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THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND DUE PROCESS IN ARMENIA

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Abstract

The assurance of human rights relating to due process is essential for society to feel safe and protected. The right to liberty is a supreme value and no one should be deprived of it except in special cases prescribed by law. The rule of law and a democratic form of government are guarantors of human rights and are directed for the establishment of law order and justice.

After becoming a member of Council of Europe and ratifying the European Convention on Human Rights and Fundamental Freedoms, Armenia is obliged to guarantee human rights protection for all people living in the territory of the Republic of Armenia. The legislative gaps and imperfect legal practices make it difficult to implement the provisions of the Convention and ensure due legal proceedings in Armenia. Amendments and improvements are needed both in legislation and practice of judiciary system and the whole legal procedures in order to provide full human rights protection under the articles of the European Convention and Protocol No. 7 relating to due process.

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Introduction

The European Convention on Human Rights (ECHR), properly known as the European Convention for the Protection of Human Rights and Fundamental Freedoms, was signed in Rome on November 4, 1950 by the member-states of the Council of Europe. It is the centerpiece of the human rights protection system and one of the most revolutionary international agreements ever signed. Twelve fundamental individual human rights were recognized and guaranteed in the ECHR at its signature in 1950. Subsequent agreements extended the number of rights which benefit from the protection of the Convention.

In accepting the ECHR, states agree to guarantee the rights enshrined therein and to provide an effective remedy for human rights violations at domestic level. If the national protective layer fails, the individual is permitted to petition an independent international European Court of Human Rights established by the ECHR. States agree to be bound by and to implement the decisions of the Court. As a consequence, when a decision is challenged by an individual, it may lead to important changes in a State's legal framework.

Human rights are derived from the inherent dignity and worth of the human person and they are universal, inalienable and equal. This means that they are inherent in every human being; they cannot be taken away from, or surrendered by, any person; and that everyone has human rights in the same measure regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights concern relationships between individuals and the state. They control and regulate the exercise of the state power over individuals, confer freedoms on individuals in relation to the state, and require states to satisfy basic human needs of people within their jurisdiction.

"It is the primary obligation of the state to respect (refrain from violating), to protect (to secure that a third non-state party does not violate) and to fulfill (undertake all the

necessary measures) human rights, which is partially manifested in the country's national legislation and accessions to international agreements" (Human Rights and Human Development, 2000, p. 17). In this context the state may be the guarantor of human rights protection, which implies democratic governance and the rule of law.

The Republic of Armenia became a full member of the Council of Europe on January 25, 2001. The Armenian parliament ratified the European Convention on Human Rights and Fundamental Freedoms on April 26, 2002, and beginning from that time it became the part of the Armenian domestic legal system. Armenia took obligations to amend its legislation and bring it in conformity with the European human rights standards guaranteeing for every citizen the protection of basic human rights and freedoms. Citizens of Armenia were given a right to apply to the European Court of Human Rights in Strasbourg to defend their rights violated by the Armenian government.

Despite the Armenian government's willingness to fully implement the requirements of the convention there are a lot of problems and deficiencies concerning the protection of human rights in Armenia. The level of awareness and knowledge about the domestic and international protection mechanisms was low among citizens; and there is widespread distrust and disbelief among people in fair trial and in the institute of legal defense. People do not feel secure; and there are the constant violations during the detention procedures and court hearings. The issue of the independence of judiciary is questioned and is not provided by the Armenian legislation (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

The purpose of this paper is to analyze and compare the current Armenian legislation and its applicability on practice with the provisions of the ECHR articles relating to the due process. The paper will offer some recommendations on how to improve the Armenian legislation and practice and what steps should be undertaken to provide full protection of rights under study for Armenian people.

Literature Review

The literature concerning the interpretation of the articles of the Convention is very rich. All the decisions of the European Court on Human Rights reflect the provisions of the Convention and give specific explanations of the applicability and the scope of rights enshrined in it. The vast majority of cases heard by the Court concern violations of Article 5 and 6 – right to liberty and security and right to a fair trial; and those cases are evidence of the importance of protection and warranty of the rights. To safeguard the rights of due process and implement the requirements of the Convention, the rule of law and legal order should be established and domestic protection mechanisms should work properly in order not to defend them internationally (Human Rights and Human Development, 2000).

In the literature concerning the correspondence of Armenian legislation to the European Convention standards, most authors point out the amendments done and new laws adopted by the requirements of Council of Europe after the Armenian membership to this international organization. Constitutional amendments are another step forward toward full implementation of the requirements and establishing a more balanced and separated government with independent judiciary and the rule of law.

However, when tuning to practice, most sources stress a lot of huge violations of law provisions and human rights of due process that are in place in Armenia (The Bureau of Democracy, Human Rights, and Labor Report, 2005). The unawareness and low legal culture of both law enforcement bodies and people make the implementations of laws almost impossible and unattainable. All Armenian literature relating to the issues of due process illustrate existing gaps in Armenian legislation and practice and emphasize the importance of creation of the independent judiciary for ensuring the right to liberty and security and the right to a fair trial (Khachatryan, 2004).

The European Convention on Human Rights and Fundamental Freedoms (ECHR) is the first international document that codifies the rights provided in the Universal Declaration of Human Rights. Its creation was the response to the atrocities and violations of human rights during the WWII and its aim was to protect and not to allow future human rights abuses. For this purpose the Convention creates a mechanism – the European Court of Human Rights which task is to ensure the observance of the engagements undertaken by the member-states and to restore violated rights guaranteed by the Convention (Jacobs&White, 1996).

ECHR obliges every member-state to provide the European standards in the area of the protection of human rights. The rights protected under the Convention and its 14 additional protocols include right to life (Art.2), prohibition of torture (Art. 3), prohibition of slavery and forced labor (Art. 4), right to respect for private and family life (Art. 8), etc.

The focus of this paper is on the rights relating to the due process - right to liberty and security (Art. 5, paragraphs 1 (a), (c), 2, 3, 4, 5), right to a fair trial (Art. 6), no punishment without law (Art. 7), right to an effective remedy (Art. 13), right of appeal in criminal matters (Prot. 7, art. 2), compensation for wrongful conviction (Prot. 7, art. 3) and right not to be tried or punished twice (Prot. 7, art. 4).

The reason why these particular rights are selected for the study is that currently in Armenia there are many problems in administering justice and almost all international and domestic human rights organizations point out the existing and continuing abuses of the rights of due process. The purpose of this paper is to analyze the current Armenian legislation and its applicability on practice with the provisions of the ECHR articles relating to the due process.

The research questions are:

1. Is there an inconsistency between the rights enshrined in the articles 5, 6, 7, 13 of the European Convention and articles 2, 3, 4 of the protocol No. 7 and Armenian domestic legislation?
2. What are the major factors that impede the development of human rights relating to the due process and fair trial in Armenia?
3. What major improvements in the Armenian legislation and practice should be made to bring it in conformity with the European Convention standards concerning the rights of due process?
4. What are the criteria of an independent and impartial judicial system and what is the situation today in Armenia concerning the free and fair trial and independent judiciary?

Methodology

The legal analysis of the articles of the European Convention on Human rights relating to due process was done based on the case law of the European Court of Human Rights in Strasbourg.

The provisions of Armenian legislation that relate to due process and fair trial were analyzed and compared with the requirements of the European Convention. Armenian legislation includes the Constitution, legal acts of the National Assembly, and decrees of the president, prime-minister, and governmental decisions.

The analysis was also done relating to the correspondence of Armenian legislation and its practice. To answer the research questions in-depth interviews were conducted with human rights lawyers and experts in the field.

Analysis

Provisions of the ECHR Concerning the Rights of Due Process

The Council of Europe was founded in 1949 with the aim of forging greater links between countries in Europe in order to facilitate social and economic progress and safeguarding democracy, human rights and the rule of law. Elaborate series of mechanisms have been developed by the member States of the Council of Europe to protect human rights and ensure rehabilitation for violations in Europe.

By signing and ratifying the international covenants on human rights Armenia has made a commitment to undertake all the necessary measures for the implementation of norms and provisions enshrined in those international documents. These activities are being carried out by elaboration of domestic legislation and law enforcement mechanisms, which unfortunately have many things to be improved and amended in Armenia.

In order to understand and compare the provisions of the Convention to Armenian legislation and practice, the analysis of ECHR corresponding articles and their interpretation should be presented. The explanation and elaboration of the articles is provided by the huge case law of the European Court of Human Rights in the Court's decisions and attached opinions of judges.

Provisions of due process in Article 5 of the European Convention state:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a) the lawful detention of a person after conviction by a competent court;

b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence

or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 5 of the European Convention embodies a key element in the protection of an individual's human rights. Personal liberty is a fundamental condition, which everyone should generally enjoy. Judges should constantly keep in mind that in order for the guarantee of liberty to be meaningful, any deprivation of it should always be exceptional, objectively justified and of no longer duration than absolutely necessary. Furthermore, the presumption

in favor of liberty is underlined by the imperative requirement under Article 5 to ensure that liberty should both be lost for no longer than is absolutely necessary and be capable of being readily recovered where such loss is not justified. The former is evident in the stipulation that suspected offenders "shall be entitled to trial within a reasonable time" and the latter is found in the prescription that everyone deprived of liberty "be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful" (Macovei, 2002, p. 8).

Article 5 enshrines the right to liberty and security of person and as a whole contemplates the protection of physical liberty and particularly freedom from arbitrary arrest or detention. Under paragraph 1 it provides protection from arbitrary arrest by setting out an exhaustive list of six permissible grounds for deprivation of liberty. In other words, a state does not have the discretion to create additional categories of justification for detaining or imprisoning individuals, but must act within the confines established by the Convention. Under paragraphs 2, 3 and 4 it sets out procedural rights which must accompany any of the grounds for deprivation of liberty. Paragraph 5 provides the right to be compensated for unlawful detention or arrest.

Article 5.1 provides that a state may legitimately detain someone on grounds founded in either the criminal or the civil law. However, both paragraphs "a" and "c" of the Article 5 fall within the realm of the criminal law and particularly these two paragraphs of Article 5.1 will be further analyzed in the essay.

Article 5.1 "a" allows "the lawful detention of a person after conviction by a competent court". For the purpose of this provision, a conviction means the finding of guilt for a committed offence. It clearly does not cover pre-trial detention or other preventive security measures. The conviction must be decided by a "competent court", meaning a body

with jurisdiction to hear the case as well as a body which is independent by the executive and the parties and which provides adequate judicial guarantees.

The “lawfulness” of the detention does not require a lawful conviction but a lawful detention only, meaning that the detention must be in accordance with the national law and the Convention. The lawfulness requirement means that the particular prison sentence must have a basis in a conviction by a “competent court” and that the facts to which the sentence relates constitute an offence permitting the imposition of the imprisonment in accordance with the domestic law at the time the offence was committed. Under Article 5.1 “a”, the European Court cannot review the legality of a conviction or of a sentence. Equally, a person may not challenge the length and the appropriateness of a prison sentence under this provision nor the conditions of detention (Macovei, 2002).

According to Article 5.1 “c” there must actually be an offence existing under national law for this ground to be legitimately invoked as a basis for depriving someone of liberty. This does not mean that there is a need to establish that an offence has actually been committed but that the conduct giving rise to the deprivation of liberty must be alleged to fall within the scope of an offence already established by law. In addition to this essential prerequisite, there are also two further key requirements. The first is that the objective of apprehending the suspected offender must be to bring him or her before the “competent legal authority” and the second is that the suspicion about the commission of the offence must be “reasonable” (Macovei, 2002, p. 23).

The stipulation in Article 5.1 “c” of the need for a reasonable suspicion that the person being deprived of liberty has committed an offence ensures that a deprivation only occurs where it is well-founded and is thus not arbitrary. Continuation of detention must be subjected to prompt judicial scrutiny which should not only consider whether it was justified in the first place but also whether it was still appropriate. The Court has recognized four

reasons as relevant for continuing a person's pre-trial detention where there is still a reasonable suspicion of his or her having committed an offence. These are the risk of flight; the risk of an interference with the course of justice; the need to prevent crime; the need to preserve public order" (Macovei, 2002).

Article 5.1 "c" provides that the state may detain an individual for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence, when it is reasonably considered necessary to prevent his committing an offence, or to prevent the flight of an offender. The main operative standard of this provision is reasonableness, which leaves a certain margin of appreciation to the states in determining the standard. The requirement of "reasonableness" in Article 5.1 "c" of the Convention forms an essential part of the safeguard against arbitrary arrest and detention. Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed an offence (Gomien, 2002).

Of the procedural guarantees set forth in Article 5 of the Convention, some apply to both criminal and civil forms of detention; others only to the criminal. Article 5.2, which sets forth the right of an individual to be informed promptly, in a language he understands, of the reasons for his arrest and any charges against him, seems to apply to deprivations of liberty in both the criminal and the civil contexts. Article 5.2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. Any person arrested should understand the essential legal and factual grounds for his arrest, so as to be able, if he sees fit to apply to a court to challenge its lawfulness.

The obligation under Article 5.2 is more limited than the duty imposed by Article 6.3 "a" to inform an accused person of the nature and cause of the accusation against him; much more detail is required in the latter situation because this will be essential for the preparation of a defense at the forthcoming trial. Article 5.2 stipulates that that the reasons must be given

"promptly" rather than "immediately". Macovei (2002) states "The acceptability of the interval between the initial apprehension and the moment when an adequate explanation is given will depend very much on the circumstances of the particular case" (p. 48).

The provision of Article 5.3, which requires that persons detained under Article 5.1 "c" must be brought promptly before a judge or other judicial officer encompasses both procedural and substantive protection for such persons. The judge or judicial authority before whom an individual is brought must, in fact, listen to that individual. It follows that the individual must be brought personally before the judicial authority. The judicial authority must review all issues relating to the detention question, and take the final decision by reference to objective legal criteria. In order to fulfill this role, the authority must take its decision independently, according to procedures prescribed by law and in accordance with norms established by law. The European Court has held that for a state official who exercises the role of both prosecutor and investigator these requirements are not met (Gomien, 2002).

The initial grounds for detention can be such factors as likelihood of flight from the jurisdiction and the risk of the committal of further offences. However, it is clear that Article 5.3 does not intend a state to detain an individual indefinitely and if the "reasonable suspicion" criterion of Article 5.1 "c" ceases to apply continued detention becomes unlawful. The introduction of the possibility of bail minimized the danger of flight thereby rendering continued detention on these grounds unacceptable.

Moreover, Article 5.3 also guarantees the right to trial within a reasonable time if an individual has not been released. The purpose of this provision is to avoid indefinite detention while the state investigates a given case. The provision of Article 5.3 concerning the reasonableness of a continued detention has to be assessed in each case according to special features.

Article 5.3 guarantees the right to bail and contains a strong presumption in favor of bail pending trial. The presumption grows stronger if the trial is delayed. The refusal of bail may only be justified under the four grounds identified by the Court – danger of flight, interference with the course of justice, prevention of crime and preservation of public order.

Article 5.3 requires that deprivation of liberty pending trial should never exceed a reasonable time. The period of the detention considered by the Court runs from the moment of the arrest until the moment the person is released. If the person is not released during the trial, the period to be considered ends when the first instance court issues a decision of acquittal or conviction. The period of detention following conviction by the trial court, for example during the appeal proceedings, is not taken into account.

In determining what is "reasonable", the Court has never accepted the idea that there is a maximum length of pre-trial detention which must never be exceeded and a judgment must always take into account all the special features of each case. Any period, no matter how short, will always have to be justified. The Court's jurisprudence has proved the significance of the particular circumstances of a case. While periods in excess of a year were considered excessive, periods between two and three years were found both acceptable and objectionable (Macovei, 2002).

Paragraph 3 of Article 5 incorporates a number of essential guarantees in order to make deprivation of liberty an exception to the rule of liberty and to ensure that judicial supervision over arrest and detention is in place. This paragraph is only concerned with detention pursuant to Article 5.1 "c". The obligation in Article 5.3 to ensure that judicial supervision is exercised over arrest and detention comprises three elements: the character of the person exercising that supervision; the authority to bring that detention to an end, in other words to release the person concerned; and the timeliness within which the supervision occurs. The judge before whom the person is to be brought should be responsible for

determining whether his or her detention can be continued or should be terminated. Any order on this matter must have binding effect. This is a critical point: Article 5.3 establishes a choice between release and trying the detained person within a reasonable time (Macovei, 2002).

A key part of the requirement of judicial supervision is that its initial exercise should occur "promptly". The promptness requirement sets an outer limit to the interval between the initial detaining act and the point at which this is first subjected to judicial supervision. However, the outer limit must be applied with due regard to circumstances of the individual case (Macovei, 2002).

Judicial scrutiny plays a significant role in ensuring that the risk of arbitrary detention is minimized. There is a continuing obligation on the detaining authorities throughout the period of detention to consider whether its continuation is really justified and, if not, to release the person concerned. Observance of the "promptness" requirement remains a vital guarantee against detention which is either arbitrary from its outset or becomes so with the passage of time and changing circumstances. A final point on this aspect of judicial supervision is the periodical review where the judge decides that continued detention is justified. This necessarily follows from the point already made that circumstances can change and, while grounds for detention may exist in the early stages of an investigation; these may no longer be compelling at a later stage. It is incumbent on the detaining authorities, therefore, to submit the case for detention to judicial supervision at regular intervals and these ought not to exceed a month or two. Without this continuing supervision, which must be as rigorous as that at the initial examination, a person could be kept in detention when this is not compatible with the Convention (Macovei, 2002).

Article 5.4 provides an individual deprived of his liberty through arrest or detention a right to challenge in court the lawfulness of such deprivation. Such a challenge must be heard

speedily, and the individual must be released if the court decides that a given detention is unlawful. Lawfulness implies conformity with the substantive and the procedural rules of domestic law and also with the purpose of Article 5, namely to protect individuals from arbitrariness. In a democratic society subscribing to the rule of law, no detention that is arbitrary can ever be regarded as lawful (Jacobs & White, 1996).

Article 5.4 is autonomous: a state may be found to violate the provision of lawfulness even if its grounds for detaining a given individual are found to be acceptable under other sections of Article 5. The substantive right at issue in Article 5.4 is the availability of review of the legality of detention. Most cases under Article 5.4 have related to the claim that the lack of regular periodic review of the legality of detention constitutes a violation of the article 5 (Gomien).

In addition to the judicial supervision under Article 5.3 which must come from the detaining authorities, Article 5.4 guarantees the option of the detainee to bring proceedings challenging the lawfulness of the detention before a court, which must decide speedily and order the release if the detention is found unlawful. The requirement in Article 5.4 is that there should be something comparable to "habeas corpus" so that the legality of one's detention can be tested. The crucial elements of the obligation in this provision are that the supervision must be by a court, must entail an oral hearing with legal assistance in adversarial proceedings, must address the legality of the detention in the widest sense, and must take place speedily. It is essential that the proceedings have to be before a judge and meet all the fair trial requirements in Article 6, but particularly those relating to independence and impartiality (Macovei, 2002).

The independence requirement will obviously not be satisfied if the review is carried out by a body which in some way is answerable to the executive. The impartiality requirement will be doubtful if the judge has in some way had a previous involvement with

the case, for example, by agreeing that the person's remand in custody after his initial apprehension was warranted. The whole point of this provision is that a person should be able to secure his or her release if the detention is shown to be unlawful (Macovei, 2002).

The Court emphasized the importance of the detainee being able to resist the submissions of the prosecutor regarding his detention, because the detainee is seeking to allege that the detention was in incompatible with the law and because the personal appearance before a court diminishes the potential for abuse in detention (Macovei).

Macovei (2002) claims that in making the case for release it is more than likely that the basis for the claim will involve difficult legal issues, and most detainees are unlikely to be in a position to prepare all the necessary arguments. It is, therefore, an inevitable consequence that a detainee should be allowed access to legal assistance for the purpose of mounting a challenge. Where the detainee cannot afford a lawyer the expense will have to be borne by the state.

The need for assistance goes well beyond the preparation of a claim and entails representation in the court proceedings. These proceedings must also be adversarial and observe the requirements of equality of arms, that is to say the person seeking release must be aware of the submissions made to justify detention, including the supporting evidence, and have an adequate opportunity to respond to them. A fair opportunity for preparation also means that the detainee must have the necessary time for this purpose; if the possibility of challenge is too speedy then the remedy might be more apparent than real. Similarly the detainee must be allowed access to facilities needed to prepare his or her case; this might mean providing legal books, the opportunity to prepare submissions, which could affect the way in which the prison regime is applied and, of course, the opportunity to discuss the case with his lawyer out of the hearing of the detaining authorities (Macovei, 2002).

Although an acceptable interval between initial detention and judicial supervision under Article 5.4 is not defined, it is clear from a vast array of cases that the time taken should still be no more than a matter of weeks (Gomien, 2002). There must be a continuing possibility of mounting a challenge so long as one is in detention. This does not mean, however, that the detainee must be able to bring proceedings at any and every moment; that could obviously lead to paralysis in the criminal justice system. The Court has, therefore, come to the conclusion that "the possibility of challenge should exist at reasonable intervals" (Macovei, 2002, p. 66).

Article 5.5 requires that those who have been the victim of arrest or detention in breach of the other provisions of this article should have an enforceable right to compensation. The absence of such a right will inevitably give rise to liability in proceedings before the European Court. Like Article 5.4, this provision is a specific manifestation of the more general obligation in Article 13 of the Convention to provide an effective remedy where any of the guaranteed rights and freedoms have been violated. The terms of Article 5.5 do not leave a state any discretion as to the body from which the remedy of compensation is to be obtained (Macovei, 2002).

Article 5.5 requires a remedy before a court, meaning that the remedy must be awarded by a legally binding decision. With regard to the form of the legal procedure by which the right to compensation can be vindicated, the national authorities enjoy a fair amount of latitude. In practice, the remedy will normally consist in financial compensation. There is scope for national variations as to the assessment of the amount of compensation that is payable but not as to the precise elements of loss that should be recognized in making an award (Macovei, 2002).

Prior to deciding the compensation, the national authorities may require evidence of the damages which had resulted from the breach of Article 5. An Article 5.5 remedy is

required only where the alleged victim had been arrested or detained contrary to any of the provisions in Article 5 paragraphs 1 to 4. Most often, the Court will consider a claim under Article 5.5 only if it finds that another paragraph of Article 5 has been violated. Moreover, when doing this, the Court will not require the victims to exhaust the local remedies in order to find out whether they could obtain a remedy before the national authorities. In countries where the Convention has been incorporated into the national law, the courts must be empowered to award such compensation where they find a violation of Article 5 and they must be prepared to exercise this power; any failure on their part will only further compound the violation of Article 5 that has occurred (Macovei, 2002).

The right to a fair trial is provided by the Article 6 according to which:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defense;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 6 is interpreted very broadly on the grounds that it is of fundamental importance to the operation of democracy. The European Court stated in the Delcourt v. Belgium case (1970) that "in a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that the restrictive interpretation of Article 6.1 would not correspond to the aim and the purpose of that provision" (Gomien, 2002, p. 27).

The first paragraph of Article 6 applies to both civil and criminal proceedings, whereas the second and third paragraphs apply exclusively to criminal cases. Article 6 lists a number of elements comprising the fair administration of justice. Fundamental to the entire process is access to a procedure with all the attributes of a judicial form of review and the access to a judicial forum must be substantive, not just formal.

Article 6.1 guarantees everyone a right to a fair hearing in the determination of his/her civil rights and obligations. From the wording of this article, it is clear that it does not cover all proceedings that an individual might be a party to, but is limited to those concerning civil rights and obligations (Mole & Harby, 2001, p. 17).

Charge is an autonomous concept under the Convention which applies irrespective of the definition of a charge in domestic law. The Court then went on to state that charge could

be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence, or, where the situation of the suspect has been substantially affected” (Mole & Harby, 2001, p. 17).

Article 6.1 guarantees to everyone a hearing within a reasonable time. The time to be taken into consideration starts running with the institution of proceedings in civil cases, and in criminal cases with the charge. Time ceases to run when the proceedings have concluded at the highest possible instance, i.e. when the determination becomes final.

There is no absolute defined time-limit however, the Court has established in its case-law that when assessing whether a length of time can be considered reasonable, the following factors should be taken into account: the complexity of the case, the conduct of the applicant, the conduct of the judicial and administrative authorities of the State, and what is at stake for the applicant (Mole & Harby, 2001).

Article 6.1 states that everyone is entitled to a hearing by an independent and impartial tribunal established by law. The two requirements of independence and impartiality are interlocked, and when deciding whether a tribunal is independent, the following criteria are important to look at: the manner of appointment of its members, the duration of their office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. The court must be independent of both the executive and the parties. The tribunal must have the power to give a binding decision which can not be altered by a non-judicial authority.

The publicity requirement of Article 6.1 applies to any phase of a proceeding which affects the determination of the matter at issue. The public hearing requirement normally encompasses also the right to an oral hearing at the first instance level particularly where a party to the case specifically requests one.

Article 6.1 states that everyone is entitled to a fair hearing. This expression incorporates many aspects of the due process of the law, such as the right to access to court, a hearing in the presence of the accused, freedom from self-incrimination, equality of arms, the right to adversarial proceedings and a reasoned judgment. The accused in criminal proceedings must be present at the trial hearing.

The right to a fair hearing also incorporates the right to adversarial proceedings, which means in principle the opportunity for parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed.

The equality of arms principle imposes an obligation on prosecuting and investigating authorities to disclose any material in their possession, or to which they could gain access, which may assist the accused in exonerating himself or in obtaining a reduction in sentence. This principle extends to material which might undermine the credibility of a prosecution witness. In Foucher v. France the Court held that where a defendant who wished to represent himself/herself was denied access by the prosecutor to the case file and not permitted copies of documents contained in it and thereby was unable to prepare an adequate defense, this was a violation of the principle of equality of arms read together with Article 6.3 (Mole & Harby, 2001).

The “equality of arms” principle is the most important of the principles of Article 6 and encompasses the idea that each party to a proceeding should have equal opportunity to present his/her case and that neither should enjoy any substantial advantage over his opponent. The equality of arms principle encompasses the notion that both parties to a proceeding are entitled to have information about the facts and arguments of the opposing party and that each party must have an equal opportunity to reply to the other (Gomien, 2002).

The European Court of Human Rights has found violations of Article 6 where a domestic court based its judgment on submissions about which the defendants had no knowledge, where one side was denied access to relevant documents contained in the case-file or was refused the right to have certain evidence considered including that of expert witnesses, where a procurator was heard on the issue of allowing or dismissing an appeal of an individual who was excluded from the hearing, where courts considered submissions from only one party and where a party was never informed about relevant dates in proceedings against him. The Court further held that in most circumstances, defendants must be present and entitled to take part in any proceedings (Gomien, 2002).

Article 6.2 enshrines the presumption of innocence in the Convention. The European Court of Human Rights has extended the principle that judicial authorities should not pronounce on the guilt of an individual prior to a final determination of that guilt to apply also to other public officials, finding a violation of Article 6.2 where, at a press conference, a government official and the policeman in charge of a criminal investigation declared a suspect guilty prior to any charges having been filed against him (Gomien, 2002).

Article 6.2 states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. The principle of the presumption of innocence requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. Article 6.2 applies to criminal proceedings in their entirety, and comments made by judges on the termination of proceedings or when the accused has been acquitted will violate the presumption of innocence. Not only the courts but also other state organs are bound by the principle of presumption of innocence.

Paragraph 3 of the Article 6 sets out five separate rights for a person charged with a criminal offence. These are all intended to secure procedural equality between defense and prosecution which is an essential element of a fair trial.

The list of minimum guarantees set out in Article 6.3 "a" – "e" is not exhaustive. It represents specific aspects of the right to a fair trial. The Court has held that the relationship between Article 6.1 and Article 6.3 "is that of the general to the particular" (Mole & Harby, 2001, p. 54). A criminal trial could therefore fail to fulfill the requirements of a fair trial, even if the minimum guarantees in Article 6.3 are upheld.

Article 6.3 "a" provides the right to be informed promptly in a language which the accused understands, and in detail, of the charge. To date, there has been little case-law under this provision of Article 6.3. In the case of Brozicek v. Italy (1989), the Court found a violation of the right to be informed where a resident in a country was charged with a criminal offence in another country and was served with papers to that effect in the language of the second country. In spite of his requests for translation of the charges into "one of the languages of the United Nations", the second country proceeded to try him in absentia and ultimately to find him guilty, without ever responding to his request (Gomien, 2002).

Article 6.3 "b" states that everyone charged with a criminal offence has the right to have adequate time and facilities for the preparation of his/her defense. The judge's key role in relation to this provision is to achieve the proper balance between this requirement and the obligation to ensure that trials are concluded within a reasonable time. The provision is also closely related to Article 6.3 "c", the right to legal assistance and legal aid. The adequacy of the time will depend on all the circumstances of the case, including the complexity and the stage the proceedings have reached.

A fundamental element is that the defense lawyer must be appointed in sufficient time to allow proper preparation to take place. This principle implies a presumption that the

lawyer has unrestricted and confidential access to any client held in pretrial detention in order to discuss all elements of the case. A system which routinely requires the prior authorization of the judge or procurator for legal visits will violate this section. Judges should make it clear to all parties when authorizing or prolonging pre-trial detention that their permission is not required for legal visits to take place. If in addition the prosecutor wishes to authorize legal visits not only will this provision be violated but the whole fairness of the trial may be questionable. It follows that the prison authorities cannot require any authority from the judge in order to facilitate legal visits. Furthermore they must ensure that adequate facilities are provided to enable legal visits to take place in confidence and out of hearing of the prison authorities (Mole & Harby, 2001, p. 54).

The provision to have adequate time and facilities for the preparation of the defense is closely connected with the right to be fully informed, guaranteed by Article 6.3 "a", and the right to legal representation guaranteed by Article 6.3 "c". However, an individual could not invoke this definition in order to imply a right of unlimited access to the investigating authorities' files on a case. Access by the defense counsel to the relevant files suffices to meet the requirements of Article 6.3 "b": the accused himself has no automatic independent right to review his own files (Gomien, 2002).

Article 6.3 "c" provides for the accused the right to defend himself/herself in person or through legal assistance of his/her own choosing or, if he/she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. Where the accused has the right to free legal assistance, he/she is entitled to legal assistance which is practical and effective and not merely theoretical and illusory.

Article 6.3 "c" provides the right to defense and the provision of free legal assistance; defense counsel and defendant must be able to communicate freely and with full respect for

the confidentiality of their communications, whether written or oral. They also must be able to do so in a timely way at the time of arrest or detention.

Article 6.3 “d” provides that the accused has the right to examine witnesses against him/her, and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her. The general principle is therefore that accused persons must be allowed to call and examine any witness whose testimony they consider relevant to their case, and must be able to examine any witness who is called, or whose evidence is relied on, by the prosecutor.

According to provisions of Article 6.3 “d” all the evidence has to be produced in the presence of the accused at a public hearing with a view to adversarial argument. The use of statements of anonymous informants as evidence to found a conviction involves limitations on rights of the defense which are irreconcilable with the guarantees contained in Article 6.

Article 6.3 “e” provides that the accused is entitled to free assistance of an interpreter if he/she can not understand or speak the language used in court. The Court held in Luedicke, Belkacem and Koç v. the Federal Republic of Germany that the provision absolutely prohibits a defendant being ordered to pay the costs of an interpreter since it provides “neither a conditional remission, nor a temporary exemption, nor a suspension, but a once and for all exemption or exoneration” (Mole & Harby, 2001, p. 65). This principle covered also those documents or statements in the proceedings which is necessary for him/her to understand in order to have the benefit of a fair trial. Among the items demanding interpretation or translation at the expense of the authorities are the charge, the reasons for arrest, and the hearing itself.

The guarantees provided for in Article 6 apply not only to the court proceedings, but also to the stages which both precede and follow them. In criminal cases it includes pretrial investigations carried out by the police.

By and large, under Article 6 the judge has to ensure that the defendant is adequately represented. He/she also has the responsibility of making proper provision for vulnerable defendants. The judge may need to refuse to proceed with the trial if he/she thinks that legal representation is required but none is available. The judge has the responsibility of ensuring that the principle of equality of arms is upheld, which means that all parties must be given a reasonable opportunity to present their case in conditions that do not place them at a substantial disadvantage vis-à-vis their opponents.

Further issues arise in relation to the question of the responsibility of the judge if the defendant appears to have been ill-treated whilst in pretrial detention. The judge also has the responsibility to determine the admissibility of evidence. The judge has the responsibility to ensure that adequate facilities for interpretation are provided. The judge has a duty to ensure that in order to maintain the presumption of innocence, he or she may have to issue the appropriate order to avoid adverse press coverage. However, rather than excluding the press completely, the judge should make clear what the press can and cannot report on.

Freedom from retroactive criminal legislation is provided by the Article 7 of the ECHR which states:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 7.1 of the Convention protects an individual from being convicted for a criminal offence which did not exist in law at the time the act was committed. This reflects

the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). It follows that one must have notice of a prohibited form of conduct in order to be held responsible for its infringement. In the event that an individual has reason to understand and to assess the risks involved in pursuing a particular course of action, the imposition of criminal liability does not lead to a violation of Article 7. Article 7.1 further prohibits a state from imposing on an individual convicted of a criminal offence a more severe penalty than the one that applied at the time of the commission of the offence.

Article 7.2 excludes from the prohibition against retroactive law any acts which were considered to be criminal at the time they were committed "according to the general principles of law recognized by civilized nations." This provision clearly goes back to the Nuremberg and Tokyo principles and their focus on war crimes. It is worth noting in this context that the use of the term "civilized nations" implies that the law and practice of states even not party to the European Convention on Human Rights must be taken into consideration when applying Article 7.2 (Gomien, 2002, p. 42).

Article 13 of the ECHR states: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 13 requires effective remedy for violations of rights and freedoms set forth in the Convention. The fundamental purpose of this provision is to enable individuals who allege that they are victims of breaches of the Convention or its Protocols to have prompt recourse to national authorities to secure domestic remedy (Gomien, 2002).

It is sufficient for a complaint under Article13 for an applicant to show that he or she has been denied effective remedy before a national authority in respect of a claim that one of his or her rights under the Convention or its Protocols has been violated. As far as

proceedings before the Convention organs are concerned, the fact that it is unnecessary for an applicant to show that another provision of the Convention has in fact been violated means that complaints under Article 13 may now be examined independently of complaints concerning other substantive issues. It is open to the Convention organs to find a breach of Article 13 as an independent right even if there has been no violation of a substantive right or freedom. However if a violation of another provision of the Convention has been established, it is generally the case that complaints of violations of Article13 are not examined (Gomien, 2002).

Although the words of Article appear to present a fairly straightforward legal concept, Article 13 has presented more problems of interpretation for the Commission and Court than has any other provision of the Convention (Gomien, 2002). The Court has stated that the protection afforded by Article 13 must extend to anyone with an arguable claim that his/her rights or freedoms under the Convention have been infringed. In the case of Aksoy v. Turkey (1996) the Court found a violation of Article 13, stating that the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the effective identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (Mole & Harby, 2001).

In addition to Article 13, two other provisions of the Convention also require States to provide remedies for violations of protected rights: Article 5.4 (habeas corpus) and Article 6.1 (fair hearing). Because these provisions both explicitly require access to the judiciary, the Court typically considers that the level of protection is higher than that afforded under Article 13. It therefore focuses its review on the Article 5 or Article 6 claim and often declares it unnecessary also to review the effective remedy claim. However, it is important to note that Article 13 may be the sole applicable provision in cases raising the lack of an effective

remedy in regard to violations of rights that are of neither a civil nor a criminal character under the Convention (Gomien, 2002).

The Article 2 of the Protocol No. 7 states:

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

The Article recognizes the right of everyone convicted of a criminal offence by a tribunal to have his/her conviction or sentence reviewed by a higher tribunal. It does not require that in every case he should be entitled to have both his conviction and sentence reviewed. Paragraph 2 of the article permits exceptions to this review by a higher tribunal:

- ✓ for offences of a minor character, as prescribed by law;
- ✓ in cases in which the person concerned has been tried in the first instance by the highest tribunal, for example by virtue of his status as a minister, judge or other holder of high office, or because of the nature of the offence;
- ✓ where the person concerned was convicted following as appeal against acquittal.

When deciding whether an offence is a minor character, an important criterion is the question of whether the offence is punishable by imprisonment or not.

Article 3 of the Protocol provides that compensation shall be paid to a victim of a miscarriage of justice or certain conditions: “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of

such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

First, according to the Article the person concerned has to have been convicted for a criminal offence by a final decision and to have suffered punishment as a result of such conviction. A decision is final "if, according to the traditional expression, it has acquired the force of res judicata. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them" (Janis et al, 2000, p. 512). It follows therefore that a judgment by default is not considered as final as long as the domestic law allows the proceedings to be taken up again. Likewise, this article does not apply in cases where the charge is dismisses or the accused person is acquitted either by the court of first instance or on appeal by a higher tribunal.

Secondly, the article applies only where the person's conviction has been reversed or has been pardoned, in either case on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice – some serious failure in the judicial process involving grave prejudice to the convicted person. Therefore, there is no requirement under this article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the article seek to lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice. This is a matter for the domestic law or practice of the state concerned (Janis et al, 2000).

Finally there is no right to compensation under this provision if it can be shown that the non-disclosure of the unknown fact in time was wholly or partly attributable to the person convicted.

Article 4 embodies the principle of "non bis in idem" meaning that a person may not be punished again in criminal proceedings under the jurisdiction of the same state for an offence for which he has already been finally acquitted or convicted.

Article 4 of the Protocol No. 7 states the following:

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

The words "under the jurisdiction of the same state" limit the application of the article to the national level. The principle established in this provision applies only after the person has been finally acquitted or convicted in accordance with the law and penal procedure of the state concerned. A case may however be reopened in accordance with the law of the state concerned if there is evidence of new or newly discovered facts, or if it appears that there has been a fundamental defect in the proceedings, which could affect the outcome of the case either in favor of the person or to his detriment (Janis et al, 2000).

The term "new or newly discovered facts" includes new means of proof relating to previously existing facts. Furthermore this article does not prevent a reopening of the proceedings in favor of the convicted person and any other changing of the judgment to the benefit of the convicted person. Article 4 since it only applies to trial and conviction of a person in criminal proceedings does not prevent him from being made subject for the same act to the action of a different character, for example disciplinary action (Janis et al, 2000).

All the rights of ECHR analyzed and presented above relate to the principle of due process. They are essential and vital for a state that is based on justice and the rule of law. Each individual should fell protected and secured under the domestic legislation and international covenants and have the right to defend his/her rights internationally after exhausting all domestic remedies.

Armenian Legislation and Due Process

Each state is to ensure that its constitution and its laws are in accordance with its obligations under international law to protect and promote human rights. It must then take the necessary administrative and enforcement measures to secure compliance with its constitution and laws. When those laws are broken and human rights violated, it must deal with the violator according to the law and secure redress for the victim of the violation. If the victim fails to secure redress, the enforcement machinery of the Convention may be invoked.

Article 1 of the European Convention on Human Rights requires the High Contracting Parties to "secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention." Article 13 states that everyone whose Convention rights and freedoms are violated "shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." Furthermore, the whole thrust of the Convention and of the findings and decisions of the treaty bodies is towards securing respect for the rule of law. This means that no person or institution is above the law and all are subject to the law and, more specifically, that there must be no immunity from legal accountability for those who break the law.

"The principle of the rule of law has come to mean, first, the legal framing of the phenomenon of the state power, i.e. the enactment of rules which the government and its agents are obliged to obey; secondly, it means – and it has as direct consequence - the existence of necessary mechanisms to check and sanction any violation of the enactments of

the legislative body, in order to achieve the compliance of the administrative authorities which have disregarded these legislative enactments" (Nika-Manoukian, 2004, p. 89).

The Republic of Armenia proclaims the principle of rule of law and supremacy of law. According to the Article 3 of the Constitution of Armenia "The state guarantees the protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law. The state is limited by fundamental human rights and freedoms as directly applicable norms." This general rule compels the Armenian state to protect its citizens' and all people's rights and freedoms by all means.

Article 6 of the Constitution of Armenia enshrines the rule of law by stating "The supremacy of the law shall be guaranteed in the Republic of Armenia. The Constitution of the Republic has supreme juridical force, and its norms are applicable directly. Laws found to contradict the Constitution as well as other juridical acts found to contradict the Constitution and the law shall have no legal force." However, Armenia does not have adequate mechanisms to guarantee this principle in practice: there is no real separation of powers, the judiciary is not independent yet, and public agencies and courts are corrupt. Several recent surveys have illustrated that only 2% of the public trust the courts (International Helsinki Federation (IHF) report, 2005).

According to Article 6 of the Constitution of Armenia the ratified international agreements are an integral part of the Armenian legal system. Moreover in case of any discrepancy between the two the norms of international agreements overrule. The only legal document that has precedence over international agreements is the Constitution and an agreement can be ratified only after making corresponding amendments in it.

Chapter 2 of the Constitution of Armenia proclaims basic human rights and freedoms that are protected and guaranteed by the state. In Armenia the national human rights

protection institutions include courts and the human rights ombudsperson. The judicial system comprises the first instance courts; appellate courts for civil, criminal and military cases, a cassation court with two chambers; and the Constitutional Court. The law on human rights defender was adopted in 2003 and became effective on 1 January 2004. This law provides that, pending constitutional amendments, the ombudsperson will be appointed by the president of Armenia. The new Constitutional adopted on November 27, 2005 provides that the National Assembly shall appoint the ombudsperson and that the latter has the right to bring cases before the Constitutional Court.

In the light of protection of human rights and freedoms the role of the Constitution and constitutional control is very essential. The control should be performed by the Constitutional Court, which primary task is to protect human rights and freedoms and eradicate all types of legal norms and documents that contradict the Constitution. Unfortunately in Armenia the issue of constitutional control is immature and not fully formed. The authorities of the Constitutional Court before the amendments were limited and it had no right to consider individual applications concerning violation of human rights. However, according to Article 101 of the newly adopted Constitution everyone is granted the right to apply to the Constitutional Court and challenge constitutionality of the decision in cases when there is a final decision of the court and all means of legal defense are exhausted. It is expected that the constitutional amendments will make the role of the Constitutional Court less nominal, conform it to international standards and provide real constitutional control over all types of legal acts that contradict to the Constitution and violate human rights.

The protection of human rights and freedoms by the court system is the most efficient and important ones. In order to fulfill prescribed functions the court system should be independent, autonomous and unprejudiced. Armenia undertook judicial reforms starting

from 1995 with the adoption of the Constitution, the formation of the Constitutional Court, and the adoption of the laws on the Judiciary, Status of Judges, Compulsory Enforcement of Judicial Acts, Penal Code, Criminal Procedure Code, etc. However due to the constitutional amendments many laws should be changed and amended accordingly.

After membership in the Council of Europe, Armenia was obliged to improve the situation concerning detention and arrest procedures and undertake institutional changes. The penitentiary institutions, including pre-trial detention facilities were transferred from the Ministries of Interior and National Security to the Ministry of Justice in January 2003. In 2002-2004 legislation on prison reform was passed, including the Law on Holding Detainees and the Arrested (2002) and the Law on Penitentiary Service (2003). In November 2004, the National Assembly adopted the Penitentiary Code, which regulates the procedure of holding convicts.

Article 47 of the Law on Holding Detainees and the Arrested provides that the Ministry of Justice shall establish a group of public prison monitors. On 14 May 2004, the justice minister issued identity papers to 11 members of the ministry's monitoring group (now the group consists of only 10 members although by the law the group can have up to 25 members), comprising representatives of NGOs, law enforcement agencies, and the Armenian Apostolic Church.

The provisions of the European Convention on Human Rights and Fundamental Freedoms relating to due process are guaranteed by Armenian legislation. However, most problems in Armenia relate to the implementation and practice of those rights and freedoms that guarantee the due process.

The domestic legal system is the first important factor in protecting the right to liberty and security. Article 5 of the ECHR, which proclaims the right to liberty and security is

enshrined in Article 16 of the Constitution, Articles 131, 133, 134, and 348 of Penal Code and Articles 9 and 11 of Criminal Procedure Code.

Article 16 of the Constitution states the right of everyone to liberty and security. A person can be detained only on the reasons and grounds established by the law. Until the court decides on a proper decision, a person cannot be placed under arrest for more than 72 hours. This Article states that no one may be arrested or searched except as prescribed by law and provides an exhaustive list of cases when a person can be deprived of his/her liberty, which fully corresponds to the grounds provided in Article 5.1 of the ECHR. The requirements of Article 5 to be informed promptly, in a language which he/she understands, of the reasons for the arrest and of any charge against him/her and to be entitled to take proceedings by which the lawfulness of the detention should be decided as well as the right to compensation for an unlawful detention are also provided by Article 16 of the Constitution. According to Articles 63.17, 287 and 290 of Criminal Procedure Code an arrested person has the right to appeal the lawfulness and reasonableness of his/her detention or arrest.

The requirements of Article 5.2 to be informed promptly, in a language which he/she understands, of the reasons for the arrest and of any charge against him/her besides the Constitution are secured in the Article 11 of Criminal Procedure Code that provides "Every arrested or detained person should be told immediately the grounds, facts of detention or arrest and all legal aspects of offence in which he/she accused." According to Article 211 of the same law an accused can be questioned only after he is noticed about the court's decision on detention.

Besides the six circumstances provided by Article 5.1 of the ECHR under which a person can be deprived of his or her liberty there are other cases envisaged by Armenian legislation that allow the detention and arrest of a person, which contradicts the ECHR as it unambiguously defines and limits them. These cases are the administrative detention and

arrest enshrined in Administrative Violations Code as well as the cases of confinement in military subdivisions provided by Penal Code of Armenia.

According to the Article 56 of Administrative Code of Armenia adopted on December 6,.1985, a person can be detained up to 15 days for a violation of an administrative character. According to Article 262 of Administrative Violations Code administrative detention can last no longer than 3 hours but nevertheless can be prolonged up to 10 days by the prosecutor's decision. The possibility of administrative detention and arrest is clear violation of the European Convention and is contrary to the requirements of the Council of Europe. In 2002 the Parliamentary Assembly of the Council of Europe required Armenian authorities to amend the Administrative Code and eliminate the provisions of administrative detention (Resolution 1405, 2004). However till now is has not been done yet because it is used as leverage by investigators for interrogation and questioning witnesses and suspects before they are charged with an offence and have a right to legal defense.

The right to bail secured in Article 5.3 of the ECHR is enshrined in Article 143 of the Criminal Procedure Code of Armenia, which states that "Bail may consist of cash, securities and other valuables posted by one or several persons to the deposit of the court for the release from detention of someone accused of committing a crime classified as minor and medium gravity. With permission from the court, real estate may be posted as an alternative measure to bail." The minimum amount of bail is different in cases of minor or medium gravity and is defined by the law. According to Article 145 and 146 of Criminal Procedure Court an accused person can be also released based on personal or organizational warranty. Besides, a prisoner may be released to a form of house arrest under certain circumstances and at the discretion of the court.

Despite legislative provisions bail is rarely applied as a preventive measure in Armenian legal practice and there are very few instances of issuances of bail. This is

primarily due to three reasons: a high amount is determined as the minimal amount for a bail, low level of awareness on behalf of the Armenian people in regards to the possibility of bail issuance, and absence of a standard of practice in the courts (Civil Society Institute, 2004).

Criminal Procedure Code of Armenia regulates the issues and grounds of arrest as well as the duration of it. The Code establishes the criteria for lawfulness and reasonableness of detention and arrest. One of the positive outcomes which emerged after the ratification of the ECHR is the fact that preliminary detention can be chosen as a preventive measure only for accused persons. Therefore, it is necessary for a person to be accused of a crime in order to be placed under preliminary detention, provided there is reasonable suspicion.

In the courts of Armenia today when they choose preliminary detention as a preventive measure, they take into account that there must be reasonable suspicion (Article 135 of Criminal Procedure Code). The European Court has recognized four reasons as relevant for continuing a person's preliminary detention where there is still a reasonable suspicion of his or her having committed an offence. These are the risk of flight, the risk of an interference with the course of justice, the need to prevent crime and the need to preserve public order. It is the duty of the investigation body to prove there is reasonable suspicion for a person to be detained and placed under preliminary detention; evidence is proven by the investigators and the courts in Armenia decide on the basis of the reasonable suspicion that they provide (Civil Society Institute, 2004).

According to Article 129 of Criminal Procedure Code detention cannot be longer than 72 hours during which a detainee should be charged with offence or released. Nevertheless in Armenian there is a long-standing problem of the violation of Criminal Procedure Code provisions regarding arrest and detention. The Criminal Procedure Code prescribes that individual can be summoned to a police station only with an official writ, which must also state their status (witness, suspect, etc.). In practice, however, most people were simply

picked up by police officers or required by phone to show up at a police station (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

The rule of 72 hours of detention without charges secured in Article 129 of the Code is also abused by Armenian law enforcement bodies. In reality, individuals were usually summoned or brought to the police as witnesses, and thereafter their status was changed to that of a suspect. By doing this, police could question them without a defense lawyer, and keep them in detention longer than 72 hours as the time limit started only after the status had been changed. Suspects could also be interrogated during the night while witnesses only during working hours (IHF report, 2005).

To make an arrest, prosecutors and police must first obtain a warrant from a judge except in cases of imminent flight risk or when a crime is in progress. Judges rarely denied police requests for arrest warrants, and police sometimes made arrests without a warrant, often on the pretext that detainees were material witnesses (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

The law also requires police to inform detainees of their right to remain silent, to make a phone call, and to be represented by an attorney from the moment of arrest and before indictment (Article 211 of Criminal Procedure Code); however, in practice, police did not always abide by the law. Police often questioned and pressured detainees to confess prior to indictment when they did not have an attorney present (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

Lengthy pretrial detention remained a problem. According to the law, a suspect may not be detained for more than 12 months pending trial; however, in practice, this provision was not always enforced. Both prosecutors and defense attorneys frequently requested trial postponements on the grounds that they required more time to prepare for the trial (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

There is a huge gap in Armenian legislation relating to the right to be brought personally before a judicial authority. Article 285.3 of the Criminal Procedure Code of Armenia states, "As a rule, the accused in confinement must be present at the court session." In the meantime, it explains if the accused person has not been arrested "The court is entitled to summon the injured person and his representative, the accused and his legal representative to the session." The lack of clarification of this law is an infringement upon international standards. The Criminal Procedure Code mandates that persons under preliminary detention attend the court session which determines whether they will be detained or not. However, there is no law making it mandatory for those accused persons who have already served an extended term in preliminary detention to attend their court sessions (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

During the investigations after a person has been placed under preliminary detention, the accused person's term may be extended every two months. At this stage, if the length of one's term is not discussed, it is possible that the accused person could remain in preliminary detention for an undetermined length of time. Moreover, in most circumstances, after the initial stage of investigations has been completed there is usually no consideration given to alternative preventive measures besides preliminary detention (Civil Society Institute, 2004).

As a result, there are cases in Armenian legal practice when the accused person does not participate in the court session and it happens more often when the case is in the questioning stage of the investigation process. The practice has been also established that accused persons do not participate in the court session which discusses and allows for appeals and extension of one's term under preliminary detention (Civil Society Institute, 2004).

Another violation of Article 5 of the ECHR relates to the right to be tried within the reasonable time. According to Article 138.6 of Criminal Procedure Code, "The maximum term of detention of the accused is not defined during the hearing of the case in the court."

This means that the court hearing may last very long which contradict to the ECHR requirements and the case-law of the European Court of Human Rights.

Provisions of Article 5.5 and Article 3 of Protocol No. 7 relating to compensation are enshrined in Articles 22 and 66.3 of Criminal Procedure Code and in Article 16 of the Constitution. The acquitted person has the right of compensation for wrongful detention, arrest and sentence taking into account lost profits. However Criminal Procedure Code does not guarantee the compensation for being kept detained or arrested longer than it is prescribed by the law. This can be considered the direct violation of the ECHR provisions and the scope of subjects to compensation of Article 66.3 should be enlarged.

By and large, Armenian legislation corresponds to the Article 5 of the ECHR and enshrines the right to liberty and security. However Armenian legislation requires some amendments concerning especially the administrative detention and the right to be brought personally to judicial authority.

The right to a fair trial of Article 6 of the ECHR is more difficult to secure and protect because of the imperfect Armenian legislation and practice. Many requirements of the Convention relating for example to the equality of arms or independent and impartial judiciary does not exist in Armenian legal practice.

The right of everyone to a fair and public hearing provided by Article 6.1 of the ECHR is secured by Article 19 of the Constitution, Article 9 of the Law on Judiciary and Article 16 of Criminal Procedure Code. “Everyone is entitled to restore any rights which may have been violated, and to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law and fulfilling all the demands of justice, to clear himself or herself of any accusations. The hearing can be held closed in cases prescribed by law in the interests of morals, public order or national security, and the

protection of the private life of the parties so require. In any case decisions of the court are declared publicly" (Constitution, Article19).

The provisions of Article 6 relating the right to be tried by an independent and impartial tribunal are enshrined in Article 19 of the Constitution and Article 17 of Criminal Procedure Code according to which everyone has a right to a fair hearing by an independent and impartial court established by law. The principle of fair trial does not allow the hearing of the case by a person who is concerned with the outcome of the case which is provided by Articles 17 and 90.2 of Criminal Procedure Code.

In order to secure the right to a fair trial the consideration should be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct. The independence of the judiciary should be guaranteed by the state and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. The judiciary should decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The judiciary should have jurisdiction over all issues of a judicial nature and should have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law. There should not be any inappropriate or unwarranted interference with the judicial process, nor should judicial decisions by the courts be subject to revision. Persons selected for judicial office should be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection should safeguard against judicial appointments for improper motives (Khachatryan, 2004).

The most elaborate system of rights, remedies and procedures would be of little use when there is no independent, impartial and competent judiciary. The independence of the

judiciary has been ensured by the judges' security of tenure as well as the judiciary's own distinguished traditions of learning, integrity and technique and the law of contempt. In Armenia judges are merely rubber-stamping the decision of the law-enforcement officials and failing to exercise an independent critical judgment.

Judicial independence makes a system of impartial justice possible by enabling judges to protect and enforce the rights of the people, and by allowing them without fear of reprisal to strike down actions of the legislative and executive branches of government which run afoul of the Constitution. Independence is not for the personal benefit of the judges but rather for the protection of the people, whose rights only an independent judge can preserve. A truly independent judiciary is one that issues decisions and makes judgments which are respected and enforced by the legislative and executive branches and that is not compromised by politically inspired attempts to undermine its impartiality.

Judicial independence includes the independence of an individual judge as well as that of the judiciary as a branch of government. Individual independence (otherwise known as decisional independence) allows judges to perform the judicial function subject to no authority but the law, and branch independence (otherwise known as institutional independence) involves matters affecting the operation of the judiciary as a separate branch of government.

Though Articles 19 and 94 of the Constitution require independent judiciary, in practice in Armenia courts were subject to political pressure from the executive and legislative branches, and corruption was a problem. There is a three-tier court system in Armenia. The highest court is the Court of Cassation. There are also two lower-level courts: The Court of Appeals; and courts of the first instance. Most cases originate in courts of first instance; appeals are lodged with the Court of Appeals and the Court of Cassation. The Constitutional Court rules on the conformity of legislation with the Constitution, approves

international agreements, and decides election-related questions (Human Development Report, 2000).

Under the 1995 Constitution, the Council of Justice, which is co-chaired by the President, the Prosecutor General, and the Justice Minister, appoints and disciplines judges for the courts of first instance, Courts of Appeals, and the Court of Cassation. The President appoints the other 14 members of the Justice Council and 4 of the 9 Constitutional Court judges. This authority gives the president dominant influence in appointing and dismissing judges at all levels. It is clear that the formation of judiciary is highly dependent on executive government and cannot ensure its independence.

Nevertheless the new Constitution has changed the way the Council of Justice is formed in order to make its independence real. The formation of Judicial Council according to amendments is done by the assembly of judges by secret ballot for a period of five years and the meetings of Judicial Council are conducted by the president of Court of Appeals (The Constitution, Article 94.1). This amendment had a purpose to make the judiciary independent especially form the executive branch of government and the president.

The principle of presumption of innocence provided by Article6.2 of the ECHR is enshrined in Article 21 of the Constitution "A person accused of a crime shall be presumed innocent until proven guilty in a manner prescribed by law, and by a court sentence properly entered into force. The defendant does not have the burden to prove his or her innocence. Accusations not proven beyond a doubt shall be resolved in favor of the defendant."

Legal defense is a constitutional human right and it is enshrined in Article 6.3 of the ECHR and the Armenian Constitution. Article 18 of the Constitution states "Everyone is entitled to defend his or her rights and freedoms by all means not otherwise prescribed by law. Everyone is entitled to defend in court the rights and freedoms engraved in the Constitution and the laws. Everyone has the right to get the assistance of a Human Rights

Defender. Everyone according to the international covenants of the Republic of Armenia has the right to apply to international human rights protection bodies." "Everyone is entitled to receive legal assistance. Legal assistance may be provided free of charge in cases prescribed for by law. Everyone is entitled to legal counsel from the moment he or she is arrested, detained, or charged" (Article 20 of RA Constitution).

According to Human Development Report (2000) the population rarely uses the right to apply to courts. Applying to court has not become a habit. Social conditions play a crucial role in this as the majority of the population cannot afford to cover costs associated with legal procedures. Courts in Armenia mainly ignored the principle of providing legal assistance and allowing advocates to be present at hearings – a clear violation of article 20 of the Constitution, which states that everyone is entitled to legal counsel from the moment he or she is arrested, detained, or charged (IHF report, 2005).

On the contrary the Helsinki Association (2005) reported that the government provided a lawyer to defendants who requested legal counsel in criminal proceedings. Criminal Procedure Code defines nine criminal cases when the participation of an attorney is required (Article 69). It is not acceptable to deny the legal assistance because of lack of financial means. State is obliged to appoint a defender for insolvent person accused in a crime. Nevertheless the law does not provide details on who decides on the insolvency of an accused and free legal assistance is provided only in criminal proceedings. The free legal assistance is not provided in administrative proceedings which does not allow for people who do not have financial means to receive professional legal counsel. In Armenia, individuals often chose to defend themselves. More than half of all defendants chose to argue their own case in court due to the perception that public defenders colluded with prosecutors (The Bureau of Democracy, Human Rights, and Labor Report, 2005).

The clear violation of Article 6 of the ECHR relates to the right of legal assistance. According to Article 63.2.4 of Criminal Procedure Code a suspect has the right to have legal assistant after he/she gets the order of the arrest. This means that a suspect can be detained, interrogated and investigated before he /she gets the status of arrested and therefore does not have the right of legal assistance (Avetisyan, 2004).

The equality of arms principle is enshrined in Article 23 of Criminal Procedure Code according to which criminal proceedings are held on the principle of equality of arms. Criminal prosecution, defense and a decision are separated and performed by different bodies. The court does not act in favor of defense or prosecution and stands only for interest of justice. However the principle of equality of arms is guaranteed by the legislation only during trial period in the courts. As to pre-trial proceeding the defense and prosecution are not equal and does not have equal opportunities.

In Armenia the principle of equality of arms is extensively violated. When sanctions are being discussed in the court, the investigator is allowed to present arguments, while the lawyer may not. Only after the preliminary investigations have been completed, the lawyer has the right to read the paperwork and become familiar with the materials of the case.

Article 212 of Criminal Procedure Code requires the investigator to interrogate the accused person within 24 hours after the conviction. This is not enough time for the accused and his/her attorney to prepare necessary materials and documents for the defense and violates the provision of Article 6.3 “b” according to which everyone charged should have the adequate time for the preparation of the defense.

The right to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court is envisaged and protected by Armenian legislation. Article 15 of Criminal Procedure Code requires that all court hearings are held in Armenian. However, everyone participating in the process has the right to come out in the language

he/she possesses. The accused should be provided with the translator free of charge if there is a need for it.

To bring Article 6 of ECHR to conformity with Armenian legislation first of all the independence of judiciary should be guaranteed and new laws on Judiciary and the Council of Justice should be adopted, secondly the principle of equality of arms should be provided especially during pre-trial period and finally the free legal assistance should be provided both in criminal and administrative proceedings.

Article 7 of ECHR – no punishment without law - is enshrined in Article 22 of Constitution and Article 13 of Penal Code. Article 22 of Constitution provides "A punishment may not exceed that which could have been met by the law in effect when the crime was committed. A person shall not be considered to be guilty for a crime if at the time of its commission the act was not legally considered a crime. Laws limiting or increasing liability shall not have retroactive effect." In general Armenian legislation fully corresponds to Article 7 of the European Convention.

The Constitution of Armenia embraces many prerequisites for guaranteeing the right to effective remedy guaranteed by the Article 13 of the European Convention. According to Article 18 of the Constitution "Everyone is entitled to defend his or her rights and freedoms by all means not otherwise prescribed by law. Everyone is entitled to defend in court the rights and freedoms engraved in the Constitution and the laws." The same right is provided by Article 4 of Law on Court's Formation according to which "Everyone has a right to defend in court his/her rights provided by Armenian Constitution, international conventions, laws and other legislative acts."

Provisions of Article 2 of Protocol No. 7 of ECHR – the right to appeal - are enshrined in Armenian Constitution and legislation. Article 20 of the Constitution states "Every convicted person is entitled to have his or her conviction reviewed by a higher court,

in a manner prescribed by law." Both defendants and prosecutors have the right to appeal. However, the law does not allow detainees to file a complaint prior to trial to address alleged abuses committed by the Prosecutor's Office, the police, or other security forces during criminal investigations.

As it was mentioned above there are three types of courts in Armenia – Courts of First Instance, Courts of Appeals and Cassation Court. Everyone has the right to appeal court decisions in Courts of Appeals and Cassation Court (Articles 376 and 406 of Criminal Procedure Code). An accused person, his/her defenders, representatives, and prosecutor have the right to appeal to the Court of Appeals during 15 days after the publication of court's decision. The appeal suspends the court's decision to come into force and the Court of Appeals has the right to fully hear and investigate the appealed case. During the case hearing in the Court of Appeals all the requirements of Article 6 of ECHR are preserved by the Armenian legislation. After hearing the appeal the Court makes its decision that replaces the decision of the First Instance Court completely or partially.

Not everybody has the right to appeal the decisions of First Instance Courts and the Courts of Appeals that are already come into force in the Court of Cassation. Only Prosecutor General and his/her deputies as well as attorneys that have special licenses and are registered in the Cassation Court have the right to appeal based on applications of trial participants (Article 404 of Criminal Procedure Code). These restrictions of Armenian legislation limit the full insurance of the right to appeal and should be eliminated.

Decisions of the Cassation Court are final and cannot be appealed. However according to Article 103 paragraph 8, every accused has the right to apply to international human rights protection institutions, if all domestic means of legal defense are exhausted. The exceptions stated in Article 2 of Protocol No. 7 are not envisaged by Armenian legislation.

Article 3 of Protocol No. 7 provides compensation for wrongful detention. It related to cases when court decisions are reversed or an accused in criminal offences is justified after newly discovered or new facts prove a miscarriage of justice. According to Armenian legislation if there are new or newly discovered facts a prosecutor undertakes an investigation while the legal defender – a study. In such situation the prosecutor and the defender do not have equal opportunities, which violate the principle of equality of arms. In the legislation a study performed by the attorney and his/her responsibilities during reopening of a case are not defined; however the legislation should provide strict rules for both sides how to act when there are new or newly discovered facts. Thus, it is necessary and obligatory to secure the procedure in the legislation.

Article 4 of Protocol No. 7 of ECHR provides the right not to be tried or punished twice. This principle applies both to acquitted and accused persons. According to Article 21 of Criminal Procedure Code states that no one can be punished for the same offence twice. However, in cases of newly discovered facts or violations during trials that can affect the issue of suit this provision is not applied. A released person cannot be detained on the grounds of the same offence, except the cases when newly discovered facts are emerged, which were unknown prior to the release (Article 142.4 of Criminal Procedure Code and Article 10.2 of Penal Code).

Although Armenia became a member of Council of Europe, ratified the Convention and adopted laws that in general correspond to the requirements of Convention those laws could not be fully implemented and followed due to several problems. First the legal culture of citizens, state officials and law enforcement bodies is very low, second, the apathy of population towards violations of their basic rights because of difficult living conditions, third, citizens' unawareness about human rights and freedoms and finally, the lack of knowledge of

main human rights documents and principles of international law by law enforcement bodies and judges.

Conclusions and Recommendations

Examining the correspondence of Armenian legal system to the European Convention on Human Rights and Freedoms it is obvious that for their full compliance changes should be done made in the legislation and practice. In regards to the issue of contradictions between the European Convention and Armenian legislation noncompliance is not between the Convention and legislation but in the application process. The courts of Armenia should study the Convention and the extensive case-law of the European Court of Human Rights in order to apply these principles in their practice.

It is the requirement of the ECHR to be brought personally before the judge and be present during court sessions. But neither Armenian legislation nor the practice fulfills this requirement. There are cases when the accused person does not participate in the court session and it happens more often when the case is in the questioning stage of the investigation process. Therefore it is necessary to delete words “as a rule” in the Article 285 of Criminal Procedure Code in regards to the participation of an accused person in a court session which discusses the lengthening of the term and make the presence of an accused person compulsory. The Criminal Procedure Law should determine the maximum length of period for the investigation and entire legal process.

The principle of equality of arms is constantly violated during preliminary arrest and investigation process. When sanctions are being discussed in the court, the investigator is allowed to present arguments, while the lawyer does not. Only after the preliminary investigations have been completed, the lawyer has the right to read the paperwork and become familiar with the materials of the case. A defender does not have a right to call witnesses or order an examination without the permission of the court and the court can

easily deny the motion or can demand to tell all the details, for example who the witnesses are why there is a need to examine them, etc. This is not strategically in the interest of the lawyer during preparation of the defense.

The very important issue for Armenia is the independence of the judiciary from the executive. The Constitutional amendments offer the solution for it. And, if the independence of judiciary will be guaranteed it will help to solve most problems connected to due process and make judges more ready to stand for the justice.

Old Soviet legal practices are another important issue. People who execute arrest and detention and make investigations are taught not to view the liberty as a supreme value and do not take into account the principle of "presumption of innocence."

Administrative arrest and detention are still widespread in Armenia despite the requirement of the Council of Europe to eliminate it. It is used as leverage by investigators for interrogation and questioning witnesses and suspects before they are charged with an offence and have a right to legal defense.

To overcome all these problems and make Armenian legislation and practice correspond to the provisions of the Convention, several steps should be undertaken.

- The legislation must guarantee "the equality of arms" during preliminary investigations and pre-trial;
- The application of bail should be widened and the amount of bail should not be defined by the law and should be considered separately in every case; the procedure for the premises of accepting real estate as a bail should be elaborated;
- The participation of accused person in court sessions should be compulsory;
- Administrative detention and arrest should be eliminated;
- The independence of judiciary should be provided by legislation and implemented in practice;

- Human Rights training and education should be provided for judges, lawyers, prosecutors, investigators;

  The decisions made by the European Court must also be taken into consideration by the courts of Armenia;
- The awareness of population concerning their rights and freedoms should be increased through training, seminars and education at schools, colleges and universities.

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