# Review of the situation of prohibition of torture in Armenia

## 1. Regulations

The domestic legislation prohibits the use of torture. According to Article 26 of the RA Constitution, no one may be subjected to torture, inhuman or degrading treatment or punishment, corporal punishments shall be prohibited and persons deprived of liberty shall have the right to humane treatment.

Article 309.1 of the RA Criminal Code establishes repsonsibility for torture. Torture is defined as:

> *any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as 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*.

Article 341 part 1 sets liability for forcing by the judge, the prosecutor, the investigator or person in charge of inquiry, to make a false testimony or give a false explanation, conclusion or translation, and part 2 of the same Article envisages as corpus delicti the commission of the same action with torture. While Article 309 (Exceeding official authorities) envisages the use of violence, weapons, or special measures as an aggravating circumstance.

Article 309.1 "Torture" of the RA Criminal Code is included in the Chapter of Crimes against State Service, where most of the crimes contain a special subject, i.e. an official. Part 3 of Article 308 of the RA Criminal Code gives the definition of an official. The problem is that a person may be subjected to torture or other forms of inhuman treatment also by someone not considered an official in the frame of the domestic legislation. This, however, is also torture or ill-treatment in terms of international criteria.

For example, in a psychiatric institution, a person with mental health problems may be subjected to ill-treatment by the hospital attendant or medical personnel, who do not implement functions of a government's representative or other organizational-managerial or administrative functions, and therefore cannot be considered as the subject of torture corpus delicti per the domestic legislation. As a rule, in such cases, instead of torture, the action is qualified as a crime against a person's life or health. This, however, does not stem from the absolute prohibition of torture.

This is also one of the main reasons why it is not possible to get the exact picture of statistics of all the cases of torture and ill-treatment manifestations in the country.

From the viewpoint of the absolute prohibition of torture, it is inadmissible to exempt persons who have committed torture from criminal liability as a result of the expiration of the statute of limitations, amnesty or pardon. In 2019, in the procedure of legislative initiative, the RA Government presented RA new draft Criminal Code to the RA National Assembly.The draft code offered to establish a prohibition on using statute of limitations and amnesty for torture. However, the mentioned amendment has not yet been adopted, and the issue raised is still in place.

## 2. Statistics

In Armenia, torture continues to remain unpunished.

Since torture was criminalized, i.e., since 9 June 2015 until 1 January 2020, the RA Special Investigation Service investigated 154 cases with features of Article 309.1 of the RA Criminal Code. In the frame of the aforementioned

154 cases, 5 criminal cases (on 10 persons) were sent to court with indictment, 113 (73.3%) criminal case proceedings were discontinued, 2 criminal cases were sent to another body, decisions on initiating two criminal cases were annulled, and the preliminary investigations of only 7 criminal cases were continued.1

Though 309.1 is in line with the substantive law requirements of the Convention (the features of the action's intention, cruelty and suffering, as well as the subject of the action (i.e., an official) are clearly defined), so far judicial practice of the mentioned Article has not been formed, that is to say, no judgment has been made based on Article 309.1 of the Criminal Code.
In 2019, 130 criminal cases were investigated by the Special Investigation Service investigators. 99 of those cases were initiated during 2019, 31 cases were initiated before 2019. In 2019, a total of 5 criminal cases were sent to court with indictment, 76 criminal cases were discontinued and 16 criminal cases were suspended.

In 2019, the following criminal cases were investigated: 73 cases with the features of exceeding official authorities, 55 cases with features of torture and 2 cases with features of forcing by the judge, the prosecutor, the investigator or person in charge of inquiry to make a false testimony or give a false explanation, conclusion or translation.

In 2019, for the commission of an action envisaged under Article 309 (Exceeding official authorities) and Article 309.1 (Torture), the Court made three guilty verdicts on the grounds of exceeding official authorities and one acquittal under the Article of torture. In the frame of the two out of the above-mentioned three guilty verdicts, the relevant persons were released under amnesty, and in the frame of the other guilty verdict, the person was released based on the expiration of the period of limitations. The acquittal made in the frame of the torture article was overturned by the superior court and sent for a new investigation.

**Since torture was criminalized, i.e., since 9 June 2015 to date, no guilty verdict has been made with features of Article 309.1 (Torture). The convictions are passed under the previous article on abuse of office (Article 309 of the RA Criminal Code).**

## 3. New cases of torture documented in 2019-2020

In the Republic of Armenia, both legislative gaps and implementation of law are challenges for the prevention of torture and effective investigation into torture cases.

Torture cases continue to remain undisclosed, reports on torture do not lead to initiation of criminal cases, and even when criminal cases are initiated, effective investigation into those cases is not ensured. Cases initiated on torture are mainly discontinued based on the absence of substantiation of the fact of torture and suspended based on the absence of the person to be criminally prosecuted.

**The case of Artur Hakobyan**
During the compulsory military service in 2015, Hakobyan was subjected to inhuman cruel treatment by the commander and as a result, acquired mental health problems.

On 13 November 2016 a criminal case was initiated with features of Article 358.1 part 2 (Commission of violent actions or threatening to commit such actions against a subordinate, 2. Beating or using other forms of violence or threatening to use violence against a subiordinate person (the one under command)) and A. Hakobyan was recognized as victim.2

[1] See the RA Human Rights Defender's 2019 Annual Report https://www.ombuds.am/images/files/f6bccc6db65258e28be6f3e093987a15.pdf

[2] https://hcav.am/en/edgar-tsatinyan-20-05-2020/, https://hcav.am/en/e-tsatinyan-10-09-19/

However, the criminal case proceedings were discontinued three times and as a result of the appeal of the advocate, after 5 years of ”brawling”, the case was reopened.

The Court of Cassation recorded the Hakobyan’s right to be free from torture was violated and that even a victim with mental health problems should have the right to be heard, and that the body condutcing the proceedings must implement an effective investigation.

The case was reopened after the decision of the Cassation Court entered into force, however, in three months, a decision was made to discontinue the criminal case again. The decision was again appealed and once again, the Court recorded the fact of violation.

**When a criminal case is initiated based on torture features, the preliminary investigation is rarely in line with the standards of effective investigation, as the speed, impartiality and detailed nature of the investigation are not ensured and all the necessary measures are not taken to properly record and document the evidence related to the case.**

Even when advocates manage to achieve the judgement of superior court (mainly the Court of Cassation) with records of violation of the right to be free from torture and a violation of effective investigation and, as result the, case is sent back for investigation, the Investigative body does not take relevant measures and the case is again discontinued or suspended. As a rule, the reopening of the case lasts years. In rare cases when the case reaches the court, the court stops criminal prosecution, for example, based on the reasoning that there was not torture in the action done by the defendant.

In the frame of torture cases, it often happens that the court combines the testimony given by persons who reported about violence and their witnesses, with the testimony given by the policemen, and unconditionally gives preference to the policemen’s testimony.

**The case of Albert Hakobjanyan and Gagik Karapetyan**

Hakobjanyan and Karapetyan were subjected to torture in the police department in 2016. The proceedings of the criminal case were discontinued in 2017 with the following reasoning, "...*during the preliminary investigation, all the possible investigative and procedural actions were taken, the possibilities to obtain new proofs were exhausted, and according to Article 18 of the Criminal Procedural Code, in such conditions, when there is an uneliminated suspicion, by the force of the principle of presumption of innocence, it is to be interpreted in favor of police officials*". This decision was appealed to the superior body and was refused by the RA Prosecutor General’s Office, Yerevan General Jurisdiction Court and Yerevan Criminal Appeal Court.

On 18 September 2019, the Criminal Chamber of the RA Court of Cassation upheld the appeal by recognizing ineffective the investigation conducted into the torture case. The Court of Cassation found that the lower courts violated Article 3 of the European Convention and Article 11 (physical and mental integrity and personal liberty) and Article 17 (fair trial of the case) of the RA Criminal Procedure Code, which could have essentially influenced the outcome of the case. Guided by the provisions of the right to effective investigation, the Court noticed that the state has a positive obligation to conduct effective investigation into cases of torture and ill-treatment. Such complaints must be investigated in a detailed manner and the competent authorities must take all the measures to collect the evidence related to the incident, which was not implemented in this case.

The Court of Cassation found that the Investigative body had all the data on Hakobjanyan and Karapetyan case, but did not take sufficient efforts, including in the frame of international legal aid, in order to find and interrogate him. Whereas, the information provided by the witness could have been crucial and key to discover those really guilty in this case, as well as the contradictions between the testimonies of G. Karapetyan and A. Hakobjanyan and the tesimony given by the policemen.

The Court of Cassation also recorded a number of other issues and assessed them as violation and failure of the obligations imposed on it by the state.3

Though the case was sent to a new investigation after the decision of the Cassation Court, it should be recorded that the proceedings of the case were again discontinued.

Additionally, in the frame of constitutionality of eliminating violations of the fundamental rights and freedoms of a person, the Court of Cassation attached importance to the absolute nature of the prohibition of torture and ill-treatment and expressed a clear legal position on the standard of effectiveness of the investigation conducted in case of the existence of signs of "being subjected to torture or ill-treatment" or "a credible allegation" or "arguable complaint" or certain other sufficient signs.

**The proportionality and adequacy of the punishments set by courts is a subject of concern.**

Improper documentation of the torture case by the body conducting the proceedings is also a common problem. Based on this improper documentation, the act of torture is qualified as exceeding official power and as a result, the fact of torture or ill-treatment is not recognized. It turns out that the person who committed an act of torture serves a punishment more lenient than the punishent established for the act of torture.

Courts can re-qualify the case during the trial, and thus, in fact, create conditions for avoiding proper accountability for torture.

**The case of Armen Aghajanyan**

Armen Aghajanyan was transferred to Nubarashen penitentiary institution on 16 March 2018, at 00:35. For unaddressed swearing, A. Hovhannisyan, first class specialist of the group on duty in the penitentiary institution, together with other workers, beat and spat on Aghajanyan, whereas Aghajanyan had been accepted into the penitentiary institution with obvious health problems (his large intestine was in a sac, outside the body).

Examining this case, the RA General Jurisdiction Court of First Instance of Yerevan city recognized A. Hovhannisyan guilty in exceeding official power that negligently caused grave consequences (Article 309 part 2) and acquitted him in terms of the accusation of torture (the case was submitted to the court with the charge of torture (clause 4 of part 2 of Article 309.1). Court released Hovhannisyan under amnesty.

The Court mentioned that Armen Hovhannisyan committed an act of "Official forgery" (Article 314 part 1), while the charge brought against him - "Torture" (Article 309.1 part 2 clause 4) - is not substantiated and is subject to be requalified.

The Court mentioned that during the preliminary investigation, forensic psychiatric examination was not appointed in order to find out whether the victim had been subjected to psychological suffering or not. That is why, as there is no proof on the psychological suffering, the Court found that there was no torture in the defendant's action. Besides, the Court found that:

> "To qualify A. Hovhannisyan's act as torture, the condition that the defendant is an official in the penitentiary institution and that he used violence against a person in the penitentiary institution is not enough, as it is also necessary to have another condition, in particular, it is necessary for Armen Hovhannisyan to have had used violence to punish A. Aghajanyan for such an action that the latter had committed, and the condition or fact of the commission of that action must be

[3] In regard to HCA Vanadzor advocate's complaint, the RA Court of Cassation recorded that the investigation into the torture case was not effective, HCA Vanadzor, June 11, 2020 https://hcav.am/en/karapetyan-hakobjanyan/

confirmed by relevant procedures, and the condition of the commission of the action must not be a result of A' Hovhannisyan's subjective perception".

The accusing party appealed the judgment. The RA Criminal Appeal Court recorded that the arguments made by the accusing party regarding the existence of corpus delicti envisaged under Article "Torture" of the RA Criminal Code in Armen Hovhannisyan's actions are not sufficiently substantiated and are a result of subjective consideration and do not stem from the materials of the case. At the same time, the Appeal Court finds it necessary to stress that the Court's statement, according to which, in order to qualify the committed violence as torture, it is necessary for the victim to have committed an unlawful action, (prior to the incident) confirmed by the relevant procedure, is unacceptable. Currently, the case is pending before the Court of Cassation.

Factually, requalifying the action, the Court released the defendant from serving punishment in the form of imprisonment for the crime committed.

**The practice of using ill-treatment and torture to extort confession testimonies or testimonies regarding the commission of a crime by other persons is still in place.**

**The case of Edgar Tsatinyan**

On April 7, 2019, policemen used violence to bring E. Tsatinyan to the police division, where they beat and humiliated him, forcing to confess to a murder he had not committed, and give testimony regarding the commission of a murder by two other persons. E. Tsatinyan refused to give false testimony, after which, the policemen threatened to hold him liable for carrying drugs and placed in his pocket a 3-gram "Crystal" drug. Afraid of being held criminally liable, E. Tsatinyan swallowed the drug, started feeling bad and was transferred to "Armenia" medical center. While in the hospital, Tsatinyan told about the violence used against him in the police division, which was video recorded by his relatives. In a few hours, Tsatinyan died in hospital. Forensic medical examination recorded that Tsatinyan had been transferred to hospital with body injuries.

On 15 April 2019, a criminal case was initiated in the Special Investigation Service (SIS) based on the incident of torture, and a month later, a criminal case was initiated in the Investigative Committee based on improper provision of medical aid. Both of the initiated criminal cases were discontinued: in June 2020 the torture case was discontinued based on the absence of crime; in January 2021 the case of improper provision of medical aid was discontinued based on the absence of corpus delicti.

Tsatinyan's legal successor and her representative appealed the decision on discontinuing the criminal case, by qualifying the decision as lacking factual and legal substantiation: the preliminary investigation was not in line with international and national legislation standards of investigation into ill-treatment, the body conducting the proceedings did not manifest impartiality and did not conduct quality investigation into the case, as a result of which, the policemen agreed upon their testimonies in advance.

**In Armenia, the norm allowing the use of statute of limitations regarding crimes constituting torture is still in place. Even in case of reopening criminal cases, those guilty of torture avoid liability due to the expiration of the statute of limitations.**

In October 2012, the European Court of Human Rights made a judgment in the case of Virabyan v. Armenia and recognized the violation of Article 3, Article 6 and Article 14 of the European Convention of Human Rights. Based on that, in May 2016, the RA Prosecutor's Office initiated a criminal case "Torture". In February 2018, the criminal case, with indictment against two persons, was sent to Court of General Jurisdiction of Ararat and Vayots Dzor regions.

The judgment of 22 February 2019 recognized two persons guilty of committing the actions they were charged with, however, based on the expiration of the statute of limitations, they were exempted from criminal liability (the crime was committed in 2004).

Later, examining the appeals of the RA Prosecutor's Office and the defendant's party, the RA Appeal Court left it in legal force, completely agreeing with the decision of the above-mentioned court.

The legal position of the two instances of court is that the legal regulations in place in the RA do not make it possible to be directly guided, in terms of torture-related cases, by the legal position expressed by the European Court of Human Rights regarding not applying statute of limitations in torture cases. According to the Courts, as the RA domestic legislation, namely, Article 309.1 of the RA Criminal Code (torture) is not included in t he exhaustively listed crime types in terms of which statute of limitations are not applicable or are applicable with restrictions, then non-application of the statute of limitations will lead to violations of the defendant's rights and legal interests, can cause legal uncertainty and be qualified as arbitrariness.

The RA Prosecutor General's Office challenged the above-mentioned decision in the Court of Cassation, by presenting a relevant appeal with the justification that the lower courts' decisions violated the approach expressed in a number of judgements made by the ECtHR. According to the aforementioned approach, the criminal case proceedings of ill-treatment or torture by state representatives must not stop based on the expiration of the statute of limitations. It was also mentioned in the appeal that the lower courts' decisions also violated the norms (enshrined in international agreements ratified by the RA) regarding inadmissibility of applying statute of limitations in case of torture.

The RA Cassation Court accepted the Prosecutor Office's appeal, but on 27 December 2020 it decided to apply to the ECtHR to get a consultative opinion on the above-mentioned case, questioning whether not applying statute of limitations for holding criminally liable for torture or crimes equalized to torture, by invoking sources of international law, will be in line with Article 7 of the European Convention, if the domestic legislation does not envisage a requirement not to apply statute of limitations for criminal liability.

Whereas, it should be noted that according to Vienna Convention on the Law of Treaties (1969), "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". The prohibition on applying statute of limitations was clearly recorded by the case law of the ECtHR and the positions of the UN Committee against Torture.

**Though torture was criminalized in 2015, if an act of torture was committed before this norm was established, investigation carried out now into those previous cases is based on the Article on "abuse of office" that was in place at the time when the act was committed. Under this article, statute of limitations is restricted and the maximum punishment is less than that envisaged under the Article "Torture". Nevertheless, it should be mentioned that the competent government bodies do not ignore the facts of torture (that happened a long time ago) that became known to them and initiate criminal cases.**

**The case of Armen Martirosyan:**

In 2019, a video material entitled "Policemen extorting a testimony with a truncheon and a gas mask" went viral. In the video, a few persons put a gas mask on a person and use violence against the latter.

A criminal case was initiated in the RA Special Investigation service based on the mentioned publication. A charge was brought against RA Police Tchambarak division head N.S. and Arabkir division criminal intelligence department former head V.N. under Article 309 part 2 (exceeding official authorities committed with violence). At the beginning of November 2008, V.N., in his working room, with the participation of employees of the same division, was talking to Armen Martirosyan about a flat robbery attempt. Armen Martirosyan had been brought to the police division under suspicion of having committed the above-mentioned crime. Armen Martirosyan refused

having any relation to the incident, after which, V.N. and a number of other policemen, demanded from him to confess to having attempted a robbery, and threw him on the floor, put a gas mask on his head and used a truncheon to beat him on various parts of his body. The case is in the phase of trial.

## 4. Protection and safety of torture victims. Rehabilitation

Redress of torture victims is implemented in a special procedure, which includes compensation for the pecuniary and non-pecuniary damage and the right to rehabilitation. The right to rehabilitation includes the right to compensation for medical aid and service, as well as the right to free of charge psychological and legal services, which is not in place in case of compensating for damage caused as a result of violation of any other fundamental right. 4

**Compensation**[5]

**Unlawfulness of the one-year statute of limitation for making a claim for compensation for damage**

The right to be free from torture should not have any time restriction, including the right to compensation.

Article 162.1 of the RA Civil Code gives a definition of non-pecuniary damage and its compensation, which includes the right to be free from torture, inhuman or degrading treatment or punishment. The procedure of compensation for torture-affected persons is regulated by the RA Civil Code (Article 1087.3).

The mentioned Article establishes that torture survivor, and in case of his/her death, being underage or legally incapable, his/her parent, adoptive parent, child, adoptee, spouse, caregiver, trustee, shall have the right to claim and get compensation in a procedure and conditions specified by Civil Code.The claim for compensation can be filed by the above-mentioned persons after the court's guilty verdict for the commission of the act envisaged under Article 309.1 of the RA Criminal Code enters into legal force, or within one year from the moment the person becomes aware of the decision taken by the investigator or the prosecutor (which has not been abolished or appealed) on rejecting initiation of a criminal case on a non-acquittal ground, or not conducting criminal prosecution or discontinuing proceedings of the criminal case or terminating criminal prosecution for the commission of an act envisaged under Article 309.1 of the RA Criminal Code.

In case the international court (acting with the participation of the Republic of Armenia) confirms the fact of torture, within one year after the entry into force of that act, the torture survivor or the persons provided for by law shall be entitled to compensation insofar as not provided by the judicial act of the international court.

The size of the compensation is decided by the Court, in line with principles of reasonableness, equitableness and proportionality, including pecuniary and non-pecuniary damage, as well as reasonable and necessary expenses for medical aid and service.

When violation of a person's right is related to the condition that the place where he/she is held is inhuman, it becomes obvious that the violation of the right is not related to a specific moment, but a long period, and in the conditions of legal uncertainty, it is impossible to determine the relevant period, as a result of which the person whose right was violated is deprived of the opportunity to have his/her violated rights effectively protected.

Article 1087.3 of the RA Civil Code regulates only the procedure of compensation for torture victims, while violation of the right to be free from inhuman or degrading treatment or punishment has been left out of this

[4] See Articles 2, 3, and 6 of the RA Civil Code

[5] A study on problems recorded within cases of compensation for non-pecuniary damage, HCA Vanadzor, November 20, 2019, https://hcav.am/en/voch-nyutakan-vnas/

Article, which presupposes that the compensation shall be done in a general procedure, in a manner prescribed for the compensation of other rights.

For a person to get compensation final decision of the court is necessary. However, the following question remains open: if it is confirmed, in the frame of a criminal case, that a person was subjected to torture, but the proceedings of the case are suspended for the reason that the person who committed the crime is not known, the disclosure can even last years, or that person may not be discovered at all. It turns out that the person subjected to torture may not receive compensation at all.

**Rehabilitation**

On 26 October 2017, the RA Government adopted the decision "On establishing the procedure and conditions of torture survivors making use of psychological services", which entered into force on 9 November 2017. According to the RA legislation and the Government's decision, the compensation given to a torture survivor includes compensation for the pecuniary and non-pecuniary damage suffered by that person and the right to rehabilitation. A torture survivor's right to rehabilitation includes the right to get compensation for medical aid and service and the right to have free of charge psychological and legal services. Psychological services are provided in a reasonable timeframe after the person allegedly subjected to torture makes a report, taking into account the survivor's legal interests. Psychological services are provided in traditional and alternative intervention ways, taking into account the individual needs of the survivor. Torture survivors receive these psychological services free of charge from a specialized center providing psychological services, which should have at least three qualified psychologist specialists and at least three years of work experience. The RA Ministry of Justice signs a contract with the relevant center for the prupose of providing psychological services.

Since 2019, Armernian Rehabilitation Center for Torture Survivors has been operating. The center opened by a subgrant project in the frame of EU-funded project implemented by Helsinki Citizens' Assembly-Vanadzor jointly with the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT). The aim of the rehabilitation center is to provide comprehensive physical, psychological and social assistance to survivors of torture, cruel and inhuman or degrading treatment, and their families. The staff of the center is comprised of two psychologists, a social worker, a doctor and a psychiatrist. The mentioned center is not financed by the state, which is problematic, as its existence depends on financing of grant projects. Whereas, the introduction of the institute of redress for torture survivors in the domestic legislation presupposes that the state ensures it at its expense. Besides, there are no rehabilitation centers in provinces.

**The issue of illegal distribution of burden of proof**

In cases of compensation claims for non-pecuniary damage, courts, as required by the legislator, distribute on each party the burden of proving the facts invoked by themselves during the examination of the case. In case the claim of **compensation** for non-pecuniary damage is submitted by maintaining the requirements of Article 162.2§2 of the RA Civil Code, "A person...has the right to judicially claim compensation for non-pecuniary damage, if the criminal prosecution body or the court has confirmed that as a result of a decision, action or inaction of state or local self-government body or their official, fundamental rights guaranteed by the Constitution of the Republic of Armenia and "Convention for the Protection of Human Rights and Fundamental Freedoms" were violated".

That is to say, **if there is a court verdict or a decision by the body conducting the criminal prosecution, by which someone was convicted for the violation of a fundamental right, distributing on a person claiming compensation the additional obligation to prove that his/her right was violated is an excessive burden**.

On 15 February 2019, Kentron and Nork-Marash District Court (Yerevan) made a judgment on rejecting Karen Kyupelyan' civil case claiming a compensation for non-pecuniary damage. The reasoning of the judgment was that the existence of suffering could be confirmed by any evidence, including testimony of the party, his relatives. In other words, too formal requirements will not stem from the peculiarities of the nature of mental suffering in order to substantiate its existence. Thus, any evidence that can prove the existence of mental suffering

(conditions, duration of the arrested person's detainment, individual characteristics of a person, etc.) should be assessed by court. The Court rejected the claim by the mentioned substantiation, whereas the plaintiff presented (as evidence of being ill-treated) court judgment that had entered into force and by which a person who committed illegal actions against K. Kyupelyan was convicted under Article 309(1) of the RA Criminal Code.

State compensation in case of the violation of the rights of persons who are under the immediate oversight of the state requires accessible legislation. Lawsuits filed in court should, in the context of proving, be examined by a procedure different from the one envisaged under the current RA Civil Procedure Code.

**The lack of the perception of "grave consequence" in case of a violation of a right**

The legislator establishes that when determining the size of compensation of non-pecuniary damage, the court shall take into account the nature, degree and duration of physical or mental suffering, consequences of the damage caused, existence of fault while causing damage, personal characteristics of the person who suffered non-pecuniary damage, as well as other relevant circumstances.

The invoked norm determines what size of compensation can be claimed by a person whose right was violated, per each right.

The mentioned approach is not logical, given the condition that there is no such body which is competent to measure the nature and duration of a person's suffering, and what is the most important, to assess the monetary value of a violation. The nature and manifestations of mental suffering are individual, which presupposes that the size of the compensation should also be individual.

The law sets by a different clause that the size of compensation may - in exceptional cases -exceed the maximum threshold envisaged, where grave consequences have been caused as a result of the damage caused. However, the legislative body does not give details as to what a grave consequence is and how it emerges, what kind of consequence can be considered grave. There is a lack of an explanation for "grave consequence" term, which generates issues of legal certainty.

Thus, the assessment of "grave consequence" is left on the discretion of the court, which cannot lead to an objective assessment, since "grave consequence" is a matter of individual and inner perception.
Thus, we record that though the RA envisaged an institute of redress for non-pecuniary damage by making amendments to legal acts, the issues and matters currently therein do not contribute to the realization of the main purpose.

## 5. Key factors hindering the implementation of the prohibition of torture. Recommendations/ Measures Needed to Improve State Response to Torture

Though "Torture" was criminalized in line with international requirements of conventions, stable practice of law enforcement has not been established so far. This is convincingly evidenced by judicial statistics: no conviction has come into force under the Article of Torture yet.

The Article on "Abuse of office", which is currently in force, is one of the obstacles to the development of state legal protection of torture survivors. before the criminalization of torture, the aforementioned article was used to hold liable those guilty. Firstly, no clear legal approach has been established in terms of qualifying crimes and differentiating between cases of abuse of office and torture. For this reason, there is a growing tendency to use the old article more frequently, which is also done intentionally, as the criminal article on abuse of office envisages a more lenient punishment for those guilty and allows exemption from punishment under amnesty. Secondly, this article is limited by statute of limitations (for holding liable) and factually blocks the real punishment of those guilty. This happens as a result of untimely initiation of criminal cases, prolonging investigations, and, factually, expiring the period for holding liable.

The current edition of the Article on Torture does not cover cases of ill-treatment and degrading treatment. This also concerns typical cases when detainees or convicts are held in inappropriate conditions in closed institutions. This article is not applicable for such violations.

The quality of investigations into reports on torture is not in line with the standards of effective investigation yet. This kind of conclusion is fair at least because the majority of investigations do not lead to the identification of those guilty and holding them liable.

In order to ensure prohibition of torture in practice, it is necessary to focus efforts on the following directions:

- Establish a prohibition on the use of statute of limitations and amnesty for torture crimes.
- Establish criminal liability for cruel, inhuman or degrading treatment or punishment.
- Expand the list of corpus delicti of torture, envisaging persons working, ex officio, in psychiatric institutions.
- Ensure effective investigation into reports on torture and cases initiated based on them.
- Develop sample forms of documentation of torture and other curel, inhuman or degrading treatment in line with the standards of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and use them in closed, semi-closed institutions.
- In defense of the victim's rights, amend the procedure of distrubution of the burden of proving the existence of the violation of a right in cases of claiming compensation for non-pecuniary damage.
- Eliminate one-year statute of limitations for presenting a claim for compensation for damage.
- Introduce psychological rehabilitation mechanisms for torture survivors, and if necessary, safeguards to ensure effective security measures for victims and witnesses, their family members.
- Under Article 1087.3 of the RA Civil Code, also envisage the right to compensation for inhuman or degrading treatment or punishment.
- Envisage that the right to compensation and rehabilitation of persons subjected to torture, inhuman or degrading treatment or punishment is in place since the moment when the criminal case proceedings are suspended.
- By the RA Government's decision N 1367-Ա of 26. 10. 2017, envisage the right to rehabilitation, at the expense of the state, for the person subjected to inhuman or degrading treatment or punishment, as well as for that person's relatives.