



# Rights of Arrested Persons



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### **1. What does arrest mean?**

Arrest is a form of state constraint applied to a person, during which the person is placed under detention, is imprisoned and is deprived of his right to move freely. Paragraph 3 of Article 5 of the European Convention of Human Rights and Fundamental Freedoms (the Convention) of the Council of Europe stipulates the following criteria for arrest and detention:

- A reasonable doubt that an offence has been committed by the person
- There are grounds to presume that it is necessary to hamper a crime to be committed by him and prevent his escape after the crime has been committed.

### **2. Who can arrest?**

The pre-investigation body, the investigator and the prosecutor can arrest.

### **3. In which cases can a person be arrested?**

Any case regarding deprivation of liberty of the person must comply with the requirements of the RA Constitution and the Convention. To detain somebody legitimately the existence of a “reasonable doubt” is primarily necessary, which witnesses the fact that the suspect has committed a crime.

The RA Criminal Procedure Code sets forth the following grounds:

- The person has been arrested at the time of committing an act prohibited by the criminal law or immediately after having committed it.
- The eyewitness directly points out at this person as the one having committed the act prohibited by the criminal law.
- Apparent traces have been found on the person or his clothes, on objects used by him, with him or in his apartment, in the transportation means

evidencing his involvement in the act prohibited by the criminal law.

- There are other grounds to suspect the person of the crime, who has made an attempt to hide either from the place of the crime or from the body in charge of the criminal case or does not have a permanent place of living or lives in another place, or whose identity is not disclosed.
- Arrest can be exercised also if the evidence collected for the criminal case provide grounds to presume that the person has committed an act which is prohibited by the criminal law. In the meantime, he is in another location or his location is unknown. In such a case, the criminal prosecution body can make a decision about arresting that person.

A person can also be arrested when he has a status of a defendant and has violated the terms of the precautionary measure applied to him. In such a case, the body in charge of the criminal case is entitled to make a decision on arresting this person, meanwhile filing a motion to court about his detention. Arresting the defendant according to such a procedure is permitted only if the provisions of the RA Criminal Procedure Code allow applying detention as a precautionary measure to him.

### **4. Who can be arrested?**

Only the following persons can be arrested:

- A person, who is suspected of committing such a crime, for which a punishment can be imposed, including holding in a

disciplinary battalion, detention, imprisonment for a certain period of time or life imprisonment.

- The defendant, who has violated the conditions of the precautionary measure applied.

### **5. Is there a time restriction for arrest?**

The body in charge of the case cannot keep you under detention more than 72 hours, unless there is the Court's respective decision about applying detention as a precautionary measure.

The criminal prosecution body, having sufficient grounds to involve the person as a defendant, within the time prescribed, in the existence of the grounds for detention, files a motion to court on applying detention as a precautionary measure to the person. By considering the grounds for detention sufficient, the Court makes a decision on detaining the person and if the Court finds the grounds insufficient, it rejects the motion in the conditions of which the person must **in no time** be released from detention despite the fact whether the term for arrest has been completed or not.

### **6. In Which Case Is the Arrested Person Released?**

The arrested person is subject to be released based on the decision made by the body in charge of the case, if

- the suspicion that a person committed an offence prohibited by the criminal law was not proved;
- There is no procedural need to keep the person in custody;
- If the maximum time for arrest imposed by the law has run out and the Court has not made a decision to detain the defendant;

If there are no grounds to keep the person under custody, the pre-investigation body, the investigator and the prosecutor shall in no time release him, otherwise this will be viewed as

unlawful deprivation of liberty. The person who has been released cannot be arrested again with the same suspicion. In the event the suspicion is not motivated, the suspect obtains the status of the acquitted and is entitled to receive compensation for the inflicted damages.

### **7. What Is the Procedure to Arrest a Person?**

Remember **from the moment you are in custody you have the right to keep silence and to demand a defense attorney.**

After bringing the person suspected of having committed a crime to the pre-investigation body, the investigator or the prosecutor **within three hours**, a record on arresting the suspect shall be made and its signed copy shall be given to the arrested person. The record on arrest shall include information about the suspect's defense, as well as clarification of his rights and responsibilities.

The record shall include information about the time it was made (day, month, year, time, minute), the time of arrest, the place, the ground(s) and the purpose, the article of the RA Criminal Code that provides the crime the arrested person is suspected of committing, the results of the person's search and other circumstances, as well as the statements and motions made by him.

The arrested person has a right to demand that his/her statements and motions are included in the record.

### **8. What rights does an arrested person have?**

As it has already been mentioned, an arrested person has the right to be informed about the grounds for arrest and also about the factual circumstances and legal classification of the crime he is suspected of committing. He has the right to defense and apart from the above referenced rights, he is also entitled to

other rights prescribed under international legal acts and RA Law that include the following:

- Immediately, after the arrest receive a written notification and explanation about his/her rights from the pre-investigation body, the investigator or the prosecutor.
- To have a defense attorney upon arrest, to decline to have a defense attorney and to defend himself;
- Before the interrogation, confidentially and without obstacles meet with his/her defense attorney, without time limitation and frequency of the meetings. If there is a necessity for carrying out other procedural actions with the participation of the suspect, the pre-investigation body or the investigator can limit the time for meeting, by informing the suspect and his defense attorney beforehand about that. The time for meeting with the defense attorney cannot be less than two hours;
- To be interrogated in the presence of the defense attorney. The defendant has the right to demand that his objections are included in the record;
- To testify or to refuse to testify;
- To let his/her close relatives know about the place of detention and the grounds for it upon having been taken into custody, but no later than within 12 hours;
- A suspect has also other rights prescribed by the law.<sup>1</sup>

### **9. What does the right to have a defense attorney mean?**

The right to have a defense attorney is established both in the international legal norms and in the national legislation of the Republic of Armenia. The right to have a defense attorney includes the following;

- A suspect's right to have a defense attorney upon the moment of arrest. If you can afford to hire a defense

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<sup>1</sup> See Article 63 of the RA Criminal Procedure Code

attorney, you can demand from the body carrying out criminal proceedings to invite a defense attorney indicated by you. The pre-investigation body, the investigator, the prosecutor have the right to offer a suspect to invite another defense attorney or to appoint a defense attorney through the Chamber of Advocates of the Republic of Armenia if;

- 1) Within 24 hours after obtaining the status of the defense attorney, the attorney is not able to appear or is not present during the first interrogation of the suspect.
  - 2) A defense attorney is not able to participate in the criminal case proceedings more than three days.
- A defense attorney can be invited both personally by you and by your legal representative or relative. Other persons can also invite a defense attorney by your request or consent
  - If you cannot afford to pay a defense attorney, you can use the services provided by the Public Defender's Office of the RA Chamber of Advocates. The body, carrying out the criminal proceedings, shall inform you about such opportunity. However, if you express a desire to have a public defender, the body, carrying out the criminal proceedings, shall make a respective decision and the Public Defender's Office of the RA Chamber of Advocates appoints a public defender for you.
  - The body carrying out the criminal proceedings does not have the right to guarantee anyone to invite a defense attorney.
  - The body carrying out the criminal proceedings must explain a suspect about his/her rights and to ensure all factual means not prohibited by the law, for their effective defense against the accusation.
  - A suspect can have several defense attorneys.

### **10. Is a suspect obliged to testify?**

Unlike a witness, a suspect is not obliged to testify. He has the right to keep silence and the enjoyment of this right cannot be used against him.

**Remember, giving a testimony is the suspect's right but not duty.**

You can discuss the issue of testifying or not testifying with your attorney beforehand and make an appropriate decision.

### **11. Can a refusal to testify be interpreted against the suspect?**

Remember, **if a suspect does not testify, does not use his rights, or refuses to use them, this shall not be interpreted against him and shall not lead to any unfavorable consequences for him.**

You shall be considered innocent, until your guilt is proved by the court's decision that has entered into force.

- You are not obliged to prove your innocence.
- The prosecuting party bears the obligation to prove the accusation and to refute the arguments brought for the suspect's defense.
- All suspicions to prove the accusation, which cannot be evaluated in the scope of the proper legal proceedings, shall be interpreted in favor of the suspect.

### **12. What rights does a suspect have during the interrogation if he decides to testify?**

If, nevertheless, a suspect decides to testify, it is indispensable to know that

- A suspect's interrogation is carried out immediately after announcing the decision about arresting him or applying a preventive measure.
- An arrested suspect has a right to be interrogated in the presence of the defense attorney. In case it is impossible to provide a defense attorney's attendance immediately, the

investigator shall provide a defense attorney's presence within 24 hours after the suspect has been arrested.

- A suspect cannot be interrogated during the night hours, except for urgent cases. Hours from 10:00 p.m. until 7:00 a.m. are considered as night hours.

### **13. Does a suspect have a right to meet his/her defense attorney before the interrogation?**

Before the interrogation, as you wish, you have a right to meet with your defense attorney separately, confidentially, without obstacles, the duration of which cannot be less than two hours. During this meeting, you can discuss the reasonableness of testifying with your defense attorney and make an appropriate decision.

### **14. Can a suspect make statements or file complaints?**

If you have statements about your innocence, about the existence of evidences, which can acquit you or can mitigate your liability, or if during the criminal proceedings violations of law were made, regarding which you are filing a complaint, you can do these yourself or through your defense attorney. The body in charge of the criminal proceedings is obliged to check thoroughly your and your defense attorney's statements and complaints.

### **15. How long should the interrogation last?**

- The interrogation cannot last more than four hours running, however, in respect of the minor as well as, mentally ill person or a person suffering from other serious disease, the interrogation cannot last more than two hours.
- The interrogation can continue after providing minimum one hour of break necessary for the person subject to interrogation for having rest and some food.

- During one day, the total time of interrogation cannot exceed eight hours, however, in respect of the minor or a mentally ill person or a person suffering from another serious disease it cannot exceed six hours.

#### **16. Does any law prohibit torture and inhuman or degrading treatment or punishment?**

- Any use of violence against the person in detention, which is not due to the urgent necessity coming from the detainee's conduct and which humiliates his/her dignity, is considered a violation of Article 3.<sup>2</sup>
- Like the Constitution of the Republic of Armenia and the RA Criminal Procedure Code, the European Convention on Human Rights (Article 3) and a number of other international legal treaties prohibit torture and inhuman or degrading treatment or punishment. There is no exception for this provision, and there cannot be any deviation even in emergency cases, when there is threat against the lives of the members of the society.
- If a person, being in the police custody, receives body injuries, the police are obliged to present reasonable explanations about the causes of the injuries<sup>3</sup>. "Such examinations shall be accomplished only by a properly qualified doctor, without the presence of any police officer. The conclusion of the medical examination shall encompass not only the detailed description of the discovered injuries but [also] the explanations given by the injured individuals about the causes of the origin of injuries and the doctor's opinion about the fact; whether the nature of the injuries corresponds to the presented explanations"<sup>4</sup>.

<sup>2</sup> Ballog vs Hungary, N 47940/99, [2004], ECHR 361 (July 20, 2004) para. 45

<sup>3</sup> Ascoy vs. Turkey N 21987/93, [1996] ECHR (1996, 18 December) para 61.

<sup>4</sup> The European Commission Opinion on prevention of torture, inhuman or degrading treatment. Acoch vs. Turkey, N 22947/93 and N 22948/93 (2000

- Article 3 of the European Convention on Human Rights (together with Article 1) puts a responsibility upon the member states to carry out effective official investigation with regard to statements about serious cases of cruel treatment, which will enable to reveal and punish the guilty persons<sup>5</sup>. For the implementation of this perspective, it is necessary; to provide guaranties for the effective investigation, to provide an active participation for a person who during the investigation submits complain and in case of necessity to provide an opportunity for compensation of damages.

#### **17. Can the body in charge of the case compel a suspect to testify in any way?**

In all cases, it is prohibited to compel a suspect to testify or to cooperate with the prosecuting party in any other way.

- A suspect does not have to testify. He/she is not obliged to cooperate with the body in charge of the case. It is prohibited to compel a suspect to testify, to present materials or anyhow assist the body in charge of the case.
- It is prohibited to extort evidence by violence, threat, deceit, by infringement of rights, as well as by means of other illicit actions.
- It is prohibited to involve a person in investigative experiments, in the performance of other judicial actions that are long-term, cause physical suffering, are dangerous for his or for surrounding people's health, or to apply means, which are dangerous for human life, health and surroundings.

October 10), para 118.

<sup>5</sup> Asenov and others vs. Bulgaria, N 24760/94, 1999, November 28, para 102.

**18. If, nevertheless, the suspect makes statements under pressure, can they be used against him?**

The norms of the international law, the RA Constitution and the RA Criminal Procedure Code prohibit to place the materials obtained by the violation of law into the core of the accusation and to use them as evidence.<sup>6</sup>

**19. Is the interrogation recorded?**

It is very important to know that an interrogation, like every procedural action must be recorded. A record is made in the course of the procedural action or immediately after it.

- The record is presented to the participants of the procedural action for their review. These people, including the suspect, have a right to make supplements and corrections in the record.
- All statements about making supplements and correction in the record are signed by the participants of the procedural action. The investigator and the participants of the procedural action sign the record. You have a right to write your statements yourself.
- You also have a right to refuse to sign the record, besides you shall be given an opportunity to explain the reasons for your refusal, which is also recorded.

**20. How can a suspect appeal the cases of violation of his/her rights by the pre-investigation body officer, the investigator, the prosecutor and bodies carrying out operative search actions?**

- A suspect can appeal to Court, challenging the legality and groundlessness of the decisions and actions undertaken by the officers of the pre-investigation body, the investigator, the prosecutor and the bodies, which carry out operative search actions, if the prosecutor did not satisfy the complaint.
- The complaint can be submitted to the Court, located in the territory of the body in charge of the case, in order to receive information about the rejection of the complaint or, in case of a failure to respond, within one month upon the expiration of the one-month period prescribed following the submission of the complaint.
- The judge personally examines the complaint within ten days upon its receipt. The body in charge of the case must submit relevant materials to the Court. The body in charge of the case and the applicant have the right to provide explanations.
- By granting the appeal, the judge makes a decision with regard to the responsibility of the body in charge of the case to eliminate the violation of an individual's rights and freedoms.

**21. Who is the witness and can he/she be kept in the custody?**

A witness is a person, summoned to testify by a party or by the body in charge of the case who may know any circumstances that is subject to clarification under the particular case. If the witness without excused reasons does appear for the investigation, a witness can compulsorily be taken to the body in charge of the case, which can go along with temporary restriction of his/her rights and freedoms.

In all cases, taking the person's actual status as a standard, the factual restriction of the person's freedom and

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<sup>6</sup> Article 42 of the RA Constitution ... it is prohibited to use evidence obtained by violation of law...; Article 105, RA Criminal Procedure Code.

freedom of movement are known as violations of Article 5 of ECHR.

## **22. How does compulsory bringing procedure take place?**

- Based on the motivated decision of the pre-investigation body in charge of the case, the investigator, the prosecutor or the Court, the compulsory bringing procedure is accomplished.
- It is not allowed to apply a compulsory bringing procedure to until 14-year-old minors, to pregnant women and to persons suffering from serious illnesses, except for cases when a person is suspected of grave or particularly grave crimes.
- Compulsory bringing procedure also cannot be applied to other people prescribed by law.

## **23. How is the witness interrogation administered and what rights does the witness have during that time?**

Remember: **A witness is not obliged to testify against him, his/her husband/wife or close relative.**

If the body carrying out criminal proceedings proposes you to testify about the information known to you regarding the crime committed, you have a right to

- Refuse to testify against you, your husband/wife or close relative.
- Refuse to present materials and information if such would evidence against you, your husband/wife or close relative in a criminal case.

You have a right to come to the interrogation with your attorney. Your attorney has a right to be present at the interrogation. A witness has also other rights stipulated by RA Criminal Procedure Code. If questions are asked or actions are done that violate the rights prescribed under paragraph 5 of

Article 86 of RA Criminal Procedure Code, the attorney has a right to make statements, which are included in the records of the interrogation.