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Master's Paper

Abusive Treatment of Arrestees by Armenian Police

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Chapter 1: INTRODUCTION

"Law enforcement officials shall
at all times fulfill the duty imposed
upon them by law, by serving the community
and by protecting all persons against
illegal acts, consistent with
the high degree of responsibility
required by their profession…"
UN Code of Conduct for Law Enforcement Officials[1]

The purpose of this study is to present Armenian Police Force practices on the treatment of arrestees or suspects during their interrogation and while confined in special police facilities for arrestees during the first seventy-two (72) hours. Although Armenian legislation provides for a number of safeguards to protect arrestees' rights, police officials customarily overstep their state authority and violate these basic rights through ill-treatment and torture. This study will identify the problems associated with this transaction, introduce international best practices related to this transaction, and suggest reforms.

International studies on ill-treatment and torture have established that "most of the cases of ill-treatment happen during the detention in police facilities, during the first hours of detention, when no access to a lawyer or a doctor and no contact with the family are allowed. The aim is generally to extract confessions."[2] Moreover, the Committee on Prevention of Torture[3] has emphasized that "in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill treatment is at its greatest".[4] Such is the practice of the Armenian Police Force.

According to human rights NGO surveys, police officers in Armenia violate the arrestees' rights regularly. More strikingly, approximately 60% of interviewed prisoners have reported being physically tortured by police officers during their arrest or interrogation

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[1]UNHCR Official Website "UN Code of Conduct for Law Enforcement Officials" http://www.unhchr.ch/html/menu3/b/h_comp42.htm , July 15, 2007 15:00

[2] Aisling Reidy, The Prohibition of Torture, A guide to the implementation of Article 3 of the ECHR, Human Rights Handbooks, No 6, page 47, COE, Germany

[3] International organization established to safeguard the implementation of the European Convention on Prohibition of Torture and Inhuman and Degrading Treatment

[4] 9th General Report of the CPT, para 23, 1999

in order to obtain confessions.[5] Notably, many officers regularly fail to inform the arrestees of their rights, including the right to remain silent, to legal counsel and to a doctor.

One illustration of the many violations made by the police officers is the case of Armen Ghambaryan. Mr. Ghambaryan was arrested for drug abuse and was taken to the Erebuni Police station for interrogation. Within hours, he was severely beaten and was compelled to give self-incriminating testimony. The police officers failed to provide Mr. Ghambaryan with an attorney, as he had requested, and denied him with necessary medical care. Only after obtaining a confession, the officers provided Mr. Ghambaryan with counsel; however, he was powerless to prove that he had been beaten severely during the interrogation and that his confession was made under physical compulsion. Instead, Mr. Ghambaryan was further coerced by the prosecutor to explain that his injuries were caused by falling accidentally.[6]

In Armenia, procedural guidelines and judicial process deem self-incriminatory confessions as ***primary*** and ***admissible*** evidence. Due to such fundamental weakness in the system, law enforcement officials abuse their state authority by committing violent acts against suspects in order to obtain confessions within the first seventy-two hours of investigation. The vital first phase of police investigation has, therefore, become an instance where arrestees' basic rights are violated regularly. Thus, confessions obtained upon an official's gross misconduct, as is in the case of obtaining forced confessions, should be held as inadmissible evidence, due to its inherent unreliable nature. Such spoiled evidence can not contribute to a fair judicial system.

The Armenian legal framework and a number of international human rights' legal instruments provide protective measures for arrestees, including the right to security and

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[5] Monitoring of the Democratic Reforms in Armenia 2006,http://www.ypc.am/Old/Downlowds/Report_eng.pdf July 20, 2007 14:30; Human Rights in Armenia, International Federation for Human Rights, Report 2006 www.hra.am/file/hca-2006.pdf , June 12, 2007, 13:20

6 Armenian Now, "Accused Accusers: Convict charges police brutality in case that cost him his spleen", http://www.armenianow.com/?action=viewArticle&AID=1889&lng=eng&IID=1109&PHPSESSID=9cbe413831d304c07be5ad4f00e7f13e, 07.26.07

humane treatment. At the same time the public, in general, has an interest in state security, fair judicial system, including criminal punishment and deterrence. The public largely relies on the police force to implement these values at a local level. The Police Force, as a state representative and authority, has a high burden and duty of care to undertake the responsibilities to secure these values. Thus, it is crucial for the law enforcement officials not to overstep their authority and to act only within the limits of their competence. The UN Code of Conduct states: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of **all** persons".[7]

Chapter 2: Legal Framework

Part 1: Legislation

The transaction is guided by the following:

a) Armenian legislation – RA Constitution, Criminal Procedure Code (CPC), Law on Police (LOP); Law on Treatment of Arrestees and Detainees (LTAD), Law on the Human Rights Defender, and Internal Procedures of the Police Facilities for Arrestees (IPPFA).

b) International agreements – International Covenant on Civil and Political Rights (ICCPR), European Convention on Human Rights (ECHR), Convention against Torture, and Other Inhuman and Degrading Treatment (CAT), Optional Protocol to the CAT (OPCAT)

c) Relevant case law of the European Court of Human Rights[8] - Greek Case; Al-Adsani v UK; Akdeniz v Turkey; Akkoc v Turkey; Selmouni v France

Pertinent extracts from the legislation, agreements and case law are included in Annex 1 and are separated as:

a) General Provisions Guiding the Transaction

b) Safeguard Provisions for Proper Implementation

c) Positive Obligations Undertaken by Armenia as a Party to International Agreements

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[7] UNHCR Official Website "UN Code of Conduct for Law Enforcement Officials" http://www.unhchr.ch/html/menu3/b/h_comp42.htm , July 15, 2007 15:00

[8] Cases decided by the European court of Human Rights are binding for Armenian national courts (HO 135-N Judicial Code, Art. 15)

General Provisions

Under Armenian legislative framework, everyone enjoys the right to liberty and security. Liberty may be restricted to the extent that a lawful arrest or detention of a person has taken place and there is a reasonable suspicion that the person has committed an offence; or when it is necessary to prevent a crime or to prevent an escape of a suspect after the commission of such crime. [9] RA police officers, as a body of inquiry,[10] are authorized to conduct a lawful arrest and to interrogate individuals[11] upon reasonable belief that the person has committed a crime or was about to commit a crime.[12]

An arrest may not exceed seventy-two hours in duration.[13] Once the seventy-two hours has expired, the police must either charge the arrestee with a crime according to a court order, or must release him.[14] Arrested persons are kept in special police facilities for arrestees[15] in accord with the manner and procedures established by the Law on Treatment of the Arrestees and Detainees (LTAD) and Internal Procedures of the Police Facilities for Arrestees (IPPFA).[16]

Safeguard Provisions

Right to Legal Assistance and Defense

Arrestees have the right to request legal assistance or defense[17] from the moment of their arrest;[18] they also enjoy the right to meet with their attorneys an unlimited number of times and for unlimited duration.[19] Defense attorneys are entitled to be present during the interrogation of the suspects, to remind the latter of his/her rights and freedoms, and to

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[9] ECHR, Art. 5(b); RA CONST. Art. 16 (4)
[10] HO-248 Criminal Procedure Code (CPC) Art. 56
[11] HO-248 CPC 57, prov. 2 (5)
[12] RA CONST Art. 16 (4); CPC Art 128
[13] RA CONST. Art. 16, para 3; CPC Art 129, para. 2
[14] HO-248 CPC Art. 132
[15] HO-248 CPC Art. 133
[16] Please look up Annex 1for relevant articles
[17] RA CONST Art 18, 20; HO-23 Law on Human Rights Defender (LHRD), Art. 8, para 1; HO-177Law On Police (LOP) Art. 5 para 3; HO-248 CPC Art. 63 (1); HO-305 LTAD Art. 13 (6); 8-N IPPFA Art 5 (1.a)
[18] HO-248 CPC Art 63 (2)
[19] HO-305 LTAD Art 15 para1; IPPFA Art 8.1

communicate freely with the suspects.[20] The investigator is authorized to appoint attorney immediately upon a suspect's request.[21]

Right to personal security, humane treatment; prohibition of torture, inhuman and degrading treatment.

Arrested suspects have a right to personal security and humane treatment[22]; and, torture is prohibited.[23] The cases decided by the European Court of Human Rights[24] state that beatings and threatened ill treatment by Police officers amount to torture and inhuman treatment (subject to case by case analysis) and are in breach of Article 3 of the ECHR. Such decisions are binding on Armenian courts because Armenia is a party to the ECHR.

Right to due process

RA legislation provides for due process by securing rights for all individuals (including arrestees) to appeal and restore the violated rights and to challenge the accusations in a fair public hearing under equal protection of the law before an impartial judicial authority. Arrestees are to be presumed innocent until proven guilty by court judgment.[25] Suspects also have the right to know the grounds of the suspicion and legal qualification of the criminal deed for which they are suspected, to receive immediately all relevant documents regarding the arrest, and to give or to refuse to give testimony or explanations.[26] Suspects need not testify against themselves,[27] and the use of illegally obtained evidence is inadmissible .[28] Illegally obtained evidence is defined by the CPC Article 105 (1) and (2) as evidence which was received by force, fraud, and violation of dignity, essential procedures, and the rights of the suspect.

Right to Appeal

[20] HO-248 CPC Art 73, paras 1. (1, 2, 3, 4)
[21] HO-248 CPC Art. 55, para 4 (16)
[22] RA CONST Art. 17; LTAD Art. 13 (2) and (7), IPPFA Art 5 (b) and (g)
[23] ICCPR Art. 7; ECHR Art. 3
[24] see Annex 1
[25] RA CONST. Art. 19; ECHR Art. 6, Art 21
[26] HO 177LOP Art. 5, para 2; HO-248CPC Art 63 para 2 (1, 3, 4, 7, 8); 8-N IPPFA Art 5 (a)
[27] RA CONST. Art. 22 para. 1,
[28] RA CONST. Art 22 para. 2

In case of violation of the mentioned rights, arrestees have the right to legal remedies and to restoration of their rights as defined by the RA Constitution, Art 18, and 19. Suspects also enjoy the right to participate in the investigation process by objections, presenting motions and challenging the decisions of the bodies of inquiry, and complaining to higher and independent authorities.[29] Moreover, Art. 7.5 of the LTAD and IPPFA, prohibits police officers from persecuting arrestees on the ground that they filed complaints to higher and independent parties.

Positive Obligations Undertaken By Armenia Upon Signing International Agreements

Armenia, as a party to several international agreements relating to protection of human rights, has undertaken positive obligations to ensure the application and implementation of the procedures for protection of human rights. Article 1 of the ECHR obligates the parties of the convention to secure for everyone the rights provided by the convention. These rights include right to a fair trial and defense, prohibition of torture or inhuman and degrading treatment. Under ICCPR, Armenia has undertaken to ensure that any person whose rights are violated have an effective remedy, even when the violations are committed by persons acting in an official capacity.[30]

Under the Convention against Torture, Armenia has undertaken obligations to take effective legislative, administrative, judicial or other measures to prevent acts of torture.[31] Moreover, Armenia must ensure that the acts of torture are punishable under domestic law[32] and must regularly review the methods of interrogation, or other practices employed in places of arrest and detention.[33] Articles 12, 13 and 14 set forth the obligation of the state to investigate promptly any act of torture committed within its jurisdiction, provide for legal remedies for the victim of torture, eliminate the possible ill treatment of the complainant, and

[29] HO-248 CPC. Art 63 (provisions 11, 12, 13, and 17); HO-305 LTAD Art. 13 (3); 8-N IPPFA Art 7.1
[30] ICCPR Article 2
[31] CAT, Article 2
[32] CAT, Art. 4 (2)
[33] CAT, Art 11

to compensate the victim. **Contracting parties must ensure that the evidence received as a result of torture must be excluded.**[34] The states also have obligation under Article 16 to undertake all necessary measures to prevent other acts of cruel, inhuman or degrading treatment. Armenia has also ratified the Optional Protocol to the CAT (OPCAT), which puts an obligation on the country to set up several visiting bodies for the prevention of torture and other inhuman and degrading treatment,[35] and vests them with the power to visit all places of deprivation of liberty.[36]

Part 2: Implementation of the Legislation in Practice

Despite the fact that the transaction is governed by extensive legislative provisions in line with international standards, as defined by the national legislative framework and international agreements, in practice, the legislative provisions and international obligations are regularly violated or ignored by police officials. Yet, none of the arrestees who reported being victims of ill-treatment or torture at police facilities during their detention filed an official complaint with the courts. Likewise, their bodily injuries were either not recorded, or were recorded superficially and with false explanations (such as in the case of Mr. Ghambaryan).[37]

The RA Human Rights Defender, Monitoring Group for Police Facilities for Arrestees (Monitoring Group), human rights NGOs, and international organizations have a major role in protecting the rights of arrestees in Armenia. Still, the practice shows that despite repeated violations, arrestees do not resort to higher or independent authorities to recover their rights. A. Baghdasaryan,[38] Head of the Department on Criminal Procedure and Military Servants Rights Recovery of the Human Rights Defender's Staff, reports that most violations of the arrestees' rights remain unreported. The same complainants, who initially called for help to

[34] CAT, Art. 15
[35]OPCAT, Art 3
[36] OPCAT, Art. 4
[37] Monitoring of the Democratic Reforms in Armenia 2006,http://www.ypc.am/Old/Downlowds/Report_eng.pdf July 20, 2007 14:30; Human Rights in Armenia, www.hra.am/file/hca-2006.pdf , June 12, 2007, 13:20
[38] RA Ombudsman's Office, Pushkin 56 a,Tel: 53-92-71

stop the violence, later refuse to file an application with the Human Rights Defender's office, thus inhibiting the staff's ability to further investigation and expose the perpetrators. Accordingly, the 2006 Annual Report of the RA Human Rights Defender shows no complaints filed by arrestees whose rights were violated by police officers.[39] According to Avetik Ishkhanyan,[40] leader of Armenian Helsinki Committee (AHC) (a human rights NGO), despite the remedial procedures set forth by the legislation, arrestees do not turn to higher instances to complain of abuse and do not demand restoration of their freedoms because there is no confidence in the system of judicial redress.

However, an Honorable Judge, sitting in the Court of Appeal on Criminal and Military Cases,[41] believes there to be other explanations as to why no complaints are being filed to the courts. First, the Judge believes cases that involve beatings, ill-treatment, and intimidation aimed at squeezing confessions, are very difficult to prove in court. By the time an application can be submitted, bodily injuries are not apparent or visible for medical evaluation. On the other hand, even if medical examination takes place in a timely manner, the police officers have the opportunity to pressure the arrestees to give a false explanation, or to minimize the gravity of the injuries. Second, victims of such violations are not aware of their rights to appeal for legal redress. Those who are aware of their rights fear being further punished by police officers for submitting a complaint. Under the abovementioned theories, violators remain unpunished and continue in unlawful practices.

Part 3: Main Problems with the Transaction Identified

The implementation of the relevant legislation in practice proves that there are a number of problems, both related to legislation and its implementation by police officers, which must be discussed:

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[39] RA Human Rights Defender's Official Web Site, 2006 Annual Report, http://www.ombuds.am/main/am/10/31/ , June 12,2007
[40] Armenia Helsinki Committee, address: 2 Zakian, apt. 69. Yerevan, Republic of Armenia. Tel:. 56 03 72
[41] RA Court of Appeal on Criminal and Military Cases, 23 Garegin Nzhdeh Street, Yerevan, Armenia

1. Courts do not pay attention to the claims of the defendants stating that their testimonies were given under ill-treatment or torture.[42]

2. Police facilities for arrestees are accessible only by one Monitoring Group.[43]

3. The Monitoring Group has no access to Police Stations, where most violations against the suspects take place.[44]

4. Violations of the rights of arrestees are facilitated by the fact that they are not properly registered.[45]

5. The police authorities refuse to provide a lawyer to the arrested suspects, who would explain their rights, including the right to remain silent.

6. Medical examination of the arrestees is very often denied (interview statement).[46]

7. The arrestees are very often not aware of their rights (interview statement).[47]

Discussion

1. Although there are number of provisions defining and excluding unlawful evidence, courts admit most evidence submitted by the prosecutors. Moreover, in many cases, the only evidence available to the prosecutor against a defendant is the self-incriminating testimony made by an accused during the initial investigation. About 80% of the defendants deny the testimony they had given during the pretrial investigation claiming that their testimony was given under torture and intimidation. However, courts regularly disregard such allegations, rendering them without legal consequence.[48]

2. Based on Article 47 of the LTAD, a civic Monitoring Group was established to conduct regular monitoring of the police facilities for arrestees. This can be considered progress for

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[42] Monitoring of the Democratic Reforms in Armenia 2006,http://www.ypc.am/Old/Downlowds/Report_eng.pdf , July 20, 2007 14:30

[43] "2007 Annual Report", Human Rights Watch Official Website, www.hrw.org/wr2k7/wr2007master.pdf, June 15, 2007 15:00

[44] Monitoring of the Democratic Reforms in Armenia 2006,http://www.ypc.am/Old/Downlowds/Report_eng.pdf , July 20, 2007 14:30; Human Rights in Armenia, www.hra.am/file/hca-2006.pdf , June 12, 2007, 13:20

[45] http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=7391 ; "2006 Report of the Activities of the Monitoring Group" http://www.policemonitor.am/reports/, June 12, 2007, 15:30

[46] Baghdasaryan, Armen. Personal interview. 10 June, 2007

[47] Baghdasaryan, Armen. Personal interview. 10 June, 2007

[48] Monitoring of the Democratic Reforms in Armenia 2006,http://www.ypc.am/Old/Downlowds/Report_eng.pdf

the judicial system; however, the independence of the body is questionable because of the composition of the group, which includes several ex-police officers as members.[49] The group has access to the police facilities where the arrestees are kept, has the right to check the records, and the right to produce reports on its findings. However, the effectiveness of the monitoring body is limited, since it does not have additional authority which would enable them to bring the violators to justice.

3. As reported by Monitoring of the Democratic Reforms,[50] "[m]ost of the ill-treatment takes place in police stations," where interrogations are conducted. The monitoring group is denied access to the police stations which makes the Monitoring Group ineffective in identifying and reporting on violence at police stations.

4. According to Article 2.5 of the Internal Procedures of the Police Facilities for Arrestees (IPPFA), the arrestees are admitted to the facility upon examination of the documents related to arrest and registration in a special registry. However, the 2006 annual report of the Police Monitoring Group indicates that a number of cases lacked proper registration of persons kept in the police facilities for arrestees.[51]

5. Armenian courts have a long standing practice of accepting confessions as primary evidence, without paying due regard to the credibility of such evidence. This practice enables the police authorities to disregard the requirement of the Criminal Procedure Code, LTAD and IPPFA to inform the arrestees about their rights and freedoms. Moreover, the language of the Criminal Procedure Code provides for the right of an attorney to be present at the time of the interrogation, but under the law he is not *required* to be present. On the other hand, the investigator is not obliged but is merely *authorized* to appoint and allow an attorney to be present during interrogation (CPC Art 63, and 73). This language gives too much discretion

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[49] "2007 Annual Report", Human Rights Watch Official Website, www.hrw.org/wr2k7/wr2007master.pdf, June 15, 2007 15:00

[50] Monitoring of the Democratic Reforms in Armenia 2006,http://www.ypc.am/Old/Downlowds/Report_eng.pdf

[51] "2006 Report of the Activities of the Monitoring Group" http://www.policemonitor.am/reports/, June 12, 2007, 15:30

to the police authority and weakens the position of the defense, enabling an opportunity to ignore the provision.

6. According to LTAD Article 15, access to medical examination for arrestees is provided upon the *permission* of the head of the facility. The provision enables the police authorities to either delay examination, or to refuse access at all. Moreover, Article 2 of the IPPFA defines that in case of a health complaint or bodily injury of the arrestee, the police officer invites medical personnel and registers the visit and findings in a special registry. According to the Report of the Monitoring Group, such registries are often missing at the Police Facilities.

7. Arrestees are also not educated regarding their rights. Instead, they are kept in a forceful and intimidating atmosphere, which discourages the arrestees to request explanation of their rights, although the legislation allows for it. Additionally, there is no explicit requirement in domestic legislation for courts to disregard evidence obtained when the suspects were not briefed on their right to remain silent or to request for an attorney.

Conclusion: In such instance, the opportunities of the police officers to bypass or disregard the rules without future punishment coupled with the arrestee's reluctance to report violations, violations against the basic human rights of the arrestee's have become a reality endorsed by the Armenian courts. The police officers are well aware that courts have overlooked the police and criminal procedure codes requiring the police officers to inform the arrestees on their rights, and, hence, have admitted spoiled confessions. Yet, the officers continue to swiftly close the cases and forward them to the courts, all, jam-packed with spoiled, unreliable, and at times, fraudulent evidence. Thus, the judiciary has wrecked its significant role: as high and ideally impartial instances, to protect the victims of violations and restore their rights, and also to prevent violations within their own state practice.

Chapter 3: International Best Practice

Part 1: Practice in the United States of America

US Courts have played a significant role in reinforcing proper legal procedures, giving "expansive interpretation to the individual guarantees".[52] By developing case law on the topic of unlawfully obtained evidence, the courts have given value to proper police procedures, contributing to the rule of law and excluding unreliable evidence obtained under coercion. Therefore, the first issue for discussion regarding the admissibility of evidence is whether a confession is given voluntarily. This way the courts achieve two goals: reliable evidence and professionalism in law enforcement.

The US court practice of excluding unlawfully obtained evidence demands that law enforcement secure reliable objective evidence and not depend on the confessions of suspects (as is the case with Armenian system). In its opinion, Justice Goldenberg in *Escobedo v. Illinois*[53] stated "that a system of criminal law enforcement which comes to depend on 'confession', will, in the long run, be less reliable and subject to abuses than a system, which depends on extrinsic evidence." The US Supreme Court further embedded the proposition stated in *Escobedo* in its historic ruling of *Miranda vs. Arizona,*[54] where the court introduced the requirement to inform an arrestee of his rights before interrogation. The court in *Miranda* emphasized that persons "deprived of their freedom of action in any significant way" could not be interrogated before being advised that: (1) "he has the right to remain silent"; (2) "anything said by the person can and will be used against the individual at court"; (3)"he has the right to consult an attorney and to have the attorney with him during the interrogation"; and (4) " if he is indigent, an attorney will be appointed to represent him".[55] These warnings have since been held to be the fundamentals of U.S. criminal procedure and are the principal procedures to be abided by the police officers prior to commencing an interrogation.

As was acknowledged by a Federal Agent,[56] once officers "Mirandize" arrestees and once an arrestee requests an attorney, the questioning or interrogation must immediately

[52] LaFave, Wayne R. and Israel Jerold H. *Criminal Procedure*, page 45, Second Ed, 1998
[53] 378 U.S. 478, 84 S.Ct. 1758, 121 Ed. 2d977 (1964)
[54] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16LEd.2d 694 (1966)
[55] Miranda v Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16LEd.2d 694 (1966)
[56] Federal Agent (US Embassy), Personal Interview, July 15 2007

cease and the arrestee must be given an opportunity to speak to his attorney. The interrogation may resume, however, if the arrestee initiates a conversation with the police officers. Thus, due to this well established practice, there are few if any cases involving beatings and other abusive methods employed by police officers. The Federal Agent pointed out that cases involving police violence do occur; but that they remain "unique" and in isolation, and due to the effective media reporting coupled with the long established rights of arrestees, punishment of the violators are effectually carried out.

Aside from the legal guidelines, the Federal Agent also mentioned yet another contemporary and practical means of ensuring proper administration of justice by implementing a fairly new requirement utilized by many states requiring that interrogatories be videotaped. This method practically leaves no space for further speculations whether there has been abuse. The last novelty mentioned by the Federal Agent is that, currently, states are beginning to apply Community Policing Systems.[57] The idea of the system is to have a police officer assigned to each small community which would enhance the police officer's effectiveness on duty by becoming more aware of the activities in the community and getting to know individuals on a personal level. This type of interactive work with the community contributes to crime prevention, and also eliminates the possibility of abuse of power by police officers.

Part 2: Comparing US and Armenian Practices

A comparison of the Armenian legal framework with the US protections of arrested suspects reveals almost the same high standards in terms of criminal procedure. The fundamental weakness of Armenian legal framework is not the legislation (although there are some provisions that could be strengthened and will be addressed in the following section); but rather, it is the implementation of these guidelines and procedures that is the major problem in Armenia. Specifically, the interplay, or lack thereof, between the court practice

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[57] "Community Policing" , Wikipedia, free Encyclopedia, http://en.wikipedia.org/wiki/Community_policing, July 12, 2007 15:00

and the police implementation of the procedures plays a major role in the weakness of the Armenian criminal system. There is no independent court system in Armenia, free from corruption and influence of the executive branch, which could deliver decisions aimed at establishing the rule of law.

The Armenian judicial system's main objective has been to punish criminals in every criminal case without examining two vital issues: (1) whether self-incriminating confessions should be used as primary evidence in establishing the perpetrator of the crime and (2) whether the confessions were given voluntarily (i.e. the arrestee was aware of his rights and waived these rights voluntarily). While this approach does not necessarily lead to a perfect criminal system such that no guilty man goes unpunished, the state's interest to provide an equal and fair legal system to each arrestee outweighs the harm caused by a possible exclusion of a perpetrator from appropriate punishment. Also, since more arrestees will raise a defense of involuntariness, eventually, courts and the legislature will be forced to create more effective and efficient evidentiary rules that would enable the defendants and the prosecutors to proceed with the preliminary phase of trial.

Notably, the principle of *stare decisis*, used in common law systems, expresses the notion that previous court decisions must be recognized as precedents. The principle has played a significant role for the U.S. courts in establishing many of its rules and procedures, especially in fact specific areas of law, such as in tort law. Precedent case law in the U.S. has also established a clear framework for criminal courts and serves as a reliable guidance for judges, prosecutors, defendants, as well as law enforcement officials. By interpreting legal decisions from Appellate Courts or the U.S. Supreme Court, judges have become well educated on a wide spectrum of possible situations or fact patterns and are more attentive to issues and facts that they personally have not addressed in their court but that they nevertheless can resolve after resorting to the holdings in other courts. Thus, the police

officials' awareness of the likelihood of close review of the cases deters many U.S. officers from acting inappropriate on the line of their duty.

In Armenia, however, there is no such established principle of *stare decisis*; thus, police officers regularly violate the rules and practice laws to their own advantage. This may improve, however, because the RA Constitution, amended as of November 27, 2005, provides for the power for uniformity in implementation of the law,[58] and the decisions of the highest court of cassation of the Republic of Armenia will become binding for all lower courts, as defined by the new Judicial Code.[59] But this has to pass a long road yet.

Part 3: The Role of the European Court of Human Rights

The European Court of Human Rights has developed case law related to the implementation of Article 3 of the European Convention of Human Rights (ECHR)[60] and which substantially furthers international best practices regarding this topic. Article 3 specifically prohibits torture, inhuman or degrading punishment or treatment. This relatively short article was interpreted and elaborated by the Court rather extensively, covering different aspects of torture, inhuman and degrading treatment exercised by police officers. The reasoning of the cases discussed in the Legal Framework and presented in Appendix 1 of this study specify that: (1) the use of physical force by the law enforcement officers against the persons deprived of liberty diminish human dignity and violate Article 3 of the ECHR;[61] (2) violation of Article 3 can not be justified even in cases related to the fight against terrorism;[62] (3) beatings, threatening with a blowlamp and syringe, taken together and exercised by police officers for several days, constitutes a violation of Article 3 and amounts to torture;[63] (4)

[58] RA CONST. Article 92, para 2
[59] Judicial Code, Article 15, provision 3 and 4
[60] ECHR, Article 3
[61] Ribitsch v Austria, No. 18896/91, Series A, No 336, 4.12.95, (1996) 21 EHRR 573
[62] Tomasi v. France, No. 12850/87, Series A, No. 241-A, 27.8.92, (1993), and Ireland v. UK, Series A, No 25, (1979-80) 2 EHRR 25
[63] Selmouni v. France, No. 25803/94, 28.7.99, (2000) 29 EHRR 403

threats of ill treatment of the arrestee's children, *i.e.* psychological pressure, would also amount to torture.[64]

As to the obligations of the state to ensure the prevention and punishment of the violation of Article 3, the court has developed case law which holds that: (1) the state has an obligation to "credibly and convincingly" explain to the European Court how the injuries occurred upon a person, when the latter was arrested in good health;[65] and (2) failure to provide medical examination to the arrestee is an important factor to determine violation of Article 3.[66]

The cases mentioned above provide for legal grounds to invoke similar cases before the national courts, and may be presented as a valid legal argument before the Armenian Courts. The Judicial Code of the Republic of Armenia, Article 15, Section 4 defines that

> "[t]he reasoning of a judicial act of the Cassation Court or the European Court of Human Rights in a case with certain factual circumstances (including the construal of the law) is *binding* on a court in the examination of a case with similar factual circumstances, unless the latter court, by indicating solid arguments, justifies that such reasoning is not applicable to the factual circumstances at hand".

However, the new code was adopted in February of 2007; thus, the society is not well informed on the new provisions envisaged in the code.

Conclusion: The fundamental issue in the improper implementation of the transaction at stake is judicial practice regarding admission of confessions as primary evidence, and the failure of the Armenian courts to exclude as evidence information obtained via threat, torture, intimidation, ill-treatment, and other unlawful methods. As was explored in the discussion of the US practice, the judicial system itself, as an impartial institution, is the main guarantee of the proper implementation of the law. Failure by the courts to accurately interpret the important principles of the law and to uphold prior decisions inevitably leads to abuse of authority by state officials, including by the police officers, as is apparently present in the

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[64] Akkoc v Turkey, Nos 22947/93 and 22948/93, 10.10.00, (2002) 34 EHRR 51
[65] Tomasi v. France, No. 12850/87, Series A, No. 241-A, 27.8.92, (1993), and Ireland v. UK, Series A, No 25, (1979-80) 2 EHRR 25
[66] Algur v Turkey, No. 32574/96, 22.10.02

Armenian system. The practice of the European Court of Human Rights is also very important, and the provision of the Judicial Code enabling its use for Armenian courts, will definitely contribute to the proper criminal proceedings in future.

Chapter 4: REFORM

Recommendations that improve the transaction through legislative amendments and practical steps include reforms in judicial practice, legislation and educational and awareness campaigns and seminars.

1. Judicial approach

First, Armenia must address the critical issue of accepting confessions, at times the prosecutor's sole evidence, as primary. Due to the record of abuse and misconduct by the police, for the time being, confessions should be treated as secondary evidence and should be supplemented with other forms of legitimate, extrinsic evidence, and police officers must be encouraged to put more effort into obtaining evidence rather resorting to torturing and threatening arrested suspects. Eliminating this practice requires legislative action. First, there must be a legislative amendment to the Criminal Procedure and Judicial Codes, which expressly prohibits self-incriminating confessions as primary evidence upon which a judgment may be rendered. The text of the amendment could read:

> "The confessions of the suspects/defendants will be deemed as inadmissible and will not be introduced to the court as probative evidence unless there is additional material evidence by way of being either equally probative or more probative than the confession made by the testimony/suspect, or by way of being independently relevant and probative evidence."

Also, there should be a provision specifying that any evidence obtained before a suspect is informed of his rights is unlawful. International organizations, such as the Committee for Prevention of Torture, and local human rights NGOs may help to influence the Armenian authorities to accept such changes because this would benefit the overall development of rule of law in the country.

2. National Mechanism envisaged by the OPCAT

Another tool to prevent abuse of individual rights by police officers is a mechanism provided for in the Optional Protocol to the Convention against Torture and Degrading and Inhuman Treatment (OPCAT). According to OPCAT Article 17,

> "Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level."[67]

Armenia ratified OPCAT on September 14, 2006.[68] Thus, by the end of this year Armenia must introduce a national mechanism with all the powers and privileges provided for under OPCAT, including independence, immunity, and access to all facilities for keeping persons deprived of liberty (police stations and military units included). Currently, none of the local NGOs have access to police stations; only the Human Rights Defender has such access. However, the need for such a mechanism is pressing, as the Human Rights Defender with two or three staff members is not physically capable for making regular visits.

The OPCAT also requires that states include experts in the OPCAT mechanism. Article 18, para. 2 of OPCAT reads: "The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge."[69] Vigilance by informed experts could eliminate unlawful practices by police officers in regard to proper record keeping, interrogation and treatment of arrestees.

Currently, the Human Rights Defender, together with several NGOs representing civil society, is involved in discussions for further development of the national mechanism. The mechanism will be introduced by a subcommittee of the Human Rights Defender's office,

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[67] OPCAT, Article 17, http://www.ohchr.org/english/law/cat-one.htm July 24, 2007
[68] OPCAT Ratification status, http://www.ohchr.org/english/countries/ratification/9_b.htm, July 24, 2007
[69] OPCAT, Article 18, http://www.ohchr.org/english/law/cat-one.htm, July 24, 2007

and as mentioned in the OPCAT, the Law on Human Rights Defender would give the Ombudsman's staff unlimited access to detention facilities.[70]

Also needed is a legislative amendment to the Law on Human Rights Defender to introduce the subcommittee within the structure of the Human Rights Defender's Staff. Thus, once the procedural hurdles have been completed, the institute of the Human Rights Defender will be substantially strengthened. Moreover, this development would benefit all the regions of the country, if the subcommittee were to expand its offices across the country.

3. Other legislative amendments which would strengthen the safeguard provisions governing the transaction

The Internal Procedures of the Police Facilities for Arrestees (IPPFA) envisions that the arrestee or the counsel for the arrestee may request medical examination. However, such request must be approved by the Head of the detention facility. This provision enables the Head of police to make arbitrary decisions, and to deny or delay access to medical examination. The provision should be amended so that the arrestees get immediate access to medical examination based on notice to the official and without regard to the discretion of detention facility heads.

Also, the provision in Criminal Procedure Code (CPC) addressing the arrestee's right to counsel may be strengthened through legislative amendment. CPC Article 73, para 1 provides for the counsel's right to be present during the interrogation process. The wording, however, is rather weak. An amendment could add stronger language such that: (1) an interrogation *may not* proceed without the presence of counsel and the counsel is to be *required to be present at all times* during interrogation; and (2) such that an Investigator is *obligated* to appoint counsel *immediately* after the arrestee has been placed in confinement in the prison. This amendment can be suggested by the human rights defender bodies (NGOs and Ombudsman).

[70] Law on Human Rights Defender of the RA, Article 3, provision 1, para 2

4. Practical improvements

As mentioned earlier, videotaping of interrogations is the most effective method to prove the validity of such a transaction. Videotaping would eliminate any possibility for squeezing confessions from arrestees, and would be considered as admissible, tangible evidence. The videotape of the interrogation should be available upon the request of the courts. To implement the videotaping of interrogations, some financial funding will be necessary for equipment, training, and supervisory support.

5. Community Policing

The next recommendation for improvement of Police practices is to implement Community Policing because Community Policing is aimed at not only preventing crime, but also at giving opportunity and mechanism to the police officers to become more informed about the needs of the community, and to provide "local solutions to local problems". The Community Policing program appears to be appropriate for geographically small localities and can be effectively introduced where individuals closely intermingle with one another. Accordingly, the OSCE office in Yerevan is in the process of implementing a project to introduce a Community Policing unit in the Arabkir region of Yerevan. The project is currently in the stage of meeting and negotiating with NGOs and police officers, and is pending Police Head approval.[71]

6. Public awareness and trainings

All the reforms mentioned so far, ideally, should be conducted in concert with media coverage and special programs dedicated to raising public awareness. Special trainings organized and implemented by different groups from the interested parties would be extremely beneficial. There are several human rights NGOs and international organizations that have conducted research and training related to human rights protection in Armenia. Such persons and organizations would be willing to help in organizing and implementing

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[71] Karel Hoffstra, OSCE Political and Military officer, Personal Interview, July 23, 2007.

specialized programs to educate people on their rights in circumstances of arrest. Funding may be received from international organizations present and active in Armenia.

Conclusion: Given the importance of the transaction, there should be an ideal legislative procedural framework and effective judicial practice aimed at excluding unlawfully obtained evidence. This may be accomplished through an effective implementation mechanism that would secure a legally valid transaction. The transaction should protect such values as respect for human rights, crime deterrence and fair punishment, equitable judicial system, individual security, and public safety. The maintenance of these values is vital for the maintenance of a democratic state and for the preservation of the state's interest in lawfully conducted investigation process.

In *Selmouni v. France*, decided by the European Court of Human Rights, the court stated,

> "[T]he increasingly high standard being required in the area of protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing greater breaches of the fundamental values of democratic societies".[72]

Accordingly, Armenia's interest in protecting these basic rights outweighs any possible justification for admitting compelled confessions. Thus, all unlawfully obtained evidence, including confessions obtained under compulsion, violate the arrested suspects' right to physical and mental integrity, and should be excluded under the law and in practice.

[72] Selmouni v France No. 25803/94, 28.7.99 (2000) 29 EHRR 403

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