

# Update on Events in the Prohibition of Torture Index Countries

January - September 2022

## Armenia

(prepared by Helsinki Citizens' Assembly Vanadzor Office, Republic of Armenia, [www.hcav.am](http://www.hcav.am))

The Republic of Armenia has made some progress towards ensuring the prohibition of torture in practice by enshrining some important provisions in the legislation.

On May 5, 2021, the National Assembly adopted the new RA Criminal Code, and on June 30, 2021, the new RA Criminal Procedure Code, which came into force on July 1, 2022.

The following was enshrined in legislation:

- The exclusion of the statute of limitations for the crime of torture, regardless of the time of the commission of the crime (Article 83, part 9 of the Criminal Code)
- Prohibition of applying amnesty for the crime of torture (Article 91, part 2 of the Criminal Code)
- Separate corpus delicti have been established for physical pressure (Article 195 of the Criminal Code) and psychological pressure (Article 194 of the Criminal Code), as well as for causing severe physical pain or mental suffering (Article 196 of the Criminal Code).
- The concept of an official has been expanded. According to the new legislation, subjects of torture can be the following persons: a public servant, person holding public position, or a person who is authorized to act on behalf of the non-profit organization or institution established by the state, public administration system or local self-government body, state or community, or is entitled to or has responsibility or liability to perform activities on behalf of them; (Article 3, Clause 20 of the Code of Criminal Procedure).
- From July 1, 2022, the new RA Penitentiary Code entered into force, which defined the protocol of medical examination related to torture or other forms of ill-treatment (Article 94 of the Penitentiary Code).
- According to part 3 of the same Article, as recommended by HCAV, effective guarantees for the safety and personal protection of the person subjected to alleged torture or other form of ill-treatment have been established. ". . . in order to exclude the contact of the convict subjected to torture or other forms of ill-treatment with the employee of the penitentiary institution or other convicts who allegedly used torture or other forms of ill-treatment, the head of the penitentiary institution organizes the protection of the convict subjected to torture or other forms of ill-treatment".

Torture has been criminalized in the RA since 9 June 2015, while the first guilty verdict on torture was made six years later, on 28 December 2021. The Court made a guilty verdict, whereby two policemen were recognized guilty of committing torture in the group and were sentenced to 7 years of imprisonment, and deprived of the right to hold office in state authorities, local self-government bodies, their organizations for a term of three years. The judgment did not enter into legal force, since it was appealed in the Appeal Court.

The first judgment on the element of crime of torture entered into force in 2022.

On October 15, 2021, the RA Court of Cassation made a precedent decision, which solved the problem of accurately demarcating the crime of torture from the crime of exceeding official powers accompanied by violence, defined by part 2 of Article 309 of the RA Criminal Code (decision of 15 October 2021 in the criminal case N ԵՂ/0558/01/18 of Armen Hovhannisyanyan). The Court of Cassation found that a person's health may not even be harmed as a result of torture; what matters in this case is the infliction of severe physical pain or severe mental suffering. Moreover, the Court considers a slap inflicted by a law enforcement officer on an individual under his control as a manifestation of torture, a serious attack on a person's dignity, because a slap on the face affects the part of a person's body that expresses their personality, manifests their social identity.

In the same case, on 26.11.2019, the General Jurisdiction Court of First Instance of the city of Yerevan made a judgment on recognizing Hovhannisyan guilty of the actions provided for under Article 309 part 2 and Article 314 part 1 of the RA Criminal Code, and applying an amnesty and releasing him from serving the punishment imposed in the form of deprivation of liberty.

After the precedent decision of the Cassation Court, the Appeal Court reviewed the case and on 9 March 2022, issued a verdict against Hovhannisyan recognizing him guilty in the actions provided for in Article 309.1 part 2 clause 4 (Torture) of the RA Criminal Code, and Article 314 part 1 (Official forgery) of the RA Criminal Code. Taking into account the period of Hovhannisyan's preliminary detention, the Court decided to impose a final sentence of imprisonment for a term of 5 years, 10 months and 10 days, with deprivation of the right to hold positions in state and local self-government bodies for a period of 3 years, which he shall serve in a relevant penitentiary institution.

### **Both legislative gaps and systemic problems continue to hinder the prevention and detection of potential cases of torture, inhuman or degrading treatment**

#### **A setback in the legal regulations of investigative jurisdiction**

In March 2021, an amendment was made to the acting Code of Criminal Procedure of the Republic of Armenia, according to which the investigative authority for the investigation of torture cases was assigned to the National Security Service (NSS). In addition, investigation of crimes committed by officers of law enforcement preliminary investigation bodies in connection with their official position was assigned to the investigative division of the National Security Service.

The amendment was to enter into force in October 2021. This amendment, as a result of which the investigative jurisdiction of torture crimes was transferred from the independent body, i.e., SIS, to NSS, was qualified by civil society as an apparent setback.

The problem is that the implementation of the preliminary investigation into torture cases by the RA National Security Service does not meet the accepted international standards for the effective investigation of torture.

The function of this body is intelligence and counter-intelligence, as well as the investigation of crimes against state security related to the aforementioned.

Moreover, according to Article 3 of the Law on National Security Services, “the National Security Service shall be a body under the Prime Minister”, moreover, it is out of the scope of civilian oversight, including the RA National Assembly. In other words, the activity of the National Security Service is not transparent and accountable. While, the Special Investigative Service was considered, in these terms, a more independent body for investigation of torture cases. In the report of 2015 on the Republic of Armenia, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) positively assessed establishment of the SIS as a specialized investigative body, and a gave a generally positive view of the professionalism of the SIS investigators.<sup>1</sup>

As a result of the active advocacy of the civil society, on May 5, 2022, the issue of investigative jurisdiction was again subjected to a legislative change, and the function of investigating torture cases was transferred to the RA Investigative Committee. The regulation entered into force on 18 June 2022. The functioning of the SIS was terminated on 23 October 2021, and the investigation of torture cases was transferred to the NSS up to 18 June 2022, and then to the RA Investigative Committee.

According to the statement disseminated by the Investigative Committee on 28.07.2022, a new subdivision (Department of Investigation into Crimes of Torture, and Abuse or Exceeding of Authorities by Officials,

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bf46f>

Accompanied by Violence) was formed in the General Department of Investigation of Particularly Important Cases. According to lawyers involved in torture cases, investigators dealing with torture cases in the Investigative Committee do not have adequate experience and knowledge to investigate torture cases.

Although according to the new Code of Criminal Procedure, the authority to investigate cases of torture has been given to the RA Investigative Committee since June 18, 2022, the investigation of crimes committed by officers of law enforcement bodies of preliminary investigation in connection with their official position is still given to the investigators of the National Security Service up to January 1, 2024 (Article 483 (Transitional Provisions) of the Code of Criminal Procedure).

In particular, the National Security Service shall implement the following up to 1 January 2023:

- the preliminary investigation in proceedings regarding crimes attributed to persons holding autonomous positions in the Investigative Committee, the State Revenue Committee, or crimes committed as an accomplice in connection with their official position
- preliminary investigation in proceedings regarding crimes attributed to persons serving in the Anti-Corruption Committee or crimes committed as an accomplice in connection with their official position.

the National Security Service shall implement the following from 1 January 2023 until 1 January 2024:

- the preliminary investigation in proceedings regarding crimes attributed to persons holding autonomous positions in the Investigative Committee or crimes committed as an accomplice in connection with their official position
- preliminary investigation in proceedings regarding crimes attributed to persons serving in the Anti-Corruption Committee or crimes committed as an accomplice in connection with their official position.

**The current editing of the Article of Torture does not include cases of ill-treatment and degrading treatment.**

According to the RA legislation, only the corpus delicti of torture, causing severe physical pain or mental suffering has been criminalized. Cruel, inhuman or degrading treatment or other acts of punishment, which are not included in the definition of torture, are not included as separate crimes in the new RA Criminal Code. Such actions can be qualified, for example, as abusing official or service powers or the impact they entail or exceeding the powers. Factually, there is no preventive mechanism for ill treatment in the RA criminal legislation. It turns out that, for example, improper detention conditions of persons kept deprived of liberty cannot be considered as inhuman treatment

**There is ongoing practice of police using ill-treatment and torture to extract confessions to having committed crimes or to extract confessions about commission of crimes by others.**

On November 12, 2021, a video went viral showing how two employees of the Stepanavan division of the Lori Regional Department of the RA Police beat victim Vrezh Mkrtumyan, and the head of the department Suren Bagratunyan was talking to the citizen with a gun and threatening to shoot him in the legs.

In 2022, many cases of violence against peaceful protesters by the police were recorded, in relation to which civil society representatives made statements<sup>2</sup> or submitted crime reports to the RA Prosecutor's Office<sup>3</sup>.

On September 22, 2022, 35 non-governmental organizations published a statement criticizing the actions of the police regarding the use of violence by the police against peaceful protesters, with which the aforementioned organizations demanded the resignation of the police chief.<sup>4</sup>

**The quality of investigations into torture reports does not meet the standards of effective investigation.** Cases of torture continue to remain undisclosed, reports of torture cases, as a rule, do not lead to the initiation of criminal cases, and in cases where criminal cases are initiated, effective investigation of cases is not ensured. The cases initiated in cases of torture are dismissed mainly on the grounds that the fact of torture is not substantiated, and are suspended on the grounds of the absence of a person subject to criminal prosecution.

In the first half of 2022, 61 criminal cases were investigated in the Investigation Department of the National Security Service of RA under Article 309.1 (Torture) and Part 2 of Article 309 (Exceeding Official Powers) of the RA Criminal Code, 58 of which were investigated under Article 309.1 of the RA Criminal Code, and 3 were investigated under part 2 of Article 309.

Out of 58 cases initiated under Article 309.1 of the RA Criminal Code, 30 cases were dismissed, 3 cases were suspended, 5 criminal cases were combined into one case, 1 criminal case was sent to the court with an indictment, and 19 criminal cases were sent according to the investigative jurisdiction.

2 of the criminal cases initiated under part 2 of Article 309 were sent for investigation according to investigative jurisdiction, and the proceedings of one criminal case were dismissed.

According to the official explanation of the General Prosecutor's Office of the Republic of Armenia, the decisions to dismiss the proceedings were mostly determined by the fact that the persons who committed crimes filed numerous complaints to various government bodies reporting physical or psychological violence against them in order to defend themselves from their accusations, to declare the confessions given during the preliminary investigation inadmissible, and often also to take revenge on this or that employee of the law enforcement agency.

### **The practice of improper documentation of torture cases continues**

Improper documentation of torture cases by the prosecuting authority is a widespread problem, as a result of which the fact of torture or ill-treatment is not recognized.

Group of Public Monitors Implementing Supervision over the Institutions and Bodies of the Ministry of Justice of RA (composed of NGOs) found out that in the RA penitentiary institutions, the recording of the medical examination related to torture or other forms of ill-treatment is not carried out properly, a careless attitude is manifested in the documentation of torture and other forms of ill-treatment.

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<sup>2</sup> See “Joint statement: We demand from the Police to immediately set free the arrested and to provide a public explanation for this unlawfulness”, August 25, 2022, <https://hcav.am/en/joint-statement-24-8-22/>

<sup>3</sup> See “A criminal case was initiated based on HCAV report on use of violence against demonstrators and reporters”, May 23, 2022 <https://hcav.am/en/police-criminal-case-16-05-22/>,

<sup>4</sup> See “35 NGOs demand the dismissal of the police chief” <https://hcav.am/en/joint-statement-police-22-09-22/> , Joint statement: We demand from the Police to immediately set free the arrested and to provide a public explanation for this unlawfulness, August 25, 2022, <https://hcav.am/en/joint-statement-24-8-22/>

The Group also reported lack of effective investigation into the growing death cases in prisons. During the first half of 2022, 10 death cases (including suicides) were officially reported in prisons, while the death toll for 2021 was 13. No prison officer or medical expert was held liable for any of these cases.

Healthcare services in penitentiary institutions are not accessible to the prisoners. It takes the medical agency several months to process the prisoners' applications concerning provision of medical services. The procedure for providing state-sponsored medical services is not effective and transparent. LGBTI inmates and other marginalized groups are extremely vulnerable in prisons, as they face severe isolation and humiliation. Prisons lack reasonable accommodations for inmates with disabilities.

**There is a vicious practice of promoting persons who have committed torture.**

The persons who committed torture not only remain unpunished, but also continue to hold office and get promoted to higher positions.

- Major Gerasim Mardanyan, who has worked in the police system for many years, is accused of committing torture. According to the accusation, on October 4, 2017, he tortured Zhora Simonyan in the building of the Ijevan police department. After the incident, the powers of the head of the criminal investigation department of Ijevan were terminated. And in 2020, by the order of the police chief, he was appointed as the head of the criminal investigation department of Dilijan, when the case is still in domestic courts and there is no final verdict.
- Artush Mirakyan, the leading specialist of the security department of the "Nubarashen" penitentiary institution, who is accused of torturing Armen Aghajanyan in the "Nubarashen" penitentiary institution with the members of the group, started working at the Kotayk Marz Police Department in 2022 by order of the police chief. He has the status of a defendant and the case is in the Court of General Jurisdiction of the city of Yerevan
- In 2020, Artak Asatryan, head of the Nor Nork Police Department, tortured world champion Armen Ghazaryan and his friend. Artak Asatryan was charged under the Article of exceeding official authority. According to the accusation, he did not take any steps to prevent the torture. The proceedings of the criminal case were dismissed, on a non-acquittal basis. On October 16, 2021, Artak Asatryan was appointed the police chief of Charentsavan by order of the RA police chief.
- On November 12, 2021, a video went viral showing how two employees of the Stepanavan department of the Lori regional department of the RA Police beat victim Vrezh Mkrtumyan, and the head of the department Suren Bagratunyan was talking to the citizen with a gun and threatening to shoot him in the legs. During the preliminary investigation of the case, the criminal case was initiated under the Article of exceeding powers, and in 2022, the deputy head of the Stepanavan Police Department S. V. was charged under Article 309.1 (torture) of the RA Criminal Code. Currently, the case is in the stage of preliminary investigation, however, both the head of the Stepanavan police department and the other two employees continue to hold office.

**Compensation and rehabilitation issues**

Article 162.1 of the RA Civil Code determines the concept of non-pecuniary damage and its compensation. A person or, in case of his or her death or in case he or she lacks active legal capacity, his or her spouse, parent, adoptive parent, child, adoptee, guardian, curator shall have the right to claim, through judicial procedure, compensation for intangible damage, where the criminal prosecution body or court has confirmed that the fundamental rights of that person guaranteed by the Constitution of the Republic of Armenia and the Convention for the Protection of Human Rights and Fundamental Freedoms have been violated as a result of a decision, action or omission of a state or local self-government body or official, including the right to be free from torture, inhuman or degrading treatment or punishment.

Article 1087.2 of the Civil Code establishes the procedure for and conditions of compensation for non-pecuniary damage caused as a result of violation of fundamental rights and wrongful conviction. Non-pecuniary damage is subject to compensation irrespective of the property damage subject to compensation and existence of fault of an official while causing the damage. The claim for compensation of intangible damage may - together with the claim

for confirming the violation of the right - be submitted to the court within one year from the moment the person has become aware of the decision taken by the investigator or the prosecutor, which has not been abolished or appealed against on violation, as well as after entering into force the judicial act confirming the violation of that right, or after rejecting initiation of a criminal case on a non-acquittal ground, or not conducting criminal prosecution or dismissing proceedings of the criminal case or terminating criminal prosecution.

The right to be free from torture, as an absolute right, must not have any time restriction, including in terms of the right to get compensation.

The possibility of compensation under the Civil Code is intended not only for torture, but also for non-pecuniary damage caused as a result of being subjected to inhuman or degrading treatment or punishment, while inhuman or degrading treatment or punishment, unlike torture, is not criminalized by domestic legislation.

It is not clear how the court will confirm the fact that a person has been subjected to inhuman or degrading treatment or punishment in the condition that these concepts have not been enshrined in domestic legislation.

**Content, procedure and conditions for the redress for victims of torture are established under Article 1087.3 of the Civil Code:** redress provided to victims of torture includes compensation for material, non-pecuniary damages incurred by those persons and the right to rehabilitation; the right of a victim of torture to rehabilitation includes the right to receiving reimbursement for medical aid and service, as well as access to free psychological and free legal services. Psychological services shall be provided within a reasonable time limit after the alleged victim has submitted a statement on torture, taking into account the legitimate interests of the victim. Psychological services shall be provided through methods of traditional and alternative intervention, taking into account the individual needs of the victim.

The procedure and conditions for psychological services for persons affected by torture are defined by the RA Government's decision N 1367 of October 26, 2017.

According to point 3 of the annex to the mentioned decision, the professional center providing psychological services that provides psychological services to persons affected by torture must have at least 3 qualified psychologists and at least three years of work experience, and for the purpose of providing psychological services, the Ministry of Justice of the Republic of Armenia signs a contract with the center.

Rehabilitation projects of torture victims continue to be implemented by various non-governmental organizations. It should be noted that since 2019, the "Armenian Rehabilitation Center for Torture Survivors" has been operating in Yerevan, which was opened with the funding of the European Union under the sub-grant program provided within the framework of the project implemented by Helsinki Citizens' Assembly Vanadzor office jointly with the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT). The aim of the aforementioned center is to provide comprehensive physical, psychological and social support to survivors of torture, cruel and inhuman or degrading treatment, and their families.

The mentioned center is not financed by the state, which is problematic, because its existence is conditioned by the funding of grant projects. Whereas, the introduction of the institution of compensation for torture survivors in the domestic legislation implies its permanent functioning at the expense of the state. In addition, there are no rehabilitation centers in the regions.