American University of Armenia

Master's Essay

STOP AND FRISK

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This study is about a stop and frisk. The stop and frisk is among a most common situation of everyday life. In the past three years, annually there have been 2,557 reported instances, of which 760 have been successfully concluded. The trend shows a 7% increase annually of reported instances.

The stop and frisk is particularly significant for population, society and law enforcement offices. For population usually ordinary individuals his or her rights to freedom and liberty are indeed unbreakable and he or she has legitimate expectations of safety and inviolability. Hence, the unreasonable and unlawful stop and frisk can cause severely damage to these expectations as even a limited search of the outer clothing constitute a severe, though brief, intrusion upon respected personal security and it must surely be an irritating, terrifying and perhaps humiliating experience. Such experience does not comply with the Constitutional provisions (Articles 14, 16, 19) stipulating the protection and regard of personal liberty and inviolability. Moreover, the society also feels vulnerable until such experience put to an end and measures are taken to compensate the victims and assure that risk of such incidents is eliminated or reduced. However, when instances are not reported because the procedure is too complicated or viewed as ineffective, the injury goes uncorrected, resulting in negative attitudes regarding the rule of law, government agencies and officials. In the case of the stop and frisk, if cases of unlawful stop and frisk go unpunished, the infringers often adopt the feeling of impunity, which sometimes escalates to more serious crimes against individuals (e.g. beating or even severe whipping). For this reason, it is important for the procedures relating to the stop and frisk to operate efficiently, produce effective results, and be well understood by all parties. This study aims to describe, analyze and evaluate those procedures and explain to the private parties involved how to exercise their rights effectively.

In Armenia, the stop and frisk is governed by the following laws and involves the following institutions. At the commencement, it is reasonable to point out that the language of the laws is dissimilar to the American stop and frisk phrase, as result instead of stop lawmakers used identity check, and instead of frisk, they used personal inspection.

As the protection of human rights is a matter of legitimate concern for our country, the Constitution of Armenia adopted on November 27, 2005 imposes:

Article 14. *The human rights shall be respected and protected by the state as an inviolable foundation of human rights and freedoms.*

Article 16. *Everyone has the right for effective remedies for legal protection of his or her rights and freedoms before courts and other state bodies.*

Article 19. *Everyone has a right to restore his/her violated rights, and to reveal the grounds of the charge against him/her in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice within a reasonable time by an independent and impartial court.*

The following articles are from the law of Armenia on police adopted in 2004.

Article 19. The rights of the Police while preventing Crimes and Other Offences.

While performing the tasks of prevention of crimes and other offences that are provided by the law, the Police shall have the right to check identity cards of citizens, as well as of officials in case of availability of "sufficient ground" for suspicion in perpetration of a crime or other administrative offences. For the context of this law, "sufficient ground" includes the following cases.

1. A person has been seized while committing a crime or an administrative offence or immediately after the committing of a crime.

2. The witnesses, including the injured person, point at the given person as offender.

3. Obvious traces witnessing the crime or the administrative offence has been found on the given person or on his/her clothes, on other things used by him/her, or in his/her apartment or transportation means. In addition, other details, detected by the Police officer, may raise grounds for suspicion of a person in perpetration of a crime or other offences (defining the speed of vehicles by technical means, similarly of this or that person with the person in search, the attempt of escape by a person who has noticed the Police officer by an accident and etc.)

Article 42. The Oversight of the Police Activity.

The higher relevant bodies and the Authorized body of the Ministry of Interior shall control and the Prosecutor's Office shall exercise oversight over the activity of the Police under the procedure defined by the legislation.

Article 43. The Responsibility of the Police Officer.

The damages of the organizations and individual citizens caused by the illegal action or inaction of police officer shall be subject to compensation according to the procedure provided by the civil legislation of the Republic of Armenia. The

illegal actions of the Police officer may be appealed to the superiors thereof or under court order.

Civil code of Armenia adopted on May 5, 1998 provides compensation:

Article 1064. Liability for harm caused by illegal actions of agencies of inquiry.

Harm caused to citizen as the result of illegal conviction, illegal bringing to the criminal liability, illegal applications as a measure of restraint of confinement under guard or signed commitment not to depart, or illegal imposition of an administrative penalty, shall be compensated by the Republic of Armenia in full regardless of the fault of the officials of the agencies of inquiry, preliminary investigation, procuracy, and the court, by the procedure established by a statute.

The Administrative code of Armenia adopted in 1985 and amended on March 25, 1997 supplements vivid deficiencies of the law on police, and establishes the grounds for the appeal to the superiors.

Article 262. The duration of the administrative detention.

The detention of the person committed administrative violation cannot span more than three hours.

Article 263. Personal and objects inspection.

The personal inspection shall be conducted in presence of two witnesses and a protocol shall be drafted.

Article 266. Appeal for the administrative detention, inspection and seizure of objects and documents.

The administrative detention, personal inspection, examination of objects, seizure of the objects and documents can be appealed by the interested party to the superior body or to the prosecutor.

Criminal procedure code of Armenia adopted on July 1, 1998 stipulates the procedure for court appellation.

Article 290. Appealing against illegitimate and underground decree…

Complaints against illegitimate and underground decrees and actions of the person in charge of investigation, the investigator, the prosecutor and operative and investigatory bodies can be submitted to the court by the suspect, the accused, the lawyer, the injured person…if their complaints were not satisfied by prosecutor.

Nevertheless, it is essential to bring up that according to Article 105 of the Criminal procedure code the objects finding in result of unlawful activities of police or any other investigatory body are rejected from the trial as cannot be placed in the scope of the accusation due to their illegal derivation.

Article 105. Inadmissibility of evidence.

In criminal procedure, it is illegal to use as evidence or as basis for an accusation facts obtained by force, threat, fraud, violation of dignity, as well with the use of other illegal actions…

Additionally, Article 5 of the European Convention on Human Rights imposes the right to liberty, security, Article 6 establishes the right to a fair trial within a reasonable time, and Article 8 sets up the right to respect for private life.

The stop and frisk involves the following institutions: The police offices of Armenia, the prosecutor offices and the courts. However, the major portion of involvement belongs to the police and to the prosecutor offices. The main police office of Armenia is located in Nalbandyan 130 (contacted phone-52-03-10, responsible official-H. Harutunyan). Furthermore, there is a Yerevan police located in Khanjyan 51(contacted phone-58-02-02, responsible official –N. Nazaryan), with twelve branches in twelve Yerevan communities. The main prosecutor office of Armenia is located in Vazgen Sargsyan 5 (contacted phone 51-16-51, responsible official-A. Hovsepyan). Furthermore, there is a Yerevan prosecutor office located in Hanrapetupyan 85 (contacted phone-52-12-51, responsible official-H. Badalyan), with seven branches in twelve Yerevan communities.

Community	Police address	Contact phone	Responsible Official	Procuracy address	Contact phone	Responsible Official
Kentron	Israelian 41	52-02-02	R. Tamanyan	Sayat-Nova 2	58-51-57	A. Andriasyan
Norg-Marash	Kajaznyny 11	57-02-02	A. Amiryan			
Malatia-Sebastia	Sagsyan 22	39-02-02	G. Vardanyan	Sebastia 37	73-30-83	H. Hovsepyan
Shengavit	G.Nshdei 27	42-02-02	H. Makaryan	G.Nshdei 27	44-19-63	D. Farxoyan
Ajapnyak	Shinararnery10	34-02-02	A. Tovmasyan	Leningradyan 4a	39-89-86	E. Adrikyan
Davidashen	Davidashen 39	36-02-02	A. Stepanyan			
Avan	Isahakyan 2	61-02-02	A. Israelyan	Nork 1	63-14-22	G.Tovmasyan
Nor- Nork	Baryan 1	64-02-02	L. Jazichyan			
Arabkir	Mamikonyan 1	23-02-02	G. Avetisyan	Zaryan 33a	28-12-65	G. Xachatryan
Qanaqer-Zeytun	Aharonyan 3	24-02-02	A. Kazaryan			
Erebuni	Xorenachi 162	45-02-02	N.Hovhannisyan	Xorenachi 162a	57-71-91	H. Babayan
Nybarashen	Nybarashen 14	47-55-35	A. Bagdasaryan			

For the relevant information related to the regional branches of the police, prosecutor offices, addresses and phones of the courts an interesting person can contact with spyur information service located in P. Buzandi 1/3

(contacting telephone-51-99-99, email address- www.spyur.am). For more detailed and especially legal information, an interested person can visit a law clinic located in Yerevan State University law faculty and obtained necessary consultation without charge (contacting phone-57-81-37, responsible official-A. Harutunyan).

Disputes arising of the stop and frisk are among the most common disputes in the everyday life. However, the cases do not go to court. Instead they are negotiated or mediated or abandoned (never reported) due to the complexities and uncertainties of the public institutional processes available for addressing these problems. Based on discussion with practitioners, employers and employees the most common issues are:

1. The legislative field pertaining to the stop and frisk is full of deficiencies and ambiguities.
2. The place for conducting the frisk is not strictly defined in law which vagueness leads to exceed of police authority.
3. A suspect's detention usually lasts longer than three hours.
4. Police officer conducts the frisk without witnesses.
5. The records of the mistaken detention are not destroyed.
6. The right for the Court appeal is not directly available.

The usual resolution for an individual facing such issues is to apply to the prosecutor office and submit an appeal. In case if, the prosecutor finds the complaint reasonable and sufficient, the police officer will receive reprimand, severe reprimand or will be dismissed from his position. If the appellant is not satisfied with the prosecutor's decision, he or she has the right to appeal at a court. However, a huge research of court cases and interviews with several judges did not bring any result. There is not a single court case pertaining to the stop and frisk. This fact means that people involving in this issue simply give up there endeavors to adopt justice after unsatisfied decisions of the prosecutors. Nevertheless, after making an inquiry in the ombudsman office it was found a number of grievances related to the illegally conducted stop and frisk, unfortunately the ombudsman office has not right to interfere while the case is in investigatory process. Moreover, the involved persons do not apply to the ombudsman office as the investigations come to an end; obviously in such condition their interest in establishing of truthfulness is greatly reduced. Indeed, the passive attitude of the people facing

the issue of illicit stop and frisk and their inconsistence in achieving justice create substantial incentives for the prosperity of the illegitimate activities of the police. However, the ineffective and indifferent approach of the law enforcement agencies toward the concerns of the population greatly contributes to such passive behavior of the people and seriously undermines the authority of these agencies.

Sufficient ground or reasonable suspicion allows a police officer to stop a person suspected of criminal activity. Attendant to the stop, the frisk may be conducted if the officer has sufficient ground or reasonable suspicion that the suspect is armed and dangerous. The frisk is conducted to protect an officer's safety, and limited to removal of possible weapons, and is not an evidentiary search. Unlike an arrest, the stop is a momentary, small-scale intrusion. Moreover, unlike a full-scale search for evidence, the frisk is a cursory inspection for weapons. Balanced against these lesser intrusions was the high state interest in conducting the stop and frisk. The stop is often necessary to investigate crime on a preliminary basis, and is an essential tool of crime prevention as well as detection. The frisk effectuates the strong state interest of protecting the safety of police officers[1].

Article 19 of the Armenian law on Police defines the cases according to which the sufficient ground and reasonable suspicion shall arise. Hence, a police officer shall conduct the stop based on sufficient ground and reasonable suspicion defined in the Article 19 and cannot exceed the scope of these definitions. However required definitions of the reasonable suspicion stated in the point 3 of this Article leave some ground for the exceeding of the police officers authority due to using phrase "etc" in the end of point 3. Obviously, a police officer can rely on this phrase while explaining and partially acquitting the occurrence of his reasonable suspicion. Consequently, following the facts stated above it become apparent that Article 19 of the Armenian law on Police establishes all possible cases for development of sufficient ground, although defining the reasonable suspicion Article 19 leaves some ground for the police officer to develop his own initiative.

Article 42 of the law of Armenia on Police stipulates the control of the police officers by the Authorized body of the Ministry of Interior and the Prosecutors Office. Therefore, activities of a police officer both legal and illegal are under the control of the superior.

[1] Basic Criminal Procedure, by S. Saltzburg, D. Capra, C. Hancock, West Publishing Co, 1998.

Article 43 of the same law imposes the rights of the people, damaged due to illegal activities of the police, to appeal to the superiors and to get compensation according to the procedure provided in the Civil code of Armenia. Hence, according to this Article an illegally stopped and frisked person can get compensation of damages and can submit complaint to the superiors.

Article 1064 of the Civil code establishes that the Republic of Armenia shall provide full compensation for people harmed in the result of illicit actions of the agencies of inquiry. Thus, the Republic of Armenia shall compensate damages caused by its agencies to an individual.

Article 262 of the Administrative code of Armenia supplements vivid deficiencies of the law on Police, as establishes the duration of the detention in case if the police officer decides to bring a suspect into the police station. Undoubtedly, the period of the detention is very important to know for an individual especially being in the status of the suspect. Hence the span of the detention is stated in Article 262 and it is not more than three hours after which the suspect whether shall be released or shall be presented an accusation.

Article 263 of the Administrative code regulates the procedure for conducting the frisk. However, there is no defined information in this Article about the possible place for conducting a frisk. Unfortunately, there is only the list of the possible agencies authorized to conduct the frisk and the requirements that the frisk shall be conducted in the presence of the witnesses and a protocol shall be drafted. Therefore, is it quite unclear whether the police officer is allowed to conduct the frisk in the street or he shall bring a suspect to the police station and after this only conduct the frisk?

Article 266 of the Administrative code imposes the rights of the people to appeal to the superior body or prosecutor in case of illicit activities of the police officer. Consequently, a person is empowered by this article to appeal if he was kept in the detention more than three hours without release or presentment of indictment and to appeal actions committed by a police officer according to the full of discrepancies Article 263.

Article 290 of the Criminal procedure code of Armenia establishes the procedure for appeal to the court in case if the prosecutor does not satisfy the complaint of a person. Hence, a person based on this Article can appeal to the court and demand the appropriate satisfaction for the damages caused by the illegal activities of the police. Nonetheless, a person is deprived an opportunity to appeal directly to the court. A person is

empowered on court appeal only in case of getting an unsatisfactory respond to the complaint submitted to the prosecutor.

Article 105 of the Criminal procedure code sets up that illegally obtained evidences shall be rejected from the trial proceedings. Consequently, objects or any other things obtained in result of unlawful stop and frisk would be automatically rejected from the scope of accusation.

The discussion put above is an interpretation of the relevant laws for the conducting the stop and frisk in Armenia, and the possible ways for the harmed person to get compensation and to bring a police officer to the responsibility. Moreover, the evaluated provisions from different laws are far from the compatibility with the permanent law of Armenia-the Constitution. Article 14 of the Constitution stipulates the respect and protection of the human dignity by the state as an inviolable foundation of human rights and freedom. Article 16 grants the rights of personal liberty and inviolability to everyone. Article 18 endows everyone by the right for effective remedies for legal protection of his/her rights and freedoms before court and other state body. Article 19 guarantees everyone the rights to restore his/her violated rights, to reveal the grounds of the charge against him/her in a fair public hearing and to fulfill all the demands of the justice by the court. Therefore, the Constitution provides all necessary incentives for the protection and the regard of the fundamental human rights. Without doubt, the Constitutional provisions vividly guarantee the compensation of the moral and material damages for a person involved in an unlawful stop and frisk and the rights to a fair public hearing. By contrast, with the laws regulating the stop and frisk, the Constitutional provisions are drafted clearly and unambiguously. Practically, if an individual subjected to the stop, which in the language of the Armenian law means identity check, or frisk, which means personal inspection he/she has to obey. However if an individual feels that there is not any reason for such intrusion he/she should disobey, but to this point a question arises; to disobey based on which law if the laws are full of flaws and uncertainties. Obviously to disobey based on the Constitutional provisions but is it reasonable or real to indicate the Constitution to the ordinary police officer who more likely does not aware of the existence of such provisions. Hence, the outcome is unacceptable; an individual has to obey regardless of the fact whether the intrusion is legal or illegal.

For the presentment of the international best practice were selected the US and France as benchmark jurisdictions because they represent well known, highly developed common and civil law systems. In the United States, there are multiple levels of policing and law enforcement services, federal police, state police, country police, special-purpose district police and local police. There are tens of thousands autonomous police agencies.

The Fourth Amendment to the United State Constitution forbids police from conducting "searches and seizure" without "probable cause". For example, the police may not affect a full-scale "seizure of the person"- that is, an arrest-absent "probable cause" to believe that the individual has committed a specific crime to be charged. This probable cause standard is an essential bulwark against arbitrary arrest under the constitutional scheme[2]. In 1968, the United States Supreme Court carved out an exception to the "probable cause" requirement. In the landmark, case Terry v. Ohio, 392 U.S.1 (1968) The Supreme Court ruled that a police officer might detain a person briefly on the street for limited interrogation in the absence of "probable cause" so long as a lesser standard of "reasonable suspicion" has been satisfied. To justify a pat down frisk, a police officer must have a reasonable fear that he or she "is dealing with an armed and dangerous individual". Under Terry, a stop occurs when, "by means of physical force or by show of authority," a police officer briefly detains a civilian such that "a reasonable person would have believed that he was not free to leave." For a police officer to affect a Terry stop, the officer must be able to articulate "reasonable suspicion." "Reasonable suspicion is a reasonable believe on the part of the officer- based on experience, observations, and/or information from other- that criminal activity is "afoot" sufficient to warrant police intervention. By providing law enforcement officers with the powerful tool of "stop and frisk", the Terry Court recognized the need of law enforcement for an "intermediate" response, short of arrest, to suspicious circumstances, also the Court recognized the importance of "stop and frisk" to the tasks of crimes detection and prevention and the goal of officer safety. At the same time, however, it recognized that even brief detentions-stop-are Fourth Amendment "seizures and that outer-clothing pat down frisk are Fourth Amendment "seizures." The decision in Terry represents a struggle played out in law between the legitimate need for some level of police intervention short of arrest, and the Constitution's mandate that civilians be free from unreasonable "searches and seizures." In sum, these

[2] Criminal Procedure and the Constitution, by Jerold H. Israel, Yale Kamisar, Wayne R. La Fave , West Publishing Co, 2000.

contradictions between the needs of law enforcement and the sensitivities of a civilian population endowed with constitutional rights-are not new, they inhere in Terry itself. Indeed, it is because of these contradictions that Terry has become a lightening rod. Obviously, these debates will continue-in the courtrooms and in the legal periodicals-so long as Terry remains a constitutional mandate. Terry set the precedent for Michigan v. Long (1983). The United States Supreme Court in Michigan v. Long extended Terry v. State of Ohio (1968) decision by allowing searches of car compartments during a stop with reasonable suspicion. The scope of Terry was extended in the 2004 Supreme Court of Nevada in Case Hiibel v. Sixth Judicial Districts of Nevada, No-03-5554, by deciding that the United States Constitution does not prohibit police officer from demanding that a suspect give his name when he has been stopped due to a reasonable suspicion of criminal activity. Another extension of Terry holding occurred in United States v. Christian Harwell (January 31 2006). The Third Circuit Appeal Court held that airport screenings of passengers and their baggage are subject to the limitation of the Fourth Amendment and it is permissible under the stop and frisk doctrine because the State has an overwhelming interest in preserving air travel safety[3].

Moreover, it is sufficient to point out that based on the exclusionary rule, principle the evidence obtained in violation of the Constitutional rights is excluded from the trial. The exclusionary rule was first announced in 1914 in Weeks v. United States, but it applies only to federal trials. The rule was extended to the States in 1961 in Mapp v. Ohio. The Mapp Court set out two justifications for the exclusionary rule: 1) to deter law enforcement officers from violating Constitutional rights by removing their incentive to do so; and 2) to preserve "judicial integrity" i.e., to ensure that Courts do not become accomplices in the violation of Constitutional rights by accepting and relying on evidence derived from such violations. The criticisms of the rule emphasize the enormous social costs when criminal are released. Supporters of the exclusionary rule argue that exclusion of unconstitutionally seized evidence is the only effective redress for the person whose rights were violated and the only means of insuring that Fourth Amendment and other Constitutional rights are respected[4].

[3] Cases and problems in criminal procedure: The police, by M. Moskovitz, Matthew Bender & Co INC, 2002
[4] Criminal procedure; by by Jerold H. Israel, Wayne R. La Fave, West Publishing Co, 2002.

In France the procedures connected with the stop and frisk are completely regulated by the Criminal procedure code. The language of the code is dissimilar to the American stop and frisk phrase, as result instead of stop and frisk the code makers used identity inspections and identity checks phrases. It is important to mention that there are two separate police agencies in France.

- National police; in the towns.
- Gendarmerie; in the country, villages and small towns.

Moreover, there are two types of National police in the France:

- Administrative police; uniformed preventative patrols, traffic duties with limited powers of arrest.
- Judicial police; law enforcement and investigation of crime, with full powers of arrest[5].

Among the main articles of the code of conduct of the national Police (set down in a decree of March 1986), it is essential to distinguish the following ones: Article 2; the police must carry out their mission with the regard to respect for human rights. Article 7; the police officer must show "absolute respect" for persons.

The Article 78-2 of the criminal procedure code imposes; *judicial police officers and, upon their orders and under their responsibility the judicial police agents may ask any person to justify his identity by any means where one or more plausible reasons exist to suspect;*

- *That the person has committed or attempted to commit an offence*
- *That the person is preparing to commit a felony or misdemeanor*
- *That the person is able to give information useful for an inquiry into a felony or misdemeanor*
- *That the person is the object of inquiries ordered by a judicial authority*

In fact the continuation of this article as well as Articles 78-2-1, 78-2-2, 78-2-3, 78-2-4 are set in four pages and there are established all possible circumstances under which a judicial police officer is authorized to make identity checks.

Article 78-3 establishes the procedure for identity inspections:

If the person concerned or is unable to prove his identity, he may in case of necessity be kept where he is or on the police premises where he is taken to have, his identity checked. He is in every case immediately brought a judicial police officer

[5] French Legal System, by Catherine Elliott and Catherine Version, Longman Publication, 1998.

who gives him the opportunity to offer by any means available material establishing his identity, and who proceeds if necessary to verify him. He is told forthwith by this officer of his right to have the district prosecutor informed of the inspection on the police premises to which he is subject and to have his family or any person of his choice informed. The person under inspection may be detained only for the time strictly required for ascertaining his identity. The detention may not last longer than four hours from the moment of the identity check made. Where in relation to the person detained there has been no investigation or enforcement proceedings addressed to the judicial authority, the identity check may not be entered into a file and the official record and also all the documents pertaining to the inspection are destroyed within six months.

Article 149 establishes the compensation for detention:

…*a person who has been remanded in custody during the course of proceedings ended by a decision to drop the case or a discharge or acquittal decision that has become final has, at his request, the right to full compensation for any material or more harm that this detention has caused him.*

Articles 703-3 to 706-15 of criminal procedure code also impose diverse compensation proceedings. Nevertheless, an independent oversight mechanism was established in France-an independent police and prison oversight body-the National Commission of Deontology in Security, CNDS, which was set up by a law of 6 June 2000, in the wake of a sequence of police shootings, and began to function on 14 January 2004. It has powers to investigate cases of alleged abuses by police officers and others and to take statements from victims, witnesses and those accused of abuses, including police officers. It can take no disciplinary or judicial action of its own, but is empowered to make recommendations and is required to inform the public prosecutor of acts which it deems constitute a criminal offence.

Nonetheless, it is essential to indicate that after the detailed examination of the Criminal procedure code of France there was found Paragraph 3-Administration of evidence from Article 427 to Article 457. Article 427 imposes the following: *Except where the law otherwise provides, offences may be proved by any mode of evidence and the judge decides according to his innermost conviction. The judge may only base his decision on evidence, which was submitted in the course of the hearing and adversarially discussed before him.*

Article 428 sets up; *Confessions, as any other type of evidence, are left to the free appreciation of the judges.*

As France is a member of the European Council and European Union, it is important to mention that the European Court of Human Rights has adopted the position that the use of illegally obtained evidence, particularly evidence obtained in violation of Article 8 the European Convention on Human Rights, which guarantees the rights to respect for private life, does not necessarily lead to unfair proceedings. The position of the Court is that it should normally left to national courts to decide on the admissibility of evidence, which is a matter essentially left to the regulation of national law. In general, national rules of criminal procedure are more protective of the accused than is required by Article 8 of ECHR in this respect. Indeed, in only seven States of the European Union including France evidence obtained in violation of the rights to respect for private life admissible in criminal proceedings[6].

Moreover, it is significant to point out that the ECHR approach toward the identity check and personal inspection issues are strictly established in the Smirnova v. Russia 1999, Tzekov v. Bulgaria 2000, Cisse v. France 2002 and Ertak v. Turkey 2000. In these cases, the ECHR found the violation of Article 5 of the European Convention on Human Rights stipulated the right to liberty and security, violation of Article 6 stipulated the right to a fair trial within the reasonable time and violation of Article 8 stipulated the right to respect for private life.

It is quite challenging to come back to the situation in Armenia pertaining to the stop and frisk after the presentment of the countries in which this principle as well the legal field of this principle were successfully developed.

The doctrine of the stop and frisk is not properly set up in Armenia; the laws regulating this doctrine are deficient and imperfect. They are not capable to adjust procedures regarding the stop and frisk by which guarantee the protection of people's fundamental right established by the Constitution. The plenty discrepancies and gaps within the laws create profound incentives for the violation of an individual's rights.

The most imperative issue relating to the stop and frisk, which an individual will face in Armenia is that the legislative field is full of defects, ambiguities, and the provisions of this doctrine scattered in different laws and codes. As was stated in previous paragraphs the procedure of conducted the stop is governed by the law of

[6] Principles of the French law, by J. Bell, S. Boyron, S. Whittaker, Oxford university press, 1998

Armenia on Police, the procedure of conducted the frisk is established in Administrative Code of Armenia adopted during Soviet era and finally the provisions for compensation and relieve are dispersed in law on Police, Administrative Code, Civil Code and Criminal Procedure Code. On the contrary, in France, all provisions adjusted the stop and frisks are gathered in the Criminal Procedure Code of France. What is the policy of Armenian legislators in remaining this doctrine in such deplorable condition? Obviously, the protection and the promotion of fundamental human rights are not a matter of legitimate concern for Armenia if its legislators are unable to draft a clear and unambiguous provisions pertaining to the stop and frisk and to include all provisions in Criminal Procedure Code or at least draft a new Administrative Code since 1986.

To make the process of evaluation more comprehensible for an interested individual the following basic provisions will be assessed thoroughly. The Article 19 of the law of Armenia on Police grants a police officer a broad authority to conduct the stop. While defining the possible cases of reasonable suspicious Article 19 leaves a sufficient ground for the police officer to conduct the stop based on his own initiative due to “etc” at the end of the point three. An individual subjected in the street to such undesirable experience, as the stop would not feel any protection from this Article as it empowers the police officer with great power. In contrast, the police officer in the United States is not endowed with the same exclusive power he must be able to articulate “reasonable suspicion” based on his experience, observations and on sufficient information justifying his intervention. Moreover, the similar situation is in France: Article 78-1 to Article 78-6 of the Criminal Procedure Code set up all possible reasons and scenarios for the police officer for conducting the stop and do not create any “etc” phrases for the extension of the police authority. However, in Armenia, sometimes exceeding of the police authority takes place regardless of this flaw. The question presently is that while violating the rights of the people some police officers usually seek the justification of their actions within the scope of this point. Nevertheless, exist a category of the police officers who do not need to rely on any justifications; they infringe the rights of the people with the certain feeling of impunity developed due to uncertain legal field.

Article 262 of the Administrative Code imposes the duration of the administrative detention, which is three hours and Article 263 establishes the procedure for conducting the frisk, however it does not set up neither the place nor the purpose for the conducting the frisk. Quite the opposite, in the United States the importance of the

frisk effectuates the strong State interest of protecting the safety of police officers and is limited to the removal of possible weapons. It is completely understandable that the frisk and short detention are performed outside the police station. Dissimilar is in France; a police officer shall accompanies a suspect to the police station and afterwards in case of necessity frisk him. Additionally, the detention shall be four hours and the records of the mistaken detention shall be destroyed. The terrible gaps in Article 263 of Armenian Administrative Code create the significant incentive for the violation of individual's rights, as this Article leaves to a police officer to decide about the place and the purpose of the frisk. Furthermore, this Article does not show the State interest in protecting the safety of police officers and obviously, a police officer has to take care of his safety individually. Besides, whether the frisk is performed in or outside the police station, the requirements of the two witnesses often neglected, the span of detention lasts longer that three hours and the record of the mistaken detention is not destroyed afterward. Consequently, an individual subjected to the frisk in Armenia is unable to rely on the law governing the frisk for his protection, as the Article 263 of Administrative Code does not highlight the most important aspects of the frisk procedure. Apparently, this is because this law does not correspond to the current political situation in Armenia, as it was drafted during the Soviet era in 1986 and the amendments, which were made in 1997, did not reverberate to this Article.

Nonetheless, the provisions for appeal and for getting compensation are satisfactory. The Article 43 of the law on Police provides compensation of damages and the right to appeal to superior. Article 266 of the Administrative Code affords the rights to appeal to the prosecutor. Moreover, Article 1064 of the Civil Code endows with the rights of compensation of damages and Article 290 of the Criminal Procedure Code establishes the procedure for appeal to the court.

The plenty of provisions from different laws create substantial grounds for the appeal and compensatory procedures. However, an individual will face an issue at this point that is the Article 290 of the Criminal Procedure Code, which guarantees the rights to Court Appeal will apply only after the unsatisfactory respond to the compliant submitted to the prosecutor. This requirement of the Article 290 produces visible inconvenience for a person, indeed, it shall be up to a person to decide whether to submit the complaint to the prosecutor or

apply to the Court. Dissimilar is in France as it is the sole authority of a person to decide in which way to proceed.

It is crucial for an individual to know about the rights granted him/her by the Article 105 of the Criminal Procedure Code of Armenia that is illegally obtained evidences are rejected from the trial. Hence, in case of prove that the stop and frisk was performed illegally the objects found as result of the frisk are automatically rejected from the trial. However, at this point questions arises; if there are not strict established laws governing the procedures of the frisk how it is possible to distinguish between the legal or illegal intrusion of the police? Consequently, the proof of the illicit intrusion will be quite complex in the absence of the provisions describing the legal intrusion. In France, though, a judge shall decide to accept evidence or not. Quite dissimilar is in the United States; the well-established exclusionary rule doctrine prevents the use of illegally obtained evidences from the Court proceeding.

The above evaluating provisions brightly demonstrate that Article 14, 16, 18 and 19 of the Constitution of Armenia stipulating the protection and regard of the basic fundamental rights were not implemented in the legislation pertaining to the stop and frisk. The reasonable solution for an individual facing the stop and frisk in Armenia is to rely on the provisions of the Constitution for the protection of his/her violated rights. Unfortunately, the direct application to the Constitutional Court is available only after the exhaustion of the regular Courts proceedings. For this regard, a person can apply to the Ombudsman office of Armenia. Another solution for an individual determined to establish justice is to apply to the European Court of Human Rights. However, as was stated above the people who were ever involved in this issue were rather inconsistent and gave up their endeavors after the complaints to the prosecutors' office. The absence of any court case related to the illicit stop and frisk is actually confirmed this statement.

The situation could be significantly improved by putting into practice appropriate reform. The proposal for the appropriate reform shall be quite realistic and reasonable. For this purpose, I do not suggest to follow the examples of the US and France where the doctrine of the stop and frisk is in the Criminal procedure field instead, I suggest to leave this doctrine in the Administrative sphere to get more results. The interviews with the leading criminal specialists A. Harutunyan and H. Kykasyan from Yerevan State University influenced me to

come to such conclusion. Definitely, I do not see urgent need for the pursuing of the US or France models, the urgent question presently is not where to collect the laws but the question is how to draft proper provisions able to perfect the stop and frisk principle in Armenia. So far, I propose to amend the provisions pertaining to the frisk in Administrative Code of Armenia and to add to this Code new drafted provisions related to the stop, by which properly adjust procedures regarding the stop, and frisk and guarantee the protection of peoples' fundamental rights established by the Constitution. These anticipated amendments shall not contain discrepancies or flaws and shall be drafted accurate and precise embracing in its scope the protection of the basic human rights. The proposal of the amendments for governing the stop and frisk pursues a policy of improving the principles of the stop and frisk doctrine in Armenia and of establishing clear, corresponding to the current political situation standards. Thus, the suggested amendments come from the current issues, which individuals faced in Armenia due to defect legislative field and they shall contain the following requirements:

- The provisions governing the procedure for conducting the stop shall express all possible situations for arising sufficient ground and reasonable suspicion in which a police officer is authorized to perform the stop. In case of urgent necessity, for the protection of the high state interests for the investigation of crimes on a preliminary basis it is reasonable to leave some ground for a police officer to develop its own initiative of reasonable suspicion. However, the advised exception shall be drafted with the full respect of the humans' rights of freedom and liberty. A police officer must be able to articulate aroused "reasonable suspicious" based on his experience, observation, practice and on sufficient information justifying his intervention.
- The provisions governing the procedure for conducting the frisk shall draw attention to the salient purpose for conducting the frisk, which is the strong State interest of protecting the safety of police officers and is limited to the removal of possible weapons. Hence, in case of vivid danger a police officer shall be empowered to perform the frisk outside the police station for the removal of possible weapons. This shall be the only exception created for a police officer for performing the frisk outside the police station in other possible cases (to check identity, to frisk for drugs) a police officer shall bring the individual to the police station and afterwards in the presents of two witnesses perform the frisk and

write a protocol. The span of the detention shall be three hours after which the individual shall be released or the accusation shall be presented. In case of release, the record of the protocol shall be destroyed.

- For the control of the police activities, an independent oversight body shall be set up.
- The provisions of governing the procedure for compensation and for appeal shall be included in the span of these amendments. There shall be provisions for superior appeal, prosecutor appeal, and the court appeal. However, these amended provisions shall leave it up to a suffered individual to decide to whom he/she is willing to apply but do not create the compulsory obligation to follow the strict established sequence of structures.

The proposal of the indispensable amendments for the Administrative Code of Armenia on the stop and frisk pursues the policy of greatly progress the current deplorable condition of the stop and frisk doctrine in Armenia. Moreover, the proposal follows the policy of making the protection and the respect of people's right of liberty and inviolability not only the legitimate aim ensues by the Constitution of Armenia but also by particular doctrine of the stop and frisk. Without doubt, the proposer of such amendments to the Administrative Code will encounter with numerous obstacles. One of the main ones is that the question of the stop and frisk was not in the area of the urgent questions required reforms in Armenia. This is vividly endorsed by the acting administrative Code of Armenia, which our draft makers are unwilling to alter since 1985. Another major obstacle is the passive attitude of the people whenever involved in this issue due to which the question of the deficient legislative filed of the stop and frisk never was significantly raised and never was given the extensive attention. Moreover, due to this passive attitude there was not raised a question of incompatibility of the current legislation pertaining to the stop and frisk with the Constitutional provisions 14, 16, 18, and 19, by which to draw the attention of the legislators to this particular issue. In order to eliminate these obstacles and create sufficient incentives for the proposal of the new amendments for the Administrative Code the people shall increase their self-consciousness, shall be persistent and determined for the establishment of justice and shall not abandon their endeavors of reaching the fairness.

After the interview with the another criminal specialist S. Dilbandyan, from the Yerevan State University who is a member of the commission established in 2006 by the decree of the president of Armenia for the judicial transformations, it become obvious that it is anticipated great reforms in Administrative sphere. According to Mr. Dilbandyan another commission shall be established in the structure of the Counsel of Justice which aim will be to draft a new Administrative Code. It means that the provisions of the newly drafted Code will be brought in the conformity with the Constitution. Hence, there is an immense expectation that the provisions governing the frisk will become constitutional and will correspond to the current demands of the society. However, it is not yet apparent, whether the new Administrative Code will require the establishment of the independent body for the oversight of the police activity or the organization of the proper procedure for appeal. Additionally, the question of the elaboration of the provisions from the Armenia law on police governing the stop is presently uncertain. No one presently is going to answer to these questions. Meeting with the administrative law specialist R. Yegyan from the Yerevan State University threw the light only to one of the raised questions, as the reforms on the Administrative sphere are not commenced yet dissimilar to the judicial reforms and it is too early to define which aspect will be included in the scope of the new Code. Mr. R. Yegyan informed me about the plans for the establishment of the Administrative Courts. According to him, the procedure for the applications to the Courts will be correctly established as to give the opportunity to the suffered people to file a suite to the Court in case of necessity. Hence, the proper procedure for the appeal, which is one of the current issues, will probably be solved.

Apparently, the potential decision-makers who will be invited to work in this commission for administrative reforms will be; law specialists from the Yerevan State University, the heads of the police offices, the heads of the prosecution offices, Judges and employees from the Counsel of Justice. It is rather obvious that the officials from the police and the prosecution offices are completely aware of the present existing problems pertaining to the stop, frisk, and will be able to present their knowledge before the commission. However, it will be reasonable for the people concerned with this issue to influence the future decision makers. For example, I profoundly presented the current problems of the legislation facing by the individuals suffered from the stop and frisk to the administrative law specialist R. Yegyan, who will be the potential member of this commission.

Other individuals desiring to improve the situation can apply to the heads of the police and prosecutor offices who will be appointed for the working in this commission and pursue them to perfect the legislation. The ombudsman office can also have its favorable pressure on this commission by presenting the complaints of the suffered people. Consequently, there is a vivid and real chance for the positive alterations and for the implementations of the proposals stated above into the new Administrative Code of Armenia, by which create the significantly guarantees for the protection and respect of the human rights stipulated by the Constitution.

Concluding this research paper, I would like to emphasize that the stop and frisk doctrine is one of the most urgent questions in every day life and the deserved solution immediately shall be given to advance this doctrine in Armenia. The anticipated reforms in the Administrative sphere are the only positive expectations for the accomplishment of the necessary transformations.

The goal of this study is to analyze, evaluate and explain the procedures of the stop and frisk doctrine in Armenia. Moreover, this study provides a vivid guideline for the effective exercise of the rights to the private parties involved in the stop and frisk issue. The detailed description and assessment of the current legislative field plus the thorough information related to the institutions involved in the stop and frisk procedure are within the scope of this study. Nevertheless, the presentment of the international best practice and further estimation of the Armenian legislation in light of the raised issues makes this study sufficiently indispensable instrument for an individual suffered from the stop and frisk. Likewise, the comprehensive proposal for the appropriate reforms and the possible way for their implementation substantially contributed to this study making it accomplished.

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