

# Legal Framework for Torture Prevention and Situation of Torture in Armenia

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## 1. Overview of the Situation in Armenia

According to the UN Committee against Torture (CAT), the following issues related to torture are present in Armenia: torture and ill-treatment by law enforcement officials; violations of the right of victims of torture to redress; non-combat deaths in the armed forces and the mistreatment of conscripts by officers and fellow soldiers; lack of fundamental legal safeguards against torture for detainees; practice of police officers discouraging detainees from requesting legal assistance; lack of independence and impartiality in the judiciary; widespread violence against women; and poor prison conditions and overcrowding.<sup>1</sup>

The last time the Council of Europe published a report about the situation in Armenia to the Committee against Torture was in 2016. They stated in the report that the Armenian authorities generally responded to their recommendations. The report summary points out that cases of ill treatment in police custody require closer attention. The report states that prison staff are generally of poor quality, that the prison health care system is insufficient, and that prisons are overcrowded. The report also pointed out that corruption remains a problem in the prison system. However, it is important to note that this report was produced before the Velvet Revolution of 2018, and the situation may have changed since then.<sup>2</sup>

Generally, the Constitution and Criminal Procedural Code provide guarantees to the accused to refrain from confessing testimony. However, in practice, people are sometimes pressured to withdraw testimony, even though the law guarantees the accused the right not to testify against themselves or their close relatives. Article 105 of the Criminal Procedural Code states that evidence gathered through torture cannot be considered as evidence in court. The Special Investigation Service is empowered to investigate cases of torture in Armenia. However, in the four torture cases investigated by the body in recent years, no official has been convicted of committing a torture-based crime under Article 309.1 of the Criminal Procedural Code.<sup>3</sup> The most effective legal instruments in Armenia for the protection of torture victims are the European Convention on Human Rights (ECHR), the Istanbul Protocol, and the UN Convention against Torture (CAT).

As a result of a 2015 amendment to the Criminal Code of Armenia, the term “torture” has been brought mostly into line with the definition provided in the UN CAT. Article 309.1 of the Criminal Code stipulates that a person is subject to liability if he or she is

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<sup>1</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20882&LangID=E>

<sup>2</sup> Interview with Nina Karapetyants, Chairperson of the “Helsinki Association for Human Rights” NGO (HAHR) in Yerevan, Armenia.

<sup>3</sup> Ibid.

acting on behalf of an official or other person empowered to act on behalf of, or on the instigation, instruction or knowledge of, a person with the intent to inflict physical pain or severe mental suffering in order to receive information or a confession from the tortured person or a third party for the purpose of punishing an offense committed by that person or a third party, or in which an offense is suspected or charged, as well as through intimidation or for the purpose of compelling or abstaining from doing an act or for any reason based on discrimination of any kind.

The problem, however, lies in the fact that the law establishes liability for the act of torture, while inhumane or degrading treatment is not criminalized. Thus, the demand of the Convention has not been completed in full. Furthermore, no official has so far been held criminally liable for torture under Article 309.1 of the Criminal Code.<sup>4</sup>

The first and foremost reason is impunity. No official in Armenia has ever been subjected to criminal liability and prosecuted for torture. Torture cases are either not investigated, or the courts justify the perpetrators of torture. Even after the Velvet Revolution, cases have been reported that arrested persons were subjected to abuse by state officials. The next reason is the unwritten rule of “mutual assistance” in cases involving police officers or members of the military. In these cases, an arrested person, a detained person, or a convict is perceived not as a victim, but as “an opponent” or “an enemy” of their official counterpart. And finally, there is the judicial system, which in its turn continues to “sponsor” police or military officers within its jurisdiction, leaving the person accused of torture unpunished, giving rise to new offenses and instances of impunity.<sup>5</sup>

## **2. Current HADR Torture Cases**

As of this writing, HADR is currently working on six torture cases. In many of these cases, torture involves not only physical ill-treatment, but psychological or mental intimidation or harassment as well. According to HADR staff members, the organization’s involvement in torture cases has revealed the following shortcomings in the conduct of such cases in Armenia today: inactivity and carelessness of relevant state bodies, particularly investigative bodies; failure to gather and preserve evidence, as well as concealment or destruction of evidence; and, corruption in the judiciary and other involved state bodies.

## **3. The ECHR and Torture in Armenia**

Article 3 of the ECHR states that no “one shall be subjected to torture or to inhuman or degrading treatment or punishment”. In addition to this Convention, Armenia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It entered into force in 2002. This Convention lays out how the Commission of the Council of Europe should act and be treated by signatory countries. Two cases involving torture in Armenia have been brought to the European Court of Human Rights (ECtHR),

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Virabyan v. Armenia (2012) and Mushegh Saghatelyan v. Armenia (2018). In both cases, opposition activists alleged torture at the hands of police officers and prison staff.<sup>6</sup>

#### *Virabyan v. Armenia (2012)*

In the first case, Virabyan v. Armenia, an opposition activist was arrested following a political rally and thereafter punched in the groin by a police officer, resulting in the removal of one of his testicles.<sup>7</sup> The ECtHR held, inter alia, that Virabyan's treatment in detention contravenes Article 6 of the ECHR, which provides the right to a fair trial.<sup>8</sup>

#### *Mushegh Saghatelyan v. Armenia (2018)*

In the second case, Mushegh Saghatelyan v. Armenia, another opposition activist alleged ill treatment in detention following his arrest during the events of March 1, 2008. On that day, several civilian protesters were killed by law enforcement officers at an anti-government demonstration. The ECtHR held, inter alia, that Saghatelyan's treatment in detention also contravenes Article 6 of the ECHR.<sup>9</sup>

### **4. The Istanbul Protocol and Torture in Armenia**

Officially called the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Istanbul Protocol is a UN document from 1999. It is the world's first set of international guidelines providing standards for torture cases. Though the document is non-binding, it provides tools for international governments in handling torture cases.

The Istanbul Protocol was written keeping in mind the key role played by the sound documentation of evidence in torture cases and to be as comprehensive as possible. The Istanbul Protocol provides: guidance for medical professionals and lawyers; standards for medical and legal reports; standards on investigations; guidance for states; and an international point of reference, among other topics. The Istanbul Protocol has two key parts: firstly, guidelines for the medical assessment and documentation of torture and other ill-treatment; and secondly, guidelines for commissions of inquiry into allegations of torture and other ill-treatment.

### **5. The UN CAT and Torture in Armenia**

The UN CAT, formally called the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was first ratified in 1984. It was ratified by Armenia in 1993.<sup>10</sup> Article 1 of the Convention defines "torture" as follows:

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<sup>6</sup> [https://www.hahr.am/images/Mark\\_Dovich\\_Admissibility\\_of\\_police\\_evidence\\_in\\_Armenia.pdf](https://www.hahr.am/images/Mark_Dovich_Admissibility_of_police_evidence_in_Armenia.pdf)

<sup>7</sup> [https://www.echr.coe.int/Documents/CP\\_Armenia\\_ENG.pdf](https://www.echr.coe.int/Documents/CP_Armenia_ENG.pdf)

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en)

“The term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>11</sup>

The first part of the Convention details what is considered torture and how to prevent it, emphasizing the key roles played by training officials involved in arrest and imprisonment procedures. The second part of the Convention establishes a Committee against Torture and explains its functions. The third part of the Convention is focused on the procedures for ratification and signature by states.

## **6. Anti-Torture Reforms in Georgia**

The European Committee for the Prevention of Torture visited Georgia most recently in 2018. The Committee’s observations suggest a general improvement of the situation in Georgia. For instance, they barely received any allegations of ill treatment by the police, prison overcrowding no longer appears to be a major problem, and the material condition of prisoners has become acceptable to international standards. An improvement in the prevention and treatment of infectious diseases in prisons was also noted. The main remaining problems noted by the Committee concern understaffing in the prison system, a lack of activities available for inmates, and problems relating to prisoners’ addiction to illicit drugs and other intoxicating substances.<sup>12</sup>

Though Georgia is known to have a domestic legal mechanism addressing torture cases from at least ten years ago, little information about the legal framework of anti-torture reforms in Georgia is available in English or Russian.<sup>13</sup>

The Committee paid a similar visit to Armenia in 2018, though a report on that visit has not yet been published.<sup>14</sup>

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<sup>11</sup> <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

<sup>12</sup> <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-georg-4>

<sup>13</sup> <https://humanrightshouse.org/articles/facts-of-torture-inhuman-and-degrading-treatment-in-georgia/> or <https://www.agenda.ge/en/news/2019/2776>

<sup>14</sup> <https://www.coe.int/en/web/cpt/-/the-cpt-visits-armenia>