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POLICE ACCOUNTABILITY IN THE REPUBLIC ARMENIA

Report

Innovative Center for Legal Researches



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Report

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Innovative Center for Legal Researches

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CONSTITUTIONAL BACKGROUND

The post-Soviet period gave rise to a number of democratic processes in Armenia. In 1991 the Republic of Armenia (hereinafter the 'RA') declared its independence.¹ As a logical sequence to create a new public order, the first step taken was the adoption of Armenian Constitution via public referendum (5 July 1995).² The Constitution laid down the order of the country, the principle of separation of powers into legislative, executive and judicial branches, the supremacy of law, and recognized multi-party system.³ The 1995 Constitution established a three-tiered structure of Courts of general jurisdiction and a separate Constitutional Court (hereinafter 'CC') authorized with exclusive power to administer constitutional justice and resolve disputes over the constitutionality of laws.⁴

Additionally, Armenia started its integration process into international and regional democratic institutions. On March 2, 1992, by the UN General Assembly's Resolution 46/227 the RA joined the United Nations⁵ and became bound by the UN Charter and respective legal instruments.

Armenia's first attempts to knock on Europe's door to become a member of its democratic legal family started in 1996. The RA applied to join the Council of Europe (hereinafter 'CoE') on 7 March, 1996⁶ and was granted full membership on 25 January, 2001.⁷ As a part of its commitment to accede to the CoE,⁸ in 2001 the RA adopted the European Convention on Human Rights and Fundamental Freedoms⁹ and carried out constitutional amendments through a public referendum in 2005.¹⁰

The amended Constitution entered into force on December 5, 2005 and played an invaluable role in promoting the rule of law in Armenia. Article 1 of the RA Constitution lays down the constitutional foundation of the country and defines Armenia as *a democratic state governed by the rule of law*.¹¹ For the first time it recognized human beings, human dignity and human rights as the ultimate value.¹²

Article 5 of the Constitution specifies that the state power shall be exercised in conformity with the Constitution and the laws based on the principle of the separation and balance of the legislative,

¹ American Bar Association Rule of Law Initiative, Judicial Reform Index for Armenia (hereinafter 'JRI'), Vol. III, at 5 (2008)

² Available at: <http://concourt.am/english/constitutions/const1995.htm>

³ The RA Constitution (13 July 1995)

⁴ Id. Arts. 91-93

⁵ Available at: <http://www.un.am/?laid=1&com=module&module=menu&id=93>

⁶ Armenia's application for membership of the Council of Europe, Opinion No. 221 (2000), Parliamentary Assembly of the Council of Europe, available at http://www.coe.am/en/docs/pace/opinion_221.pdf

⁷ Council of Europe, Information Office in Armenia, available at http://www.coe.am/index.php?cat_id=35

⁸ Supra note 6

⁹ Available at: <http://www.echr.coe.int/Library/annexes/CEDH1950ENG.pdf>

¹⁰ The RA Constitution of 1995 as amended on 27 November 2005, available at: <http://concourt.am/english/constitutions/index.htm>

¹¹ Id. Art. 1(emphasis added).

¹² Id. Art. 3.

executive and judicial powers. Indeed, state and local self-government bodies and public officials are competent to perform only such acts for which they are authorized by the Constitution or laws. Article 8.2 requires the Armenian armed forces to ensure security, defense and territorial integrity of the country, as well as inviolability of its borders. The armed forces shall maintain neutrality in political matters and remain under civilian control.

These constitutional provisions set the general tone for democratic accountability in the country, from which other laws and mechanisms are derived. The Constitution provides for the establishment of various structures and mechanisms aimed at holding governmental bodies accountable and many of which have their own laws defining their main principles, tasks and functions.

International Standards and the Importance of Police Accountability

The Police are the most visible manifestation of the Government authority. While facing current challenges of combating organized crime and risks of global security, the Police must always abide by national and international legal obligations and respect human rights.¹³

As the OSCE Senior Police Adviser Kevin Carty stated “police officers will enhance the legitimacy of the State if they demonstrate in their daily work that they are responsive to public needs and expectations and use the authority of the State in the people’s interest. And in the process of pursuing its objectives the police are obliged to operate in accordance with respective domestic and international rules and standards, adhere to a code of professional conduct and demonstrate professionalism”. Democratic policing requires the Police to be accountable to citizens, state and the law. Police activities shall be subjected to scrutiny by a number of oversight institutions.¹⁴

Accountability is a vital element of democratic policing. Both individual officers and law enforcement agencies should be held to account for their actions. Effective accountability procedures are essential if the Police are to achieve their goals of lawfulness and legitimacy. Lawfulness refers to compliance with the formal requirements of the law, as well as statutes and court decisions. Legitimacy refers to the perception that police conduct is both lawful and consistent with public expectations (National Research Council, 2004).¹⁵

In accordance with Samuel Walker’s suggestion and definition, (articulated by the US National Institute of Justice) as a fundamental principle of a democratic society, the Police should be held accountable for their actions. Accountability should be perceived as what the Police do and the way in which they perform.

¹³ Kevin Carty, *The Guidebook for Democratic Policing*, OSCE, at 6 (2008)

¹⁴ Id.

¹⁵ Samuel Walker, *Police Accountability: Current Issues and Research Needs*, National Institute of Justice, Police Planning Research Planning, at 1, Washington DC, November, 2006.

Walker distinguishes two types of police accountability: agency-level and individual-level. Correspondingly, ‘agency-level’ accountability involves the performance of law enforcement agencies with respect to controlling crime and disorder and providing service to the public, whereas ‘individual-level’ accountability involves the conduct of the police officers with respect to lawful, respectful and equal treatment of citizens.¹⁶

“Individual-level” accountability is largely accepted to be divided into two groups: *internal and external* (emphasis added). Internal accountability involves such concepts as controlling officer conduct, routine supervision, regular performance evaluations, investigation of professional misconduct etc.

External accountability covers oversight by other democratically created bodies such as Parliament, Ombudsman, criminal and civil litigation against police officers, oversight by civil society including, but not limited to media outlets, non-governmental organizations, etc.

This entails the subordination of the Police to democratically elected bodies and officials exercising power on the one hand, and the public oversight on the other, involving the public in the exercise of democratic oversight of the Police. The latter is exercised through civil society institutes such as free press and NGOs. The effectiveness of democratic oversight is seen in the stability and effectiveness of the public bodies and the so-called ‘third sector’ (press, NGOs), where the third sector shall have a pro-active role.¹⁷

Regarding international legal standards, in 1992 Armenia became a member of the United Nations and ratified and signed a number of UN legal instruments including the UN Charter, the UN Convention against Torture and other Inhuman or Degrading Treatment or Punishment (1984), International Covenant on Civil and Political rights, Convention on the Elimination of all forms of racial discrimination (1966), Convention on the Elimination of all forms of racial discrimination against women (1979) etc. Other international legal instruments applicable to Armenia are; Universal Declaration of Human Rights, United Nations Code of Conduct for Law Enforcement Officials, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The UN Code of Conduct for Law Enforcement Officials acknowledges the obligation of officers exercising police powers to serve the community with a high degree of responsibility by protecting all persons against illegal acts.¹⁸ They are required to respect human rights and dignity while exercising their functions¹⁹ and are forbidden to apply torture at any time.²⁰

¹⁶ Id. at 1-2.

¹⁷ For more details on this issue please consult the Civil Control over “Enforcement” structures in Ukraine: challenges and prospects, available at www.caei.com.ar

¹⁸ Code of Conduct for Law Enforcement Officials, GA Res. 34/169, Art. 1, 17 December 1979

¹⁹ Id., Art. 2

²⁰ Id., Art. 5

Most importantly, law enforcement officials shall not commit any act of corruption.²¹

The RA is a member of the Council of Europe and has signed and ratified ECHR with its respective protocols. Accordingly, the legislation within the framework of the CoE may also entertain obligations for Armenia. For the purposes of our report and in the light of international standards of democratic policing, it is essential to take note of the European Code of Police Ethics.

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the Police, in 2001 the Committee of Ministers of the CoE adopted the European Code of Police Ethics²² and recommended its member states to be guided with the standards as set by the European Code in their internal legislation and practice. The European Code addresses such notions as objectives of the democratic Police and the legal basis for the Police under the rule of law. It defines the Police as a public body to be established by law, requires clear distinction between the Police and the criminal justice system, lays down the organization structure of the Police, rights of police personnel, sets down the guidelines for police intervention and devotes a special section to the accountability and control of the police.

The European Code makes a clear distinction between internal and external accountability of the Police. Paragraph 20 of the Code specifies the internal accountability requirement for the Police, *‘the police organization shall contain efficient measures to ensure the integrity and proper performance of the police staff, in particular to guarantee the respect for individuals’ fundamental rights and freedoms as enshrined by the European Convention on Human Rights.’*²³

Regarding external accountability, democratic policing requires the Police to be accountable to citizens, their representatives, the State, and the law. State control of the Police shall be divided into the legislative, the executive and the judicial powers. Public authorities are obliged to ensure effective and impartial procedures for complaints against the Police and accountability mechanisms shall be promoted.²⁴ The recommendations and provisions enshrined in this code were further introduced and implemented in the Law on Disciplinary Code of the Armenian Police discussed within this report.

²¹ Id., Art. 7

²² The European Code of Police Ethics adopted by Committee of Ministers, Recommendation Rec(2001) 10, 765th Meeting, 19 September, 2001.

²³ Id., para. 20, (emphasis added).

²⁴ Id., paras. 59-63, section VI

POLICING IN ARMENIA

Before turning to different branches of the Government empowered to exercise oversight of the Police and hold it accountable to both public and authorities, it is necessary to understand the position of Police in the Armenian legal system, its main functions, objectives and principles, as well as discuss its internal structure.

Chapter 5 of Armenia's Constitution sets down the constitutional basis for the executive branch, the Government, and specifies its authorities. In accordance with Article 85, the Government designs and implements the domestic policy of the Republic of Armenia. The Government is constitutionally responsible for the implementation of defense and national security policy in the country.²⁵ The Government implements this policy through respective governmental agencies. The Police are the executive body adjunct to the Armenian Government and are responsible for developing and implementing state policy in the realm of protecting public order and security, as well as preventing and combating crime and other illegal acts.²⁶

The Police have only recently been launched as a separate body. Until 2001, the Police were a part of the Ministry of Interior. In 2001, when the National Assembly (hereinafter referred 'NA') passed the Law on Police in April 2001 the MoI was restructured into the Police. The Police were de jure established since April, however became effective only since January 2002 when the Ministry of Interior transformed into the Police. Subsequently, the senior executive officials became police leaders and later, based on an internal decree of the Police, the employees of the Ministry of Interior were redeclared as Police staff. It is notable that currently the Police structure and the numbers of Police units is set by the Government, whereas more internal matters, e.g. the number of the employees of each department, is decided by the Police itself. The penitentiary institutions, as well as the Fire fighting department were taken out of the Police structure and connected to the Ministries of Justice and Emergency Situations, respectively. The reason for transforming the MoI into the Police is the idea of having impartial and neutral Police. The ministerial position is a political one and bears political implications, whereas the police *per se* shall sustain political neutrality. Currently, police management is cognizant that in the event of democratic developments, it is possible that there would be a need to establish a Ministry of Interior in charge of designing and implementing policy in this sector. This MoI would be comprised of not only the Police, but also e.g. the Migration Agency, and even of Territorial Administration. However, the best method to address police needs is to hold them as a separate, politically neutral body.²⁷

²⁵ Supra note 10, Art. 89.6

²⁶ The RA Law on Police, April 16, 2001; see also the Government Decree on the Statute of Armenian Police adjunct to the Government, Art. 1.1, 29.04.2004

²⁷ Interview at the Police Headquarters, 12, November, 2009.

The Law on Police scrutinizes the tasks and objectives put forward before the Police, the principles upon which the Police base their operations, as well as the rights and obligations of the Police.

In accordance with the Law on Police, the core objectives of the Armenian Police are:

- security of persons;
- prevention and restraints of crimes and administrative offences;
- discovery and disclosure of crimes, criminal investigation;
- ensuring public order and safety;
- protection of all types of ownership;
- providing support to physical and legal entities in protecting their rights and legal interests.²⁸

The Law puts forward the fundamental principles of democratic policing, in particular it obliges the Police to be governed by the rule of law, respect for human rights, human dignity and freedom, principles of humanism and transparency.²⁹ The Law encompasses detailed provisions of Police rights and obligations. It addresses the obligations of the Police from different perspectives and separates them vis-à-vis obligations to safeguard a person's security, rights and freedoms; to prevent and combat crimes and other illegal acts; to maintain public order; to safeguard public safety; to supervise keeping and use of arms; to protect property of citizens and organizations; obligations during public emergency; to perform compulsory executive measures with special order, as well as to ensure the passport and visa regime.

The Law grants traditional rights and duties to the Police and ensures that its activities are based on the principle of rule of law within the criminal justice system. It allows the Police to temporarily limit the rights and freedoms of citizens when legally necessary, protect innocent people, and holds the Police accountable to society.

The RA Law on Police encompasses police accountability provisions. Chapter VII of the Law is titled 'The control and oversight of the activity of police and the responsibility of police officers'. This chapter directly lists the bodies empowered to control and exercise oversight of the Police activity. Article 42 reads as follows:

'The RA President, Prime Minister and Government exercise oversight of the police within their competence. In the events prescribed by the RA Constitution, the National Assembly exercises oversight of the police. Internal control of the Police is exercised based on the procedure defined by the Chief of the Police. The oversight over the operational and investigatory activities of the Police

²⁸ Id. Art. 2.

²⁹ Id. Art. 3

*is carried out through the procedure defined by law.*³⁰

Other state bodies and organizations shall not be entitled to intervene in operational, investigatory and criminal procedural activity of the Police, as well as in the investigation of cases of administrative offences (emphasis added).'

External oversight over the activities of the Police is exercised by the Government and the Parliament, whereas internal oversight is exercised by the Chief of the Police. Although the respective law does not entertain provisions on judicial oversight, judicial powers also control the Police through civil and criminal proceedings initiated by other state bodies, as well as by members of the public.³¹

The system and management of the Police are regulated by the Law on Police, as well as by the Police Statute. Article 9 states that the police system is comprised of the Police and state non commercial organizations and institutions controlled by the Police. The structure and the staff of the Police shall be approved by the RA Government on the suggestion of the Chief of police. The general management of the Police shall be carried out by the Chief of the Police. The higher chain of command belongs to the Chief of the Police who exercises centralized administration of the body. The Chief of the Police is appointed by the President based on the recommendation of the Prime Minister.³² The Chief of the Police has one first deputy and deputies, who are appointed by the President of RA upon Chief's recommendation. The Chief of the Police is accountable to the President, the Government and the Prime Minister of RA.³³

Police work is considered a special form of service which is regulated by the Law on Police Service.³⁴ The Law on Civil Service Article 1 defines the concept of state service and underlines that police service is a state service.³⁵ The Law on Police defines that the service in the Police is a special type of state service. Only Armenian citizens are entitled to be civil servants in the Police.

Currently there are two types of servants within the Police: police servicemen and technical staff. In 2007 the NA passed the Law on Special Civil Service and in 2008 it amended the Law on Police which allowed to introduce a special civil service in the Police as well (not only in the Ministry of Defense). The RA Police has already elaborated relevant legal acts to introduce them in the system in 2010. Special civil servants will not be directly involved in policing, the latter will provide support services to the Police, i.e. procurement officer, financial officer, information officer, etc.

³⁰ Irrespective of the legal provisions of the Law on Police granting the NA a power to carry oversight of the Police as defined by the Constitution, the latter does not prescribe the events when the NA shall exercise the oversight exempt for the budgetary control.

³¹ Explanatory memorandum to the European Code of Police Ethics, Comment to para. 60, at 68, CoE, 2001

³² Police Statute, Art. 3.

³³ Id.

³⁴ The RA Law on Police Service, 03, July, 2002.

³⁵ The RA Law on Civil Service, December 4, 2001.

The Law on Police Service underlines the governing principles of police service: the rule of law, respect for human rights and freedoms, human dignity, transparency and humanism.³⁶

The Police of the Republic of Armenia is territorially divided into Central Apparatus, 11 Territorial Police Departments (one of which for the City of Yerevan and 10 Provinces) that are further subdivided into 52 police precincts. The Police also include the Training Center, Police Academy, as well as other auxiliary organizations. The Chief of the Police is at the top of the Police command structure, which is comprised of the staff of the Chief of the Police, deputy chiefs, and specialized branches of the Central Apparatus.

Among the bodies of Central Apparatus are the Headquarters, Organized Crime Main Department, Criminal Investigations Department, and Criminal Investigation Main Department. Other important branches are the Press and Public Relations Department, Personnel (Human Resources) Department, Information Department, Financial Department, Legal Department, Passport and Visa Department, Public Order Department, Traffic Police Department, Medical Department, State Protection Department, Communication Department, as well as Internal Security Department, Forensic Department, Operative-Technical Division.³⁷ A more detailed structure of the Police is attached to this report as Appendix A. Police funding is included in the state budget of the Republic of Armenia. Also, at the expense of assets received from other organizations and citizens for rendering services to them on a contractual basis.³⁸

³⁶ Id. Art. 2.2.

³⁷ Available at: [http:// www.armeniaemb.org/DiscoverArmenia/armpol.htm](http://www.armeniaemb.org/DiscoverArmenia/armpol.htm)

³⁸ The Law on Police 2001 as amended 21.02.07

INTERNAL ACCOUNTABILITY

Internal oversight of law enforcement bodies, objective investigation of professional misconduct and criminal offences within the Police structure is a direct requirement of the Constitution and respective legislative norms and statutes. In Armenia, the matter of internal control and oversight over the discipline and legitimacy of the Police was regulated differently in various times.

Internal monitoring and control within the Police structure starts from the lowest level: the district Police office head exercises control over his/her subordinate police officers. The same power is vested upon the regional police office heads and the central apparatus of the entire Police. Each department of the central apparatus exercises control and oversight over territorial police bodies within its functional competence. There are two specialized agencies within the central apparatus of the Police empowered to carry out monitoring functions. These are the Internal Security Department (hereinafter referred as 'ISD') and Headquarters³⁹ which monitors police officers' adherence to instructions and orders of the Chief of Police. Headquarters performs controlling functions over analytical work and planning activities of the Police. As well, Headquarters has a subdivision that carries out random checks.⁴⁰

A number of developments necessitated an introduction of a specialized agency to address issues of professional misconduct and disciplinary measures within the Police. In 2003 the ISD was established to implement requirements prescribed by Article 9 of the Law on Police and Article 3 of the Law in Police Service. The ICD is an independent unit of the centralized police apparatus and is responsible for internal security measures of the Police. Its main tasks are to strengthen discipline among police personnel, investigate their professional and ethical misconduct, warn about disciplinary violations, explore reasons and causes for such misconduct, guarantee pre-trial protection of police personnel's rights, study all circumstances of the misconduct in an objective and timely manner, organize and carry out measures aimed at ensuring internal security of the Police, and draft and design legal-normative instruments to regulate police management. For example, the ISD may examine reasons for carrying out an internal investigation to determine whether a police officer is regularly insubordinate, or whether the respective manager is not exercising proper control of his/her staff. Based on its findings, ISD may suggest solutions and means to resolve the issue.

The ISD is comprised of three units:

- Disciplinary Investigation Unit
- Intelligence Unit
- Analysis and Reporting Unit

³⁹ The Headquarters is one of the Main Departments of the Central apparatus which is comprised of several departments, such as: Analytical, International Cooperation, Inspectorate, and Duty Office.

⁴⁰ Interview with the Police Headquarters' office, 12 November 2009

The Disciplinary Investigation unit of the ISD verifies complaints and statements of citizens against police personnel, and investigates disciplinary and ethical breaches.

The Intelligence unit key tasks are: to carry out intelligence and operative measures to prevent and reduce violations committed by police personnel and reveal facts of these incidents; disclose violations of constitutional rights and freedoms of citizens committed by the Police; suppress, disclose and examine situations when members of the Police obstruct law enforcement and investigatory bodies. From the outset, staff members of the Unit have carried out purposeful and unexpected control visits and spot checks of police personnel.

The Analysis and Reporting Unit is a 'databank' for the Police internal management. The Unit collects and analyzes the number and types of professional misconduct and disciplinary offenses, summarizes statistics, suggests necessary preventive measures to be implemented, and inspects the status of discipline and legitimacy within different branches, departments and units of the Police.

A significant direction of the Police operations is to enhance and improve the Police legislation. In this regard, the RA Law on Police Disciplinary Code requires special attention.

To meet the CoE recommendations enshrined in the European Code of Police Ethics, in 2005 the RA Parliament enacted a law regulating matters of police discipline, police ethics, disciplinary measures and internal consequences for police professional misconduct, procedure for carrying service investigations, responsibility for not complying with law requirements, as well as other issues related to strengthening service discipline among police officers.⁴¹

In accordance with Article 5 of the Law on Police Disciplinary Code, it is the duty of every police officer to strictly comply with his/her obligations prescribed by legislation. Service discipline within the Police is based on the idea that every police officer carries out his/her duties and bears individual responsibility for complying with ethical norms, follows orders and implements them in a timely and accurate manner. The supervisor is to serve as an example for his subordinate and shall always respect their rights and dignity, punish for disobedience, encourage compliance, pay attention to personal characteristics of his/her subordinates, reveal and examine service misconduct in a timely manner and take preventive measures.

This law devotes special section to the ethical norms of the police officer. It requires the Police to respect the Constitution and laws, people's customs and traditions, refrain from supporting any political party and stay politically neutral, in any situation keep his/her personal dignity, know and respect human rights, refrain from engaging herself/himself in any sort of business that might affect his/her independence and impartiality, prioritize public and state interests from his/her own interests, not to abuse his/her position etc. Ethical norms are mandatory for the police officers both in their

⁴¹ The RA Law on Police Disciplinary Code, 28. 05. 2005

professional and personal capacity. The breach of ethical norms may entail disciplinary sanctions.⁴² In order to uncover professional misconduct and disciplinary breaches, heads of all Police departments are entitled to hold service investigations. During service investigations all police officers are equal before the law irrespective of their rank and position.

In accordance with Article 18 of the Police Disciplinary Code, the basis for initiating a service investigation against a police officer is a complaint and statement brought by a citizen, including reports from mass media on professional misconduct allegations by police.

Service investigations can be instituted based on statements received by a Member of Parliament, Human rights defender, state officials, local self governing bodies and prosecutors. Service investigations can also commence when a head of a department or respective deputy directly reveal professional misconduct of a police officer.

Normally, a service investigation is carried out as soon as possible, but not later than within 30 days from the day the investigation was assigned. As a result of a service investigation, a police officer may be subjected to disciplinary sanctions. Sanctions include; reprimand, severe reprimand, reduction of salary rate, warning on non-compliance to the position held, demotions in rank and positions by one step, and removal from police service.

Generally, service investigations can be assigned by the official who is eligible to decide on the issue of disciplinary sanction. In accordance with law on Police Service, these functions are conferred upon only by the Chief of the Police. The Chief of the Police has, under relevant order, delegated some of his/her powers to deputies and heads of independent units. Heads of regional police departments can authorize service investigations. However, major sanctions such as demotions in rank and position and removing an officer from the police office are exercised only by the Chief of the Police. If a police officer is to be removed from the police, all documentation is subject to review by the Legal Department to ensure that the decision is justified and legal.

If the misconduct of a police officer involves a criminal element enshrined in the Criminal Code, the body conducting the service examination may suspend the examination and forward the materials to the special investigative service⁴³. They can initiate a criminal investigation in order to determine whether a person has committed a crime or not. The body initiating the service examination has an option to either wait until a decision is taken by the prosecutor, or proceed with the service examination.

Article 43 of the Disciplinary code enables the official in charge of subjecting a police officer holding senior, leading or middle class position for alleged professional misconduct or ethical violation to

⁴² Id., see for more details Art. 10

⁴³ The special investigative service deals with all the issues related to criminal investigation of the police officers.

disciplinary sanction. Then, to send the materials to a Court of Honor for their review and personalizing the responsibility of the police officer. The main rationale behind the so called Court of Honor is shaming the individual before the staff and getting staff's opinion on the conduct. Most of the cases the Court of Honor plays a role of a saving mechanism for the supervisor and alleged violator and the case ends by merely shaming the person in front of his/her colleagues. The RA Police have developed a methodological manual for exercising service investigations on a unified and structural basis within the entire Police system.

Public-Police partnership plays a crucial role in promoting transparency and uncovering professional misconduct of police officers. Citizen complaints regarding police misconduct are an essential means of gathering information. The Chief of Police has endorsed these orders; procedure of examining suggestions, complaints and statements of the citizens⁴⁴ and procedure of citizens' admission by the police agencies.⁴⁵

These policies have created a legal basis and conditions for citizens to file their suggestions, complaints, letters and critiques about the professional work of the police officers both in written and oral forms. The management bodies of the Police bear personal responsibility for organizing and coordinating the work of the citizens' letters and complaints. All police units including the police education and training centers admit citizens on every business day at special (reception) rooms. The name of the police official receiving citizens, the time and place of the availability is announced publicly in police premises, as well as the Police through mass media. This information is further available on the official Police website.

The Chief of Police personally controls work with citizens' written statements through deputies and the staff. In departments of the Police there are sections dealing with citizens' complaints and suggestions. By exercising control over police-public partnership, the Chief of Police pays special attention to whether the police officer has responded to a citizen's letter in a complete and timely manner, and the legality and justification of police officer's decision and action taken.

Police-public partnership, support of non-governmental organizations and active public participation play a key role in promoting rule of law.

A more specific form of police-public partnership within Armenian police is the introduction of Public Council adjunct to the RA Police. The Public Council consists of cultural workers, public figures, sportspersons and highly reputable citizens.

The main tasks of the council are; participate in promoting public security means, protection of citizens' rights and freedoms, discussing essential questions of improving police operation, to design

⁴⁴ Order N 12-H, 27.12. 2003

⁴⁵ Order N 1402-A, 18.06.2008

programs aiming at developing civic and public initiatives vis-à-vis the police, to cooperate with media outlets to present objective and complete information about police activities in the country.

Police-public partnership and advent of the Public Council are effective means to support police internal control and oversight over the discipline and professional service.

Analysis of complaint data indicates a recent positive tendency. The number of professional misconduct incidents has decreased. For example, during the years of 2006-2007, the Police conducted 564 inspections and service investigations. However, as a result of complex preventive measures undertaken by the Police in 2008 and 2009, the number of occurrences dramatically decreased amounting to 292, approximately 50 percent less than previous years.⁴⁶

For the last three years and nine months of 2009, the Police received 856 complaints from individuals, legal entities and imprisoned persons. The Police conducted 856 service investigations. 625 police officers were subject to disciplinary sanctions and 167 of them were removed from office. 48 cases were forwarded to criminal investigation bodies for examination. As a result, 52 criminal cases were processed and 26 police officers were convicted.⁴⁷

It should be noted that not all the complaints and statements are fair and justified. A number of allegations are made to avoid administrative or criminal responsibility.

For example during 2009, 58 complaints of the citizens were concluded to be without basis, and there was no misconduct by the police officers.

Currently, the RA Police are in the process of introducing and implementing fundamental measures to strengthen discipline and professionalism among police officers, to increase public trust, simplify police-public partnership and communication, and improve social and legal protection of police officers.

⁴⁶ Speech of the Police Colonel R. Ghambaryan, Deputy Head of the Internal Security Department of the RA Police

⁴⁷ Id.

EXTERNAL ACCOUNTABILITY

This report has stipulated that another aspect of the Police accountability is its accountability to the public in general. To achieve democratic policing, the Police must be subject to efficient external control to various powers, particularly to the legislative, executive and the judicial powers.

PARLIAMENTARY CONTROL

According to the OSCE Guidebook for the Democratic Policing ⁴⁸ the legislative power (the Parliament) carries out an *a priori* control over the activities of the Police through passing laws regulating different spheres of their work. It is also suggested, that the Parliament may exercise an *a posteriori* control through its internal commissions or through parliamentary ombudsman.

In the RA, the Parliament exercises both *a priori* and *a posteriori* oversight over the Police within the meaning of the OSCE Guidebook. The RA Constitution guarantees state power to be exercised not only by the separation of different branches of the power, but also by a *balance* between those branches. In theory, Parliament shall play a crucial role in serving as a forum to balance legislative and executive branch and to perform democratic oversight of the Police.

In accordance with Article 62 of the RA Constitution, legislative power in the RA is vested in the National Assembly. The NA exercise democratic oversight over the executive generally and police in a number of ways.

The NA ensures that state budget is properly controlled and allocated. In accordance with Article 76 of the RA Constitution the ‘National Assembly shall adopt the state budget upon its submission by the Government. If the budget is not adopted by the start of the fiscal year, all expenditures shall be incurred in the same proportions as in the previous year’s budget. The procedure for debate on and adoption of the state budget shall be prescribed by the Law on the Rules of Procedure of the National Assembly’.⁴⁹ The NA controls the implementation of state budget together with the use of loans and credits received from foreign governments and international organizations.⁵⁰ In order to exercise budgetary control power in a fair manner, there is an independent body created in the RA, namely the Control Chamber. This body oversees the use of the budget resources and the state and community property. The NA approves the Chamber’s action plan and is required to submit at least once a year a report on the oversight outcomes to the legislative body.⁵¹ The NA examines and adopts the annual

⁴⁸ Supra note 13, at 68.

⁴⁹ Supra note 10, Art. 76. See also Chapter 10 of the Law on the Rules of Procedure of the NA, 20.02.2002.

⁵⁰ Id.

⁵¹ Id. Art. 80.

report on the execution of state budget⁵² only after having the Chamber's findings on its hands. The Police are an adjunct body to the Government and are basically within the executive branch. In compliance with the provisions enshrined by the RA Law on the Police, they are financed at the expense of the state budget, within its budgetary control function the NA exercises democratic oversight vis-à-vis the spending of the Police financial resources as a part of the state budget.

One may conclude that the NA possesses a limited role in the budgetary process, as it merely adopts it, makes amendments to it, and oversees its implementation by means of approving the report on budget implementation. Targeted use of budget resources is excluded. A striking example of this is a situation when the RA Government, on the basis of budget allocations and budget lines, approves the list of procurement of goods, works and services. In fact, by approving the amount allocated to budget lines according to economic classifiers, the RA Parliament is no longer capable of overseeing how these amounts are ultimately spent. Of special concern is the solution to the question of internal line redistribution and amendment of the budget index, which is also implemented by the RA Government today.

Another interesting aspect of the legislative-executive interrelation and mechanism pertaining to democratic oversight is a so called 'Answers and Questions' session between the Government and the NA. These sessions are also often transmitted live on Public TV to make sure that the Government is also accountable to the public. The overall rationale behind the 'Answer and Question' session is that Deputies are entitled to ask the Government written and oral questions and the parliamentary factions and deputy groups are also entitled to submit interpellations to the Government. During one sitting of the regular session week the Prime Minister and the Government members shall answer the Deputies' questions. However, the NA does not pass any resolutions in conjunction with the questions raised by the Deputies and there is no defined follow-up procedure for the answer and question sessions.⁵³

A POSTERIORI PARLIAMENTARY OVERSIGHT: THE RA NA STANDING COMMITTEE ON DEFENSE, NATIONAL SECURITY AND INTERNAL AFFAIRS

One of the principal ways in which parliamentary democratic oversight is exercised over different branches and bodies of the Government is standing committees. The majority of parliaments in the world have specialized standing committees on issues such as defense, security, policing etc. The RA NA is not an exception to this generally accepted practice.

In accordance with Article 73 of the RA Constitution, the NA is not allowed to run more than 12 standing committees. These committees shall be established for the preliminary review of draft legal acts and *other issues* and for providing the NA with conclusions thereon.

⁵² Id.

⁵³ Id. Art. 80.

Paragraph 4 (f) of Article 21 of the RA NA Rules of Procedure specifies the areas of the activities of the RA NA Standing Committee on Defense, National Security and Internal Affairs. The latter is called to provide conclusions on the issues of defense, security, public emergencies, police, military-industrial complex, military education establishments, and military and police services.⁵⁴ The rules and procedure, the specific functional competence of the standing committee in question are set down by its Statute which is subject to approval by the decision of the Standing Committee.

The RA NA Rules of Procedure (Art. 21.7) also specify that each standing committee has one administrative assistant and three experts. Pursuant to Article 23 of the Rules of Procedure, within its structure a standing committee may establish sub-committees, as well as working groups and define their tasks and activities.

One of the concerns that standing committees face is the lack of opportunity for them to cooperate with civil society sector, in particular with the non-governmental organizations. This may weaken its position and power to carry out appropriate parliamentary oversight over the Police.

In the view of the NA Standing Committee on Defense, National Security and Internal Affairs, the Parliament lacks direct oversight machinery vis-à-vis the Police. The only direct way in practice when the Parliament exercises oversight over those security sector state institutions is budgetary control. As far as the budgetary control is concerned, the Standing Committee exercises close oversight of the Police's spending and gives a conclusion as to whether the money of the Police has been spent in a justified manner and in accordance with the budget. The main function of the Standing Committee remains the conclusion it issues about adopting laws dealing with defense, national security and internal affairs. The NA Standing Committee considers that one of the striking examples remains the Law on the Police, which has turned to be an active topic for discussion amongst the Committee.

Another example is the Law on the Operative-Investigatory Operations, when the Standing Committee has issued negative conclusions for a number of times.

As far as the Questions and Answers of the Government is concerned, the Police is not a body of the Government as such and at the end of the day the Chief of the Police has no obligation to stand in Parliament and answer to the questions raised. Technically, the Chief of the Police is not held accountable before Parliament through this answer and question session.

The parliamentary Standing Committee has a capacity to follow up on citizens' inquires and complaints about police officers actions and inactions. The Standing Committee can send a letter to the Police office to inquire about the alleged violation, to mention what laws have been violated by the police officers and ask the Police to keep the standing committee informed about measures being taken.

⁵⁴ Also available at: http://parliament.am/committees.php?ID=111153&do=show&cat_id=119&month=all&year=2009&lang=eng

The letter sent by the Standing Committee may serve as a basis for commencing a service exam against a police officer in question.

Committee sessions are generally open and every Deputy may attend its working sessions. The Police have representatives during those sessions and Deputies also get a chance to debate with them on different issues and concerns. The sessions are only closed if the subject matter deals with a state or service secret or with the budgetary control.

In spite of all the functions that the Standing Committee currently enjoys, the Parliament still lacks proper oversight machinery, which can only be guaranteed by having direct constitutional provisions conferring the power of oversight over the Police to the Parliament in general, and to the Standing Committee in particular. There is a need to make the work of the Committee more proactive, hold working sessions more often and to respond to citizens' inquiries and requests in a timely manner.

Recently, the OSCE Office has set an expert group adjunct to the Standing Committee to help it successfully accomplish the set goals. Within this expert group, the Standing Committee actively cooperates with non-governmental organizations. The NGOs currently have an opportunity to present their work to the Committee.

THE RA HUMAN RIGHTS DEFENDER: NEW MECHANISM FOR HOLDING POLICE ACCOUNTABLE

The RA has the Office of the Ombudsman (Human Rights Defender). The role of the Ombudsman is critical in every democracy. The OSCE Guidebook on Democratic Policing suggests the Ombudsman is another way of parliamentary control over who may initiate investigations *ex officio* or following complaints by the public regarding the maladministration.⁵⁵ The Ombudsman/Public Defender is usually a public official of high level, is impartial and independent of the Government and appointed by the Parliament.⁵⁶

In accordance with the constitutional provisions of the RA, the Human Rights Defender is an independent official who protects human rights and fundamental freedoms violated by state and local self-government bodies and their officials. State and local self-government bodies and their officials shall cooperate with the Human Rights Defender (RA Constitution, Art. 83.1).⁵⁷ The Human Rights Defender (hereinafter referred as 'Defender') is elected by the NA for a period of 6 years by 3/5 of the total number of Deputies. The Constitution requires high public esteem and integrity of a candidate

⁵⁵ Supra note 13, at 69

⁵⁶ Julie Berg, Police Accountability in Southern African Commonwealth countries, Institute of Criminology, University of Cape Town, at 8, 2005

⁵⁷ See also the Law on Human Rights Defender, Art. 2, 21.10.2003, HO-23

to be elected as a Defender. As a guarantee of its position, the Defender shall be irremovable during his tenure.⁵⁸

The Law specifies the range of complaints which the Defender may consider. Article 7 sets down that the Defender is empowered to consider complaints concerning violations by central and local government agencies (or their officials) of human rights and fundamental freedoms enshrined in the Constitution, laws, other legal acts and the international treaties of the Republic of Armenia, as well as by the principles and norms of International Law. Accordingly, for the purposes of our report, the Defender is entitled to consider human rights violations and abuses by police officers.

The Defender cannot intervene in judicial processes. The Defender can attend and speak at Cabinet meetings and at meetings in other state agencies when issues related to human rights and fundamental freedoms are discussed. The Defender is also empowered to propose for discussion, at these sessions, issues related to violation of human rights and fundamental freedoms required under the laws by state agencies or their subordinate agencies or their officials. The Defender may attend the sessions of the RA NA and make a speech in accordance with the procedure defined by the NA Statute when issues related to rights and freedoms are discussed.⁵⁹ Any individual has a right to apply to the Defender. S/he should be granted free access to military units, police detentions centers, pre-trial detention facilities or penitentiaries, as well as to other places of detention in order to receive complaints from potential applicants. Once the Defender accepts a complaint for consideration, s/he is entitled to apply to the respective state agencies or their officials for assistance in the process of examining the circumstances subject to disclosure. This cannot be performed by the agency or official whose actions/decisions are disputed.⁶⁰

During the examination of a complaint, the Defender shall have free access to all state institutions and organizations, require and receive from them any information, documentation related to the complaint in question, instruct relevant state agencies to carry out expert examination of, and prepare findings on the issues subject to clarification during the investigation of complaint.⁶¹

At the same time, the Defender shall give an opportunity to central and local government agencies or their officials (whose decisions, actions or inactions are disputed) to give clarifications on the subject of the complaint and the results of examinations, and substantiate their position in general.⁶²

In accessing the role of the Defender, and trying to understand the level of democratic oversight s/he possesses, the departure point should be the types of decisions s/he can render. Article 15 of the

⁵⁸ Supra note 57

⁵⁹ Id. Art. 7

⁶⁰ Id. Art. 11

⁶¹ Id. Art. 12

⁶² Id. Art. 13

Human Rights Defender Law empowers the Defender, *inter alia*,:

1) *to propose to the central or local government agency or official, the decisions or actions (inaction) of whom have been qualified by the Defender as violating human rights and freedoms, to eliminate the committed violations, indicating the possible measures necessary and subject to implementation for the restitution of human and civil rights and freedoms;*

2) *to apply to the Constitutional Court on the issues of violation of human rights and freedoms;*

3) *to bring an action before the court on invalidating in full or partially the normative legal acts of the central and local government agencies or officials that violate human rights, fundamental freedoms and lawful interests and contradict the law and other statutes, if the central or local government agencies or officials, who committed the alleged violation, do not invalidate in full or partially their corresponding legal act within the prescribed period;*

4) *to recommend that the authorized state agencies execute disciplinary or administrative penalties or file criminal charges against the official whose decisions or actions (inaction) violated human and civil rights and freedoms and (or) violated the requirements of this Law (emphasis added).*⁶³

Clearly, the Defender is not akin to the judicial remedy and cannot offer a definitive interpretation of a law, and the decision and conclusions of the Ombudsman are not binding. However, what is important here is that Defender can serve as a vehicle to bringing a state official, e.g. a police officer accountable before the court by challenging his/her decisions, actions or inactions violating human rights and freedoms.

In a broader sense, the Defender's main power is more of a consultative/recommending character. A possible obstacle to the effectiveness of the Defender's work could be situations when the recommendations made by the Defender's Office regarding the violations of human rights may be either ignored or not enforced by the organization to which it was addressed. It is also possible that the Office of the Defender itself may be under-resourced and over-burdened.

The Armenian Law requires that state officials/agencies receiving the Defender's recommendations and suggestions about measures, take action within 20 days of receiving the motion. To ensure the transparency of the entire process for the public, the Defender shall publish in mass media special information about the central or local government agency or official who failed to respond to his/her motion or did not comply or only partly complied with the requirements of the motion, together with the responses of the central or local government agency or their officials to the Defender's decision and motion, if all other means of resolving the issue through state authorities have been exhausted.⁶⁴

⁶³ Id. Art. 16

⁶⁴ Id.

This legal provision plays an important role in naming and shaming state officials and agencies, including the Police, for not complying with the Defender's recommendations.

Another important instrument for democratic oversight entertained by the Defender's office is delivery of his/her report. Article 17 of the Law specifies that during the first quarter of the year, the Defender delivers a report on his/her activities and on the human rights situation in the previous year to the President of the Republic of Armenia and the representatives of the executive, legislative and judicial authorities. The report should be presented to the National Assembly during the first sitting of the National Assembly's spring session. The Defender also presents his/her report to the mass media and relevant NGOs. Moreover, in exceptional cases producing a widespread public response, or in case of flagrant violation of human rights or mass occurrence of non-elimination of the violations in due time, the Defender has the right to deliver ad hoc reports.⁶⁵

One of the most recent and publicly debated ad hoc reports of the Human Rights Defender's Office was the Ad Hoc Public Report on the 2008 February 19 Presidential Elections and Post-Electoral Developments aimed at providing comprehensive analysis of the presidential elections and post-electoral developments. In his report the Defender raised the issue of the lawfulness of the demonstrations (February 20-March 1, Freedom Square), legitimacy of the March 1 Police operations from the perspective of criminal procedure, police authority and proportionality of police actions, in particular those with application of physical force, special means and firearms.⁶⁶

In its 2008 Annual Report, the Defender addressed the human rights violations by the public bodies in a special section and devoted a specific sub-section to human rights violations by the Police.

The Defender's Office received 187 complaints against the Police about allegations of human rights violations. 137 of 187 complaints were admitted by the Defender for consideration.⁶⁷ Compared to previous years, there is a tremendous increase in a number of complaints challenging the actions/decisions of the Police. The complaints received by the Defender's Office were both in oral and written manner. Out of fear of being prosecuted and tortured by police officers, the vast majority of complaints were submitted in oral format. The complaints mainly dealt with the issue of subjecting an individual to a criminal responsibility without any grounds, not initiating criminal cases in accordance with the procedure set by law, obtaining evidence and testimony from a defendant through torture, fear and treatment, not returning a passport to a citizen. A number of people subjected to torture, ill and degrading treatment by the Police, not only didn't file a written complaint to the Defender's Office, but also were reluctant to reveal their identity fearing future prosecution by the Police.⁶⁸

⁶⁵ Id. Art. 17

⁶⁶ For more information please consult the Ad-Hoc Public Report On the 2008 February 19 Presidential Elections and the Post-Electoral Developments, Yerevan 2008, available at: <http://www.ombuds.am/main/en/10/31/>

⁶⁷ The RA Human Rights Defender's annual report for 2008, at 115, 03.10.2009

⁶⁸ Id. at 116.

In his Report, the Defender highlights findings on incidents where police officers conducted actions violating the RA Criminal Procedure Code.

The Defender also received a number of complaints alleging illegal police actions on March 1-2 demonstrations against the results of the presidential elections. The issues concerned false criminal charges brought against demonstrators due to their political associations and massive arrests without providing defense lawyers, etc.

The core problem with the role of the Defender in addressing the human rights violations of police officers is that it is almost impossible for the Defender to prove the breach committed by a police officer, since the state agency or official charged with alleged violations simply denies that the violation did in fact occur.⁶⁹

Nevertheless, the cooperation between the Human Rights Defender's Office and the Police is on a relatively good level. The Defender's Office highly values the cooperation between the Office and the Police. Among the state institutions, the Police are the only one that has signed the Memorandum of Cooperation with the Human Rights Defender's Office. Within the framework of this cooperation, the Police and the Human Rights Defender's Office agreed to actively cooperate in the field of promoting and protecting human rights. Although the Police are obliged by law to provide information and cooperation to the Human Rights Defender's Office, this mechanism of establishing mutual understanding puts the cooperation on a much closer level.

Currently, the Police perceive the role of the Human Rights Defender much more seriously, and the cooperation level between these two bodies has grown immensely. The reason for this is the public acclaim of the institution due to its ad hoc and annual reports.

As a result of the work of the Human Rights Defender's Office, incidents of police beatings at police stations have decreased. The Defender's Office has set up immediate response units which can quickly attend to allegations and investigate whether there have been incidents of police beatings, take photos to use later as evidence before the court.

The Defender's Office deals with conditions at police detention centers and exercises oversight of sanitary conditions, food, health conditions, etc.

The Defender's Office can control and study the registry books of arrested and detained individuals. There have been a number of instances when the Defender's Office revealed a number of criminal procedure violations, for example when a person was deprived of liberty for more than 72 hours without any decision on his procedural status (some cases involved 7-8 days). In these circumstances, the investigators typically justified their action by stating that it was the command of a superior

⁶⁹ Id. at 127.

prosecutor, which is a violation of the rule of law. As a result of the advocacy efforts of the Defender's Office, the Chief of the Police has given an internal order that if an arrested person does not receive a procedural status (e.g. suspect, detained, etc) within 3 hours of the initial arrest, s/he must be released.

On numerous occasions the Police have conducted internal investigations on their own officers for alleged misconduct based on the letters and complaints from the Defender's Office

POLICE ACCOUNTABILITY TO THE EXECUTIVE

The executive power, through its central, regional or local authorities, may hold the Police accountable. It has direct control over the Police who are part of the executive power. In the RA, the first point of departure is that the Police receive their financial means from the state budget, decided by the Government. Another important aspect of the executive control over the Police is that the Government is in charge of designing and implementing internal policy of the country.⁷⁰ The Government gives directives and instructions regarding the general priority of police activities without prejudice to operational independence for performing its specific tasks.

The Role of the Prosecutor's Office

Prosecutors have significant power as an oversight mechanism for Police. Prosecutors can scrutinize the police methods of investigation; they may ask the police investigators to reinvestigate cases and provide additional information/evidence, which make it difficult for the police officers to cover up official misconduct. In accordance with RA Constitution Article 103, the Office of the Prosecutor General is a unified, centralized system, headed by the Prosecutor General. The Prosecutor General shall be appointed by the NA upon the recommendation of the President of the Republic for a six-year term. The same person may not be appointed Prosecutor General for more than two consecutive terms. The Constitution sets down general tasks of the Prosecutor's office as follows:

1. to commence criminal charges and prosecute;
2. to oversee the lawfulness of preliminary inquiries and investigations;
3. present the case for the prosecution in court;
4. bring actions to court and defend the interests of the state;
5. appeal judgments, verdicts and decisions of the courts;
6. oversee the lawfulness of discharge of penalties and other means of compulsion.⁷¹

⁷⁰ Supra note 10, Art. 85.

⁷¹ Supra note 10, Art.103 & the RA Law on the Prosecution, Art. 4, 22. 02. 2007.

The Office of the Prosecutor General shall operate within the powers granted by the Constitution and on the basis of the law.

Within the broad domain of the Prosecutor's power, the Prosecutor's Office is capable of monitoring the Police through overseeing the lawfulness of preliminary inquiries and investigations, as well as overseeing the lawfulness of discharge of penalties and other means of compulsion. For the purposes of holding the Police accountable and in accordance with Article 25.6 of the Law on Prosecution, the prosecutor supervising the lawfulness of inquests and investigations may request the relevant body conducting the inquest or investigation to carry out a service investigation/exam of the person conducting the inquest or investigation. The request shall be sent to the supervisor of the official alleged to have committed a violation, who shall be obliged, within a one-week period of receiving the request, to start the service investigation/exam. Thus, the prosecutor may request the respective body to subject a police investigator to service examination for alleged professional misconduct.

Another example of prosecutorial power to supervise the lawfulness of enforcing sentences and other compulsory measures is the following; the prosecutor may, without any hindrance, visit all places where detained persons are kept, become familiar with documentation upon which a person was subjected to sentence or deprived of liberty, check the conformity with the legislation of such orders, instructions, and decisions of the administration of bodies enforcing sentences and other compulsory measures, which concern the fundamental rights of the person subjected to a sentence or other compulsory measures. If a prosecutor discovers an act which contradicts legislation, the prosecution shall file motion to revise it; when the prosecutor considers that a delay may lead to grave consequences, the prosecutor has the right to suspend the validity of the act and to file motion to revise it. The prosecutor has the right to immediately release any unlawfully detained person, and in penal and disciplinary isolators of such places, If a person was deprived of liberty on the basis of a legal act of the administration, then the person adopting such act shall be obliged, if so instructed by the prosecutor, to eliminate the act without delay; and in case of doubt that the rights and liberties of persons subjected to a sentence or other compulsory measures have been breached, the prosecutor has the authority to demand explanations from officials on actions or inactions taken.⁷²

The prosecutor exercises control over 3 aspects: operative investigative functions, inquiry and investigation. The Prosecutor's Office exercises control over investigation carried out by the police investigators. This is a key area which manifests the efficiency of the prosecutorial control over the work of the Police.

Effective oversight has two potential problems. The first is the lack of the legal means; the second is the lack of credible resources capable of exercising proper criminal investigation within the Police. Very often young and new recruits may require more skills and trainings for exercising proper

⁷² Id. Art. 29.

criminal investigation. To avoid this problem it is imperative to intensively and regularly train police investigators.

To ensure the effective prosecutorial control over the Police it is equally important to have the right balance of duties and powers of police investigators and prosecutors and to ensure both the prosecutors and investigators are acting strictly within the limits of the law.

THE JUDICIARY AS AN EXTERNAL CONTROL MECHANISM

As a part of the criminal justice system, the judiciary plays a vital role in monitoring the Police functions. Generally speaking, the courts carry out their controlling mandate through civil and criminal proceedings initiated by other state bodies as well as by the public.⁷³ The Armenian Constitution safeguards the right to effective legal remedies before judicial and other public bodies.⁷⁴ It also reflects the right to redress from the Human Rights Defender, including international institutions protecting human rights and freedoms in the light of Armenian international obligations.⁷⁵ Armenian legislation thoroughly sets down domestic judicial remedies available to individuals claiming violations by public authorities.

The Armenian judicial system is a three-tiered system consisting of: First Instance Courts of General Jurisdiction, the Courts of Appeal and the Court of Cassation, and a separate Constitutional Court authorized with exclusive power to administer constitutional justice and resolve disputes over the constitutionality of laws.⁷⁶ The highest court instance in the RA, except for matters of constitutional justice, is the Court of Cassation, which shall ensure uniformity in the implementation of the law.⁷⁷

Effective January 1, 2008 the RA Administrative Court became operational. The subject matter jurisdiction of the Court includes cases challenging administrative and normative acts, actions and inactions by state and self-governing bodies and their officials.⁷⁸ Plaintiffs can directly lodge a complaint with the Administrative Court without previously exhausting all other administrative remedies. An appeal against the substantive judgments on the merits of the case is exercised through cassation procedure.⁷⁹ In some cases, as specified by law, the Administrative court also issues final judgments which are not subject to appeal. For example, if a person is challenging a police officer's decision, actions or inactions, or if a police officer is challenging his/her commander's actions, then the Administrative Court serves as a '*forum convenience*'. There are no special courts to examine cases dealing with police officers or servicemen.

⁷³ Supra note 13, at 69.

⁷⁴ Supra note 10, Art. 18

⁷⁵ Id.

⁷⁶ Id. Arts. 91-93.

⁷⁷ Id. Art. 92.

⁷⁸ RA Administrative Procedure Code, HO-269-N (10 December 2007)

⁷⁹ Id. Art. 118, & Chapter V of the RA Civil Procedure

As far as the courts of general jurisdiction are concerned, their subject matter jurisdiction covers all civil and criminal cases.⁸⁰ There are two courts of appeal in Armenia: the Criminal Court of Appeal and the Civil Court of Appeal.⁸¹ Courts of Appeal are empowered to review judgments of courts of general jurisdiction.⁸²

For the purposes of our report, it is noteworthy to look at the Criminal Procedure Code and present the list of preventive measures requiring the judicial review. Article 134 of the RA Criminal Procedure Code⁸³ defines the preventive measures as coercive measures taken against the suspect (or the accused) to prevent their inappropriate behavior during criminal proceedings, and to ensure the execution of the sentence. Article 134 of the RA Criminal Procedure Code lists arrest, bail, written obligations restricting travel, a personal guarantee, an organization guarantee, and taking under the supervision of the commander as preventive measures.⁸⁴ Chapter 39 of the Criminal Procedure Code is entitled as Court Supervision over the pretrial proceedings. Article 278 sets the domain of the court supervision. In particular, the courts supervise the implementation of the investigative, operative and search activities, and the petitions concerning the application of the judiciary enforcement restricting the constitutional rights and freedoms of the person. The court considers complaints concerning the legitimacy of decrees and actions of preliminary investigation bodies, investigators, prosecutors and operative and searching bodies. Investigative actions, such as searches, restriction of privacy of correspondence, wire tapping, interception of correspondence, including telephone conversations, telegraph and other communications (Art. 279) can be exercised only based on the court's decision. The court has the prerogative to implement such criminal enforcement measures as detention, prolonging detention, arrest as a measure of securing appearance, and setting bail instead of detention.

Court review plays a central role in ensuring the efficiency and legitimacy of pretrial proceedings. Despite constitutional reforms, a newly introduced Judicial Code,⁸⁵ and rules of judicial conduct guarantee the independence and impartiality of the judiciary, corruption within the judiciary still exists. The general perception is that the courts rarely issue a decision incompatible with the will of the Government or a prosecutor.

In its Human Rights Report, the US State Department noted that ‘despite structural changes, courts remained subject to political pressure from executive branch and judicial corruption was a serious pressure’. The independence of the judiciary was highly criticized by the public as a result of the 2008 Presidential Elections and trials of so-called ‘political prisoners’. It is widely perceived that the executive branch, in particular the President and the Government officials influence the judges,

⁸⁰ Article 15 Civil Procedure Code; Article 44 Criminal Procedure Code

⁸¹ The RA Judicial Code HO-135-N (21 February 2007).

⁸² Id. Art. 39

⁸³ RA Criminal Procedure Code, HO-248, 1 September 1998 as amended on June 8, 2009.

⁸⁴ Id. Art. 134.2.

⁸⁵ The Judicial Code, Art. 11(1).

especially when the case before the court bears political implications.⁸⁶

In order to determine the objectivity of the judiciary and the level of the system's integrity, one should assess whether or not police abuse results in prosecution. Only where the cases of abuse are exposed, can the court's role be invaluable in holding the Police accountable for their actions. Another problem hindering the entire process is the fact that often the police and prosecution may be in close connection with each other. This may prevent an impartial judgment of a case of police abuse. In fact the entire system is totally interconnected. Judgments will be deemed to be impartial if the investigation is impartial and free of outside pressure. Indeed, any outside influence of investigations will lead to fewer prosecutions and court examinations of police abuse.

PUBLIC OVERSIGHT: A CLOSE EYE ON THE POLICE

Public oversight, encompassing representatives of non-governmental organizations and media outlets, occupies a central role in holding the Police accountable for their actions. Active civil society is one of the core preconditions for every democracy. Compared to other oversight mechanisms, public oversight bears more of a proactive character and constantly keeps close eye on the work of the Police.

Armenian legislation, in particular the Law on Freedom of Information, guarantees the right to seek and get information from its holder, particularly state bodies, local self-governing bodies, state offices, state budget-sponsored organizations, as well as organizations of public importance and their officials.⁸⁷ Article 6 of the same Law specifies that every person has the right to request information from state agencies, to get acquainted with and/or get information sought by him/her as defined by the Law. Article 7 underlines that unless the RA Constitution and/or laws prescribe otherwise, the party possessing the information publicizes information on this activities at least once a year, in particular on its budget, the forms of written inquiries and consultative instructions on filling them in, staff lists, statistical and summary data on the inquiries received, including the grounds for refusals, etc.

Civil society actors exercising oversight functions towards the state institutions include the Yerevan Press Club and the Asparez Club of Journalists. These are two leading media outlets aiming at promoting freedom of expression and providing information to a wider public. The Yerevan Press Club is the first professional association of journalists in Armenia, established during the post-communist period. YPC is a non-profit, non-governmental organization that unites journalists, publishers, media leaders and experts, irrespective of their political ideas.⁸⁸ The Yerevan Press Club is exercising and has exercised a number of reform, democratic, human rights and media oriented projects supported

⁸⁶ American Bar Association Rule of Law Initiative, *Judicial Reform Index for Armenia* (hereinafter 'JRI'), Vol. III, at 5 (2008), at 3.

⁸⁷ RA Law on Freedom of Information, September, 23, 2003, Art. 3.

⁸⁸ Available at <http://www.ypc.am/eng>

by the OSCE and the Open Society Institute included, but not limited to Media Monitoring and Production of TV Debates during Yerevan Municipal Election Campaign, Promoting Reforms in the Armenian Media, Media Diversity in Armenia, Overcoming Public Disenfranchisement through Reform Monitoring and Publicity, Introduction of Self-Regulation Model in Armenia as an Advocacy Tool for Freedom of Media, Promoting Democracy through Public Debate and Monitoring of Reforms, Developing Resources for Free and Quality Media etc. All these projects can play a great role in creating and advancing the level of civil society and utilizing media outlets as a significant tool of public oversight.

Generally speaking, the Yerevan Press Club aims to support and develop of independent and professional media, seeking to help strengthen democratic institutions and establish civil society in Armenia.

The Asparez Club of Journalists has a similar agenda. They aim to promote freedom of expression and contribute to the development of civil society at large. Among others, the Asparez Club also aims to study and assess the quality of the work of the state officials and exercise oversight thereof.

The availability of information, and access to it, is the cornerstone for non-governmental organizations and media to effectively oversee and expose the Police abuse. Along these lines, it is worthwhile to mention the official webpage of the Police. The Police webpage has a special section devoted to news. Anyone may familiarize him/herself with the crimes that have been disclosed by the Police, information on statistics, meeting with the media outlets or with public notices of the Police. A very interesting aspect of Police transparency is a TV program and newspaper TV-02, that presents the public regularly criminal incidents within the republic, criminals, the measures taken by the Police to prevent and combat crimes etc. The Police webpage also includes information about this program. This is proving to be a good venue to a larger public and to announce its activities.

The official site lists sections devoted to the respective legislation applicable to the actions of the police, the procedure to become a police officer, archive, statistics, and history of the police, information on migration and the list of voters. Currently, the Police website is only available in Armenian. It would be advantageous to have the webpage in English and Russian languages to ensure a wider public audience.

The relationship between public and police and their partnership has been addressed earlier in this report. The Police take measures to maintain sustainable partnership with a larger public through complaint/letters/suggestions of the public addressed to the Police and it is under the direct control of the Chief of the Police.

One of the interesting structures created within the executive branch and holding a consultative status is the Public Council. It was established by the RA President S. Sargsyan. It is adjunct to the President's Office. The core objective of the Council is to discuss and advise Armenian leadership on key challenges facing the country, in particular, represent the interest of Armenians in relation with the

bodies of public administration. The goals of the Public Council are: to contribute to the development of the democratic system and fundamental human rights and freedoms, prevention of intolerance among the public, sustainable development and strengthening of civil society, fostering mutual trust between the authorities, nationals and non-governmental organizations, building a dialogue and reliable partnerships between the public and the authorities, as well as implementing public oversight. It represents the interests of nationals in their relations with public bodies, promotes the participation of non-governmental organizations and nationals in public administration, and draws the President's attention to the problems of public concern and importance by means of alternative approaches and positions. The Public Council has twelve committees, of which the Committee on Defence, National Security and Internal Affairs deals with the problematic aspects in the police domain. The Public Council is comprised of 35 members, 12 of whom are appointed by the President, whereas the rest are to be represented by people involved in 'various spheres'.

However, in our opinion, the fact that the Public Council is under the close eye of the President, hinders its ability to act independently. The public oversight body is incapable of acting in an efficient manner detached from other civil society institutes and public at large.

Within the different civil society there are also public monitoring groups. For example on January 14, 2005, the RA Chief of Police issued the Order "On the Activities of the Public Monitoring Group at the Detention Facilities of the Police Department". According to this Order, on March 10, 2006, the RA Chief of Police, by Order No. 368 confirmed the staff of the public monitoring group which consists of 11 members and the Police handed over membership certificates to them. Members are elected for a three-year term. The Group consists of representatives of several non-governmental, as well as legislative organizations. The Group is a monitoring body, the task of which is to secure the protection of human rights and liberties of persons detained in police facilities. According to the Order, members of the Group have the right to free access to the detention facilities (DF) of the police, meeting with the detainees, getting acquainted with the internal legal deeds regulating the DF activities, upon the consent of the detainees, familiarizing themselves with their case and correspondence (except for documents of governmental and official secrecy). Civil society can play a role in spreading awareness and influencing public opinion. Civil society can trigger reforms in the field through its public opinion which is crucial to politicians. The same politicians may need the public support in the next election, thus the cooperation is essential. Mobilizing significant groups can help pressure those in position to implement respective reforms and ensure the existence of responsive and accountable policing.⁸⁹

To sum up, the proactive disclosure of information can be an excellent way of promoting accountability.⁹⁰

⁸⁹ Supra note 80, at 57

⁹⁰ The Police, the People, the Politics: Police Accountability in Kenya, Commonwealth Human Rights Initiative, at 35, 2006

CONCLUSIONS/RECOMMENDATIONS

Police accountability is vital in every democratic society. The Republic of Armenia is not an exception to this rule. Both individual officers and law enforcement agencies must be held to account for their actions. The lawfulness and legitimacy of Police actions is directly dependant upon the effective accountability procedures applicable to the police. This is the only legitimate way for the Police to achieve its goals of reducing crime and disorder, enhancing the quality of public life and serving the community needs. Contrary to the popular view that effective crime control and respect for constitutional principles are competing values in policing (Packer, 1968), experts today increasingly recognize that lawful conduct and accountability are essential for crime-fighting (Bayley, 2002).

The departure point for the effective police accountability in the Republic of Armenia should be the increased interest in police accountability on the part of police managers, policy-makers, scholars and civil society.

A positive step for effective policing in Armenia would be regular performance evaluations, which must be fair and objective. They are the best way to identify and correct performance shortcomings and to warn and terminate the police officers whose performance is substandard. Allegations of police misconduct can originate either from internal or external sources. Allegations from external sources deserve special attention, as it involves formal and informal complaints by citizens. This is where police-public partnership comes to play a central role in keeping a close eye on the entire system.

Although it is evident that the public can play a role in the quality of the police work, an opinion poll conducted by the OSCE Office in Yerevan in 2009 revealed that 70-89 percent of the society were not willing to collaborate with the Police. The only means of cooperation is to alarm the Police strictly in case of need (77 percent of Yerevan population). However, one should give due regard to the fact that there are other means of public-police partnership not simply including response related, but ensuring day-to-day cooperation and partnership. This should facilitate bringing the public closer to the Police and carrying oversight on a better and advanced level though understanding mutual needs and interests. One of the models entertained in Western countries are public forums that gather the members of a respective community to discuss security and defense issues together with the Police. Another option of effective oversight can be the establishment of City Security Councils. These Councils involve not only civil society actors and Police representatives, but also all other institutions dealing with security matters in a larger meaning of this notion. This may include officials from Ministry of Social Affairs, Ministry of Sports and Youth, Mayor's Office, etc. These Councils may play as great preventive and proactive tools for holding the Police accountable.

The Legislators and Policy-Makers have the Capacity to Improve Police Accountability:

The public generally loses trust in the Police as a result of the lack of accountability and seeks alternative ways of justice. This adversely affects police organizations themselves. At the end of the day the Police are less likely to receive the cooperation of citizens in their day-to-day activities. The lack of cooperation in turn may trigger the Police to revert to unacceptable methods to ensure the compliance with their orders. Thus, it becomes apparent that all levels of the Government should be involved in police reform process and increase the accountability aiming at eliminating the culture of impunity. In fact, the Government of the RA has taken a number of steps to ensure the internal and external accountability of the Police. The process should be ongoing and there is still much work to be done to advance the level of oversight.

One may suggest that the Parliament should play a crucial role in the entire process. In particular, the Standing Committee on Security, Defense and Internal Affairs should be empowered with more specific oversight functions vis-à-vis the Police per se instead of limiting itself with legislative drafting in this domain. Another important aspect of Armenian policing would be the idea of making legislative requirements upon the Chief of the Police to appear before the Parliament and make an annual report on the Police activities, goals achieved and challenges faced. It would be better if this report is printed and made publicly available to ensure higher level of transparency.

One of the core ways to involve the Government in Police accountability is to ensure that sufficient funds are allocated to oversight bodies and for the proper training of the Police. The Government must also ensure that relevant laws not only complement each other but are human rights orientated and free from loopholes. Existing laws need to be properly enforced and the Government needs to show that it is serious about tackling the problems of human rights abuses within the Police.

The Armenian Government can become involved in public awareness campaigns, educating the public on their rights and ensuring that they are aware of the existence of institutions at their disposal if they have been victims of police abuse.

Better Police Accountability Inside of the Police Organizations:

The Police can enact their own reforms. For example, setting a policy of scheduled internal training and professional development for long-serving police officers. Indeed, the training capacity involves additional funds and resources, which may become available through active cooperation with leading international security organizations and institutions.

The Police may initiate the creation and establishment of a toll-free telephone line, not only in Yerevan, but also in regions, especially in remote areas to assist the citizens in reporting police abuse and violence. This can be coupled with regular public opinion surveys to keep the Police informed about community needs and create a solid relationship and trust between public and police.

Civil Society can Have a Significant Impact in Improving Police Accountability:

Local Armenian NGOs can greatly contribute to the improvement of police accountability, not only through directly controlling police operations and simply looking for misconduct and allegations of a police officer, but also through cooperating and helping the Police to become more community-friendly.

Civil society organizations and NGOs can launch training workshops and conferences for members of the Police, initiate public awareness campaigns, launch TV or radio, disseminate booklets and leaflets, and link the Police with donor organizations for potential reforms. It is very important to have the public understand, establish and sustain specialized non-profit organizations to conduct police oversight work. There is a huge number of civic advocacy organizations, however they are not sector specific and one may hardly find a specific oversight NGO dealing exactly with the professional work, ethics and discipline of police officers, with whom the Police may cooperate and advance the level of Police-Public partnership.

What Else is Possible?

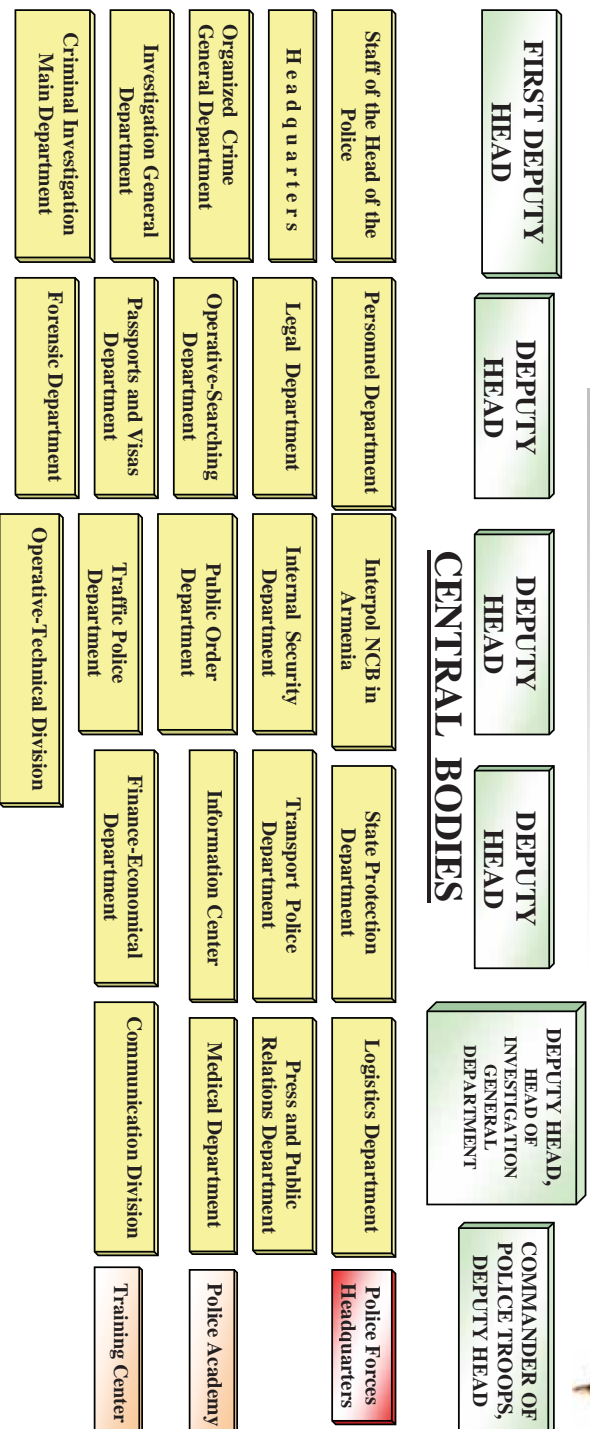
In order to advance police accountability, it is important to ensure the sharing of information and expertise between different state institutions, research bodies, universities, and representatives of civil society as well as leading international organizations and other countries. The Armenian Government must seek expertise from countries having in place successful programs and projects which have improved police accountability. Similarly, the sharing of research, information and expertise can take place through the active participation of Armenia in regional networks and mechanisms that already exist.

In a democratic society there can be no room for a culture of police impunity and violence. Thus, police oversight and effective accountability mechanisms should be properly undertaken. It is not simply the responsibility of the Police to strictly adhere to applicable rules and regulations. Indeed, effective police accountability consists of internal and external oversight mechanisms coupled with properly worded laws and policies enforceable at every level.

STRUCTURE OF THE POLICE OF THE REPUBLIC OF ARMENIA



THE HEAD OF POLICE



TERRITORIAL BODIES



