroes as the work which they carry out, isn't appreciated.

Problems existing in the police departments

In each police department, there is a lack of computers, printers, photocopiers, stationery, means of communication, security alarms, lack of rooms for resting. The available computers, material and technical equipment are generally old or are bought in at the employees'expense.

The equipment in the study rooms differs as ordinary rooms are equipped worse in comparison with the ones for high-ranking policemen. The furnishing of rooms of employees doesn't correspond to the norms provided by law, as the furniture is wornout and is mainly bought in at personal expense.

All of the Police Departments are in need of repair and general maintenance. T rooms are generally repaired at the employees' expense.

In the Vanadzor Police Department there is no drinking water available so employees collect water from the yard and store it in rooms in plastic bottles.

The is no internet connection in the Vanadzor Police Department which can be an obstacle for effective work with use of modern means. There is no relevant professional library for use by police officers.

The Vanadzor, Nor-Nork and Kentron Police Departments are heated by electric heaters and the corridors are not heated. Each employee of the Vanadzor Police Department provides electric heaters at their expense.

Heating in the Bazum Police Department is carried out at the personal expense of each employee. Everyone is responsible for the heating of their own rooms.

Conclusions and Recommendations

The revealed problems testify that in practice, the law requirements are not met or guaranteed. safe and healthy working conditions, as well as the right to work in conditions with sufficient material and technical equipment is not provided.

In this regard we recommend:

- In due time, to provide each investigator with the necessary quantity of material means: stationery, means of communication such as the Internet, means of internal communication, possibility of long distance and international calls, and up to date legal literature.
- To provide each investigator with the necessary equipment for work
- To create sanitary rooms and rooms for personal hygiene or wash basins and places for rest, storage for clothes, footwear, and other personal belongings
- For the purpose of the safety of investigators, to set up alarm system in each room, this will be connected to a call center
- To provide each Department with a ventilation system
- To provide the buildings of Vanadzor, Nor-Nork and Bazum Departments with a central heating system • To provide the staff of the Vanadzor Police Department with pure drinking water and this should be made available to all employees

Working conditions of police officers and conditions of the care of arrestees in Georgia

Police Departments

The monitoring in the police departments showed that police buildings, as a rule, are located near the city centers.

The buildings of the police administration have glass windows. Most of the buildings have only two floors. . Each has a waiting room for citizens. In the city, the working rooms of the employees are large with glass walls divided into 16 parts. Heights of the solid portion of the walls are less than a human's height. There are also six study rooms. In the regions and villages, there is one big hall where all employees work together. In the police departments, there are no isolation cells for temporary detention or interrogation rooms...

In all the police departments the conditions are almost normal. As a result of reforms which were carried out almost all departments were reconstructed or newly constructed according to international standards and are equipped with a central heating system and good ventilation.

Each police inspector shall have two chairs with a comfortable back, one modern table, and one personal computer.

In the room for having a rest, there is one comfortable sofa and two comfortable armchairs. On each floor there are women's and man's toilets. In the police department there is no pre-trial detention centers. There is no medical room in the police departments; however, there is a medical corner where there is a first-aid kit and all means necessary for first-aid treatment.

There are no separate rooms for appointments, but detainees can meet the attorney in a room specially made for this purpose. A meeting with relatives is forbidden.

All interviewed policemen were on the average, 30 years old with, a higher legal education, and had three to four years of working experience in the system of the Ministry of Internal Affairs. They are satisfied with their working conditions.

Isolation Cells for Preliminary Detention

The basic functions of isolation cells at the Ministry of Internal Affairs include temporary detention of persons suspected of a crime in an order and time frame established by the law (no more than 72 hours).

Since March 2005, the isolation cells for temporary detention of the local and regional bodies at the Ministry of Internal Affairs, as well as the isolation cells for temporary detention in Tbilisi, which belong to the former Ministry of Security, have been transferred to the Central Administration. Since this period, many actions have been introduced and developed and directed towards the improvement of the health conditions of suspects, protection of their rights and respect for the dignity of a person, as well as the arrangement of an identification and registration system. It is necessary to note that, following the European standards, isolation cell #2, used for temporary detention in Tbilisi, underwent capital repair.

In the aforementioned registration books, the primary attention is paid to the degree of health of the suspects, their rights and claims. A record is recorded from the moment of accepting the suspect to the isolator cell until he/she leaves it. A uniform identification and registration database of detainees and persons placed in isolator cells for temporary detention has been developed which considerably improves, from the viewpoint of efficiency, the process and progress of search and identification in efficient terms, as well as compilation of complete information.

Material-technical Equipment of Isolation Cells

During and after monitoring, while searching for information on the isolation cells of temporary detention places at the Ministry of Internal Affairs, we revealed problems connected with an outdated infrastructure although rehabilitation of all isolation cells is planned and will be carried out stage by stage. Last year in a number of the isolation cells of temporary detention places there was repair work, and this gives grounds to believe that this problem will be solved soon.

During the period of our monitoring, №1 and №2 isolation cells, in which investigation rooms, shower, ventilation and heating function in Tbilisi were fully repaired. Repair in other isolation cells is being carried out stage by stage.

The majority of the respondents interrogated by us notice that lighting in an isolation cell of temporary detention was satisfactory. Ventilation on the premises was carried out by means of a window, which opened to the outside. The chairs, cots were new. There was a toilet, but there was no shower and hot water and hygienic means were not provided.

Food was provided, although these items were mainly sent by relatives, and special permission was required for this.

While held being in an isolation cell, persons do not have the possibility of meetings with relatives. Only one case was recorded when the arrested person was visited by his father the meeting lasted an hour, and no one was present. The meeting was organized by the inspector.

None of the interrogated could remember that he/she or anyone else in the isolation cell needed medical aid.

None of the interrogated detainees took a walk outside for fresh air.

We may say that the cells for preliminary detention meetthe minimal requirements. The cells for preliminary detention are subject to the Central Administration of Human Rights and Monitoring, operating at the central office of the Ministry (Administration Department). The central administration provides registration and health services for persons placed in the cells of preliminary detention, as well as regular monitoring of the cells of preliminary detention. The mentioned Administration hands over the information on the violations revealed to the general inspection, and regularly process the statistical data. The National Defender and non-governmental organizations can freely carry out monitoring in cooperation with the Administration and/or independently based on the memorandum issued with the administration of the Ministry of Internal Affairs. However, as our practice has shown, carrying out monitoring by any non-governmental organization in any of the structures of the Ministry of Internal Affairs is connected with great difficulties. The Central Administration of Human Rights and Monitoring ensures informing the persons placed in the cells of temporary detention about their procedural rights. The Central Administration also provides delivery of products and improvement of sanitary conditions. The conditions in the cells of temporary detention are brought into accord with the

international standards stage by stage. At the same time, attention is paid to preservation of already rehabilitated/updated infrastructure. Before reception on service the personnel working in the cells of temporary detention, attends a specialized training course in the Academy of the Ministry of Internal Affairs. Evaluation of employees is regularly carried out; retraining courses are planned and carried out. At the same time, the employees of the isolation cells regularly attend educational trainings to increase the level of their knowledge and improve the actions directed towards the protection of the rights and freedoms of the person, and respect and dignity of the person, during the realization of the activity by them and execution of their rights and duties.

Medical Service

The suspects placed in isolation cells in each of the regions of Georgia, are provided with first aid which is free of charge, and is state funded. The medical staff of the isolation cell is on duty in a 24-hour regime, whose main functions includes observation and a check of all suspects, both during acceptance to the isolation cell, and at check-out.

During the stay in an isolation cell, the doctor carries out medical preventive treatment necessary for the suspect although here it is necessary to note that our respondents (not considering those who have been detained for drug use and have been transferred to a narcotics department for carrying out special research) couldn't remember fact when they or someone else had been provided with medical services or a check-up. So, of the three detainees one had been was carried out (one of them informed that the examination had been carried out by the employee on duty), 1 person informed that it had been carried out in the preliminary detention cell.

The doctor regularly carries out sanitary control over food items.

Just after accepting the suspect to an isolation cell, in the presence of the doctor, an external examination is carried out to fix any traces of physical injury on his/her body about which a corresponding statement is made, in which there is also included a statement on where, when and under what circumstances the suspect had received them, as well as the claims, stated by the suspect in relation to the police officers during detention or after it. In case there are such, corresponding statements are immediately sent to relevant investigating bodies for subsequent reaction (General Inspection of the Ministry of Internal Affairs, Office of the Prosecutor General).

Cases of violations of the 72-hour term of the maintenance of the suspects in the isolation cell are eradicated. This fact is stated in the reports of the Ombudsman.

Treatment of petainees

Since 2005, there have been no facts of beatings, cases of torture, or any forms of an insult or attempt of humiliation of the person's dignity by the policemen; either in the police departments, or in the isolation cells.

The Ministry of Internal Affairs guarantees the independence of the activity of isolation cells from intervention from outside officials, which is due to the control established over isolation cells. Corresponding materials about the person suspected of the crime and, placed in an isolation cell with any physical injuries, which by their words are a consequence of use by the police officers of physical force either at the moment of detention and/or after being placed in the police department, go to corresponding bodies, where an investigation on each of the specified facts is held.

According to the statistical data, in comparison to more recent times, such facts of human rights violations of detained persons by the policemen, concerning use of physical force, torture, psychological pressure and other facts of humiliating the dignity of a person, which took place after detention in police departments, police cars or other places, have been reduced. It is due to the constant monitoring of police departments though there are still facts of traumas caused by the police officers in the course of detention which aren't disregarded, an all corresponding materials are sent to competent services.

Conclusions

As a result of monitoring, both positive and negative tendencies have been revealed. Among the positive it is necessary to notice that the infrastructure of all types of closed establishments in Georgia have considerably improved: the police buildings have been constructed and repaired, repair of some isolation cells of temporary detention has been carried out, although it is necessary to add that there are establishments which were not renovated and still continue to function.

The Ministry of Internal Affairs, by means of development of an infrastructure and periodic renovation of technical equipment, consistently provide appropriate working environment and conditions for the employees. Efficient equipment and technical materials of the police officers, help promote and provide effective execution of their duties. The infrastructure of the ministry and technical equipment provide protection of both the physical and electronic classified information from unlawful accessibility.

APPENDIX N1

Summary of Information Received during Monitoring in South Ossetia.

Within the framework of monitoring in South Ossetia, 9 persons were detained and 8 relatives of detained persons were interrogated. All nine detainees were adults, between the ages of 22 to 52. Six of the nine detainees, and six of the eight relatives of detained persons had a higher education, two did not finish higher education, and one of the detained persons and two of the relatives of detained persons had secondary education.

Procedure of Detention. First Contact

Three of the nine respondents were detained at home, one in the house of his relative, three in the street, one person at work, and one in the assembly hall of the Government of the Republic.

Six were informed about the reason why they were being detained, one detainee was told that he would be informed at the police station but the police would not give the reason beforehand and, one detainee who insulted the OMON employees was given no explanation but simply hit in the face and put in the car.

According to the interrogated relatives, all detainees were informed about the detention bases verbally in an available language.

Identification of the detained

In four cases the identities of detainees were established according to their passport; in three cases people were asked their name and surname verbally, the name of one detainee was reported by neighbors, and in one case, the police officers made the identify.

According to three relatives, the identities of the detainees were established, by asking the detainees' names, the identities of five were established by checking their documents.

Documenting of the Detention Procedure

Two detainees stated that they didn't sign any document, five signed the detention protocol, one person refused to sign the detention protocol, one stated that he had to sign the document as he had been severely beaten.

Of the persons who signed the detention protocol; only two said that they had been given sufficient time to get familiarized with the document, one reported that he had not be given the chance to get familiarized, and only one managed to look through the text.

Two interrogated relatives of detainees reported that the detained person signed the detention protocol; however, they couldn't answer the question on whether the detainee had a chance to get familiarized with the protocol.

To the question of whether or not they had been provided with a copy of the detention protocol, seven detainees responded negatively and one answered that a copy of the detention protocol had been given at the pre-trial detention center. One was given a copy of the detention protocol several days

after he asked about it.
Six relatives reported that a copy of the detention protocol had not been provided to the detainees.

The Attitude of Police Officers during Detention:

Six of nine interrogated detainees responded that police officers did not direct any humiliating statements towards them or towards members of their families. One of the respondents reported that one of employees swore.

The detainee who reported earlier that employees had hit him in the face, also said that when he was being put into the police car, police officers used swear words and then a skirmish began between them. He was hit after he had offended the police officers. One detainee reported that at the police station, he was beaten and treated with unkind words. Seven of the nine detainees stated that physical force had not been applied against them.

The detainees, as a rule, were not provided with medical assistance. The detainee, who was hit in the face, stated that he was not provided with medical care. A detainee, who said that he had been beaten in the police station while being questioned, said that they were allowed to get medical care only in the pre-trial detention center. Other detainees answered that they didn't need medical care, two were allowed medicine.

Two of the relatives of the detainees (the father and the brother of the detainees) stated that their relatives were beaten, with an object, in the police station, in order to obtain testimonies. According to the father of one of the detainees, there were bruises all over the body of his son.

All interrogated relatives of detainees reported that the detainees were not provided with medical assistance in spite of the fact that four of them were in need of it.

All interrogated detainees stated that they experienced humiliating conditions.

Informing on their rights

Eight of the nine former detainees have not been informed about their rights; one detainee stated that he had been "given a paper which he needed to read." The phone which belonged to a detainee was taken from him during detention. However the police officers did not respond to the person's requirement to justify the action

Seven relatives of detainees informed that the detainees had not been informed about their rights; one of the relatives said that the detainee had been informed about his rights in written form.

The Right to Defense

Three of the nine detainees were informed about their right to make use of the services of an attorney, ; one of them was informed right after detention by the investigator in the police station, and another detainee was informed on the day after detention.

Five of nine detainees didn't make use of the services of an attorney. To the question why not?, one of them responded that, it was useless, the other four detainees didn't consider it necessary as they were going to be placed in a pre-trial detention center for 15 days. One of the detainees made use of the services of a public defender.

To the question whether or not the person was satisfied with the services of the defender one of the detainees responded that he was satisfied, however none of his petitions were satisfied.

Two of the interrogated relatives reported that their relatives were provided with a state defender. In one of the cases the accused refused services of the state defender and hired a private "Russian" attorney, in another case, according to the relative, the state defender achieved a verdict of not guilty.

The Right to Inform the Person of a Choice about their Detention

Eight of the nine detainees were not informed about their right to be informed about detention, however one person was informed. All nine detainees called from the police station and informed their relatives about their whereabouts. One of detainee's phone was taken from her when when she was calling her daughter: the conversation lasted from 2 to 3 minutes. All detainees used their personal mobile phones in order to make a call.

One of the relatives stated that in spite of the fact that the police officers had informed the person about the right to notify someone about their whereabouts and had given him/her the opportunity to make a call, the person refused to call anyone. Despite it, the police officers contacted the relatives of the detainee and informed about the detention.

Detainees called six of the interrogated relatives from the police station. One of the interrogated relatives was present during detention.

Transportation of Detainees

Six of the nine former detainees specified that the car in which they were transported to the police station, was for official use but three of the detainees couldn't recognize the official car. All detainees were immediately brought into the police station.

Conditions of Care in the Police Station

All nine detainees were transferred to the police station. In the police station before carrying out interrogation and transfer to a pre-trial detention center, detainees were kept in the investigator's study-room.

Two of the nine interrogated detainees have been kept in the investigator's room for 2 - 3 hours, one of them has been kept in the investigator's room for 4 hours, another person has been kept for 7 hours. Three detainees have been kept in the cell of the police station for days, and were regularly interrogated by the police. ns. All interrogated persons noted that they were given the chance to satisfy their needs. In none of the cases was a medical examination carried out in the police station.

The persons, who asked for water, were provided with water by the police officers, a detainee who asked for medicine was given only water. In one case the detainee was provided with a bandage to use on a wound.

Legal Protection and Restoration of the Violated Rights

One of the nine detainees noted that he tried to appeal against some procedural actions of the police in the prosecutor's office, the Supreme Court and other legal bodies. An answer was received only from the Supreme Court as other bodies re-directed the complaints to the Supreme Court; however, the person did not receive complete answers to the questions and the complaints were not satisfied.

Seven of the eight relatives reported that they didn't appeal against the actions of police officers. In one case, the attorney didn't receive the answer to the statement sent to the Parliament of the Republic.

Conditions in the Cells

Two of the nine detainees presented data on their treatment in the pre-trial detention cells, five in the pre-trial detention centers cells, and one in the cell of a corrective establishment. In the pre-trial detention cells, the persons stayed two weeks and three months. Seven and eight detainees were incells with an area of 24 sq.m and 28 sq.m respectively.

The interrogated persons complained about the smell of humidity in the cell. They stated that the windows couldn't be opened, there was no ventilation system , as the cells were aired by opening the door. In each cell there was 8 beds. The toilet was in the cell and was fenced off by a partition. There was a wash basin and water supply in the cell. As the administration didn't provide detainees with means for hygiene, their relatives brought items to them. Detainees also reported that there was no prohibition in storing hygiene items. The relatives also provided the detainees with dishes, tableware and, bedding, with no prevention of any items. There were also tables and benches in the cells.

According to the evidence of the interrogated detainees, they were able to have daily walks for a duration of between 3 - 5 hours.

During their stay in the pre-trial detention cell, the interrogated detainees never saw their relatives.

There were medical workers and a nurse in the pre-trial detention place, who, if necessary, measured their blood pressure, or administered medicines. .Detainees also took the medicine brought in by relatives.

Six persons living in a pre-trial detention center stated that they were kept in 24 sq. m (4 persons), 8 sq. m (2 persons), 15sq. m (4 persons), 24sq. m (2 persons), 20sq. m (3 persons), 48sq. m (6 people) sized cells.

The detainee being kept at the police detention stated that there was no toilet in the cell. In the pre-trial detention centers there was a toilet in the cells which was separated by a plywood partition.

There was a wash basin in the cells, and the water was drinkable. Water was supplied on a schedule.

According to three of the five respondents living in the pre-trial detention center, they had access to a shower once every 7 days and according to three detainees it was once every 3 days. The interrogated persons reported that they had the possibility to store their personal dishes, one of the respondents said that they had the possibility to store only dishes for a single use. The relatives provided them with means of hygiene and bedding. Eight interrogated relatives reported that they provided the detainees with bedding, clothes, blanket, means of hygiene, and food.

According to detainees and relatives, the administration of the establishment provided food once a day. One of the five respondents reported that he had an appointment with his relative in a room for appointments in a pre-trial detention center. The visits, which were permitted by the prosecutor, lasted one hour. Five interrogated detainees didn't meet with their relatives during their stay in a pre-trial detention center. One of the respondents, whose relative was in a pre-trial detention center, reported that in spite of the fact that the judge permitted an appointment, the chief of the pre-trial detention center didn't allow the appointment.

Four of the interrogated relatives said that they saw their relatives in the pre-trial detention center. The appointments lasted one hour and a police officer was present.

Medical workers of a pre-trial detention center had a first-aid kit. If necessary, the medical personnel provided medications. One of respondents reported that he didn't trust the medical personnel and didn't take the medicine which they prescribed for him. . According to detainees, an ambulance was

called if necessary.

Three of the interrogated detainees declared that while being received at the pre-trial detention center, a medical examination was conducted and three reported that a medical examination was not conducted.

APPENDIX N 2

To Artur Sakunts, Chairman of
Helsinki Citizens' Assembly -Vanadzor

The RA Police considered the briefing memorandum based on the results of the monitoring of "police – citizen" relations"conducted by Helsinki Citizens' Assembly – Vanadzor, and here are the considerations by the Police.

Enclosed 2 pages.

Chief, Police General V. Yeghiazaryan

Considerations

Regarding the briefing memorandum based on the results of the monitoring of "police – citizen" relations conducted by Helsinki Citizens' Assembly – Vanadzor

The study of the results of the monitoring of "police-citizen" relations conducted by Helsinki Citizens' Assembly-Vanadzor revealed that the observations were conducted at a low professional leveland the issues raised were studied with a superficial and unscientific approach. First of all, the briefing memorandum does not indicate in which period the individuals involved in the inquiry communicated with the police, as many of the issues identified in the briefing memorandum have already been solved due to the policy adopted by the RA Police Administration.

It is obvious that those who prepared the memorandum were unaware of the actual purpose of the issues they studied and the legislation regulating the sector.

The issues and recommendations raised in the briefing memorandum are regulated by the RA Legislation, namely, the issues raised in points 1.1, 1.3, 3, 3.1, 3.2, and 4 of the briefing memorandum are regulated by the RA Law on Treatment of Arrestees and Detainees and the RA Government Decision N 574-N from June 5, 2008, on Establishing Internal Regulations at Detention Facilities of the RA Police System, and the approach indicated in Part 1 of the recommendations section is already regulated by Articles 63 and 131^1 of the RA Criminal Procedure Code. According to these articles and immediately upon arrest, the arrestee receives, from the body of inquiry, the investigator, or the prosecutor, a written notification of one's rights and justification. The 2nd point of the recommendations contradicts the provisions of the RA Criminal Procedure Code. According to point 1 of Part 1 of Article 70 of the RA Criminal Procedure Code, advocates participate in the criminal proceedings as a defense attorney: 1)upon the invitation by the suspect, the accused, the legitimate representative thereof, the relative, and also upon the invitation of other individuals upon request or consent of the suspect or accused; by appointment of the Chamber of Advocates of the Republic of Armenia at the request of the body conducting the criminal trial. Point 1 of Part 5 of Article 70 of the Ra Criminal Procedure Code states that: "The body of inquiry, the investigator, the prosecutor, or the court, have the right to offer the suspect and the accused to invite another defense attorney themselves, or to appoint the defense attorney through the Chamber of Advocates of the Republic of Armenia: 1) upon impossibility of the defense attorney to arrive for the participation in the first interrogation of the suspect or the accused, taken to imprisonment, within 24 hours from the moment of acquiring the status of the defense attorney or in the case of not arriving within the same time frame."In other words, the legislature states that the advocate has to obtain a status of an defense attorney, and according to Article 71 of the RA Criminal Procedure Code: "To confirm his legal status,the Defense Attorney presents to the body conducting the criminal trial, the following documents: a document proving his identity proof document and a document, confirming his/her membership in the Chamberas well as a written confirmation from the suspect or the defendant for acting in the capacity of a defense attorney; or the decision by a competent authority indicated in this Code about appointing a defense attorney."

If any violations of the abovementioned legal requirements are revealed, the RA Police Administration

provides an adequate legal solution.

As to the working conditions of the RA Police Officers and creating interrogation and lineup rooms equipped with audio and video recording systems, those are connected with significant financial expenditures and will be solved gradually, within the framework of the reforms conducted within the RA Police System.

Based on the aforementioned, we believe that the publication of the information in the briefing memorandum will not promote police efforts towards strengthening mutual trust between police and society and will lead to useless and pointless discussions.

The RA Police Staff

APPENDIX N 3

Interview with a Detainee

Interview date	Interview time	First name/Last name of the interviewer	Country	City/Town

Respondent Information

First name/last name: (not mandatory) _____
Birth Date: (not mandatory) _____
Age: _____
Education: _____

Tell us what exactly happened?
Did the police officers come after you?
What for?
Where were you at that time?
Was any of your relatives or acquiantances present? If no, who first learned that you were brought to the police station? When? How? If your relative was called, who made the call?
Is your case already closed or not?
If no, in which phase is it now?

Interview

1. Apprehension

1.1 When were you sent for?
1.2 Where?
1.3 How was your identification established (by checking documents, passport or asking questions)?
1.4 How many people came from the Ministry of Home Affairs?
Were they in uniforms? Did they introduce themselves? Did they show you a certificate?
1.5 Did they tell you the reason why they came, circumstances, etc., where they were going to take you, for how long and why?
Did you understand why they came for you?
1.6 Were you explained your rights? When exactly did it happen?
How (orally, written)?
Was it clear to you (the language and the terms)?
1.7 Were you informed about the right to an attorney?
When were you informed about that?
Did you use the service of an attorney?
If no, what was the reason?

If yes, when?

1.8 Which attorney did you use (defender or hired attorney)?
If hired who recommended him/her?
If defender, were you allowed to choose him/her?
Are you satisfied with the service of your attorney, why?

1.9 Did you sign any documents? When? Can you mention what you signed?
Before signing were you given enough time to get familiar with the document? Did you get familiar with it?

1.10 Were you given a copy of the Act on Detention? If yes, when?

1.11 Were you allowed to ask questions? If yes, what questions did you ask?
Were your questions answered?

1.12 Did you offer resistance, how? Did you use any items at hand? If yes, why did you offer any resistance?

1.13 Were you under age when brought to the police station? If yes, was your legal representative present?

1.14 Who else was present?

1.15 Did the police staff threaten you or say degrading expressions against you or your relatives? What exactly? How did you react to those expressions?

1.16 Did they use physical force, firearms, or threaten you? What kind of force was used (truncheon, handcuffs, etc.)? Did it leave any marks on your body?

1.17 If physical force was used, did you or did your relative require medical aid or medicine? Why (in case of illness, injury)?
Were you provided with medical aid?
By who and how?

1.18 In what psychological condition were you in when you were first brought to the station (irritation, degrading...)?

1.19 How were you led to the car? Did you get into the car by your own? What kind of identifying signs were there on the car?

1.20 Were you taken to the police station immediately? If no, where?

1.21 Were you informed about your right to notify an attorney, a friend or a relative about being brought to the police station?

1.22 Were you allowed to phone?
When?
On what phone?
Who did you call?
How long did you talk?

1.23 How long did you stay at the police station?

1.24 Was a preliminary medical examination done in the police station?
Who did the examination (nurse, policeman on duty)? How many people?

1.25 Where were you kept in the station, in which room? Did you have a chance to get out of the room?
While being at the station did you need to use the restroom? Did you use the restroom? How

was access to the restroom?

1.26 Did you ask for water or something else while being kept in the station? Was your request satisfied?

1.27 When were you released from the station?

1.28 How long did it take the police to release you from detention?

1.29 Was the decision on the detention made based on the same evidence as it was on bringing you to the station?

2. Detention

1.1 Where were you detained?

1.2 When?

1.3 What was the reason of your detention?
Were you familiar with the reasons for the detention?
If yes, who gave you that information?
Were you detained at the scene of the crime, what was the crime you were accused of?

1.4 How was your identity established (documentation checking, passport, or other inquiries)?

1.5 Did someone explain the reason of detention to you?
If yes,was the language clear to you?
Did you understand why you were detained?

1.6 Did you sign any documents?
When?
Can you say what exactly you signed?
Before signing, were you given a chance and enough time to get familiar with the document?
Did you get familiar with it?

1.7 Were you given the copy of the detention record?
When?

1.8 Were you given a chance to ask any questions to the police staff?
If yes, what questions did you ask? Were your questions answered?

1.9 Did you offer resistance, how? Did you use any items at hand? If yes, why did you offer any resistance?

1.10 Who else was present at the time of detention?

1.11 Did the police staff threaten you or say degrading expressions against you or your relatives? What exactly did they say? How did you react to those expressions?

1.12 Did they use physical force, firearms, or some special means? What kind of special means were used (truncheon, handcuffs, etc.)? What kind of marks did it leave on your body?

1.13 Was it necessary for you or your relatives to receive medical aid or medicine at the detention? Describe the illness or injury.
Were you provided with medical aid?
Who provided it and how?

1.14 In what psychological condition were you when you were brought to the station Were you irritated or did you feel humiliated?

1.15 Were you informed about your rights?
How (orally, written)?
If written, were you given a chance to get familiar with what was written?
Was everything clear to you?
If orally, was the information accessible to you (language and terms)?
Did you understand?
Were you given a chance to ask questions?
Did you ask anything? What?

1.16 Were you informed about the right to be provided with the service of an attorney, public defendant, or an advocate?
When were you informed?

1.17 Did you make use of the service of an attorney?
Which attorney did you make use of (public defender, advocate, or an attorney)?
Who recommended the attorney?
If a public defender, were you given a chance to choose him/her by yourself?
Are you contented with the service of your attorney? Why?

1.18 Were you informed about the opportunity to appeal the record of the detention?
When were you informed about it?

1.19 Were you informed about the right to inform any relatives about your detention? Were you allowed to call?
When?
On what phone?
Who did you call?
How long did you talk?

1.20 Were you taken to the police station by car?
Did you get into the car by your willingness?
Was it a police car or a private car?
What kind of distinctive signs were there on the car (siren, emblem..)?
Were you taken to the police station immediately? If not, where were you taken?

1.21 Before the police started the interrogation or took you to a cell how long were you in the police station?

1.22 Which room were you held in at the police station before the police started the interrogation or took you to a cell? Did you get a chance to get out of that room?

1.23 While being held at the police station did you need to use the toilet? Did you use the toilet? How was access to the toilet?

1.24 Was a preliminary medical examination done in the police station? Who did the examination (nurse, policeman on duty)? How many people?

1.25 Did you ask for some water or something else while being in the police station? Was your request satisfied?

1.26 When were you released?

1.27 When was the decision on the indictment made?

1.28 Was the indictment on the same evidence by which you were detained?

3. Interrogation

1.29 Did the interrogation begin just after being brought to the police station?
1.30 Where did it take place?
1.31 What time did the interrogation take place?
1.32 Was your attorney present at the interrogation?
1.33 Who held the interrogation?
1.34 How long did it last?
1.35 Did you ask for something during the interrogation (water, food)?
Was your request satisfied?

4. Protection of your Rights

1.1 Did your attorney present an application on Violations of the Client's Rights to the Governmental Bodies?
1.2 Who exactly was it submitted to?
1.3 Did the representative of the governmental body consider the application?
1.4 What was their decision?
1.5 Did the detainee submit any complaint to authorities? Who was it submitted to?
1.6 Did the authorities consider the complaint?
1.7 What was the decision made by the authorities?
1.8 Were there any cases in your attorney's practice when someone was followed for submitting complaints on the activities of the police to the authorities.

1. Were you kept in the cell at the police station or at another facility under the jurisdiction of the Ministry of Home Affairs?
2. How long?

Please answer the following questions.

5. General Information of the cell

1.1 What was the approximate size of the cell in which you were kept?
1.2 How many people were kept in the cell with you?
1.3 Was there electric lighting in the cell? How many lamps were there?
1.4 Were there switches and wall sockets in the cell?
1.5 Was there a bad smell or mold in the cell?
1.6 What was the approximate temperature in the cell?
1.7 Were there windows in the cell? How many? Could they be opened? How (from inside or outside) ?
1.8 Could the detainees open the window?
1.9 Was there a fan in the cell? Was it working?

1.10 Were there stools, table, or other pieces of furniture?
1.11 Were there benches or bunk beds in the cell?
1.12 Was there a toilet in the cell, if yes, was it separate from the cell? How?
1.13 If there was no toilet in the cell, how was access to the toilet?
1.14 Was access to the toilet free?
1.15 Was there a faucet or sink in the cell?
1.16 Was there running water in the cell (constant or by schedule)? If no, how was access to the water?
1.17 Was there drinking water in the cell? If no, how was access to the drinking water?
1.18 Was there access to a shower and hot water?
1.19 Did you get any hygienic items? What kind?
1.20 Did your relatives provide you with hygienic items?
1.21 Was there a lock for the hygienic items?
1.22 What kind of tableware was used?
1.23 Could you have your own tableware?
1.24 Was there a lock for the tableware?
1.25 Were there any organized walks, how often? How long? Where? Was the walk area indoors or outdoors?
1.26 Did the administration provide you with food? Can you give an example of what was provided?
1.27 Was there a place for you to sleep in the cell? Were there bed linens, who provided them (administrative staff, relatives, other). Were they clean?
1.28 How many times a day were the detainees provided with food?
1.29 Were you provided with food from your relatives? If yes, what kind of food? Did they need permission for that?
1.30 Could you see your relatives while being kept at the police station? How was the meeting arranged? In which room?
Who gave permission for that?
How often were the meetings arranged?
Was someone present at the meeting? If yes, who?

6. Medical Aid

1.1 Was there a medical worker in the station (nurse, doctor...)? If no, how was the medical aid arranged?
1.2 Was there medication for first aid?
1.3 Did you need to get medical aid while being kept in the cell? What was the injury or illness?
1.4 How was it arranged and by who?
1.5 Did your co-detainees need any medical aid? What was the injury or illness?
1.6 How was it arranged and by who?
1.7 While being at the police station was there any need of immediate medical treatment? Related to what?
1.8 Who made the decision on the immediate medical treatment?

1.9 How was it made?

1.10 While being kept in detention, did you need any special food? When did you receive the special food? Can you tell in detail?

1.11 Who made the decision on the special food?

1.12 How was it arranged?

1.13 Did any of the co-detainees need special food?

1.14 Did you receive a preliminary medical examination? Who gave it, where were the results of the examination registered?

1.15 Do you think the medical information was kept confidential?

1.16 Did any of your co-detainees have a contagious illness? What exactly?

1.17 How did you learn about their illness?

Thank you for your cooperation.

Interview with an attorney

Interview date	Interview time	First name/Last name of the interviewer	Country	City/Town

Information about the respondent

First/Last name _____
Work experience_____
Main activities _____

Information about the defendant

First/Last name _____
Date of Birth _____
Age _____
Education _____

1. At which phase of the case were you involved as an attorney?
2. At which phase is the case now?
3. What procedural status does the client have at present?
4. What procedural actions have been made towards your client up to date?
5. Did he/she have a right to make use of free legal aid?

Interview

1. Apprehension

1.1 When was the person apprehended?
1.2 Where the person was apprehended?
1.3 How was the person identified (by checking documents, passport or asking questions)?
1.4 How many of the police were involved in the apprehension? Did they introduce themselves and show their certificates?
1.5 If the person was underage, were his/her relatives present at the time of apprehension?
1.6 Was the person informed about the reason for apprehension?
1.7 Was he/she provided with an apprehension report?
Was he/she allowed to get familiar with the document?
Did he/she get familiar with it?

Did he/she sign it?
Who was present at the time of apprehension?

1.8 Was he/she given the copy of the protocol of rights?
1.9 Did the person resist, how; did he/she use any items at hand?
1.10 If yes, why did he resist?
1.11 Did the police threaten him/her or show degrading treatment towards him/her or his/her family members?
1.12 Did the police use physical force, firearm or special means?
1.13 What kind of special means were used?
1.14 Were there any signs of violence on the body after he/she was apprehended?
1.15 What kind of signs were on the body?
1.16 Was he/she immediately brought to the police station, if not, where?
1.17 On what kind of vehicle was he/she brought to the station?
1.18 Did he/she inform a relative or someone else about the apprehension?
1.19 Was he/she informed about the right to inform a person he/she indicated?
1.20 How was he/she provided with information about his/her rights (orally, written)?
When?
1.21 Was he informed about the right to make use of an advocate's or public attorney's service? When was he/she informed about it?
1.22 After the expiration of the prescribed period was he/she released or involved as a suspect?

2. Arrest

1.1 What time did the arrest take place?
1.2 How was the person identified (checking documents and passport, or other inquiries)?
1.3 What were the grounds for the arrest?
1.4 Was the person arrested at the time of crime, what crime?
1.5 Did he/she do what was asked by the police staff, what exactly?
1.6 Did he/she offer resistance when the police staff used physical force?
1.7 How did he/she offer resistance?
1.8 Did the police staff threaten, use physical force or weapons during the detention?
1.9 What kind of means of threats were used?
1.10 Was the person informed about the grounds of the arrest?
1.11 When did he/she get familiar with the record of the arrest?
Did he/she sign the record on the arrest?
Was he/she given the copy of the record on the arrest?
1.12 Was he/she informed about the right to make use of services of an attorney or public defender?
When did he/she get informed about it?
1.13 Was he/she informed about the opportunity to appeal the record of the arrest?
1.14 Was the person informed about their right to let relatives/friends/someone else know about the arrest?
1.15 Did the person inform someone about the arrest? Who was informed?

1.16 In what form was the information of the right given to the detainee (orally, written)?
1.17 Was the detainee taken to the police station immediately or not? If no, then where?
1.18 By what type of transportation was the detainee taken to the station?
1.19 Did the detainee know the national language well? If no, was the detainee provided with all the information in the language accessible to him/her?
1.20 How long was the detainee kept in the police station?
1.21 Was a charge brought against him/her? When?

3. Interrogation

1.1 Did the interrogation begin just after bringing the apprehended person to the police station?
1.2 Where did it take place?
1.3 What time did the interrogation take place?
1.4 Were you present at the interrogation? Was the other attorney present at the interrogation?
1.5 Who held the interrogation? How many people?
1.6 How long did the interrogation last?
1.7 Did the person ask for something during the interrogation (water, food)?
Was his/her request made?

4. Protection of rights

1.1 Did you present a letter on the violations of the client's rights to the governmental bodies?
1.2 Who exactly?
1.3 Did the representative of the governmental body consider the application?
1.4 What was the decision?
1.5 Did the detainee submit any complaint to corresponding authorities? Who was it sent to?
1.6 Did the corresponding authority consider the complaint?
1.7 What was the decision made by the authority?
1.8 Were there any cases in your practice when someone was followed for submitting complaints on the activities of the police to the authorities.

B. Can you provide us with information about the conditions of the cell where the detainee was kept?

5. General information of the cell

1.1 What was the approximate size of the cell in which the detainee was kept?
1.2 How many people were kept in the cell with the detainee?
1.3 Was there electric lighting in the cell? How many lamps were there?
1.4 Were there switches and wall sockets in the cell?
1.5 Was there a bad smell or mold in the cell?
1.6 What was the approximate temperature in the cell?

1.7 Were there windows in the cell? How many? Could they be opened? How (from inside or outside)?
1.8 Was there a fan in the cell? Was it working?
1.9 Were there stools, table, or other pieces of furniture?
1.10 Were there benches or bunk beds in the cell?
1.11 Was there access to fresh air?
1.12 Was there a toilet in the cell, if yes, was it separated from the cell? How?
1.13 If there was no toilet in the cell, how was there access to the toilet?
1.14 Was there a faucet and a sink in the cell? If no, is there access to water? In what way were the detainees provided with drinking water?
1.15 Was there a bunk bed in the cell?
1.16 Were there bed linens, who provided them (administrative staff, relatives, other). Were they clean?
1.17 Was there access to a shower?
1.18 Did the detainee get hygienic items, what?
1.19 Did the relatives provide the detainee with hygienic items?
1.20 What kind of tableware was used? Could the detainees have their own?
1.21 Are any walks organized for the detainees and where (is it inside or outside)? How often? How long do they last?
1.22 How many times a day are the detainees provided with food?
1.23 Are they provided with food from their relatives?
1.24 Did the detainee ask for any hygienic items, clothes, bed linens or other things from you? Did you provide it to him/her? If yes, how (should there have been any permission for that from the administrative staff)?
1.25 Did the detainee ask for food from you?
1.26 Could you provide him/her with food? How? Should there have been any permission for that from the administrative staff, in what way?
1.27 Did he ask you to arrange a meeting with the relatives?
Could you arrange the meeting? How?

6. Medical Aid

1.1 Did the detainee need to get medical aid while being kept in the cell? Related to what?
1.2 Was there a medical worker in the police station (nurse...)? If no, how was the medical aid administered?
1.3 Was there any need of immediate medical treatment? Related to what?
1.4 Who made the decision on the immediate medical treatment?
1.5 Was there need of special food for the detainee while being kept in the cell?
1.6 Did someone conducted the preliminary medical examination of the detainee, who did it, where were the results of the examination registered?
1.7 Did other detainees in the same cell have a contagious illness?
1.8 Was the medical information kept confidential?

1.9 How are the detainees having contagious illness placed in the cell?

1.10 Are there corresponding conditions for women-detainees?

C. Can you tell us your personal opinion about the following?

1. Do your clients often complain that the police staff violate their rights?
2. What kind of violations do they often complain about?
3. How do you evaluate the activity of the police regarding detainees' rights, i.e. violations, tortures, inhumane and humiliating treatment?
4. How do you evaluate the knowledge of the police staff in the sphere of human rights?
5. What would you like to add?

Thank you for your cooperation.

Interview with a Representative of NGO

Interview date	Interview time	First name/Last name of the interviewer	Country	City/Town

General information of the organization

Name of the organization _____
The main sphere/spheres of its activity _____

Information of the representative of the NGO

First/Last name
Date of Birth
Position in the organization
Profession
Duration of the work in the organization

1. How often do people turn to you with complaints against actions of police officers.
2. How often do people turn to you (who do not know the national language, (as well as foreigners) with complaints against actions of police officers.
3. Which actions of police officers do these people complain about?
   3.1. Disproportionate use of physical force or coercive means during apprehension, detention.
   3.2. After detention, can you give any examples?

1.3 Violation related to transportation?

1.4. Failure to provide information on their rights (right to information about the grounds of the detention, right to having a copy of the record on detention/apprehension, right of a detainee/ apprehended person to make use of services of an attorney, right to require primary medical examination, right to inform a specified person about the apprehension, detention).

1.5. other

4. How often do people complain about violation of admissible terms of detention in custody at the police station?
5. How often do people complain about application of inadmissible methods during the interrogation (psychological, physical)? Can you give examples?
6. How often is the admissible duration of the interrogation violated?
7. How often are the interrogations conducted in the absence of an attorney?
8. How often do people complain about confinement conditions at the police station?

1.1 What do they usually complain about: living conditions, sanitary-hygienic conditions, feeding, medical aid (give examples)?

9. How often do people who have suffered from activities of the police demonstrate readiness to

protect their rights?

10. How do they reason their uneasiness?
11. How do these people try to protect their rights?
12. Do you support them in protecting their rights? If yes, how?
13. Do you achieve any results?
14. What results? Can you give examples?
15. Can you provide us with documents, reports, or some other materials, that can help us in the investigation?

Thank you for your cooperation.

Interview with Relatives

Interview date	Interview time	First name/Last name of the interviewer	Country	City/Town

Respondent Information

First name/last name: (not mandatory) _____
Birth Date: (not mandatory) _____
Age: _____
Education: _____

Personal information of the detainee

Age _____
Gender _____
Education _____

1. Who of your relatives dealt with the police/policemen?
2. Tell us what exactly happened?
3. Did the police officers come after him?
4. What for?
5. Where was he/she at that moment?
6. Were you also there with him/her?
7. Was any of your relatives, acquaintances present?
8. If no, how you learned what had happened? Who first learned that he was brought to the police station?
   When?
   How?
   Where you called?
   Who called?
9. Where is your relative now?

Interview

1. Apprehension

1.1 When did the police come after him/her?
1.2 Where did they come?
1.3 How was your relative's identification established (by checking documents, passport or asking questions)?
1.4 How many people, officers of the Ministry of Home Affairs (police officers) came after him? Were they in uniforms?

Did they introduce themselves?
Did they show their certificates?

1.5 Did they tell your relative the reason why they came, circumstances of the case, etc., where they were going to take him/her, for how long and why?
Did your relative understand why they came for him/her?

1.6 How were you addressed to, did they call you by name or in another way?

1.7 Was your relative explained his/her rights?
When, at which moment?
How (orally, in written form)?
In comprehensible and clear language or not?
Was it clear to your relative?

1.8 Was he informed about the right to inform a given person about the apprehension?
Was he allowed to call?
When?
What phone did he use?
Who did he call?
How long did he approximately talk?

1.9 Was he informed about the right to use services of an attorney?
When was he informed?
Did he use services of an attorney?
If no, why?
If yes, from which moment?

1.10 Services of what attorney did he use (public attorney or hired attorney)
If he used a hired attorney, who recommended you to turn to that attorney?
If he used a public attorney, was he allowed to choose an attorney himself?
Are you, he content with services of the attorney? Why?

1.11 Did he/she sign any document?
When did he sign?
Can you say what exactly he/she signed?
Before signing was he/she given enough time to get familiar with the document? Did he/she get familiar with it?

1.12 Was he given a copy of the act of apprehension?
If yes, at which moment?

1.13 Was he/she allowed to ask questions?
If yes, what questions did he/she ask?
Was his/her question answered?

1.14 Did he/she offer any resistance, how; did he/she use any items? If yes, why did he/she offer any resistance?

1.15 If your relative was under age when brought to the police station, was his/her legal representative present?

1.16 Who else was present there?

1.17 Did the police staff threaten your relative or say degrading expressions against him/her or the

relatives?
What exactly?
How did your relative react to those expressions?

1.18 Did the police officers use physical force, special means or firearms?
What special means were used (truncheon, handcuffs, etc.)?
Did it leave any marks on your relative's body?

1.19 Did your relative need any medical aid or medicine?
Why (in case of illness, injury)?
Was he/she provided with medical aid?
By who and how?

1.20 In what psychological condition was your relative in when he/she was first brought to the station (irritation, fury, oppresion, abjection...)?

1.21 How was he/she led to the car?
Did he/she get into the car by his/her own will?
Was it a police car?
What kind of identifying signs were there on the car?

1.22 Was he/she taken to the police station immediately? If no, where was he taken?

1.23 Was he/she informed about the right to inform the relatives about his/her detention?
Was he/she allowed to call?
When?
On what phone?
Who did he/she call?
How long did they talk?

1.24

1.25 How lond did your relative stay at the police station?

1.26 Was the preliminary medical examination conducted at the police station? Who conducted the examination (nurse, medical assistant, duty policeman)? How many people?

1.27 Where was he kept at the police station, in what room? Did he have an opportunity to freely leave the room? During his stay at the police station, did he need to use a toilet?
Did he use the toilet? How was the access to the toilet arranged?

1.28 Did he ask for water or anything else during his stay at the police station? Was his request answered?

1.29 When was he/she released?

1.30 When was the decision on detention made, for how long?

1.31 Was the decision on the detention made based upon the same case as the apprehension?

2. Detention

1.1 Where was your relative detained?

1.2 When?

1.3 What was the reason of the detention?
Was he/she familiar with the reason of the detention?

If yes, who gave him/her that information?
Was he/she detained at the scene of the crime, what was the crime he/she was accused of?

1.4 How was the identity of your relative established (checking the documents, passport, or asking questions)?

1.5 Did someone explain the reason of detention to your relative?
If yes, how (was the language comprehensible and clear to him)?
Did he/she understand why he/she was detained?

1.6 Did he/she sign any documents?
Do you know what exactly?
Before signing, was he/she given a chance and enough time to get familiar with the document?
Did he/she get familiar with it?

1.7 Was he given a copy of the act of apprehension?
When, at which moment?

1.8 Was he/she allowed to ask questions?
If yes, what kind of questions did he/she ask?
Was his/her question answered?

1.9 Did he/she offer resistance, how; did he/she use any items? If yes, why did he/she offer any resistance?

1.10 Who else was present at the time of detention?

1.11 Did the police officers threaten your relative or say degrading expressions against him/her or the relatives?
What exactly?
How did your relative react to that?

1.12 Did the police officers use physical force, some special means or firearms?
What kind of special means were used (truncheon, handcuffs, etc.)?
What kind of marks did it leave on your relative's body?

1.13 Was it necessary for your relative to receive medical aid or medicine at the detention? Describe the illness or injury.
Was he/she provided with medical aid?
Who provided it and how?

1.14 In what psychological condition was your relative when brought to the station? Was he/she irritated or did he/she feel humiliated?

1.15 Was he/she informed about his/her rights?
How (orally, in written form)?
If written, was he/she allowed to get familiar with what was written? Was everything clear to him/her?
If orally, were the information and the language accessible to him/her?
Did he/she understand it?
Was he/she allowed to ask a question?
Was he/she asked anything? What exactly?

1.16 Was he/she informed about the right to have an attorney/public defender?
When was he/she informed about that?

1.17 Did your relative make use of the service of an attorney/public defender/ advocate?
When?
Which attorney did he/she make use of (public defender, advocate, or an attorney)?
Who recommended the attorney?
If a public defender, was your relative given a chance to choose him/her by his/her own?
Was he/she contented with the service of the attorney? Why?

1.18 Was he/she informed about the opportunity to appeal the record of the detention?
When was he/she informed?

1.19 Was he/she informed about the right to inform the relatives about his/her detention?
Was he/she allowed to call?
When?
On what phone?
Who did he/she call?
How long did they talk?

1.20 Was your relative taken to the police station by car?
Did he/she get into the car by his/her willingness?
Was it a police car or a private car?
What kind of distinctive signs were there on the car (siren, emblem..)?
Was he/she taken to the police station immediately? If not, where?

1.21 How long was he kept at the station before beginning the interrogation or taking him to the cell?

1.22 Where was he kept at the police station, in what room? Did he have an opportunity to freely leave the room?

1.23 During his stay at the police station, did he need to use a toilet?
Did he use the toilet? How was the access to the toilet arranged?

1.24 Was the preliminary medical examination conducted at the police station? Who conducted the examination (nurse, medical assistant, duty policeman)? How many people?

1.25 Did he ask for water or anything else during his stay at the police station? Was his request answered?

1.26 When was he/she released?

1.27 When was the decision on the indictment made?

1.28 Was the indictment on the same evidence by which he/she was detained?

3. Protection of the Rights.

1.1 Did the attorney present an appeal on Violations of the corresponding Rights of apprehended people?

1.2 What bodies did he appeal to?

1.3 Did the authorized official or body consider the appeal?

1.4 What decision was made?

1.5 Did the detainee or the person brought to the station submit an appeal? Who was it submitted to?

1.6 How?/ In what form?

1.7 Did the authorized official or body consider the appeal?

1.8 What the decision was made?

1.9 Were there any cases of prosecution of a person for an appeal on actons of police in the attorney's practice?

Did your relative tell you about the conditions in the cell?

Can you answer the following questions?

4. General information on the cell.

1.1 What was the approximate size of the cell in which your relative was kept?

1.2 How many people were kept in the cell with your relative?

1.3 Was there electric lighting in the cell?

1.4 Were there switches and sockets in the cell?

1.5 Was there a bad smell or mold in the cell?

1.6 What was the approximate temperature in the cell?

1.7 Were there windows in the cell? How many? Could they be opened? How (from inside or outside)?

1.8 Was there a ventilating system in the cell? Was it working?

1.9 Were there table, stools or other pieces of furniture in the cell?

1.10 Did your relative ask you to provide him/her with some clothes or blanket?

What items of clothing did he/she ask for?

Could you provide what he/she needed? If no, what was the reason?

1.11 Was there a toilet in the cell? If yes, was it separated from the cell?

If there was no toilet in the cell, how was access to the toilet arranged?

1.12 Was there a faucet, a sink, and a washbasin in the cell?

If no, how was access of the detainees to the water arranged?

1.13 Was there a bunk bed in the cell?

Were there bed linens, who provided them, were they clean?

Could you provide your relative with linens?

1.14 Was there access to a shower?

1.15 Was there access to hot water?

1.16 Was there drinking water in the cell?

If no, how were detainees provided with water?

1.17 Did the detainee get hygienic items? What kind of?

Did your relative ask some hygienic items from you? If yes, what kind?

Could you provide with what he/she asked from you? If no, why?

1.18 What kind of tableware and cutlery were used?

Did your relative ask items of tableware from you?

Could you provide with what he/she asked from you? If no, why?

1.19 Were wals organized, how often? For how long? Where the walks were organized? Indoors or outdoors? What was the area?

1.20 How many times a day was the detainee provided with food by the administration? Did you or someone else provide your relative with food? If yes, what exactly did you provide? Did you

need special permission? By menas of whom did you transfer the food to your relative? Did your relative receive it?

1.21 Did you meet with your relatives while he was kept at the police station?
How was the meeting organized? In which study, room?
Who authorized the meeting?
How long did the meetings last?
Was anyone present at your meeting? If yes, who?

5. Medical Aid.

1.1 Did your relative get sick when he/she was kept at the police station?
What exactly?

1.2 Did he/she turn to the administrative staff for help?

1.3 Did they provide him/her with medical help?
How was medical help provided (what measures, by which medical workers, from which institution)?
Were the measures aimed at providing medical help effective?

1.4 Was there a medical worker in the station (nurse, medical assistant)?

1.5 Did your relative need compulsory medical treatment while being kept at the police station?
If yes, who made the decision on the compulsory medical treatment, in what order?
On which day after his factual detention did the need arouse?
In connection with what did this need arouse?
What measures were taken for providing compulsory medical treatment?

1.6 Did your relative need special food while being kept at the police station? Did he/she go on hunger strike?
On which day after his factual detention did the need arouse?
What measures were taken for providing the special food?

1.7 Did your relative receive a preliminary medical examination when he was brought to the station, if yes, who conducted it, where were the results of the examination registered?
What do you think according to the results of the preliminary medical examination could there arouse a need for medical treatment?

1.8 Do you think the medical information was kept confidential from the police staff and the other detainees?

1.9 Were there any detainees with contagious illness kept in one cell with your relative?

1.10 How did you learn about their illness?

Additional information.

_____

_____

Thank you for your cooperation.

Interview with the Head of the Police Station

Interview date	Interview time	First name/Last name of the interviewer	Country	City/Town

Information about the respondent

First/Last name _____
Date of Birth _____
Age _____
Education _____
Position _____

Interview

1. General questions

1.1 How long have you been working in the system of the Ministry of Home Affairs?
1.2 How long have you been working in this position?
1.3 Are you content with the working conditions in the system of the police (salary, equipment, physical activity, type of work)? Why?
1.4 How many employees are there at your police station?

2. Interrogation, keeping the detainee at the police station.

1.1 Are there any cells for keeping detainees at the police station?
1.2 Where are detainees sent after the arrest or apprehension?
1.3 When is the interrogation conducted after the apprehension of the person to the police station?
1.4 Are there waiting rooms in the station?
1.5 How long after being apprehended to the police station is the detainee allowed to make a call?
1.6 What phone do they use?
1.7 How long do they have a right to speak?
1.8 Where in the police station are the interrogations conducted?
1.9 Who conducts the interrogation?
1.10 Who participates in the interrogation?
1.11 How long do interrogations usually last?
1.12 Have you ever taken part in the interrogation?
1.13 Where is the detainee taken to after the interrogation?
1.14 Is the detainee or a person brought to the station interrogated immediately?
1.15 How is the meeting with the attorney arranged?
1.16 Is there a special room in the police station for meetings with an attorney?

1.17 If no, how is the meeting with an attorney arranged?
1.18 Do the detainees have a chance to meet with their relatives?
1.19 If yes, do they need special permission for that? Who makes the decision and in what order?
1.20 Where is the meeting held with relatives? In which room?

3. General conditions in cells.

1.1 How many cells are there in the police station?
1.2 What is the size of the cell?
1.3 Are there detainees in the police station at present?
1.4 For how many people is one cell meant?
1.5 Are there cases when there is no place in the cells because of a large number of detainees?
1.6 What do you do in such cases?
1.7 Are there toilets in the cells? How are they equipped?
1.8 If no, how is access to the toilet arranged?
1.9 Is there running water in the cell? If yes, is it constant or scheduled? What is the schedule?
1.10 How are detainees provided with water, drinking water?
1.11 Is there hot water in the cells?
1.12 Is there a shower in the cells? If no, how is access to the shower arranged?
1.13 Is there a sink, faucet in the cells?
1.14 Are there bunks, plank beds in the cells?
1.15 Are there blankets, bed linens in the cells?
1.16 Do the detainees have an opportunity to get bed linen, clothing from their relatives?
1.17 Are there tables, stools or other pieces of furniture in the cells?

3. Medical Aid

3.1 Is there a medical room in the police station?
3.2 Is there a medical worker in the police station?
3.3 If no, how is the medical aid provided to the detainees?
3.4 Is there a first-aid-kit in the police station?
3.5 Who arranges the preliminary medical examination of a detainee brought to the station?
3.6 Who arranges the preliminary medical examination of a detained woman brought to the station?
3.7 How is the preliminary medical examination conducted? When?
3.8 Where and who registers data of the preliminary examination?
3.9 Have there been cases of compulsory medical treatment in your police station?
3.10 If yes, who made the decision and in what order?

4. Food

4.1 How is the food provided to the detainees?
4.2 Are the detainees allowed to receive food from their relatives?

4.3 If yes, how many times a day and how much (is it limited or not)?
4.4 Have there been cases of compulsory feeding of detainees in your police station?
4.5 Who made the decision on compulsory feeding and in what order?
4.6 How was compulsory feeding arranged?

5. Providing detainees with hygienic items

5.1 How are the hygienic items provided to the detainees?
5.2 Are the detainees allowed to have their own hygienic items?
5.3 Are they allowed to receive hygienic items from their relatives?
5.4 Are there any items that the detainees are not allowed to have with them?

6. Heating, ventilation

6.1 Is the police station heated?
6.2 How?
6.3 Is there a system of ventilation in the police station? Is it in working order?

7. What would you like to add to the above-mentioned?

8 Would you allow us to talk to your co-workers and hold an interview with them? Who from your co-workers can we have a talk to?

Thank you for your cooperation.

Observation Card of the Police Station Building

Time of the visit _____

Where is the police station located?

- The approximate distance from the city center close far very far
- Availability of a bus station or public transportation close far very far
- Availability of a sign indicating the police station yes no

General description of the site of the building _____
_____
_____
_____

- **Is the area fenced?** yes no

_____
_

Is there a control station at the entrance? yes no

Are passports or other identification documents checked at the entrance to the police station?
yes no

By who? _____

Is the building repaired or not? yes no

The number of floors _____

How many rooms are there in the police station? _____

Who receives citizens? _____

Where? _____

Is there a waiting room for citizens? yes no

In the waiting room is there…

Complaint forms , application forms yes no

Notice board yes no

information on the rights of the detained and arrested persons yes no

information on how and where one can get psychological support yes no

information on how one can present complaint against activities of police officers
yes no

Availability of benches yes ___ no____ Quantity ___

Condition _____

Type _____

Availability of table yes ___ no___ Quantity ___

Condition _____

Type _____

Availability of a toilet yes no Quantity ___

Are they separated for males and females? yes no

Cleanliness of the police station very clean normal dirty

Repaired yes no

Where are the detainees interrogated? _____

Where are women-detainees interrogated? _____

Who takes part in the interrogation? _____

Where are suspects identified? _____

Are witnesses visible during the identification? yes no

Offices of the staff:

How many offices are there in the police station? _____

How many people work in one office? _____

Are the offices repaired? yes no

In the office are there…..

Bench yes ____ no___ Quantity ___

Condition _____

Type _____

Table yes ___ no____ Quantity ___

Condition _____

Type _____

Computer yes___ no ___ Quantity ___

Condition _____

Type _____

Coach yes___ no___ Quantity ___

Condition _____

Type _____

Armchair yes___ no ___ Quantity ___

Condition _____

Type _____

Availability of a toilet yes no Quantity ___

Are they separated for males and females yes no

Are there female employees at the police station? yes no

Quantity of the cells for detainees _____

Is there a medical room or other availability of medical aid? yes no

Is there heating at the police station yes no

What kind of? electric ____ gas _____ other _____

Availability of a meeting room yes _____ no _____

Availability of meeting with relatives or an attorney

_____

_____

_____

Observation Card of the Court Session

Date	Time	First/last name of the interviwer	Country	Town/City

Accessibility of compiling information on the trials

Is there a schedule of court sessions fixed on the wall? Yes ☐ No ☐

Did the court session take place in the hall mentioned on the schedule?

Yes ☐ No ☐

Parties of the trial

- First name/last name of the judge _____
- First name/last name of the public prosecutor _____
- First name/last name of the defender _____
- First name/last name of the defendant _____
- Date of birth of the defendant _____
- Nationality of the defendant _____
- Citizenship of the defendant _____
- Place of residence of the defendant _____
- Is this the first offense of the defendant? Yes ☐ No ☐
- Additional information about the defendant
  - state of health _____
  - marital status _____
  - education _____
  - profession _____
  - employment Yes ☐ No ☐
  - social status of family _____
  - previous convictions _____
  - other _____

General information about the criminal case

- The article against the defendant
- The date of bringing the defendant to the police station according to the defendant and attorney
- The date of bringing the defendant to the police station according to the materials of the case
- The date of the detention/according to the materials of the case/ _____
- The date of the indictment _____

- The date of imposition of measures of restraint _____
- The type of the imposition of measures of restraint
  - recognizance not to leave

- personal guarantee ☐
- guarantee of the organization ☐
- release on bail
- arrest ☐

The organization of the defense.

- Is the defendant present at the session? Yes ☐ No ☐
- If no, mention the reason _____

  _____
- Does the defendant have an attorney? Yes ☐ No☐
- If no, mention the reason _____

  _____
- If yes, what phase was the defendant involved at?
- at the preliminary examination ☐
- at the trial ☐
- other _____
- The defender is an appointed advocate/a public defendant ☐ a hired attorney ☐
- Did the judge ask whether the defendant agreed to be defended by that attorney

  Yes ☐ No ☐
- If the defendant is hired, by whose advice or solicitation is he/she? _____

  _____
- If the defendant does not have an attorney, did the court inform him

  about the right to invite a defendant of his choice Yes ☐ No ☐

  about the right to use the service of the public defender Yes ☐ No ☐
- Was the defendant informed about the date and time of the session?

  Yes ☐ No ☐
- Is the attorney present at the session?

  Yes ☐ No ☐

  If no, mention the reason.

  _____

If no, did the court ask the defendant what is his\her view of proceeding with the session without an attorney? Yes ☐ No ☐

Clarification of the rights of the defendant

- Did the court inform about the rights and responsibilities of the defendant

  Yes ☐ No ☐

  Why? _____
- Did the court inform about all the rights of the defendant? Yes ☐ No ☐

- Was the defendant warned about the criminal responsibility for giving a false testimony?
  Yes ☐ No ☐
- Was the defendant informed that he did not have to answer the questions and it could not be interpreted against him/her. Yes ☐ No ☐
- Did the defendant get the copy of the indictment?
  Yes ☐ No ☐

  Why? _____
- If yes, mention the date of getting the indictment. _____
- Did the court ask whether the defendant agreed with the indictment?
  Yes ☐ No ☐
- Did the defendant understand the indictment?
  Yes ☐ No ☐
- Did the defendant admit his guilt?
  No ☐ admitted fully ☐ partly ☐ was not defined exactly ☐

- Did the defendant participate in the trial

1. with handcuffs Yes ☐ No ☐
2. with foot-cuffs Yes ☐ No ☐
3. with shaved head Yes ☐ No ☐
4. with jail uniform Yes ☐ No ☐
5. other _____

- Who accompanied the arrested to court?
  - administrative staff of the detention site ☐
  - police station employees ☐
  - other _____
  - Were relatives present at the court session, who (first name, last name, relationship)?

_____
_____
_____

- Did the defendant make an announcement about being ill treated in the detention site or during the interrogation?

Describe _____
_____
_____

- How did the court react to the defendant's announcement?

Describe _____
_____
_____

- Did the court make any decisions related to the announcement?

Yes ☐ No ☐

What kind of decision? _____

_____

- How did the investigator and the prosecutor react to the announcement?

Describe _____

_____

_____

- While making the last speech was the defendant interrupted by anyone?

Yes ☐ No ☐

Describe _____

_____

_____

Your comments about the court session

_____

_____

_____

_____

_____

_____

_____

APPENDIX N 4

To the RA Chief of
Police A. Sargsyan

Dear Mr. Sargsyan.

The police have always played an important role in maintaining public order, and protecting public safety, human rights, and security. All of us should take all possible steps to increase public trust towards police. These steps can be based on the research of the sector conducted by local and international organizations and reform recommendations derived from that research.

Police activity has often been a subject of research by Helsinki Citizens' Assembly-Vanadzor. Thus, on October 29, 2009, within the framework of a project conducted in 16 countries by the "Altus Global Alliance" International Organization and with direct assistance from the RA Police, HCA Vanadzor conducted observations in 6 police departments in Lori Region: Vanadzor, Tashir, Bazum, Spitak, Stepanavan, and Alaverdi, to study the accessibility and availability of services provided to citizens as well as the working conditions of the police officers, including their material and technical resources. Prior to the observations, the organization received permission from the RA Police.

There were a number of recommendations developed as a result of the observation and directed towards the mayors of the communities, the RA Chief of Police, and the RA Government.

This year, Helsinki Citizens' Assembly-Vanadzor has undertaken the responsibility of conducting new observations of the police activities within the framework of Article 3 ofthe ECHR. Based on Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ratified on April 26, 2002, the Republic of Armenia undertook an obligation to ensure the protection of citizens from torture or inhuman or degrading treatment or punishment in the territory of the Republic of Armenia.

Helsinki Citizens' Assembly-Vanadzor is currently implementing a «Training and Networking of Young Human Rights Defenders» Project, aimed at raising youths' roles in the human rights movement in the South Caucasus Region (Armenia, Georgia, and South Ossetia).

The project anticipates creating joint devices and tools of human rights protection for youth from the South Caucasus, conducting legislative analyses, developing a human rights protection group, and monitoring police-citizen relations in the context of prevention of torture, inhuman or degrading treatment as prescribed by Article 3 of the European Convention on Human Rights.

During the monitoring, it is planned to observe the conditions in which apprehended or arrested individuals are kept at the police stations and the treatment towards them by the police officers.

The monitoring will be conducted by monitors who received training on "Human Rights Monitoring in Police-Citizen Relations" on August 1-7, 2010. Throughout the training, they received adequate knowledge and skills to conduct competent monitoring of human rights in police-citizen relations in the context of torture, cruel and inhuman treatment.

The monitoring will include 3 regions: the Republic of Armenia, Georgia, and South Ossetia. The results of the monitoring will be presented to you beforehand and you will be able to provideremarks and comments, which will be included in the joint alternative report on the results of the monitoring.

Based on the aforementioned, I would like to request you to allow the monitors of the project: Arman

Veziryan, Gayane Shahnazaryan, Anna Aleksanyan, Suren Ananyan, Artur Harutyunyan, and Anush Yeghiazaryan conduct observations of the building facilities and have interviews with officers (chief, officer on duty, and members of police task force) of the departments indicated below:

- The Police Department of Arabkir Administrative District
- The Police Department of Kentron Administrative District
- The Police Department of Shengavit Administrative District
- The Police Department of Erebuni Administrative District
- The Police Department of Kanaker-Zeytun Administrative District
- The Police Department of Nor Nork Administrative District
- The Vanadzor Police Department
- The Gugark Police Department
- The Spitak Police Department
- The Goris Police Department

If there is a need to present the timeline of the monitoring at individual departments, monitoring tools, passport information of the monitors,or other information, we can present it separately.

Thank you in advance,
Regards
Chairman of the Organization

To the Chairman of Helsinki Citizens'
Assembly-Vanadzor, Artur Sakunts

The RA Police considered and discussed your note regarding conducting monitorings and interviews with police officers (chief, officer on duty, and members of police task force) at Arabkir, Kentron, Shengavit, Erebuni, Kanaker-Zeytun, and Nor Nork Divisions of the Yerevan Police Department, Vanadzor, Gugark, and Spitak Divisions of the Lori Region Police Department, and Goris Division of the Skyunik Region Police Department.

We find it appropriate for the monitorings and individual interviews to be conducted from October 20 to November 20, 2010.

Stamp