

INDEX ON TORTURE. MAIN DEVELOPMENTS IN 2023

ARMENIA

Despite the positive developments in 2022 caused by the entry into effect of new codes (the Penal Code, the Criminal Procedure Code, and the Penitentiary Code), which established crucial safeguards for the prevention of torture and punishment for torture, the practical situation in 2023 has not changed as compared to 2022.

New Safeguards

Thus, the new Penal Code expressly provides for the following:

- a prohibition on the application of the statute of limitations, amnesty, and pardon in cases of criminal offenses involving torture, abuse of power or official authority, and exceeding official powers with the use of violence or threats thereof (the scope of this offense has been significantly expanded);
- an express prohibition on exemption from criminal liability in case of the defendant's active repentance of committing torture;
- non-application of the prohibition on double jeopardy in cases of unjustified exemption from liability in a third country for torture, complete or partial exemption from punishment, or an unfairly lenient punishment;
- criminalization of failing to report preparation or an attempt to commit torture during the time when the crime or its consequences could have been prevented;
- the new crime of "exerting psychological pressure," i. e. threats of murder, causing bodily harm, torture, committing a crime against sexual liberty or integrity, kidnapping, illegal deprivation of liberty, or destruction of property on a large or especially large scale, provided that there was a real danger of such threat being carried out and the victim was in social isolation or regularly subjected to humiliating treatment;
- the definition of a public official has been expanded.

The new Penitentiary Code provides that the identification and documentation of possible bodily injuries, including those resulting from torture, may be one of the objectives of medical examination during quarantine. In addition, it introduces a separate form for medical examination of torture and other forms of ill-treatment for recording the results of the examination (Article 92 of the Penitentiary Code).

A separate article in the Penitentiary Code regulates the procedure for documenting signs of alleged torture on a special form (Article 94). The form is compiled based on a written or oral statement from the inmate that bodily injuries or health complaints were caused by torture or ill-treatment, or upon the initiative of a medical staff member, if the latter concludes, based on the medical examination, that the bodily injuries or health complaints of the inmate may have resulted from torture or other ill-treatment.

In addition to the obligation to fill out the form, such medical staff member is required to send the completed form to the investigative body.

According to data provided by the Penitentiary Service, in 2023, such special forms were compiled for 82 cases of bodily injuries. The Internal Security Department of the Penitentiary Service sent five reports to investigative bodies regarding signs of abuse of power or official authority, or exceeding official powers, committed with the use of violence or a threat thereof.

To prevent contacts between the inmate who has been subjected to torture or other ill-treatment and the penitentiary staff or other inmates who allegedly perpetrated torture or other ill-treatment, the warden must arrange protection for the inmate who has been subjected to ill-treatment.

Another novelty in the Penitentiary Code is the court's obligation to review a complaint from an inmate about the actions or inactions by penitentiary institutions officials within 24 hours if the complaint alleges that the complainant was subjected to torture or other ill-treatment, or that there is a threat to their life (Article 160).

Non-application of the Statute of Limitations to Torture

According to the new Penal Code, the statute of limitations does not apply to torture. The application of this prohibition to cases of torture that had occurred before the new Penal Code came into effect caused discrepancies due to the principle of non-retroactivity of laws that worsen the situation of a suspect.

To ensure a clear uniform approach, the Court of Cassation in the case of Grisha Virabyan (ՄՎԴ/0009/01/18) issued a decision on December 22, 2023, confirming that the prohibition on the application of the statute of limitations applied to torture cases that occurred since August 1, 2003.

This date was used as the starting point because it marks the day the previous Criminal Code came into force, which directly provided for the non-application of the statute of limitations to persons who committed crimes covered by international treaties prohibiting the application of the statute of limitations. The Court of Cassation referred to the Constitution of Armenia, which says that international treaties are an integral part of Armenia's legal system, and argued that by ratifying the Convention against Torture, Armenia committed to following the decisions of the conventional bodies, including the ones interpreting the Convention.

Persisting Problems

In practice, systemic problems continue to hinder the prevention and identification of potential cases of torture and inhuman or degrading treatment.

Legislative provisions that were identified as having gaps in 2022 have not been changed or supplemented. In particular, cruel, inhuman, or degrading treatment or other forms of punishment not falling under the definition of torture are not singled out as separate offenses in the new Penal Code of the Republic of Armenia; the Civil Code allows for compensation not only for torture but also for moral harm caused by inhuman or degrading treatment, even though such treatment, unlike torture, is not criminalized; limitations on obtaining compensation for victims of torture (both in terms of time and amount) remain, etc.

Low quality of investigations remains a key problem. Over the last year, the effectiveness of registering reports of torture has not improved, and investigations remain ineffective. Investigative bodies usually do not initiate criminal proceedings on their own initiative to investigate incidents of use of force by the police (e. g. based on media reports). Investigations are initiated based on reports by individuals and legal entities.

Cruel Treatment

The current version of the article on torture in the Penal Code does not include cases of cruel and degrading treatment. In Armenian legislation, only the crime of torture is criminalized. Cruel, inhuman, or degrading treatment or other forms of treatment not falling under the definition of torture are not singled out as separate

offenses in the new Penal Code (although there is a crime of psychological pressure, see above). Such actions or their consequences can be qualified, for example, as abuse of power or official authority or exceeding official powers. In practice, there is no mechanism in the criminal legislation for preventing cruel treatment, including in connection with conditions of detention.

Unlike other types of crimes, authorized bodies (besides courts) do not publish regular information on the number of torture cases and their status.

Jurisdiction

Special Investigative Service (SIS), an independent investigative body authorized to investigate torture, was terminated on October 23, 2021, with the creation of the Anti-Corruption Committee, after which the investigation of torture cases was transferred to the National Security Service, and then from June 18, 2022, to the Investigative Committee. At the same time, the investigation of official crimes committed by investigative officers was entrusted to the Investigations Department of the National Security Service (until January 1, 2024). The liquidation of the SIS took place without any consultations with civil society. The overwhelming majority of SIS investigators joined the Anti-Corruption Committee.

According to experts, investigators of the Department for the Investigation of Torture and Abuse or Exceeding of Authority by Officials with the Use of Violence, which operates within the Main Directorate for the Investigation of Particularly Important Cases of the Investigative Committee, lack the necessary experience and expertise.

The department has a staff of eight investigators. It is equipped with all the necessary resources for conducting investigations, but there is no regional representation, so cases from all over the Republic are concentrated in the Central Office. According to data provided by the Investigative Committee for 2023, investigators were handling 261 cases of torture and abuse or exceeding of authority with the use of violence.

Torture Practices

The practices of cruel treatment and torture by the police to obtain confessions or witness testimonies persist. Human rights organizations have publicly expressed serious concern about the increasing incidence of cases of violence against detainees at police stations,¹ as well as against attorneys performing their professional duties at police stations.

Incidents of Violence against Attorneys

On February 9, 2023, a group of police officers used violence against attorneys Marzpet Avagyan and Emmanuel Ananyan, who were carrying out their professional duties at the Erebuni police station in Yerevan. According to the lawyers, the police officers punched and kicked them for a long time, shouting insults at them. One of the lawyers was forcibly removed from the police station by police officers. A criminal investigation was initiated, but the results are not yet known.

Another incident where an attorney was subjected to violence by duty and patrol police officers took place at the Central Police Station on June 7, 2023. According to the lawyer, he went to the police station

¹ <https://prwb.am/2023/07/03/vostikanakan-brnuthyunnereh-darnum-en-hamakargayin-hk-neri-haytararuthyune/>

to represent his client, and upon hearing screams from a room, he opened the door and witnessed five or six police officers beating his handcuffed client. He intervened, the beating stopped, but soon one of the officers began shouting at the detainee, and other police officers removed the lawyer from the room, leaving the detainee alone with the police officers. The lawyer heard his client's screams from the room. Physical force and handcuffs were used then against the lawyer, he was held at the station for about six hours, and later accused of group hooliganism (together with his client) and interfering with the actions of public officials. A criminal case was initiated, but as of June 26, 2024, the investigation was still ongoing and, according to the attorney, it does not meet the standards of an effective investigation.

Cases of Violence Against Detainees

On June 22, 2023, Tigran Arakelyan claimed that a few days earlier he had been subjected to torture at the premises of the Investigative Committee, where he was taken as an accused, and that the Chair of the Investigative Committee and his deputy personally participated in his beating. He reported the beating on June 19 from the detention center to the Human Rights Defender's hotline. A criminal investigation was initiated into suspected torture. Information on the progress of this investigation is unavailable.

Cases of Death

According to media reports and comments from authorities, in 2023, there were at least two cases of detainee deaths as a result of falls from the 3rd² and 5th³ floors of investigation agency buildings.

Quality of Investigation of Torture Reports Does Not Meet Standards of Effectiveness

Torture cases remain unsolved, and reports of torture usually do not lead to criminal cases; when cases are initiated, effective investigations are not conducted. Cases initiated based on torture reports are often closed due to the absence of signs of torture or suspended due to the impossibility to identify the person to be charged.

According to data published by the Prosecutor General's Office, in 2023, 507 criminal proceedings were initiated into suspected torture,⁴ of which 106 were closed, and five cases were sent to court.⁵ The Prosecutor General's Office explains the increased number of torture cases in 2023 by changes in the

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<https://epress.am/ru/2023/04/27/%d0%bc%d0%b0%d1%80%d0%b8%d1%85%d1%83%d0%b0%d0%bd%d0%b0-%d0%b8-%d0%bf%d0%be%d0%bf%d1%8b%d1%82%d0%ba%d0%b0-%d0%bf%d0%be%d0%b1%d0%b5%d0%b3%d0%b0-%d1%81%d0%ba-%d1%81%d0%be%d0%be%d0%b1%d1%89%d0%b8.html>

³ <https://epress.am/ru/2023/07/20/%d0%bd%d0%b0%d1%80%d0%ba%d0%be%d1%82%d0%b8%d0%ba%d0%b8-%d0%ba%d0%be%d0%bd%d1%82%d1%80%d0%b0%d0%b1%d0%b0%d0%bd%d0%b4%d0%b0-%d0%b2%d1%82%d0%be%d1%80%d0%b0%d1%8f-%d1%81%d0%bc%d0%b5%d1%80%d1%82.html>

⁴ The language "suspected torture" can also apply to cases of abuse of power or official authority, or influence conveyed thereby, or exceeding official powers committed with the use of violence or threat thereof. The lack of clear delineation in the statistics does not allow for an accurate understanding of the situation without additional inquiries to state authorities.

⁵ https://prosecutor.am/storage/dynamic_web_pages/dyn_page_285_1465690793.pdf

Criminal Procedure Code, which eliminated the stage of “pre-investigation check,” so that criminal proceedings are initiated based on every report.

According to data provided by the Investigative Committee, in 2023, the Committee received 80 torture reports, of which 74 led to criminal proceedings (28 under the article on torture and 46 under the article on abuse of power or official authority, or exceeding official powers committed with the use of violence or threat thereof). Two criminal cases involving four individuals were sent to court.

In 2023, no verdicts were issued by trial courts under the article on torture, while the Judicial Department does not maintain separate statistics on abuse of power or official authority, or exceeding official powers committed with the use of violence or threat thereof.

According to the Prosecutor General’s Office, the large number of terminated proceedings is due to the fact that no sufficient factual data proving the commission of torture or abuse of power involving violence could be obtained in the course of the investigation. Many such cases involve the use of force and “special means” by police officers. In particular, the Prosecutor General’s Office’s responses indicate that the lawfulness and proportionality of the use of force are confirmed by the testimonies of the complainants themselves.

In some cases, complainants reported facts of torture long after the events, resulting in the evidence not being documented.⁶ Two decisions to terminate proceedings were found by the court to be unlawful or unfounded and quashed.

Conditions of Detention

There has been an increase in the number of convicts and pre-trial detainees compared to 2022. The number of detainees has sharply increased: 8,645 people in 2023 compared to 2,693 people in 2022.⁷

The average daily expenses per person (including all expenses, salaries of service personnel) in 2023 amounted to 13,878 drams (34 EUR), which is slightly higher than in 2022.

Due to the closure of two penitentiary facilities, more than 40% of pre-trial detainees and convicts are held in the “Armavir” penitentiary. This facility lacks an adequate ventilation system and is located in one of the hottest regions of Armenia. In overcrowded cell conditions, this negatively affects the conditions of detention and can reach the level of inhumane treatment during 40-degree heat, which tends to last several months.

Issues of Compensation and Rehabilitation

Article 162.1 of the Civil Code (CC) of Armenia defines the concept of non-material damage and provides for its compensation. The injured person, and in case of their death or incapacity, their spouse, parent, adopter, children, adoptee, guardian, or custodian, have the right to seek compensation for non-material damage in court. However, this is only possible if the prosecuting authority or court has confirmed that the person’s fundamental rights guaranteed by the Constitution and the European Convention on Human Rights were violated due to actions/inactions of a state body or local self-government body, or their officials.

⁶ https://prosecutor.am/storage/dynamic_web_pages/dyn_page_285_1465690793.pdf

⁷ https://prosecutor.am/storage/dynamic_web_pages/dyn_page_285_1465690793.pdf

Article 1087.2 of the CC defines the procedure and conditions for compensating non-material damage. The awarding of compensation does not depend on the reimbursement of property damage or the perpetrating official's fault. A claim for compensation for non-material damage may be filed in court simultaneously with a claim to confirm the violation of rights.

Such a claim can be filed within one year from the moment when one of the following became known:

- investigator's or prosecutor's decision regarding the violation of a right (if not canceled or appealed);
- entry into force of a judicial act confirming the violation of a right;
- decision to refuse to initiate a criminal case on non-rehabilitative grounds;
- non-prosecution of a criminal case;
- termination of proceedings in a criminal case;
- termination of prosecution.

The right not to be subjected to torture, being an absolute right, should not be subject to any time limitations, including in terms of receiving compensation.

The possibility of obtaining compensation, as established by the CC, extends not only to torture but also to moral harm caused by inhuman or degrading treatment, even though such treatment, unlike torture, is not criminalized in national legislation.

It is unclear how a court is supposed to confirm the fact of inhuman or degrading treatment or punishment if such concepts are absent in the law.

The content, procedure, and conditions for providing compensation to victims of torture are established by Article 1087.3 of the Civil Code of the CC. Compensation includes reimbursement for material and non-material damage, as well as the right to rehabilitation. The latter includes the right to receive compensation for medical care and services, as well as the right to access free mental health and legal services.

The procedure and conditions for receiving mental health services are defined by Government Decree No. 1367 dated October 26, 2017. Mental health services for torture survivors are provided within a reasonable time after notifying the Mental Health Assistance Center in writing about the alleged torture.

The following individuals may seek mental health assistance for torture survivors:

- the person subjected to torture;
- the authority conducting the proceedings; and
- close family members of the torture survivor or other interested parties.

After submitting an application, mental health services are provided to the victim taking into account their individual needs.

According to para. 3 of the Annex to the mentioned decree, the Ministry of Justice of the Republic of Armenia signs a contract with a specialized mental health assistance center for the provision of mental health services. The center must have been operating for at least three years and have at least three qualified psychologists on staff.

Projects involving rehabilitation for torture survivors also continue to be implemented by various non-governmental organizations.