

## **Detainees' rights**

### **Defend your rights**

International studies on torture and inhuman treatment have established that "most of the cases of inhuman treatment happen during the detention in police", during the first hours of detention, when no access to a doctor or a lawyer is allowed. The basic reason for such poor treatment is to obtain evidence. Moreover, the Commission on Prevention of Torture of the Council of Europe has emphasized that "in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and inhuman treatment is at its greatest".

Taking into account the statement above, it is worth reviewing those provisions of the RA legislation, which each individual who is subject to becoming a victim of inhuman and cruel treatment or torture by police or other legal body needs to know.

#### **What is detention?**

Detention is a short-term deprivation of liberty of an individual, which is implemented based on suspicion of the person having immediately committed a crime or the decision of the body which carries out such investigation.

#### **Who can be detained?**

Only those people can be detained who have violated the terms of the securing measures taken against them, or are accused of such crime for which they may be punished by imprisonment.

#### **What is the difference between detention and arrest?**

Detention is a short-term deprivation of liberty of a person, which can not exceed 72 hours. Detention is carried out based on the decision of investigating body. As compared with detention, arrest of a person may last two months, which is carried out based on a court decision. The term of arrest may be prolonged by the court for 2 more months.

#### **How long can a detention last?**

Detention may not exceed 72 hours duration. If the detained is not taken under arrest within 72 hours by the decision of a court based on a certain accusation, he/she must be released immediately.

### **How is detention carried out?**

After a person is delivered to the inquiring body a protocol of detention is compiled, which includes the article of the criminal code of which a person is accused of violating. The detainee's rights and obligations are also stated in the protocol and a signed copy is provided to the detained suspect. Failing to provide a detainee with his/her rights and obligations is a violation of law. Within twelve hours after compiling the protocol the inquiring body or investigator must inform the public prosecutor about it in writing.

### **How long can a person stay in the police station without his status being determined?**

Within three hours after a person is delivered to the inquiring body a protocol of detention with charges mentioned must be presented to him/her. If the protocol of detention is not presented within three hours the person must be released.

### **What kind of rights does the detainee have?**

First of all a detainee has the right to legal assistance and defense. After receiving the protocol of detention the detainee's request to invite a defender is subject to immediate implementation. The detainee has a right of access to his/her defender without prohibition and confidentially (outside of any other persons' presence); the number of meetings with the defender and duration of the meetings can not be limited by the inquiring body. Within 12 hours from the moment of detention, the detainee has the right to inform his/her relatives of his/her place of detention. In case of bodily injury the detainee has the right to immediate medical examination; moreover, a detainee can ask for his/her preferred doctor's presence during the examination.

### **Who is a defender and what kind of rights does he/she have?**

The defender is the attorney, who defends the rights of a suspect or accused and has several rights and obligations for the complete implementation of his/her work. First of all, he/she has the right to unlimited access to the defendant without prohibition and outside of any other person's presence; has the right to get acquainted with the accusation against the defendant; to participate in interrogations and other proceedings (upon the suggestion of the criminal body), to refute and complain against illegal actions of the body of the criminal proceeding.

## **Who can defend your violated rights besides a defender?**

According to the RA law on "Human Rights Defender" each individual can apply to the RA Human Rights Defender, who has an access to police stations and other places of detention without prohibition.

## **How to conduct the interrogation?**

The interrogation of the suspect is conducted after the protocol is presented to the detainee. The suspect's request to be interrogated in the defender's presence is subject to immediate implementation and the inquiring body is obliged to provide the defender's presence within 24 hours at the latest. Prior to the interrogation the suspect has the right to see his/her defender outside of any other persons' presence. In cases of other judicial actions with the suspect's participation the investigator may limit the access, however the access may not last less than two hours. Prior to the beginning of the interrogation, the investigator is obliged once more to remind and clarify the suspect's rights, especially noting that giving evidences is the suspect's right and not the obligation.

## **How long can the interrogation last?**

The interrogation of a detained person may not last more than 8 hours during one day. The interrogation may last four hours without interruption, then the detainees should be provided with one hour rest and food, after which the interrogation may restart. For mentally sick detainees, as well as minors, a shorter term is established.

## **The right to remain silent**

The suspect may refuse to give evidence about him/herself, and about or his/her relatives. Moreover, the suspect is not obliged to prove his/her innocence. Any forced measure by the interrogating body to obtain evidence from the suspect is considered illegal and the suspect or his/her defender may complain about it to the relevant body. It's worth emphasizing, that according to Criminal Judicial Code each individual who is suspected or charged with a criminal offense shall be presumed innocent unless proved guilty by a court decision which has come into legal force.

## **Facts inadmissible as evidence**

Any evidence which is obtained by force, threat and other physical or mental pressures by the interrogating body, cannot be considered as admissible evidence.

Also, evidence is considered to be inadmissible when obtained by legislative violations depriving or illegally limiting the person's right to participate in the action which can affect the authenticity/reliability of the evidence.

### **What can a detainee do in case his/her rights are violated?**

The detained person has the right to submit complaints directly or through a defender to the leadership of the detention facilities, to the court, public prosecutor, to the means of mass media and other relevant bodies, as well as to the Human Rights Defender. It is worth emphasizing, that those law enforcement officers, who persecute detainees, who had filed complaints to the relevant bodies on the violation of their rights, must be held liable in accordance with law.