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TITLE

RAISING ISSUES IN TORTURE IN COMPARISON WITH

ARMENIAN LAW AND INTERNATIONAL STANDARDS.

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LIST OF ABBREVIATIONS

UN	United Nations
CAT	Committee against Torture
ECHR	European Court of Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICC	International Criminal Court

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"…Torture is senseless violence,

born in fear....

We would almost be too lucky if these
crimes were the work of savages:

The truth is that torture makes torturers. …"

– JEAN-PAUL SARTRE

French philosopher, playwright,
novelist, political activist

INTRODUCTION

The prohibition of torture is found in a number of international conventions, in the laws and treaties , in human rights and also is regarded as a principle of general international law. Despite of the fact that torture is prohibited, it still continues. Torture and other forms of ill-treatment may take place in virtually in any location. People are in risk when they are

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deprived of their liberty, held in pre-trial detention or subject to interrogation. The greatest risk is arrest and detention, before the person has access to a lawyer or court. People being in detention without access to anyone in the outside world are particularly vulnerable. It is also considered to carry a special status in general international law, that of jus cogens, which is a 'peremptory norm' of general international law.

In my paper I will present how prohibition of torture is codified in different international conventions, such as the torture convention, Vienna Convention on the law of treaties, ICCPR and the European Convention on Human Rights, and the case-law by different human rights courts and institutions, such as the Committee against Torture and the Human Rights Committee. This definition encompasses both physical and mental pain. It also notes that torture has a purpose, and does not allow torture for the sake of the torturer's amusement. As well as , Amnesty International state that 'torture is the systematic and deliberate infliction of acute pain in any form by one person on another, in order to accomplish the purpose of the former against the will of the latter' (Klayman, 1978, p482).

Also, I will mention the definition of the torture, the differentiation between torture and degrading treatment according to international standards. I will cover the understanding of the torture in Armenian legislation, the differences between Armenian law and International standards. Then, I will cover the understanding what is time limitation and in what cases is it applicable in our legislation.

Moreover, I will introduce other issue which is granting pardon or amnesty in our legislation. I will bring parallels between national law and international law. According to Rome Statute of International Criminal Court[1] also prohibits time limitation for crimes against humanity such as torture.

I have done examination of relevant ECHR cases for understanding the problem more precisely. At the end I have done statistical research and then I take some interviews from current working people to understand their opinion.

The reason, why I chose this topic is that I think that in our legislation we should do legislative changes because there is a misconception according to our national law and international standards. Also, there should be discussion about the injured person's opinion and give possibility of granting pardon/amnesty in cases when the injured person does not protest.

[1] (https://www.icc-cpi.int/resourcelibrary/official-journal/rome-statute.aspx#article29)

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The main purpose for giving the responsibility to injured person because as a whole the damage that caused to victim of torture could not be compensated.
Some legislative problems should be discussed in this paper and some relevant solutions should have done for them taking into consideration international standards and *national* law. Solving the issue of misunderstanding will help us to overlap the situation and as a result of these actions, the vulnerable group of defendants will not bear the risk of the gap of the law.

This thesis paper shall consist of an introduction, three chapters, a conclusion and bibliography. **Chapter 1** is designed to study international law more precisely ECHR regulations, international understanding for torture and time limitations for them. There is also understanding in what cases there could be granting amnesty and pardon according to international standards. The chapter also covers examination of ECHR cases which are about torture as well as time limitation and grading pardon/amnesty. Examining the cases will help to understand the main issue and possible solutions for preventing torture and ensure safeguards for solving them. **Chapter 2** will present an overview of general characteristics and understanding what is torture, differentiation from degrading treatment, the statute of limitation and individual/social impact and implications in the Republic of Armenia. Also, there is examining Law on Pardon of RA as well as Prosecutor's General Office of RA protocols and decisions regarding to the torture and CAT reports. Then will bring parallels between International legislation to understand the main differences between them. **Chapter 3** offers analysis in foreign countries to understand the current situation more specially and how countries regulate such kind of problems. Ultimately, the chapter will present statistical data and relevant survey analysis. The chapter also covers relevant articles in media and also will present recommendations grounded on survey data and analysis of relevant Armenian legislation. Also, there are interviews and questions from current working people in that field, which comprise a sample questionnaire and subsequent presentation of data collected. Followed by a bibliography listing all the sources used for the paper, the **Conclusion** will summarily outline the main findings of the research discussions about the topic and possible solutions regarding to it.

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CHAPTER 1

Review of Torture and Degrading Treatment in International Law

First of all to understand the issues related to torture we should explore what is torture according to international standards and the meaning of degrading treatment.

a.Torture and degrading treatment

The basic definition of torture is that contained in the **UN Convention Against Torture (1984)**. According to Article 1(1), the term 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."[2]

"From this definition, it is possible to extract three *essential elements* which constitute *torture*:

- The infliction of severe mental or physical pain or suffering

[2] UN Convention Against Torture (1984), *available at* https://www.ohchr.org/en/professionalinterest/pages/cat.aspx

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- By or with the consent or acquiescence of the state authorities
- For a specific purpose, such as gaining information, punishment or intimidation

The *torture* is characterized and distinguished from other forms of ill-treatment by the severe *degree of suffering* involved. It is therefore important to reserve the term for the most objectively serious forms of ill-treatment. C*ruel treatment*, and *inhuman* or *degrading treatment* or *punishment* are also legal terms which refer to ill-treatment causing varying *degrees of suffering* less severe than in the case of torture. Forms of ill-treatment other than torture do not have to be inflicted for a specific purpose, but there does have to be an *intent* to expose individuals to the conditions which amount to or result in the ill-treatment. The essential elements which constitute *ill-treatment not amounting to torture* would therefore be reduced to:

- Intentional exposure to significant mental or physical pain or suffering
- By or with the consent or acquiescence of the state authorities

In order for the international bodies to make a distinction between the different forms of ill-treatment and assess the *degree of suffering* involved, they must take the particular circumstances of the case and the characteristics of the particular victim into account each time. This makes it difficult to identify the exact boundaries between the different forms of ill-treatment, because those circumstances and characteristics will vary, but it does make the law more flexible because it allows it to adapt to the circumstances. The important point to remember is that *all* forms of ill-treatment are prohibited under international law. This means that even where treatment is not considered severe enough (in legal terms) to amount to *torture*, the state may well still be found to have violated the prohibition on ill-treatment”[3]

Torture and other ill-treatment are among the most abhorrent violations of human rights, human integrity and human dignity. According to the Universal Declaration of Human Rights no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No exceptions are permitted under international law. All countries are obligated to comply with the unconditional prohibition of all forms of torture and other ill-treatment in all circumstances. Despite the efforts by the international community,

[3] Camille Giffard “The torture reporting handbook” 2000, *available at* https://www1.essex.ac.uk/torturehandbook/handbook/index.htm

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torture and other ill-treatment persist in all parts of the world. Impunity for the perpetrators of torture and other ill-treatment continues to prevail in many countries.

From the analysis of the UN Convention against Torture and in a number of European Court decisions, one can conclude that the main criteria for distinguishing torture from other forms of ill treatment are as follows:

1) physical and / or mental illness or suffering,

2) premeditation

3) certain goal

4) special subject

In order for deed to be viewed as torture, the simultaneous presence of the following elements is required. The absence of any of the above-mentioned elements directly excludes the existence of torture but does not deprive the person of what has happened as a different form of ill-treatment.

The first criterion for torture is the "severe pain or suffering" that can be either physical or mental, and may also occur at the same time as physical and mental illness or suffering. However, the Istanbul Protocol envisages some types of acts which will result in physical pain or torture. These include: beatings, bumps, injuries to various parts of the body, head injuries, strong shaking, which can cause brain injury, but without external markings, chest or abdominal trauma, "phalanga" or foot attacks , hanging, electrocution, suffocation, burns, sexual assault, especially rape, and so on

According to the European Commission of Human Rights [4]in the Greek Case, It is plain that there may be treatment to which all these descriptions apply, for all torture must be inhuman and degrading treatment, and inhuman treatment also degrading. To understand what type of behavior is forbidden, and how that behavior is to be classified, it is necessary to understand what the legal implications for each term set out in Article 3 are. Article 3 can be broken down into five elements:

[4] https://rm.coe.int/168007ff4c

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1. torture
2. inhuman
3. degrading
4. treatment
5. punishment.

Torture as a term of art has its own discrete legal implication. The Court has expressed the view that the intention of the drafters of the Convention in using both the terms "torture" and "inhuman or degrading treatment" was to make a clear distinction between them.15 Specifically, the Court considered that the intention was that a special stigma should attach to deliberate inhuman treatment causing very serious and cruel suffering.

The Court on that occasion referred to Article 1 of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

The European Court of Human Rights, although it has identified the elements which characterise treatment or punishment as torture, has never tried to define exactly what the term means. However it has endorsed in part the definition provided in the United Nations Convention Against Torture, which came into force on 26 June 1987.17 At Article 1, the Convention states that 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 .

From the foregoing it is possible to extract three essential elements which constitute torture:

the infliction of severe mental or physical pain or suffering

the intentional or deliberate infliction of the pain

the pursuit of a specific purpose, such as gaining information, punishment or intimidation

The Court has stated that the distinction between torture and other types of ill-treatment is to be made on the basis of "a difference in the intensity of the suffering inflicted". The severity, or intensity of the suffering inflicted can be gauged by reference to the factors referred to above:

-duration

-physical and mental effects

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-the sex, age and state of health of the victim

- the manner and method of its execution

Ill-treatment that is not torture, in that it does not have sufficient intensity or purpose, will be classed as inhuman or degrading. As with all Article 3 assessments, the assessment of this minimum is relative.26 In the Greek case, the Commission stated that the notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which in the particular situation is unjustifiable...[5]

The EU supports actively the work of the relevant actors (including inter alia the UN Committee Against Torture, the UN Subcommittee on Prevention of Torture, the UN Human Rights Committee, the UN Committee on Enforced Disappearances, the Committee for the Prevention of Torture of the Council of Europe, as well as the UN Special Procedures and other relevant actors). The EU will pro-actively contribute to ensure that the existing international and regional safeguards against torture and other ill-treatment are strengthened and effectively implemented. The CPT organises visits to places of deprivation of liberty in the Council of Europe's 47 member states in order to assess how detained persons are treated. Places visited include prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc.

CPT delegations have unlimited access to places of deprivation of liberty, and the right to move inside such places without restriction. They interview detained persons in private, and may enter into contact with anyone else who may be able to provide relevant information.

After each visit, the CPT sends a confidential report containing its findings and recommendations to the state concerned. This constitutes the basis for a dialogue between the CPT and the national authorities in order to strengthen the protection of detained persons from ill-treatment

[5] Էմմա Ավագյան, խոշտանգման հասկացությունը և բովանդակությունը (510-512էջեր)

http://publishing.ysu.am/files/Iravagitutyan_aspirantner-2016.pdf

(ԵՊՀ իրավագիտության ֆակուլտետի ասպիրանտների և հայցորդների 2016 թ. նստաշրջանի նյութերի ժողովածու Երևան ԵՊՀ հրատարակչություն 2017)

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b.Statutory limitations

When the period of time specified in a statute of limitations passes, a claim might no longer be filed, or, if filed, may be liable to be struck out if the defense against that claim is, or includes, that the claim is time-barred as having been filed after the statutory limitations period.[6]

"Time-barring, or the application of a statutory limitation on legal action in the event of an offence, may relate to either of two aspects of legal proceedings. The time bar may apply to prosecution: if a certain time has elapsed since the breach was committed, this would mean that no public action could be taken and that no verdict could be reached. The limitation may apply only to the application of the sentence itself: in this case, the fact that a certain amount of time had elapsed would mean that the criminal sentence could not be applied.

Most legal systems have time bars for minor offences. But for serious crimes, several legal systems, in particular those based on common law, do not permit a time bar for prosecution. Legislatures in countries where civil law prevails have either established time bars for serious crimes. The time-barring of the application of criminal penalties is less prevalent. It does not exist at all in common law, and is extremely restricted in other systems. Where it does exist, the time bars are generally very long for the most serious offences and do not apply for certain types of offences or in cases involving dangerous or repeat offenders"[7].

Also, the Rome Statute of the International Criminal Court (ICC) in Article 29 stipulates the non applicability of statutory limitations for war crimes, crimes against humanity, genocide and the crime of aggression

On the other hand according to Criminal Code of RA Article 5 " The court decides the issue of application of the prescription period to a person who committed a crime punishable by a life

[6] https: //en.wikipedia.org/wiki/Statute_of_limitations

[7]Advisory Service On International Humanitarian 2014

General Principles of International law, *available at*

https://www.icrc.org/en/download/file/1070/general-principles-of-criminal-law-icrc-eng.pdf

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sentence. If the court does not deem possible to exempt the person from criminal liability due to the expiry of the prescription period, the life sentence is not applied."[8]

"Thus, the 5th paragraph of Article 75 of the Code defines a regulation which makes the institution of application of the statute of limitations directly dependent on the wide discretion of the court which is mainly conditioned by the incomplete certainty of the regulation and the lack of description of the criteria typical to the institution of statutory period of limitations. The legislation, defining that the issue of application of the statute of limitations to a person who committed a crime punishable by life is decided by the court within the framework of the regulations prescribed by Article 75 of the Criminal Code, has not defined clear and foreseeable criteria, which must guide the court, or the circumstances which must be taken into consideration by the court when making decisions. At the same time, it should be taken into consideration that the third paragraph of Article 102 of the RA Criminal Procedure Code defines that the decisions in relation to the motions presented by the parties and the claims of the persons participating in the criminal proceeding must be reasoned. This is a clear requirement of the criminal procedure and does not endow the court with any discretion. It should be also noted that when defining the issue of the application of the 5th paragraph of Article 75 of the Criminal Code, the court must be guided also by Articles 60-63 of the Code (These articles deal with life imprisonment, general principles of imposing a sentence, mitigating circumstances of liability and punishment, and aggravating circumstances of liability and punishment)."

Moreover, it is important to highlight that there is Constitutional Court decision[9] regarding to that Article 75 point 5 and in the decision Court underlines that " What refers to the applicant's arguments that the challenging norm doesn't define from which Court should be guided. Court underlines that if challenged norm perceived as separated, in Criminal law out of as usual regulation logic, there could appear wrong understanding that Courts have "absolute" discretionary power. A person who was committed for grave crime and who was imprisoned for ten or more years or life-imprisonment is regulated according to Criminal Law articles 60-63. Even if judges decides not to apply the statute of limitation for life-imprisoned person the subject matter of the dispute and same Code article 81 part 5 could not apply decision to grant

[8]Rome Statute of the International Criminal Court , *available at* https://www.icc-cpi.int/resourcelibrary/official-journal/rome-statute.aspx#article29

[9] http://www.concourt.am/armenian/decisions/common/2014/pdf/sdv-1141.pdf

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life-imprisonment. It is important to highlight that this approach for applying statute of limitation as well as not applying is a legislative approach."

We see that from above-mentioned regulations and comments we conclude that in this case judges should make reasonable decisions when they decided not to apply the statute of limitation for such grave crime prisoners.

"However, in spite of the above-mentioned legislative safeguards, we think that in order to ensure the clarity and predictability of the 5th paragraph of Article 75 of the Criminal Code, there was a need to foresee criteria specifically concerning the statutory period of limitations, as the legislation has done in case of other criminal legal institutions such as necessary defense, urgent necessity, effective repentance, etc."

The RA Cassation Court expressed the following position with respect to the case concerning Anahit Saghatelyan: "According to criminal legislation, depending on the nature of the crime and the degree of public dangerousness, different limitation periods are prescribed in relation to criminal liability, in case of the expiry thereof, the crime loses its dangerousness, and the person is exempted from criminal liability."[10]The state has a positive obligation to discover and prevent crimes.

For sum up, we should underline two important points. First of all judge must give a reasonable decision. Secondly, taking into consideration the position of party the weight of the grave crime does not change if it applies time limitation.

c. Granting amnesty or pardon

There is no legal definition of amnesty in international law but it can be understood as an official legislative or executive act whereby criminal investigation or prosecution of an individual, a group or class of persons and/or certain offences is prospectively or retroactively barred, and any penalties cancelled.

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[10] Vardevanyan Aram- Certain Issues with Respect to the Institution of Statute of Limitations Prescribed by Armenian and Foreign Criminal Legislations

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An amnesty is generally distinguished from a pardon. A pardon occurs post prosecution and revokes the penalty without absolving the individual(s) concerned of responsibility for the crime. (3 See ICRC, Commentary on the Additional Protocols, 1987, paras 4617–4618.)

> 7. The Committee regrets that, contrary to its previous recommendation (see CAT/C/ARM/CO/3, para. 10), the current legislation still maintains the statute of limitations in respect of the crime of torture and the possibility of granting pardon and amnesty to perpetrators of torture and that individuals convicted of torture or ill-treatment have benefited from amnesty in practice. The Committee takes note of the State party's plans to discuss the possibility of excluding the pardon, amnesty and statute of limitations for torture in the context of a new legislative package that is currently being developed (arts. 1 and 4).

It is important to highlight that the Grand Chamber decision in Case of **Marguš v. Croatia** (Application no. 4455/10) [11]mentioned that "Proceedings for charges of torture and ill-treatment should not be time-barred or subject to an amnesty and that an amnesty is generally incompatible with the duty to investigate and prosecute serious crimes, including war crimes

The case concerned a Croatian army commander who had been convicted of several murders of civilians in 1991. He had benefited from an amnesty in relation to the murders in 1997 but in 2007 was convicted of war crimes. Just two months before Croatia became a signatory to the European Convention on Human Rights (ECHR) in November 1996, the Croatian Parliament had passed a Law on General Amnesty

"Criminal proceedings against Marguš are instigated in 1991 based on the Croatian Criminal Code but are terminated on 24 June 1997, pursuant to the 1996 Amnesty Act, by the Osijek County Court, without the accused ever having been tried for any of the offences alleged. The County Court does not consider whether or not Marguš's offences might have constituted war crimes – which would have precluded the application of amnesty (1996 Act 3 (1)). Instead, it categorises his actions as "being closely connected to the armed conflict" and therefore covered

[11] **Marguš v. Croatia** (Application no. 4455/10) *available at* https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22002-9477%22]}

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by General Amnesty (1996 Act 3 (2)). Furthermore, the County Court judges mention the exceptional courage Marguš showed during late 1991 when the murders took place"

"The resort to institutionalized forgetfulness and amnesty in conflicted entities and troubled communities is neither new (for example, all of the army personnel involved in the wrongful conviction of Alfred Dreyfus in France in 1894 were granted amnesty from prosecution) nor exceptional in Europe (see the continuing enforcement of Spain's 1977 Amnesty Law) and such resort was not uncommon in the Western Balkans after the 1990s conflicts. However, the recourse to amnesty is a very divisive issue in itself"[12] "[13].

Nowadays, there is strict judicial practice as well as there is mentality that there should not be amnesty for people who are accused for torture or already under detention.The brilliant example could be 2800th anniversary of Erebuni-Yerevan and the 100th anniversary of the First Republic of Armenia Amnesty[14]

d. ECHR cases

In this part is presented some torture cases that should be discussed in details to understand the main problem that usually appear in such cases.

- **Abdülsamet Yaman v. Turkey** *(Application no. 32446/96)*[15] points out that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an "effective remedy" that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible.

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[12] https://strasbourgobservers.com/2014/06/30/neighbourly-murders-forced-forgetting-and-european-justice-margus-v-croatia/

[13] Case of Marguš v. Croatia (Application no. 4455/10) *,available at* http://www.menschenrechte.ac.at/orig/14_3/Margus.pdf

[14] ՎԱՏ ՎԵՐԱԲԵՐՄՈՒՆՔԻ ԳՈՐԾԵՐՈՎ 2008–2018 թթ. ԴԱՏԱԿԱՆ ՊՐԱԿՏԻԿԱՅԻ ԳՈՐԾՆԱԿԱՆ ՈՒՍՈՒՄՆԱՍԻՐՈՒԹՅՈՒՆ Արա Ղազարյան 2018 https://rm.coe.int/17-12-2018-study-of-national-courts-practice-final/168091ed10

[15] 1. Case of Abdülsamet Yaman v. Turkey *(Application no. 32446/96),available at* <https://hudoc.echr.coe.int/app/conversion/pdf/?...ECHR...>

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- **Cestaro v Italy** (Application no. 6884/11)[16]

  Court stated that at the national level, both preliminary and judicial proceedings should be fully implemented under the requirements of Article 3 of the Convention. Consequently, domestic courts should not allow anyone who has committed physical or psychological violence to remain unpunished.

- **Öcalan v Turkey** (Application no. 46221/99) [17]

  Court underlines that in all cases where a representative of the State is accused of committing the offenses set forth in Article 3 of the European Convention on Human Rights, the proceedings and punishment shall not be limited to a period of time and pardon or amnesty shall not be permitted[18].The Court also underlines the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted.

- **Case of Alikaj and Others v. Italy**[19], (Application.no. 47357/08)

  Court underlines that "In view of the promptness and reasonable expedition required of the authorities in such a context, the application of the time bar fell within the category of "measures" that the Court regarded as inadmissible, because they had the effect of preventing punishment. The Assize Court, 11 years after the incident, had granted a discharge because the charges in respect of Julian Alikaj's death had become time-barred, thus making it impossible for the court to sentence A.R. In addition, no disciplinary measures had ever been taken against A.R."Also Court mention that according to Article

[16] Case of Cestaro v Italy (Application no.. 6884/11, judgment of 7 April 2015, para. 225) *available at* https://hudoc.echr.coe.int/eng-press#{%22fulltext%22:[%22Cestaro%20v%20Italy%22]}

[17] Case of Öcalan v Turkey (Application no. 46221/99) *available at* https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22\%22CASE%20OF%20%C3%96CALAN%20v.%20TURKEY\%22%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-69022%22]}

[18]

[19] Case of Alikaj and Others v. Italy, app.no. 47357/08, judgment of 29 March 2011, para. *available at* file:///C:/Users/TEST/Downloads/Chamber%20judgment%20Alikaj%20and%20Others%20v.%20Italie%2029.03.2011.pdf

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2 the criminal proceedings and the penalty of imprisonment should not be limited to the term as it will not directly interfere with the guarantees of that Article.

- **Virabyan v Armenia**[20] , (Application no. 40094/05)

  The Court found that the Applicant was subjected to particularly cruel ill-treatment, which caused him severe physical and mental pain and suffering, whereas the domestic agencies and the Government based their explanations about the origin of the applicant's injuries solely on the testimonies of police officers, including the person who allegedly committed a crime. At the same time, the Court found that the investigation carried out by the law enforcement agencies following the applicant's allegations of ill-treatment was ineffective, inadequate and absolutely incomplete; the competent authorities did not show sufficient diligence and cannot be said to have intended to identify and punish the perpetrators.

  The RA Government submitted 2 Action Plans on execution of the judgment under this case, namely Action Plan № DD(2015)206[21] of February 16, 2015 and Action Plan № DD(2014)328[22] of February 25, 2014. By the Action Plan above, "The RA Government provided information to the legislative change in the RA Criminal Code introduced by Law № HO-69-N[23] which defined the elements of crime of torture in compliance with the provisions of the UN Convention against Torture (Article 309.1) and under the procedural safeguards, the RA Government invoked Article 110 of the RA Criminal Procedure Code stipulating the minimum rights of an arrested person. It is noteworthy that the RA Government provided rather incomplete and unsubstantiated information on the taken and intended steps to resolve the issue of protecting the right not to be subjected to torture in RA. In particular, the Government provided no statistical data on the investigation into crimes of torture by the RA Special Investigation Service. It can be noted that still no full and effective investigation is carried out into the allegations of the use of torture and at the same time, the investigative agencies and courts of law still

[20]https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22virabyan%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-113302%22]}
[21]https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a7590
[22] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804afceb
[23] https://www.arlis.am/DocumentView.aspx?docid=98839

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continue basing their conclusions solely on the testimonies of the law enforcement officers who allegedly used violence. There are no legislative regulations (except for regulations on RA Investigation Committee officers) under which the powers of the law enforcement officers under criminal prosecution must be terminated. Also, the practices of processing a person's allegations on violence used against him/her during the preliminary investigation and trial examination and carrying out proper investigation remain of concern. Thus, on this part the judgment cannot be considered executed."[24]

- **Matevosyan v. Armenia** (application no. 52316/09)
  The applicant, Alik Matevosyan, is an Armenian national who was serving his sentence in Nubarashen penal facility when he lodged his application with the Court. The case concerned his complaint that there had been no effective investigation into his allegations of ill-treatment by military police officers. In May 2006, Mr Matevosyan, who was performing his military service at the time, was questioned by the police during a criminal investigation into the death of a fellow serviceman, A.H., whose body had been found in the forest next to Mr Matevosyan's military unit. According to the case file, Mr Matevosyan was questioned on 2 May 2006 in the town of Kapan. Subsequently, he and another serviceman, R.H., were taken to the Military Police Department of the Ministry of Defence in Yerevan, where they were held until 12 May 2006. R.H. confessed that he and Mr Matevosyan had murdered A.H. On 17 May an investigator drew up a record of the arrest, stating that Mr Matevosyan had been arrested on that day on suspicion of beating up and murdering A.H. A defence lawyer was assigned to him the next day. On 20 May 2006 he was charged with aggravated breach of military discipline and aggravated murder. Mr Matevosyan contests the facts as reflected in the documents of the case file. He maintains that he was taken to the Kapan Military Police Department on 1 May and was held there until 3 May 2006. Subsequently he was taken to a disciplinary isolation facility of the Military Police Department, where he was held until 20 May

[24]Situation of Execution of European Court of Human Rights Judgments by Republic of Armenia, Anahit Chilingaryan 2016 Vanadzor
https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5a37fb6ec830258ccbd9f3fd/1513618309309/Situation-of-Execution-of-European-Court-of-Human-Rights-Judgments-by-Republic-of-Armenia-2007-2015.pdf

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2006. During this period, in the absence of a lawyer, he was subjected to torture by military police officers, with the aim of forcing him to confess to the murder. In particular, he was repeatedly brutally beaten, held in an isolation cell and threatened that "bad things" would happen to his girlfriend and his sister. While in pre-trial detention, in June 2006, Mr Matevosyan lodged a complaint with the General Prosecutor about having been ill-treated by the military police. After having questioned several officers of the military police, the investigator decided, in September 2006, not to institute criminal proceedings, concluding that there was no evidence of a crime. Mr Matevosyan only learned about that decision later, when consulting the case file. 1 Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.Inadmissibility and strike-out decisions are final. 2 In August 2007 Mr Matevosyan was convicted of non-aggravated murder and of breaching military rules, and sentenced to nine and a half years' imprisonment. R.H. was also convicted and sentenced to a prison term. Mr Matevosyan appealed, maintaining his innocence. In December 2007 the Court of Appeal upheld the judgment. In July 2008 the Court of Cassation granted an appeal on points of law by the Military Prosecutor's Office, seeking a re-evaluation of the offences. The case was remitted to the Court of Appeal, which, in November 2008, changed the first offence to aggravated murder and increased Mr Matevosyan's sentence to 15 years' imprisonment. Subsequent appeals on points of law, lodged by his lawyer and by himself – maintaining that he had been beaten and tortured by military police officers, and that R.H. had been forced to make confession statements – were dismissed. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Matevosyan complained that the authorities had failed to conduct an effective investigation into his

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allegations of ill-treatment by military police officers while in custody. Violation of Article 3 (investigation)[25]

- **Aksoy v Turkey** (Application no. 21987/93)[26]

"To clarify whether torture can be regarded as any kind of ill-treatment, the Court must take into account the intensity of the suffering"

Also,it is important to discuss that according to international standards there is a prohibition for torture. Also it is important to mention that a remarkable document is Vienna Convention on the law of treaties where it gives substantial input toward protection and prevention of torture. Moreover, the important document is also the provisions of Committee against Torture, whereas according to **Article 2**

> "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".

We should also examine the Istanbul Protocol[27] professional training series which is divided in many parts but the main important parts are:

1) Physical evidence of torture

2) Psychological evidence of torture

3) Legal investigation of torture

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[25] Matevosyan v. Armenia (application no. 52316/09)
file:///C:/Users/TEST/Downloads/Judgments%20and%20decisions%20of%2014.09.17.pdf

[26] Aksoy v Turkey (Application no. 21987/93)
https://www.dipublico.org/1563/case-of-aksoy-v-turkey-application-no-2198793-european-court-of-human-rights/

[27] Istanbul Protocol New York and Geneva, 2004
https://www.ohchr.org/Documents/Publications/training8rev1en.pdf

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According the Protocol there are explored the main characteristics for torture and there is a regulation that the Istanbul Protocol should be the evidence in the court for understanding according to that standards whether there are torture or not. Moreover, it is important to mention that in our legislation now the Istanbul protocol evidences are not considered as an evidence that according to that standards there should be torture. On the other hand, Georgia, our neighbor country , has already used the system and recognize that according to that standards there should be evidence.

“Even though it is rarely stated expressly in the judgments, there is no denying that some form of balancing takes place regardless of the absolute nature of Article 3. There exists a clear discrepancy between the Court’s rhetoric and the way it actually applies Article 3 in practice. At the same time there is no doubt the European Court of Human Rights regards the prohibition of torture as a non-derogable right”[28]

For summing up, examining all international sources regarding to torture we see that there is strict prohibition against torture cases which are protected by Article 3 of ECHR.

So, for analyzing above mentioned cases we could conclude that in a lot of cases we see strict prohibition and problems related to our issue. There should be some safeguarding remedies to ensure the rights of victims because when we explore the international practice we see that according to ECHR cases there are problems regarding to the torture and time limitation that is also inadmissible and there should be safeguards in our legislation for preventing torture and ensure the rights of victims of torture.

Conforming to international standards, we explore what is time limitation and understand that there is no way to put the time limitation for torture cases. Also, we should underline that granting pardon or amnesty quite regulated in international law. We see the serious attitude for preventing torture cases, also decrease of impunity because the strict rules provide the result. Also, we see that judicial practice is partly match ECHR requirements which is also a problem.

[28] APPLICABILITY OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AT THE BORDERS OF EUROPE Enni Lehto,2018 file:///C:/Users/TEST/Downloads/74564-Artikkelin%20teksti-101335-1-10-20180911.pdf

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CHAPTER 2

General characteristics and understanding what is torture, differentiation from degrading treatment, the statute of limitation and individual/social impact and implications in the Republic of Armenia

To understand the problem more precisely we should examine the national law.

According to Article 26 part 1 of the Constitution[29] **n**o one may be subjected to torture, inhuman or degrading treatment or punishment. Also, in **Article 309.1** of the RA Criminal Code is mentioned the definition and sanction of torture. It envisaged sanction from four to eight years

[29] ՀՀ Սահմանադրություն 2015
http://www.president.am/hy/constitution-2015

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of imprisonment with a ban to occupy certain positions or engage in certain activities for three years, and from seven to twelve years of imprisonment for a qualified act or engage in certain activities for three years. Also it is important to examine the old and new versions of Criminal Code of RA.

According to **Article 75** of the same code is stipulated the criminal exemption from criminal liability as a result of the expiry of the statute of limitation. According to our legislation and above mentioned **Article 75** of Criminal Code[30] the person is exempted from criminal liability if the following periods of time have elapsed after the committal of the crime:

1)…..

2) 5 years, since the day of committal of medium-gravity crime;

3) 10 years, since the day of committal of grave crime;

4) 15 years, since the day of committal of particularly grave crime.

Also, it its important to bring parallels between Old and New Criminal Code. Mostly according to old criminal code there were article 119 which stipulates.

Article 119. Torture.

1. Torture is willfully causing strong pain or bodily or mental sufferance to a person, if this did not cause consequences envisaged in Articles 112 and 113, is punished with imprisonment for the term up to 3 years...

2. The same actions, committed:

1) in relation to 2 or more persons;

2) in relation to the person or his relatives, concerned with this person in the line of duty or carrying out one’s public duty;

3) in relation to a minor or a person dependent financially or otherwise on the perpetrator, as well as, in relation to a kidnapped person or hostage.

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[302] Criminal Code of RA 2015
< https://www.arlis.am/>

4) In relation to a pregnant woman;

5) By a group of persons or by an organized group;

6) With particular cruelty;

7) with motives of national, racial or religious hatred or religious fanatism, is punished with imprisonment for the term of 3 to 7 years.[31]

According to Criminal Code of RA Article 82:

"The person who committed a crime can be exempted from criminal liability by an act of amnesty adopted by the legislature, and the convict can be completely or partially exempted from the basic, as well as, from the supplementary punishment, and the convict's unserved part of the punishment can be replaced with a softer punishment, or the criminal record can be expunged".

Article 83:

"The act of pardon can completely or partially exempt the convict from the basic, as well as, from the supplementary punishment, or the convict's unserved part of the punishment can be replaced with a softer punishment, or the criminal record can be expunged".

So, we see that our legislation does not give us restriction to torture cases neither for amnesty nor for pardon. We have a problem because according to international standards there is a prohibition for torture cases. Here, we also should have legislative changes and give such kind of restriction for granting pardon or amnesty because in fact it could be qualify as a impunity.

In international and regional instruments and in the legal positions drawn up by the enforcement agencies, special attention is paid to the issue of torture and ill-treatment by officials, with no special emphasis on the right of claiming to be free from liability. Exemption from the criminal liability or punishment of officials executing the abovementioned acts on the ground of limitation, amnesty for these persons as well as the use of adequate measures leading to impunity of that offense directly infringe upon the international obligations undertaken by the State.

[31] Criminal Code of Republic of Armenia 2003*, available at* https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/65062/61317/F1716776223/ARM65062.pdf

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It is quite clear that changes in Criminal Code were done for the best purposes but there were problems with sanctions as there are were low if we bring comparison with international legislation. Also, it is useful to discuss the injured person opinion because if we look from injured person "side" we understand that in fact they do not get the real compensation because their feelings and their psychology are destroyed and does not recovered by getting compensation. Their feeling of remorse stays, no matter injured person gets the material compensation or not.

Accordingly, it means that feeling couldn't be compensated. Compensation is a monetary payment for financially assessable damage arising from the violation. It is important to examine that at the national level there are two principal ways in which victims of violations of international humanitarian law can receive compensation from national courts.

"First, in civil law systems, they can become parties to the criminal proceedings (partie civile) and claim compensation in them. A disadvantage of this process is that their claim for compensation is dependent on a conviction, thus subject to the higher standards of criminal law as well as to any defenses and other general limitations under criminal law.

Secondly, in States that have adopted appropriate legislation, victims may bring civil actions for compensation based on violations of the relevant norms of international law. A notable example of such legislation is the US 1789 Alien Tort Claims Act and the more recent 1991 Torture Victim Protection Act.(US, 1789 Alien Tort Claims Act; 1991 Torture Victim Protection Act.)

Also, from a wider policy point of view responsibility to pay damages must go hand in hand with, if not indeed follow, investigation and prosecution of violators. Otherwise, as Professor Philip Allot pointed out at the University of Cambridge's Lauterpacht Research Centre for International Law at a seminar in 1999 on torture, torturers could merely take out professional insurance and continue to commit atrocities"[32]

So, we see that monetary payment could not in fact recover all damages mostly when we are talking about torture cases.

[32]Reparation for violations of international humanitarian law Emanuela Gillard 2003*, available at* https://www.icrc.org/en/doc/assets/files/other/irrc_851_gillard.pdf

Additionally, to understand the problem in details we should also examine the annual report of the activities of the Republic of Armenia's Human Rights Defender (Ombudsman) and on violations of human rights and fundamental freedoms in Armenia during 2004.

In **Chapter 3.3** of this report concerned the right to be free from torture and cruel, inhuman and degrading treatment and punishment."Violations of this right mainly concerned apprehension of a person by the police or investigative authority, upon suspicion or facts of committing a crime or an administrative infringement, the holding of such persons in custody and their interrogation. In criminal cases in which the police prepared the file, there are allegations that the concerned persons had to provide self-incriminating testimony in conditions of unlawful custody under the threat and use of violence and intimidation.

These persons state such allegations both during pre-trial proceedings, before the investigative authority, and in court. In rare cases, when a different unit of prosecution is instructed to investigate these Virabyan v. Armenia[33] allegations, there are still no safeguards of an impartial investigation.[34] During the hearing, courts tend to ignore these allegations. So, we have problems concerning torture in our practice as well.

Also, it is important to mention that there is a of the Prosecutor's General office of RA on it's 2017 June 23 protocols and decisions make statements and observe the situation from 2014 to 2015 years. According to that protocol they mention that according to 2014-2015 years by Special Investigation Service were examined 78 criminal cases, from which 1 send to court and 44 criminal proceedings have been dismissed.

During 2014 103 reports of crimes received reports about the alleged torture and ill-treatment done by law enforcement officials, from which 4 related to and 99 employees of different departments of the RA Police. According to Article 309.1 crimes that stipulated in RA Criminal Code were initiated a criminal case from which 2 eliminated by prosecutor.

Also, Colegue stipulated that for torture and ill-treatment cases there is no criminal cases that has been discussed during the reporting period regarding subjecting the victim to a

[33] Virabyan v Armenia
https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22virabyan%20armenia%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-113302%22]}

[34] Annual Report: Activities of the Republic of Armenia's Human Rights Defender (Ombudsman), and on Violations of Human Rights and Fundamental Freedoms in Armenia During 2004
http://www.ombuds.am/resources/ombudsman/uploads/files/publications/634ac12bf01fc9bb2a646f95d8fd02bd.pdf

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forensic-psychological examination to understand by way of mental suffering the possibility of torture against the victim. Also, they mention that according to the Istanbul protocol handbook also applies if there is necessity they should do the forensic-psychological examination to the victim.

Moreover, they mention that in torture cases, sufficiently in cases when for confessionary testimony officials extort and there is a big question that person wrote it by himself or there were extortion. That's why there were offer to record the whole process.[35]

It is useful to understand what is the bullet point and question of this paper. So, we examine whether are there any contradiction between ECHR requirements and Armenian regulations on time limitation in torture, granting of pardon or amnesty to torture perpetrators?

According to Armenian legislation in criminal cases statute of limitation is permissible as a result of expiry. When a person decided to appeal to all instances and suffered all domestic remedies he decided to apply to the European Court of Human Rights. The situation will be different this way as there could raise misconceptions regarding the law. Here is the basic contradiction between our legislation and international standards. Moreover, it will be useful to discuss that our legislation allows us granting pardon and amnesty to perpetrators of torture and that individuals convicted of torture or ill-treatment have benefited from amnesty in practice. In comparison with CAT report, they do not allow to grant a pardon or amnesty to perpetrators of torture and the individuals convicted of torture or ill-treatment have benefited from the amnesty.

Also, it is important to mention that in the report of the CAT 'Recalling its previous concluding observations, the Committee urges the State party to repeal the statute of limitations for the crime of torture or other acts amounting thereto under the Criminal Code. The State party should also ensure that pardon, amnesty and any other similar measures leading to impunity for acts of torture are prohibited both in law and in practice. In this regard, the Committee draws the State party's attention to paragraph 5 of its general comment No. 2 (2007) on the implementation of article 2 of the Convention by States parties, in which it states that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution

[35] ՀՀ դատախազության կոլեգիայի 2017 թ. հունիսի 23-ի նիստի արձանագրությունը և որոշումները http://www.prosecutor.am/myfiles/files/pdf/ardzanagrutyunner%20voroshumner23.06.2017.pdf

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and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.[36]

Moreover, it is important to mention that at the current time in the Court are Nalbandyan's and Virabyan's cases . For the current time Court brings opinion that for Nalbandyan and Virabyan cases Court gives the opinion that what as a regards the prosecution's viewpoint of the investigator that in torture related cases according to the provisions of the 1984 United Nations and Convention time limitation does not apply ,the State ratifying the above mentioned Convention further subsequently undertook an obligation to eliminate barriers to the issue then the Court agrees with the investigator on which state has assumed such an obligation. Also, Court underlines that any provision prohibiting the time limitation that was stipulated in UN 1984 Convention refers that the fundamental rights of the accused person namely stipulated the main question in the absence of such a prohibition by domestic law ; from the perspective ….

So, there is no international treaty that is ratified with the participation of the Republic of Armenia, in which the provisions statute of limitations in cases of torture are established. The restriction of the rights of the accused person may be conditioned by the constraints of the fulfillment of the international positive commitments, but in this case cannot be justified and legitimate, unless a similar limitation is made in the manner prescribed by law or is incompatible with legal certainty and applicable law. In the context of the principle of proportionality, there is also cannot be such comment whether it is possible to apply the restriction not envisaged by the law of the accused.

The issue of applying the statute of limitation to a person who has committed a life-term criminal offense decided by a court. If the Court finds it impossible to exempt a person from criminal liability as a result of expiration of his term of limitation, life imprisonment shall not be applied.

The Court also underlines that according to CAT provisions "the State Party should also ensure that according to the law and in the practice the prohibition for amnesty/pardon and equivalent means which causes torture in the case of impunity . The Committee strongly urges the State party to abolish the time limits for torture or other acts punishable under the Criminal Code".

[36] CAT/C/ARM/CO/3, para. 8,10

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So, we see that even nowadays the Court gives opinion that there is no prohibition according to the CAT provisions and makes a decision that in Nalbandyan case and in Virbayan case time limitation is applicable.

For summing up, it is important to mention that the legislative changes should be done according to international standards. We see that in a lot of foreign countries there is strict prohibition for time-barring in particularly torture cases. Also they forbid granting pardon for such cases as well. Here is some issues that should be regulated only after doing legislative changes in Criminal Code of RA.

First of all, there should be revision of sanction for torture cases. They are very low and should be updated because if we look from different countries code regulations we see that the sanctions are differ and also higher. We see quite such kind of "mild treatment" in our legislation. So, there should be also changes because the torture are protected by different conventions and treaties. There could not be lower sanctions for highly protected type of crime.

Secondly, for not being very deteriorating norm (rule), the injured person's opinion should be decisive for granting pardon/amnesty or for applying time limitation. As a whole, we can accept time limitation or granting pardon only when injured person doesn't protest and only when the compensation accepted. After it we could consider the regulation could be applicable. It is important to see the reconciliation agreement between the parties because suffering and feelings of injured person could not described in some words.

To sum up, the only way to overcome these problems is to do legislative changes. To understand the importance of the legislative changes now it is *preparing* the legislative project by the Ministry of Justice. In their project, they are stipulating some main problems and issues that in this report discussed as well. According to the author's opinion under the proposed legislative amendments, full compliance with the international commitments undertaken by Armenia and the legal regulations set out in domestic law will be ensured. "At the same time, the effectiveness of the fight against torture cases and the fight against impunity will increase, and the criminal policy of the state against violence by officials will be laid on new quality legal grounds" In view of the need to ensure compliance between the RA commitments and international legal requirements, it is proposed to abolish the RA Criminal Code, as well as make appropriate amendments to the RA Law on Drug Abuse, on the basis of the expiry of the statute

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of limitations on the criminal liability or punishment of persons who committed torture or inhuman treatment. , the pardon, amnesty, and the conditional non-application institution in order to establish a ban.[37]

Also, it is important to mention that according the Law on Pardon of RA Article 7 stipulated the cases when

1. A person convicted of a crime may be pardoned if he has submitted a petition for pardon.

2. A person sentenced to imprisonment or imprisonment may be pardoned, if he has actually served a sentence or at least half of his sentence.

3. A person sentenced to life imprisonment may be pardoned, if he has actually been imprisoned for not less than twenty years.

4. A person who has been convicted of a crime or torture against peace and humanity provided for by the Criminal Code of the Republic of Armenia shall not be pardoned.

Furthermore, solving the issue of misunderstanding will help us to overlap the situation and as a result of these actions, the vulnerable group of defendants will not bear the risk of the gap of the law. In this sense, legislative changes will make them one step closer to becoming a fully international standardized legislative country.

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[37]«Հայաստանի Հանրապետության քրեական օրենսգրքում լրացումներ և փոփոխություն կատարելու մասին», ««Ներման մասին» Հայաստանի Հանրապետության օրենքում փոփոխություն կատարելու մասին» Հայաստանի Հանրապետության օրենքների նախագծեր https://www.e-draft.am/projects/1486

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CHAPTER 3

Analysis in foreign countries, current situation and how countries regulate such kind of problems

Overall according to international standards for grave crimes as a well as torture there is a prohibition for applying time limitation[38].It is important to examine foreign countries criminal codes to understand the differences between them.

- According to **Georgian** Criminal Code the statute of limitation does not apply for torture (144^1), torture threats (144^2), and humiliating and inhuman treatment (144^3)[39]

- According to **Polish** Criminal Code Article 105 part 2 provides that the statutes of the of limitations do not extend to deliberate murder, severe bodily injury, torture.[40]

- Article 101 of the **Swiss** Criminal Code provides that the statute of limitation does not apply to sexual exploitation, rape, sexual exploitation, sexual exploitation, sexual exploitation or sexual exploitation of a child, or to such.[41]

[38] ՀՀ քրեական օրենսգրքի նախագծի 89-րդ հոդվածի 8-րդ մասը նախատեսում է. «Վաղեմության ժամկետ չի կիրառվում այն հանցանքների կապակցությամբ, որոնց համար սույն օրենսգրքով որպես պատիժ նախատեսված է նաև ցմահ ազատազրկումը»:

[39] https://matsne.gov.ge/en/document/download/16426/157/en/pdf

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[41] http://www.parliament.am/library/Qreakan/shvecaria.pdf

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- Article 78 § 2 of the Federal Criminal Code of the Federal Republic of **Germany** states that the statute of limitation on persons who committed murder in grave circumstances does apply time limitation.[42]

The Criminal Code of Canada states that in the Article 269.1:

> ***"Torture*** means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for a purpose including obtaining from the person or from a third person information or a statement, punishing the person for an act that the person or a third person has committed or is suspected of having committed and intimidating or coercing the person or a third person or for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions."[43]

- According to the sub-paragraphs c), d), e) of the 2nd paragraph of Article 33 of the Criminal Code of the Republic of **Hungary**, in case of murder with aggravating circumstances, kidnapping and violence against a representative of authorities as well as terrorism, the regulations concerning the statute of limitations are not applicable.[44]

a. Statistical data and relevant survey analysis according to Armenian legislation

[42] https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/criminal_code_germany_en_1.pdf
[43]Criminal Code of Canada ,169.1
https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec269.1_smooth
[44] Vardevanyan Aram- Certain Issues with Respect to the Institution of Statute of Limitations Prescribed by Armenian and Foreign Criminal Legislations

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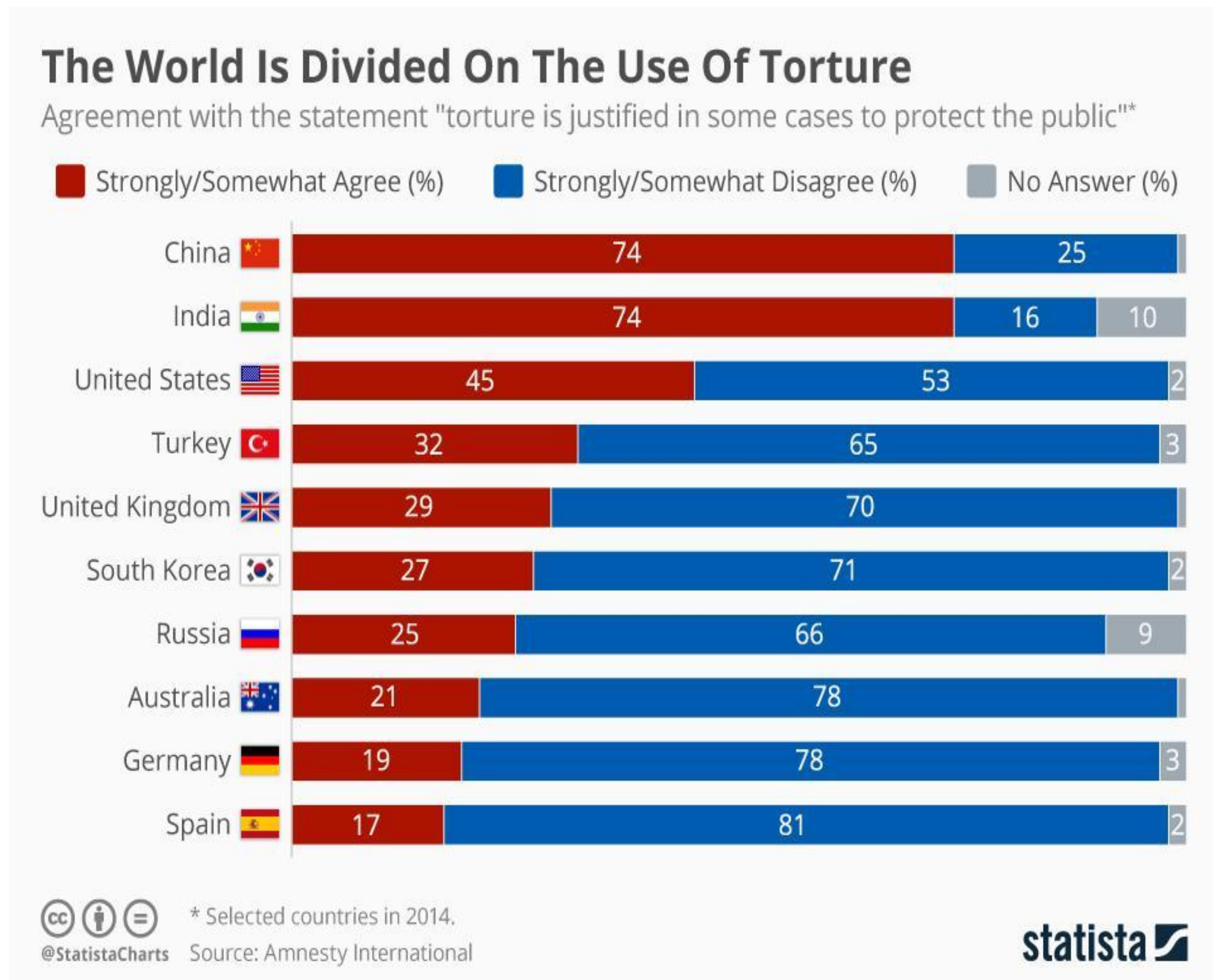
First of all it is important to examine international statistical data and also we should explore statistical situation in Armenia.

Considerable majorities in China and India think torture can be justified to protect the public in some instances while the opposite is true in the UK, Russia and Germany.[45]



45 https://www.statista.com/chart/7779/the-world-is-divided-on-the-use-of-torture/

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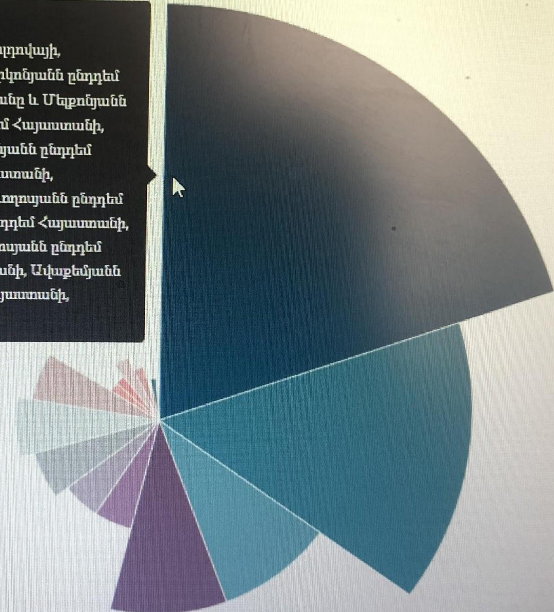

Unfortunately according to above mentioned statistics we see that the most widespread is Article 6.

As well as, it is important to explore the current situation in Armenia statistical information taken from Special Investigation Office. The statistical data will give us main understanding and commonness of that article in Armenia.

	1.Statistical Data from Special Investigative Service[46]	**2015**	**2016**	**2017**	**2018 First Semester**	**2019**

[46] Վատ վերաբերմունքի գործերի քննության առանձնահատկությունները միջազգային չափանիշերի, ՄԻԵԴ–ի նախադեպային իրավունքի, ինչպես նաև ազգային օրենսդրության և դատական պրակտիկայի լույսի ներքո, Երևան 2018 https://rm.coe.int/ill-treatment/1680903592

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1.	The number of criminal cases investigated by torture and other cruel, inhuman or degrading treatment from which	**114**	**104**	**99**	**71**	
2.	Article 308 Criminal Code of RA	1	–	–	–	
3.	Article 309Criminal Code of RA	102	84	50	46	
4.	Article 309.1 Criminal Code of RA	8	17	47	24 (50)	24 (since may 9)
5.	Article 315 Criminal Code of RA	–	–	1	–	
6.	Article 316 Criminal Code of RA	3	2	–	–	
7.	Article 341Criminal Code of RA	0	1	1	1	

Also, there is statistical information from Special Investigative Service that from 2015 June 9th to 2019 February 14th Article 309.1 Criminal Code of RA were investigators have 115 proceedings.

For summing up, we see that foreign practice gives us the understanding that torture cases are widespread internationally and in Armenia as well. A lot of measures done for preventing and also for reducing the probability of next possible risks. Prohibition against torture is protected by different Conventions treaties and laws. We explore the situation in different countries, understand the situation in Armenia and bring parallels between them. So, it is unacceptable to derogate and ignore the current situation in our country and it will be better to do the legislative changes for improving the situation and increasing the possibilities to prevent for further crimes.

Without shadow of a doubt, besides the studies there should be taken into consideration some interviews and ideas that was taken from current working people that everyday are facing with these problems. They give us ideas their thoughts and solutions for future to "built" the right answer.

b. Interview and questions from current working people in that field.

The interview were taken from current working people. The main questions that were given are follows:

Question 1* : *Does torture namely Article 309.1 of Criminal Code RA is widespread in our country?

Question 2: Does legislative changes will bring positive effect in torture cases?

Question 3: If legislative changes will appear, do you think there should be prohibition for time limitation in torture and relevant cases as well as prohibition for granting pardon or amnesty?

Question 4: Should injured person have main opinion in torture cases?

Question 5: Overall the legislative changes are deteriorating norm (rule) for defendants. What do you think would it be effective for preventing future crimes?

Bisharyan Karen who is working in the Prosecutor's General Office in the department for supervision over the investigation of especially important cases as a vice head of that department. He gives an opinion that according to international law and treaties there is a strict prohibition for torture crimes. If we look from the perspective of legislative changes definitely

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there should be strict prohibition without any possibility such as injured person's opinion. As if we give such kind of possibility there definitely could be impunity and as a result we could not prevent future crimes. At that moment they are preparing some criminal cases that should be send to the court that regards to police officers and if the result will be as we expected the police officers should be punished and if time limitation, granting pardon/amnesty would not appear it is definitely is a very strict punishment and could be a "lesson" for others not do that way. Definitely legislative changes could bring a positive effect and could prevent for future crimes.

Varuzhan Ghahramanyan who is working in Special Investigation Service as a head of investigation department of tortures and crimes against Person gives an opinion that if we look practically there should be prohibition for time limitation as it is stipulated in international law and prohibited as well. He thinks that there could also be alternative way namely it could be injured person's opinion. He explained it and said that in a lot of cases that were almost past more than ten years practically it is possible that injured person could give an opinion and could agree for using time limitation. Injured person's opinion could be taken into consideration only for article 309.1 of RA Criminal Law part 1 and part 2. Definitely legislative changes could be possible effect for preventing future crimes.

CONCLUSION

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In this thesis I have used legal and sociological approaches to analize and provide the use of torture.

I began by presenting definition of torture according to international standards, what changes were done in judicial systems, current position of torture as an act prohibited by international law and norms of jus cogens and especially in conjunction with human rights norms. Then I discuss the definition of statute of limitation, granting pardon/amnesty according to international standards. Also, I review some relevant ECHR cases for understanding the main problems.

In the second part of my thesis I discussed the definition of torture according to Armenian legislation .

Moreover, I explore the definition of time limitations, bring understanding in what situations granting amnesty/pardon and relevant torture cases.

Then for summing up, I bring parallels between international and national legislations, explore the main problems and put forward the solutions.

In the third part of this thesis I bring statistical reviews from international standards and also current statistical data in Armenia. Also, I took interview from current working people to understand their opinion regarding to the modernity of the main problem that was stipulated in my master paper. Statistical data gives us the understanding that torture cases are common not only internationally but also in our country. Fight against torture are strictly protected by a lot of conventions , treaties and laws.

A lot of experts in that field gave the opinion that definitely there should not be time limitation for torture cases in Armenian legislation and there are a lot of problems based on the contradiction between international standards and national law. From Prosecutor General Office we see strict position of prohibition for torture crimes without any alternative way. On the other hand Special Investigation Service observe the possibility in some cases the injured person's opinion. Both experts think that definitely the legislative changes will bring positive effect and will prevent for doing future crimes.

The only way to overcome these problems is to do legislative changes. It is important to once again mention that for understanding the importance of the legislative changes now it is *preparing* the legislative project by the Ministry of Justice. In their project, they are stipulating some main problems and issues that in this report raises as well. According to the author's

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opinion under the proposed legislative amendments, full compliance with the international commitments undertaken by Armenia and the legal regulations set out in domestic law will be ensured. “At the same time, the effectiveness of the fight against torture cases and the fight against impunity will increase, and the criminal policy of the state against violence by officials will be laid on new quality legal grounds”.[47]

In that way prohibiting the time-limitation and granting pardon/amnesty we could ensure that future grave crimes could decrease because people could not “escape” from detention and for them could not be gentle punishment..The legislative changes absolutely will bring positive changes. The legislative changes and prohibition against torture will help us to overlap a situation and ensure to prevent future risks. It is also a great possibility to be a part of international regulation systems.

Furthermore, solving the issue of misunderstanding will help us to overlap the situation and as a result of these actions, the vulnerable group of injured people will not bear the risk of the gap of the law. In this sense, legislative changes will make them one step closer to becoming a fully international standardized legislative country. These changes can be explained from the judicial viewpoint, by the changes in the judicial systems and the increased influence of the human rights norms.

[47]«Հայաստանի Հանրապետության քրեական օրենսգրքում լրացումներ և փոփոխություն կատարելու մասին», ««Ներման մասին» Հայաստանի Հանրապետության օրենքում փոփոխություն կատարելու մասին» Հայաստանի Հանրապետության օրենքների նախագծեր https://www.e-draft.am/projects/1486

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45.Վատ վերաբերմունքի գործերի քննության առանձնահատկությունները միջազգային չափանիշերի, ՄԻԵԴ–ի նախադեպային իրավունքի, ինչպես նաև ազգային օրենսդրության և դատական պրակտիկայի լույսի ներքո, Երևան 2018
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46.«Հայաստանի Հանրապետության քրեական օրենսգրքում լրացումներ և փոփոխություն կատարելու մասին», ««Ներման մասին» Հայաստանի Հանրապետության օրենքում փոփոխություն կատարելու մասին» Հայաստանի Հանրապետության օրենքների նախագծեր
https://www.e-draft.am/projects/1486

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