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PERMANENT MISSION OF THE REPUBLIC OF ARMENIA

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The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations at Geneva presents its compliments to the Secretariat of the Working Group on Arbitrary Detention, Office of the United Nations High Commissioner for Human Rights and in response to the Note dated 17 June 2013 Ref: G/SO 218/2 has the honour to convey the information provided by the Government of the Republic of Armenia with respect to the implementation of the resolution A/HRC/RES/20/16 "Arbitrary detention".

The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations at Geneva avails itself of this opportunity to renew to the Secretariat of the Working Group on Arbitrary Detention, Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Attached: 11 page.

Geneva, 03 December 2013

SECRETARIAT OF THE WORKING GROUP
ON ARBITRARY DETENTION,
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
Geneva

Information provided by the Government of Armenia with regard to the questionnaire prepared by the WG on Arbitrary Detention with the aim to develop basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty, in accordance with the HRC resolution 20/16

General information

Chapter 17 of the Criminal Procedure Code of the Republic of Armenia is fully devoted to the notion of arrest. In particular Article 128(1) of the Criminal Procedure Code defines the concept of arrest by describing it as placement of a person under custody — for the purpose of preventing the committal of a crime by the person or preventing his or her escape after the committal — bringing to the inquest body or body conducting proceedings, drawing up a relevant protocol and informing him or her thereon for holding under short-term custody in places and under conditions defined by law. According to part 2 of the same Article only the following persons may be arrested: (1) a person, suspected in such a crime, for which a punishment may be imposed in the form custody in a disciplinary battalion, detention, imprisonment for a certain term or life imprisonment; (2) an accused, who has violated conditions of the measure of restraint. According to the third part arrest is made: (1) based on immediate suspicion of committal of a criminal offence; (2) based on a decision of the criminal prosecution body. According to the Criminal Procedure Code, when the accused violates conditions of measure of restraint applied to him or her, the body conducting criminal proceedings shall have the right to take a decision on arresting the person concerned concurrently filing a motion to the court on his or her detention. Arrest made on these grounds may not last more than 72 hours upon placing the accused under custody.

According to Article 131.1 of the Criminal Procedure Code within a period of three hours after bringing the person suspected in committal of a criminal offence before an inquest body, an investigator or a prosecutor, a protocol on arresting the suspect shall be drawn up, the copy of which shall be provided to the arrested person upon signature. The inquest body or investigator shall, within 12 hours after drawing up the arrest protocol, inform the prosecutor in writing.

In Article 134 of the Criminal Procedure Code, which provides the definition and types of measures of restraint, detention is also included among measures of restraint. Article 136 of the Criminal Procedure Code, which defines the procedure for applying a measure of restraint,

states that detention and bail apply only by a court decision upon a motion by the investigator or prosecutor or upon own initiative in the course of examination of the criminal case in the court. The court may apply bail instead of detention also upon a motion by the defending party. The prosecutor shall file a motion for consent to the relevant bodies when there are grounds to impose detention as a measure of restraint on persons enjoying immunity from criminal liability.

According to Article 137 of the Criminal Procedure Code, detention is the holding of a person under detention in places and under conditions provided for by law. A detained person may not be held in police holding facilities for more than three days, except for the cases when his or her transfer from the police holding facility to the investigation isolation unit or, in accordance with the requirements of law, to other detention facility is impossible due to the lack of transport communication. The inquest body, investigator, prosecutor, court shall be entitled to give instructions to the administration of the investigation isolation unit on holding apart the persons accused in one criminal case, as well as those accused in several interrelated criminal cases, on preventing contacts of the accused with other detained persons, as well as other instructions provided for by law, not contradicting the regime of holding detainees prescribed by law. The given instructions shall be binding for the administration of the investigation isolation unit. The court shall, simultaneously with taking a decision on detention, decide upon the possibility of releasing the accused from detention on bail and, by declaring the possibility of such release, shall set the amount of bail. Later the court may, upon a motion by the defending party, review the decision on inadmissibility of bail or on the amount of bail. The court decision on imposing detention as a measure of restraint may be appealed against to a higher court.

As regards terms of detention, Article 138 of the Criminal Procedure Code states that the term of holding an accused under detention shall be calculated starting from the moment of actually placing the person under custody when arresting him, and — when he or she is not arrested — starting from the moment of executing the court decision on imposing that measure of restraint. The term for holding under detention shall be calculated in combination with the time when the person has been: (1) under custody while arresting or detaining him or her; (2) in a medical institution — upon decision of the body conducting criminal proceedings — during the period of undergoing hospital expert examination, as well as receiving medical treatment for temporary aggravated mental disorder found during criminal proceedings, including the period of applying coercive medical measures to the suspect and accused.

The term for holding under detention in pre-trial criminal proceedings may not exceed two months, except for the cases provided for by the Criminal Procedure Code. Moreover all the terms, to be set-off against the period when the person has been under detention and in a medical institution, and when the accused has been held under detention, shall be added. The running of the term of detention in pre-trial criminal proceeding shall be suspended the day when the prosecutor refers the criminal case to the court, or when detention as a measure of restraint is abolished.

The term for holding the accused under detention in pre-trial criminal proceedings, taking into consideration the particular complexity of the case, may be extended up to six months by the court, and in exceptional cases, when the person is charged with grave or particularly grave crime, up to 12 months. Further extension of the term of detention shall be prohibited except for the cases provided for in cases the Criminal Procedure Code.

In case of placing the accused under detention once again on the same criminal case, as well as on a criminal case joined with or separated from it, the term for detention shall be calculated taking into account the period spent under detention earlier by the accused.

The term for holding the accused under detention in pre-trial criminal proceedings may not exceed: (1) one year; (2) maximum term of imprisonment provided for by criminal statute for the crime incriminated to the accused, in case the mentioned term is less than one year. A maximum term shall not be defined for holding the accused under detention during the examination of the case in the court.

Article 139 of the Criminal Procedure Code provides for extension of the term for holding under detention. In case of a necessity to extend the term for holding the accused under detention the investigator, prosecutor — not later than ten days prior to the expiry of the term of detention — shall file a reasoned motion to the court. The court, agreeing with the necessity to extend the term for detention, shall take a relevant decision not later than five days prior to expiry of detention term defined by the court. When the necessity for the extension of the term for holding the accused under detention is related to getting familiarised with the materials of the case by him or her or by his or her counsel, then the prosecutor or, upon consent of the prosecutor, the investigator may file a relevant motion to the court five days prior to the expiry of the term for holding under detention.

Materials of the criminal case shall be introduced to the accused under detention and his or her counsel not later than 30 days prior to the expiry of maximum detention terms provided for in Article 138(4) of this Code, and when the accused and his or her counsel fail to familiarise themselves with materials of the case within the mentioned period, the term of holding the accused under detention may be extended as prescribed by this Code and within the limits of periods defined by the fourth part 4 of Article 138 until the accused and his or her counsel familiarise themselves with materials of the case and the prosecutor refers the case to the court. When there are several accused persons in the case, the detention term may be extended also in respect of the rest of accused persons unless the grounds for holding them under detention are eliminated.

When deciding upon the issue of extending the detention term, the court shall be have the right to declare the possibility of releasing the accused on bail and setting the amount of the bail. When taking decision on extension of the term of holding the accused under detention, the court shall extend the detention term within the limits provided for in this Code, for a period not longer than two months in each case. When remanding the criminal case for further investigation the court shall settle the issue of imposing detention on the accused as a measure of restraint or on extending the term for detention, changing or abolishing it.

According to Article 63 of the Criminal Procedure Code a suspect has the right to defence. The body conducting criminal proceedings shall provide the accused with the opportunity to exercise his or her right to defence through all the measures not prohibited by law.

The suspect, as prescribed by this Code, shall have the right to: (1) learn what he o she is suspected in, get informed on the content of the suspicion, on the facts and the legal qualification of the act incriminated to him or her; (2) after being arrested, receive immediately from the inquest body, the investigator or the prosecutor a written notification on and clarification of his or her rights; **(3) after being arrested or informed of the decision on imposing a measure of restraint, receive from the inquest body —immediately and free of charge — the copy of the arrest warrant or the decision on imposing a measure of restraint issued by the inquest body, and — after an arrest protocol has been drawn up — the copy thereof;** (4) **have a counsel, waive a counsel and conduct the defence by himself or herself after being informed of the arrest warrant of the inquest body, the arrest protocol or the decision on imposing a measure of restraint;** (5) meet with the counsel in private (in confidence) and in an unimpeded way, with no limitation on the number and duration thereof, except for the case

provided for by the second paragraph of part 2 of Article 211 of the Criminal Procedure Code; (6) be interrogated in the presence of the counsel; (7) give testimonies or refuse giving testimonies; (8) provide or refuse to provide explanations; (9) not later than within 12 hours immediately after placing under custody, inform about the place of and the grounds for holding under custody to the close relatives through the body conducting criminal proceedings, by telephone or through other possible means of communication, and in case of a conscript, to the command of the military unit. In case of placing a foreign national or a stateless person under custody, the body conducting criminal proceedings shall, through diplomatic channels within 24 hours, inform of the place and grounds for holding him or her under custody to the state of citizenship, and where he or she is stateless, to the state of his or her permanent residence, and where necessary, also to another state concerned. Where a foreign national or a stateless person placed under custody is entitled — by international treaties of the Republic of Armenia — to contact with the relevant representative of his or her state of citizenship or of the state of his or her permanent residence respectively, or with other representative entitled to such contact, or to a visit by the respective representative, the request by the person placed under custody to exercise that right shall be satisfied; (10) submit materials for attaching to the criminal case; (11) file recusal motions; (12) file motions; (13) object to the actions of the bodies conducting criminal prosecution and require that his or her objections are recorded into the protocol of the investigative or other procedural operation; (14) upon his or her motion and upon the permission of the inquest body, the investigator or the prosecutor, participate personally or through the counsel in investigative or other procedural operations or refuse to participate therein, unless otherwise provided for by this Code; (15) get familiarised with protocols of investigative operations and other procedural actions, wherein he or she has participated or been present, and submit comments on the accuracy and completeness of the records made in the protocol; require — in case of participation in an investigative or other procedural operations — that records are made in the protocol of the mentioned operation about those circumstances that, as he or she believes, must be specified; (16) get familiarised — through the body conducting criminal proceedings — with the decisions taken on expert examinations and specialised checks, and upon his or her request, also receive the copies of those decisions free of charge; (17) appeal against the actions and the decisions of an inquest body, an investigator, a prosecutor and a court; (18) withdraw the appeal filed personally or by his or her counsel; (19) receive compensation for the damage unlawfully caused by the actions of the body conducting criminal proceedings.

Article 65 of the Criminal Procedure Code covers the rights and obligations of the accused. In particular, it states that the accused person has the right to defence. The body conducting criminal proceedings shall provide the suspect with an opportunity to exercise his or her right to defence through all the measures not proscribed by law.

The accused shall have the right to: (1) learn what he or she is accused of, and — immediately after bringing the charge, placement under custody, or informing of the decision on imposing a measure of restraint — receive from the criminal prosecution body, free of charge, a copy of the decision on involving him or her as a an accused; (2) immediately after being placed under custody, receive from the inquest body, the investigator or the prosecutor a written notification on and clarification of his or her rights provided for by the second part of this Article; **(3) have a counsel, waive a counsel and defend himself or herself in person, from the moment the charge is brought;** (4) meet his counsel in private (in confidence) and in an unimpeded way with no limitation on the number and duration thereof; (5) be interrogated in the presence of the counsel; (6) give testimonies or refuse to give testimonies, be interrogated through confrontation with persons having witnessed against him or her; (7) provide or refuse to provide explanations; (8) upon his or her motion and upon the permission of the inquest body, the investigator or the prosecutor, participate personally or through the counsel in investigative or other procedural operations or refuse to participate therein, unless otherwise provided for by this Code; (9) not later than within 12 hours immediately after placement under custody, inform about the place of and the grounds for holding under custody to the close relatives through the body conducting criminal proceedings, and in case of a conscript, to the command of the military unit. In case of placing a foreign national or a stateless person under custody, the body conducting criminal proceedings shall, through diplomatic channels within 24 hours, inform of the place and grounds for holding him or her under custody to the state of citizenship, and where he or she is stateless, to the state of his or her permanent residence, and where necessary, also to another state concerned. Where a foreign national or a stateless person placed under custody is entitled — by international treaties of the Republic of Armenia — to contact with the relevant representative of his or her state of citizenship or of the state of his or her permanent residence respectively, or with other representative entitled to such contact, or to a visit by the respective representative, the request by the person placed under custody to exercise that right shall be satisfied; (10) submit materials for attaching to the criminal case and investigating; (11) file recusal motions; (12) file motions; (13) declare his guilt or innocence; (14) object to the actions of the bodies

conducting criminal prosecution and require that his or her objections are recorded into the protocol of the investigative or other procedural operation; (15) get familiarised with protocols of investigative operations and other procedural actions, wherein he or she has participated or been present, and submit comments on the accuracy and completeness of the records made in the protocol; require — in case of participating in an investigative or other procedural operations, being present at a court hearing — that records are made in the protocol of the mentioned operation or of the court hearing about the circumstances that, as he or she believes, must be specified; (16) upon the completion of the preliminary investigation get familiarised with all the materials of the case, take copies thereof free of charge, excerpt from the case any information of any volume; (16') file a motion on applying an accelerated procedure of trial prior to the commencement of the trial of the case; (17) participate in hearings of the Court of First Instance and Court of Appeal and in the examination of the materials, deliver speeches and make remarks; (18) make the final statement during the court trial; (19) get familiarised — through the body conducting criminal proceedings — with the decisions taken on ordering expert examinations and specialised checks, on imposing measure of restraint and applying other procedural coercive measures on him or her, and — upon his or her request — also receive free of charge the copies of those decisions and the indictment or the final decision, copy of the statement of claim, as well as the copy of the judgment or other final decision of the court; (20) appeal against the actions and decisions of the inquest body, the investigator, the prosecutor, the court, including against the judgement and other final decision of the court; (21) withdraw the appeal filed personally or by his or her counsel; (22) object to the complaints of other participants of judicial proceedings, communicated to him or her by the body conducting criminal proceeding or having become known to him or her under other circumstances; (23) express an opinion at the court hearing on the motions and recommendations submitted by other participants of judicial proceedings; (24) appeal against unlawful actions of the other party; (25) object to the actions of the presiding judge; (26) receive compensation for the damage unlawfully caused by the actions of the body conducting criminal proceedings.

QUESTIONNAIRE

- 1) **Is your State is a party to the International Covenant on Civil and Political Rights, how is Article 9(4) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption**

✓ **Yes**

The Republic of Armenia ratified the International Convention on "Civil and Political Rights" (accepted 16.12.1966) on 23.06.1993.

According to **Article 18, part 1** of the Constitution of the Republic of Armenia: Everyone shall be entitled to effective legal remedies to protect his/her rights and freedoms before judicial as well as other public bodies.

According to **Article 16, part 4** of the Constitution of the Republic of Armenia: Every person shall have the right to recover damages in case when he/she has illegally been deprived of freedom or subjected to search on the grounds and by the procedure defined by the law.

These fundamental provisions are regulated by the Criminal Procedure Code of the RA (accepted 01.07.1998).

In accordance with **Article 285, paragraph 2** of the Criminal Procedure Code: The decree on appeal for arrest as means of securing the appearance is subject to immediate discussion solely by the judge in the vicinity of preliminary investigation or detention, with participation of the appealing person, the lawyer, if the latter participates in the case. The lawyer's failure to appear, provided he was informed on time, is no obstacle to discussion of the appeal in court.

- 2) **Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalization, immigration detention, or any other reason?**

✓ **Yes**

In accordance with **Article 16** of the Constitution of the RA: Everyone shall have a right to liberty and security. A person can be deprived of or restricted in his/her liberty by the procedure defined by law and only in the following cases:

- 1) a person is sentenced for committing a crime by the competent court;
- 2) a person has not executed a legitimate judicial act;
- 3) to ensure the fulfillment of certain responsibilities prescribed by the law;
- 4) when reasonable suspicion exists of commission of a crime or when it is necessary to prevent the commission of a crime by a person or to prevent his/her escape after the crime has been committed;
- 5) to establish educational control over a minor or to present him/her to the competent body;
- 6) to prevent the spread of infectious diseases and other social dangers posed by mental patients, persons addicted to alcohol and drugs, as well as vagrants;
- 7) to prevent the unauthorized entry of a person into the Republic of Armenia, as well as to deport or extradite him/her to a foreign country.

/.../ Every person shall have the right to appeal to a higher instance court against the lawfulness and reasons for depriving him/her of freedom or subjecting to search.

3) Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?

✓ Yes

4) Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?

✓ Yes

According to **Article 1064** of Civil Code of the Republic of Armenia: Harm caused to a citizen as the result of illegal conviction, illegal bringing to criminal liability, illegal application 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. Harm caused in the conduct of the court administration shall be compensated in the case when the fault of the judge is established by a verdict-sentence of a court that has gone into legal force.

Article 348 of the Criminal Code of the Republic of Armenia envisages punishment for obviously illegal detention or arrest. Besides this, according to **Article 22, part 2** of the Criminal Procedure Code of the RA: Also, entitled to compensation of inflicted financial damage, is any person who was illegally subjected to forced measures by the body in charge of criminal proceedings.

There can also be mentioned decision N ԵԱԴԴ 0085/06/09 of The Court of Appeals adopted on 18.12.2009.

5) Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your country's domestic law?

✓ Yes

In accordance with **Article 73** and **Article 77** of the Criminal Procedure Code the defense attorney has the right to object against the actions of the bodies of criminal prosecution and to demand on inclusion of his/her objections into the protocol of investigatory or other procedure actions; to acquaint himself/herself with the materials, presented by the body of criminal prosecution to court in confirmation of the lawfulness and substantiation of the imprisonment of his/her client

6) What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before the court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.

Article 287 of the Criminal Procedure Code of the RA

7) Does the legislation provide for a time limit for submitting such application to the court? If so, please indicate what the maximum time is.

In accordance with **Article 379** of the Criminal Procedure Code of the RA:

The appeal is filed within 15 days after the publicizing of the verdict of the first instance court.

The appeals filed after this deadline are left without consideration.

8) Are there any major decisions of your country's Constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court?

✓ Yes

The Constitutional Court's decision on **Article 290, part 1** of the Criminal Procedure Code/ՍԴՈ (SDO)-844, 07.12.2009/,
Decision **N ԵԷԴ 004/06/09** of the Court of Appeal adopted on 04.05.2010.