Right to liberty: Comparative analysis of pretrial detention in Armenia from European and Russian perspectives

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Abstract

This thesis aims at revealing and discussing the prevailing issues concerning arrest in Armenia, particularly regarding its time frames. The research is based on comparative analysis between Russian and Armenian regulations in light of the standards developed by the European Court of Human Rights. As a result, it has been revealed that Armenia attempts to resolve the major issues in place regarding arrest and makes efforts to secure the fundamental right to liberty and security.

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Introduction

After regaining independence in 1991 the Republic of Armenia has undertaken the path to becoming a more democratic state. In spite of the post-Soviet history, it undertook the obligations to bring the human rights records of the country in line with the international standards. Hence, in 2002 Armenia ratified the European Convention on the protection of Human rights and Fundamental Freedoms. Thus, the decisions of the European Court of Human Rights became binding on Armenia.

Moreover, some similarities exist between Armenian and Russian legal systems as both belong to the continental legal family and have the same post-soviet legacy. Initially, the first legal acts adopted in both states provided for the same solutions for the same legal issues. Nevertheless, these solutions not always were in conformity with the international standards the obligations to comply with which both states have undertaken.

As it will be further discussed in this thesis, the practice has revealed that there are major issues regarding the pretrial detention in Armenia, particularly arrest, which concerns the initial deprivation of liberty of the person. In fact, the first hours of arrest are of crucial importance both for the investigation of the case and for the protection of rights of the detained.

At the same time the right to liberty and security is one of the fundamental human rights guaranteed under the ECHR and Armenia is under obligation to ensure the protection of this right. Thus, in this thesis I will analyze the existing issues concerning the arrest under

Armenian legislation, in particular regarding its conformity with the safeguards pursuant to Article 5 paragraph 3 of ECHR.

In the first chapter I will elaborate on the standards of the European Court of Human Rights in regards to Article 5 paragraph 3 developed in its jurisprudence. I will start by examining Article 5 paragraph 1 (c) as it enshrines the conditions of lawful arrest the procedural safeguards of which are provided in Article 5 paragraph 3. Afterwards I will assess the requirements of reasonableness and promptness under Article 5 paragraph 3. Due to the fact that the European Court of Human Rights has extensive number of landmark cases that established the standards of importance for the aims of this thesis, I will examine and assess those cases mostly alongside with several academic works and articles.

The second chapter will be dedicated to the presentation of the regulation of arrest under Armenian legislation in comparison to the European standards. Then I will assess the relevant precedents of the highest court of Armenia, the Court of Cassation. As we will see, these decisions inspired the drafters of the new Code of Criminal Procedure which actually strives for finding solutions for the existing issues of arrest. The latter alongside with the Draft of Constitutional Amendments of Armenia will be analyzed.

Last, but not least in the third chapter I will examine the Russian legislation arrest as well as relevant landmark cases of ECtHR against Russia. The third chapter will end with a comparative analysis of Armenian and Russian approaches to regulation of arrest. As we will see besides similarities due to shared post-soviet past and the fact that both legal systems belong to the continental one, there are crucial differences between them. Moreover, the situation has changed in light of the recent developments in Russia concerning the new

regulations on direct applicability of the decisions of ECtHR. The latter will also be presented and assessed in the last chapter.

In short, this thesis is aimed at analyze whether the current regulation and practical application of arrest in Armenia, most particularly in light of time frames of arrest, are in line with the standards of the European Convention of Human Rights. After revealing the issues in place, it is intended to analyze whether there are any positive tendencies towards resolution of those problems. At the same time these issues will be compared to the ones in Russia to disclose the similarities and differences as well as possible solutions of the issues that might be found in a state with similar legal traditions.

Chapter 1: Pretrial detention under Article 5 of the European Convention

1.1 Lawful detention under Article 5 paragraph 1 (c)

The right to liberty and security is guaranteed under Article 5 of the European Convention of Human Rights (hereafter ECHR). The crucial aim of the article is to safeguard individuals from being arbitrarily deprived of liberty. The article can be studied from its three aspects. First comes the exhaustive list of grounds under which the person can be legally deprived of his or her liberty[1]. The next you can find the list of procedural safeguards that serve to ensure the lawful procedure when applying the above mentioned grounds for deprivation of liberty. Last but not least, Article 5 stipulates that the person who unlawfully was deprived of his or her liberty is entitled to compensation[2].

This thesis is more particularly concentrated on the procedural guarantee enshrined in Article 5 paragraph 3. The latter enshrines the prompt judicial review of deprivation of liberty within a reasonable time. It is a crucial safeguard for the individual for protecting his or her right to liberty and security. Therefore, even though the complete and comprehensive assessment of all the above mentioned aspects of Article 5 is beyond the scope of this thesis, for the purposes of this thesis, this subchapter will discuss the aspects of Article 5 paragraph 1 (c) which enshrines the lawful ground of detention on remand.

[1] Article 5 paragraph 1 a-f, ECHR, 1950
[2] Ibid paragraph 5

As Trechsel puts it, "paragraph 1 (c) can be considered the most inadequately drafted provision in the whole Convention" [3]. He grounds this by stating that the domestic legislations of the Council of Europe member states stipulate stricter rules for the detention on remand than the provision at issue. In spite of this, he continues that there were no substantial issues while practically applying the conventional norm[4].

According to Trechsel, in general, there are various stages of preliminary detention, such as

1. "'stopping' by the police, which serves the purpose of verifying the identity of a person or conducting a search and lasts normally an hour;
2. Police detention, if not for emergency circumstances, it should last no longer than four hours;
3. Detention on remand during investigation;
4. Detention on remand after the investigation awaiting trial;
5. Detention on remand during appellate proceedings;
6. Detention on remand after final trial awaiting beginning of the sentence."[5]

Hence, the European Court of Human Rights (hereafter the European Court or ECtHR) has stated that deprivation of liberty is not limited to the one after arrest or detention and can take various forms[6]. However, for the purposes of this thesis, I will assess only one of the classic forms of deprivation of liberty, namely arrest, as Article 5 paragraph 3 covers both arrest and detention, speaking in general about detention on remand. Only arrest will be analyzed as the

[3] Stefan Trechsel, Human rights in criminal proceedings, Oxford ; Oxford University Press, 2005,p. 423
[4] Ibid
[5] Ibid
[6] Guzzardi v. Italy, par. 95, Application no. 7367/76, ECHR, 6 November 1980

research has revealed that major issues arise concerning the arrest in the Republic of Armenia and this thesis is dedicated to analyzing those issues of arrest in Armenia from Russian and European perspectives.

Hence, the provision at issue stipulates as follows:

> "1. … No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: … (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so"[7].

Thus, it enshrines the specific lawful ground for deprivation of liberty, which is detention on remand.

Detention on remand in the meaning of Article 5 paragraph 1 (c) consists of several elements. There should be a reasonable suspicion that the person has committed the crime or a necessity to prevent him or her from committing a crime or there should be danger of absconding. Furthermore, the person should be detained to be "brought before a competent legal authority"[8]. Interestingly enough the majority of continental legal systems require the existence of both the reasonable doubt and grounds for detention, for example, the danger of absconding[9]. However, it is important to note that the interpretation of the above mentioned provision suggests that the latter are presented as alternatives. Moreover, the ground of detention for tampering the evidence is absent, the grounds of prevent of further crimes and danger of absconding are only explicitly mentioned in the above mentioned provision.

[7] Article 5 paragraph 1 (c), ECHR, 1950
[8] Ibid
[9] Treschel p. 425

Treschel argues that the exclusion of "the legitimate ground of tampering evidence would be contrary to the meaning of the Convention"[10]. He concludes that the wording of the provision is limited to the commission of the crime, leaving aside the "additional dangers"[11] .

The European Court in its case law has stated that Article 5 paragraph 1 (c) applies "only in the context of criminal proceedings for detaining individuals for the purpose of bringing them before the competent legal authority on suspicion of his having committed an offence"[12]. Alternatively, as stated in the above-mentioned article, the person can be detained for the prevention of the further occurrences of crimes. It is important to underline that in this case the provision speaks about the pretrial detention "not about preventative custody without the person concerned being suspected of having already committed a criminal offence"[13]. Acording to van Dijk, as the grounds for detention on remand under the above mentioned article do not appear to be cumulative, it follows that "detention of people concerning whom there is a suspicion to yet commit crimes would be justified"[14]. He proves his statement with the help of the travaux preparatois of the Convention that goes on saying that "it may be necessary to detain a person in order to prevent the commission of a crime even if the intention to commit a crime is not a crime in itself"[15].

As for the notion of the reasonable suspicion, it is interesting to note that the Commission was reluctant to examine whether there was actually reasonable suspicion or not before the

[10] Ibid
[11] ibid
[12] Lawless v. Ireland, par. 14, Application No. 332/57 ECHR, 1 July 1961; Ječius v. Lithuania, par. 50, Application No. 34578/97, ECHR, 31 July 2000
[13] Ciulla v Italy, par. 38-40, Application No.11152/84, ECHR 22 February 180; Ostendorf v. Germany, par. 82, Application No. 1598/08, ECHR 7 June 2013
[14] P. van Dijk, [et al.], Theory and practice of the European Convention on Human Rights, The Hague : Kluwer Law International, c1998, p. 471
[15] Ibid

case of Fox, Campbell and Hartley[16]. The case concerned the arrest of the applicants who were suspected of being involved in terroristic activities in Northern Ireland[17]. The deprivation of liberty was in fact carried out without any arrest warrant as their suspected conduct fell under the Section 11 of the 1978 Act, that enabled the policemen to arrest people without arrest warrants if they were being suspected of terrorism[18]. Among others the applicants alleged the lawfulness of their arrests as well as the lack of reasonable suspicion[19]. The ECtHR held that one can speak of a reasonable suspicion if there is a set of facts or information that will convince the objective observer that the person committed the offence[20]. Nevertheless, the circumstances of the case should be taken into consideration[21]. As Alastair Mowbray puts it, "the objective test that the Court states was not complied with on the facts, even with special allowance that it was prepared to make in the special context of offences"[22]. Therefore, the ECtHR found a violation of Article 5 paragraph 1[23].

At the same time, Article 5 paragraph 1 (c) does not imply that the police should have sufficient grounds for bringing charges at the time of arrest or in custody[24]. Nonetheless, the domestic authorities should establish that they acted in good faith aiming at upholding or rejecting the suspicion of the arrested person to having committed the crime[25]. Additionally, the Court has established that the purpose of bringing the person before the court should be

[16] Trechsel, p. 424
[17] Fox, Campbell and Hartley, par. 10, 14 , Application no. 12244/86; 12245/86; 12383/86, ECHR, 30 August 1990
[18] Ibid, par. 15-16
[19] Ibid, par. 29
[20] Ibid, par. 32
[21] Ibid
[22] Alastair Mowbray, Cases, Material and Commentary on the European Convention of Human Rights, Oxford University Press, Third Edition, 2012, p. 275
[23] Fox, Campbell and Hurtley, par. 36
[24] Petkov and Profirov v. Bulgaria, par. 52, Application Nos. 50027/08 and 50781/09, ECHR, 17 November 2014
[25] Brogan and Others v. the UK, par. 53, Application no. 11209/84; 11234/84; 11266/84; 11386/85, ECHR, 29 November 1988

assessed independently from the purpose of achieving that aim[26]. Furthermore, detention under Article 5 paragraph 1 (c) should be a proportionate measure towards its end[27]. Thus, the authorities should establish those basic facts in the case to justify the detention under Article 5 paragraph 1 (c).

As for the cases concerning situations of public emergency, especially the ones related to terrorism, it should be noted that the European Court has already stated that even if the case involves confidential information that the government cannot disclose, the notion of "reasonableness" cannot be diminished[28]. Hence, some set of supporting facts should be presented to meet the criterion of reasonable suspicion. For instance, in Murray v. Ireland[29], the ECtHR concluded that the requirement of reasonable suspicion was met as the applicant's brother had a business in USA and she had visited him. Thus, she could have been suspected of supplying the IRA with weapons. Nevertheless, the case differed in O'Hara as the evidence put on the basis of reasonable suspicion was given by unidentified informants. In the end, though, relying on the good faith of the police, the European Court confirmed the existence of reasonable suspicion, as in addition there were no arguments about the arbitrariness of the detention[30]. It also established that "there is a fine line between the cases where the suspicion grounding the arrest is not sufficiently founded on objective facts and those that are"[31].

As it has been stated, Article 5 paragraph 1 (c) becomes operative when there is a reasonable doubt that a person has committed a crime. As only the existence of reasonable doubt is

[26] Ibid
[27] Ladent v. Poland, par. 55-56, Application no. 11036/03, ECHR, 18 June 2008
[28] O'Hara v. the UK, par. 35, Application no. 37555/97, ECHR, 16 January 2002
[29] Murray v. UK, par. 55-63, Application no. 14310/88, 28 October 1994
[30] O'Hara, par. 40
[31] Ibid, par.41

required, this provision can be considered to be too broad[32]. At the same time domestic legislators can set specific limitations. Moreover, the reasons put on the basis of the detention are crucial for the assessment of whether the length of the detention was reasonable or not in the meaning of Article 5 paragraph 3.

The next ground for detention under Article 5 paragraph 1 (c) is for the purpose of preventing the commission of the crime. In the early cases the European Court has already stated that it detention for the prevention of crimes in general is not lawful[33]. In Guzzardi the ECtHR held that people who pose danger to the society such as Mafiosi, should be detained only in case of specific offence[34]. No exception is allowed even if it is feared that the person may get away from the prevention, not constituting detention[35]. Nonetheless, everything was made clear when in the case of Jecius v. Lithuania the European Court established that "Article 5 paragraph 1 (c) is triggered only in criminal proceedings when the person is detained for the purpose of having committed a crime for the purpose of brining him or her to the competent legal authority"[36]. Hence, Trechsel concludes that there is no substance to the second alternative mentioned in Article 5 paragraph 1 (c)[37]. As for the third alternative, it should be mentioned that it presupposes that the person has committed a crime. The latter may raise problems with the presumption of innocence enshrined under Article 6 paragraph 2. In Trechsel's opinion, this ground also is not substantiated under Article 5 paragraph 1 (c)[38].

It should be noted that the ECtHR applies stricter review if the term of the detention is set by the law and does not terminate by a court order. For instance in K. -F. v Germany, the

[32] Trechsel p. 426
[33] Lawless v. Ireland, par. 14
[34] Guzzardi v. Italy, par. 102
[35] Ciulla v. Italy, par. 40
[36] Jecius v. Lithuania, par. 50
[37] Treshsel p. 428
[38] Ibid, p. 429

domestic law established that the authorities could detain a person for checking his or her identity for twelve hours. The European Court interpreted this stating that the domestic authorities have to do everything possible during these hours so that the person is released on time. The Court unanimously found a violation[39].

The purpose of the detention under the above mentioned paragraph of Article 5 is directly connected with the procedural guarantee under Article 5 paragraph 3. The ECtHR has established that "these two provisions should be read together"[40]. Even though the provisions speak about bringing the person before the competent legal authority it is not required that the person is physically brought before the authority. It is sufficient if "the detention is issued in good faith"[41].

As for the notion of the "competent legal authority", it is the same as under Article 5 paragraph 3. Due to the fact that Article 5 paragraph 1 (c) forms one unity with Article 5 paragraph 3 the term of competent legal authority stands for "judge or another officer authorized by law to exercise judicial power"[42]. The term "judicial power" includes not only judges but also officials working at public prosecutor's offices[43]. At the same time the officer should be able to exercise judicial power which he is lawfully authorized[44].

Nevertheless, judge and officer are not identical. Hence, officer should satisfy some criteria that constitute the safeguards to the rights of the arrested. First of all, he or she should be independent and impartial. They should have independence from the parties and from the executive branch. However, this does not mean that they should not be subordinated to other

[39] K. -F v Germany, par. 72, Application No. no. 25629/94, ECHR,27 November 1997
[40] E.g. Guzzardi v. Italy, par. 102
[41] E.g. Brogan and others v. UK, par. 53
[42] Lawless v. Ireland, par. 13; Schiesser v. Switzerland, par. 29, Application no. 7710/76, ECHR, 4 December 1979
[43] Ibid, par. 28
[44] Ibid, par.30

judges, namely the chief judges[45]. As for impartiality, it can be argued that the parties may have a reasonable doubt about it if the same judge deciding on detention is authorized to represent prosecution during the proceedings[46].

Moreover, there is a procedural requirement, which means that the officer is obliged to hear the case in person prior to reaching a decision[47]. Additionally, the officer should assess the merits of the detention[48]. Lastly, the officer should have the power to reach binding decisions on detention[49].

In addition, it is important to state that the concept of "offence' is identical to one enshrined under Article 6 of ECHR. This means that the classification of the act under domestic law will be taken into account. Nonetheless, the severity of the penalty and the nature of the proceedings will also be assessed by the Court[50].

Last but not least it should be noted that preventive detentions are outlawed by the court. The mere fact that a person is suspect to have predisposition to committing a crime should not serve as a ground for deprivation of liberty. Thus, the offence should be specific and concrete[51].

To sum up, as we can see, the study of the jurisprudence reveals that the ECtHR has elaborated on all the aspects of the provision at issue. The European Court has stressed the importance of all the procedural guarantees and significance of applying them properly. The

[45] Ibid
[46] Huber v. Switzerland,par. 43, Application no. 12794/87, ECHR, 23 October 1990
[47] Schiesser v. Switzerland, par. 31;
[48] Aquilina v. Malta [GC], par. 47, Application no. 25642/94, ECHR, 29 April 1999
[49] Schiesser v. Switzerland, par. 31
[50] Engels and others v. Netherlands, par. 81-85, Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, ECHR, 8 June 1976
[51] Guzzardi v. Italy, par. 102; Ciulla v. Italy, par.40,

discussion of the terms in Article 5 § 1(c) leads us to the assessment of the Article 5 § 3 itself which enshrines one of the procedural guarantees under Article 5.

1.2 "Promptness"

Article 5 paragraph 3 stipulates as follows:

> "Everyone arrested or detained in accordance with the provision of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power …"[52]

The main aim of the provision is to secure the individual from arbitrary deprivation of liberty[53]. "It is one of the fundamental principles of a democratic society…, which is expressly referred to in the Preamble to the Convention" and "from which the whole Convention draws its inspiration"[54]. Thus, it can be concluded that this provision is aimed at eliminating unlawful deprivation of liberty by law enforcement agencies.

It should be noted that this provision is rather formalistic due to the fact that the person should be brought to the judge in person as well as because this safeguard cannot be waived. The latter illustrates the general mistrust in the operation of the national law-enforcement agencies[55]. Hence, it can be hardly believed that the detainee would voluntarily waive this procedural guarantee. The latter is designed primarily for the application in the states where the police occasionally uses force or torture. Therefore, the ECtHR has stressed in several

[52] Article 5, par. 3, European Convention of Human Rights, 1950
[53] Aquilina v. Malta [GC], par. 47
[54] Brogan and Others v. the United Kingdom, par. 58
[55] Trechsel-p. 506

cases that "the review should be automatic as the tortured or beaten detainee would not be able to file any applications"[56].

As we can see, the provision at issue requires a prompt review of detention by a judicial authority. However, it is also reasonable to think that the person cannot be brought before a judge right after the arrest. Nevertheless, sufficient and reasonable steps should be taken to enforce this provision.

First of all, it is important to identify when the time for bringing the person before a judicial body starts flowing. In the majority of cases it is when the person is deprived of the liberty. Issue might arise if the Convention was not in force for the respective contracting party when the person was arrested or the state has made a reservation under Article 57 of the Convention. It is what happened in Jecius v. Lithuania, when the applicant was deprived of the liberty for the period from 14 March 1996 till 14 October 1996, while the convention became enforceable in Lithuania in 21 June 1996. This means that the applicant should have been brought before a competent legal authority after the latter date. However, the European Court rejected the claims stating that the guarantee under Article 5 paragraph 3 applies only for the first deprivation of liberty, "the obligation on the states is limited to bringing the detainee before a competent legal authority at the initial stage"[57]. On the other hand, the period ends when the person is finally brought before the judicial authority. Certainly, the detention should be reviewed right away; otherwise, it can be interpreted as a tacit confirmation of the detention[58].

[56] E.g. De Jong, Baljet and Van den Brink v. Netherlands, par. 36, Application no. 8805/79; 8806/79; 9242/81, ECHR, 22 May, 1984
[57] Jecius v. Lithuania, par. 84
[58] Trechsel, p.512

It is crucial to determine what the requirement of "promptness" implies as Article 5 paragraph 3 does not stipulate the time frames for the judicial review. Moreover, there is a bewilderment between the French and English versions of the Convention[59]. The Court has interpreted the French word "*aussitôt"* to mean immediately, while "promptly" has a more flexile meaning. Nevertheless, the Court has added that "this flexibility should not be in a way to result in the impairment of the right under Article 5 paragraph 3"[60].

In De Jong, Baljet and Van den Brink, the ECtHR had to decide whether the referral to judicial authority after six to eleven days from the moment of arrest is in line with Article 5 paragraph 3. The Court found that, in fact, there was a violation. Nevertheless, it abstained from setting a minimum standard. It simply underlined that the promptness should be assessed in each case separately[61]. In McKay v. the UK, the European Court has stated that the time constraint set by the provision actually leaves space for interpretation; otherwise it will endanger the procedural guarantee[62].

In Brogan and others, the suspects of the terroristic acts in Northern Ireland were not brought before the judicial authority for more than four days and some hours from the moment of their arrest. The ECtHR has found that "attaching such importance to specific features of this case as to justify such a lengthy arrest without appearance before the judge or other judicial official would be an unacceptably wide interpretation of the plain meaning of the word 'promptly'"[63]. Later in O'Hara[64] the European Court held that if the length of the detention should not exceed four days in public emergency cases, the situation is not in compliance

[59] Ibid
[60] Brogan and others v. UK, par. 59
[61] De Jong, Baljet and Van den Brink v. Netherlands, par. 52
[62] McKay v. the UK, [GC], par. 33, Application no. 543/03, ECHR, 3 October 2006
[63] Brogan and others v the UK, par. 62
[64] O'Hara v. the UK, par. 46

with Article 5 paragraph 3. Thus, it can be concluded that the standard set by the European Court for maximum length of detention is four days.

However, shorter periods of detention can also be found to be not in compliance with the Convention "if there are no special difficulties or exceptional circumstances preventing the authorities from bringing the arrested person before a judge sooner"[65]. Moreover, the ECtHR has stated that in situations like in Vassis and Others v. France, when the members of the crew of the ship were deprived of their liberty under the meaning of the Convention and then had to wait for another forty eight hours to stand before the judicial authority, the standard of promptness is even stricter[66]. Additionally, the access to judicial authority does not justify the delay in bringing the arrested to the judicial authority[67].

The ground rule should be that "the person is brought before a judicial authority without undue delay"[68]. As a rule, after the investigation body checks some facts, the person should be presented to court on the following day after the arrest[69]. Trechsel, on the other hand, concludes that if there are no exceptional circumstances, the upper limit is to be set for four days[70]. In my opinion, the time limit set by the ECtHR, that is four days, is fair and equitable. However, it still has to be assessed in practice.

It is important that Article 5 paragraph 3 is a safeguard separate from Article 5 paragraph 4, which speaks about speedy judicial review of lawfulness of arrest or detention. The European Court has stated that "judicial control of detention must be automatic and cannot be made to

[65] Kandzhov v. Bulgaria, par. 65-67, Application no. 68294/01, ECHR, 6 November 2008
[66] Vassis and Others v. France,par. 60 , Application 62736/09, ECHR, 27 June, 2013
[67] De Jong, Baljet and Van den Brink v. the Netherlands, par. 51
[68] Trechsel p.513
[69] Ibid
[70] Ibid

depend on a previous application by the detained person"[71]. This means that the fact that the arrested person has applied for habeas corpus does not mean that he or she should not be promptly brought before the judicial authority. Moreover, automatic nature of the review is necessary because the arrested may not have the capacity to apply for habeas corpus[72]. Thus, it can be concluded that these two safeguards work hand in hand and do not substitute one another. Furthermore, they provide additional guarantees for vulnerable groups.

It was stated earlier that the judicial authority should review the merits of the case. The automatic review by a judge or judicial officer should be able to assess the issues of lawfulness regardless of the fact whether the person was arrested in connection to a reasonable suspicion under Article 5 paragraph 1 (c)[73]. The review under Article 5 paragraph 3 should be wide enough to circumscribe different circumstances for or against detention[74]. Nevertheless, the examination of the lawfulness under Article 5 paragraph 3 is not identical to the one under Article 5 paragraph 4. In fact, it should be more limited in scope of review[75].

In short, the ECtHR in its case law has established the maximum standard for requirement of "promptness". In cases concerning public emergency situations, in particular terrorism, it should not be more than four days. In all other cases, the length of the detention before the judicial review should be four days or less, if there are no circumstances that serve as obstacles on the way to applying the safeguard. Furthermore, from close study of the jurisprudence of the European Court it can be concluded that prompt judicial review and habeas corpus, in fact, should serve as distinct, but equally important safeguards, not

[71] Aquilina v. Malta [GC], par. 49
[72] McKay v. the United Kingdom [GC], par. 34
[73] Ibid, par. 40
[74] Aquilina v. Malta [GC],, par. 52
[75] Stephens v. Malta (no. 2), par. 58, Application no. 33740/06,ECHR, 14 September 2009

substituting one another. Thus, even though the ECtHR has stated that while deciding the lawfulness of the detention the specific circumstances of each and every case should be taken into consideration, it can be concluded that it has also set some minimum standards that should be applied by domestic authorities.

1.3 "Reasonableness"

Additionally, Article 5 paragraph 3 stipulates as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article … shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial"[76].

The initial reading of this provision suggests that the judicial authorities have two choices: either to conduct a trial within a reasonable time and prolong the detention on remand, or release the arrested person. Nevertheless, the ECtHR has rejected this interpretation, stating that the person is granted the presumption of innocence and the aim of the provision at issue is to secure the release of the person once there are no grounds for keeping him or her in detention before the trial[77]. Moreover, the ECtHR has stated that domestic authorities should not prolong the criminal proceedings beyond reasonable time. The latter will contradict Article 6 (1)[78].

The European Court's interpretation in case Neumister v. Austria suggests that the word "reasonable" concerns the length of detention. Surely, the pretrial stage can be prolonged due to different reasons, as it requires some time to complete all the investigations, summon the

[76] Article 5, par. 3, European Convention of Human Rights, 1950
[77] Neumeister v. Austria , par. 4 Application no 1936/63 ,ECHR, 27 June 1968
[78] Wemhoff v. Germany ,par. 5, Application no 2122/64, ECHR, 27 June 1968

witnesses and so on. Nonetheless, this should not affect the rights of the arrested person. That is why the Court has stated that the word "reasonable" has different meaning under Article 5 paragraph 3 and Article 6 (1)[79]. Even if there is a violation under Article 5 paragraph 3, the situation under Article 6 (1) can be found to be in conformity with the Convention. In addition, the ECtHR has stated that "the accused has the right to have his case given priority and conducted with particular expedition"[80]. Thus, it can be concluded that High contracting states should ensure that detention is reviewed without undue delay.

As for the determination of the length of detention to be reviewed under Article 5 paragraph 3, the European Court has stated that the period runs from the instance of arrest till the judgment of the first instance court[81]. Hence, the period terminates when the judgment on detention is pronounced.

If there are two periods of detention for the same charge that were cut off by release, those periods can be considered either together[82] or independently[83]. However, if the periods were not for the same charge, then the latter rule is not applicable. The review of the detention awaiting appeal should be decided under Article 5 paragraph 1 (a). Furthermore, this period is excluded when assessing the reasonableness criterion under Article 5 paragraph 3.

In fact, continuous detention can be substantiated if there is an overarching public interest which outrights the right to liberty of the accused, one of the fundamental human rights, regardless of the fact that the person is still entitled to presumption of innocence. Due to the principle of subsidiary, it is up to the domestic judicial authorities to determine whether the

[79] Stögmüller v. Austria, par. 5, Application no 1602/62, ECHR, 10 November 1969
[80] Wemhoff v. Germany ,par. 17
[81] Ibid, par. 9
[82] Letellier v. France, par. 34, Application no. 12369/86, ECHR, 26 June 1991
[83] Kemmache v. France (NO 1. And NO 2), par. 46-48, Application no.123225/86 and 14992/89, ECHR, 27 November 1991

length of the pretrial detention remained within reasonable boundaries. They must conduct a comprehensive and thorough analysis of all the arguments for or against keeping the person in detention, giving sufficient consideration to the presumption of innocence. Moreover, this analysis should be reflected in the judgment on detention on remand. Thus, the ECtHR has stated that "it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice"[84].

The continuous existence of the reasonable suspicion is a condition sine qua non when determining the lawfulness of the detention[85]. This means that when there is no reasonable doubt in place, consequently, there is no need for detention, it is not reasonable to deprive a person from his or her liberty. Therefore, the review of the pretrial detention for later periods of pretrial stage should not be assessed in abstract. In fact, all the specific circumstances of each and every case should be taken into consideration. The arguments should not be "general and abstract"[86] and there should be implications of facts and personal factors for each case. In addition, the European Court must examine whether domestic authorities conducted the proceedings with due diligence[87].

Furthermore, the ECtHR has stated that there is no settled time period to be applied to each case[88]. However, if detention is prolonged quasi-automatically, then that situation is contrary to guarantees under Article 5 paragraph 3[89]. Moreover, the European Court has adduced that there should be no shift in burden of proof putting the accused in the position of displaying

[84] Suominen v. Finland, par. 37, Application no. 37801/97, ECHR, 27 July 2003
[85] Stögmüller v. Austria, par. 4
[86] Letellier v. France, par. 35
[87] Ibid
[88] McKay v. the United Kingdom [GC], par. 41-45
[89] Mansur v. Turkey,par. 55, Application no. 21163/11, ECHR, 16 September 2014

the lack of necessity to keep him or her in detention[90].These interpretations by the ECtHR serve as an additional safeguard and guideline for the High Contracting states.

On the other hand, domestic authorities should ground the necessity for the detention before domestic courts. The study of the jurisprudence of the European Court reveals that the four grounds for justifying pretrial detention are the following: the risk that the accused will fail to appear for trial; the risk that the accused, if released, would take action to prejudice the administration of justice; commit further offences or cause public disorder. In fact, there can be more than one ground to be applied. However, they are not dependent on one another; these are alternative grounds.

The first ground of danger of absconding cannot be assessed solely from the perspective of the severity of the sentence for the crime the detained is being accused of. A series of factors should be taken into account and evaluated[91]. Such factors as "person's character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is being prosecuted should be examined"[92]. Even if the severity of the sentence is to be assessed, the gravity of the charges cannot rationalize the unreasonable length of pretrial detention[93]. Ordinarily, the expression "the state of evidence" can serve as an applicable factor for the existence and continuation of serious indications of guilt. However, it cannot be the only decisive factor[94]. In the landmark case of Neumeister v. Austria the ECtHR has stated that the more time the person passes in detention, the less is the danger of

[90] Ilijkov v. Bulgaria, par. 85, Application no. 33977/96, ECHR, 26 July 2001
[91] Panchenko v. Russia, par. 106, Application no. 45100/98, ECHR, 08 May 2005
[92] Becciev v. Moldova, par. 58, Application no. 9190/03, ECHR, 04 January 2006
[93] Ječius v. Lithuania, par. 94
[94] Dereci v. Turkey, par. 38, Application no. 77845/01, ECHR, 24 August 2005

absconding[95]. In addition, the European Court has established that the absence of permanent address does not justify the detention on the ground of danger of flight[96].

The next ground of obstruction of the proceedings is facilitated by the fear that the accused may be able to disturb the ordinary flow of the criminal process. The ECtHR has held that this ground should not be considered in abstract, but should be assessed taking into consideration all the circumstances of the case, in other words factual evidence[97]. Interestingly enough, the European Court has found that the pressure on witnesses is acceptable during initial stages of the proceedings[98]. In Clooth v. Belgium it has stated that in the long run the requirements of the investigation do not satisfy to justify the detention of a suspect, as when the time passes and all the investigatory procedures are carried out, the purported risks decrease[99].

Even though the seriousness of the crime should not be the decisive factor in justifying the detention under the fear of the danger of absconding, it can be a conclusive one for the domestic court when they assess the situation pursuant to the ground of repetition of offence. However, the danger should be probable and the measure appropriate taking into account the facts of the case and the past history and the personality of the accused[100]. Surely, the fact that the person has prior criminal record gives rise to the reasonable fear that the person may commit a new one. Nevertheless, the comprehensive assessment of the reasonableness should

[95] Neumeister v. Austria,par. 10
[96] Sulaoja v. Estonia,par. 64, Application no. 55939/00, ECHR, 15 May 2005
[97] Becciev v. Moldova, par. 59
[98] Jarzynski v. Poland,par. 43, Application no. 15479/02,04,ECHR, January 2006
[99] Clooth v. Belgium, par. 44, Application no. 12718/87, ECHR, 12 December 1991
[100] Ibid, par. 40

be conducted. In addition, the ECtHR has stated that the absence of job or family does not suggest that the person is prone to committing new offences[101].

Lastly, the ground of the preservation of the public order is triggered when the national laws acknowledge the concept of 'disturbance to public order caused by an offence'. Especially, some so called major cases attract the attention of the public and may cause public disturbance. Therefore, the existence of those provisions is justified. Nonetheless, the European Court has held that this ground should be applied solely when there are sufficient and consistent facts demonstrating that the accused can, in fact, threaten public order. Moreover, the detention can be remanded only if the order prevails to be disturbed[102].

After assessing the existence of sufficient and relevant grounds, the ECtHR proceeds examining the due diligence performed by the law enforcement agencies. The "periods of inaction or the unjustified delays"[103] are on the spotlight. The complexity of the case does not excuse the authorities from the obligation to conduct the investigation within reasonable time. However, if "the detention is traceable neither to the applicant's conduct, nor to the complexity for the case as well as the European Court does not find any other reasonable justification, then it should be concluded that it was a violation of the Article 5 paragraph 3"[104].

In a majority of cases the Governments claim that the applicants themselves are accountable for the lengthy pretrial detention as they do not cooperate. Even though this is not the rule, the ECtHR found no violation in W. v. Switzerland as "applicant was primarily responsible for responsible for the slow pace of the investigation due to the fact that it was difficult to

[101] Sulaoja v. Estonia, par. 64
[102] Letellier v. France, par. 51
[103] Barfuss v. Czech Republic, par.72, Application No. 35848/97, ECHR, 31 July 2000
[104] Tomasi v. France, par. 102, Application no. 12850/87, ECHR, 27 August 1992

reconstruct the financial situation of his companies as well as his accounts. Moreover, he refused to make any statements, thereby extending the length of the detention"[105]. As Trechsel points out, we can observe a conflict with the applicant's right to remain silent. Hence, Trechsel argues that the Court did not balance the two rights at issue[106].

In sum, in its jurisprudence the European Court has established that the word reasonable in Article 5 paragraph 3 concerns the length of the detention. The Court requires due diligence from the domestic authorities in reviewing the lawfulness of the detention without undue delay. The lawfulness should be assessed in the context of the circumstances of the particular case at issue. Moreover, the final decision by the judicial authorities should be based on those facts and present a grounded reasoning of the holding. As for continuous detention, the grounds for it should also be considered in the light of the facts of the case and be sufficient and relevant.

[105] W v. Switzerland, par. 42, Application no. 14379/88, ECHR, 26 January 1993
[106] Trechsel, p.530

Chapter 2: Challenges to pretrial detention in Armenia

2.1 Armenian approach to regulation of pretrial detention

The fact that Armenia is a post Soviet country still in the process of transition has its reflection in its legal system. Even though, Armenia is a member of Council of Europe from 2001 and, consequently, a signatory to the ECHR, there is still a lot to be done in order to bring the domestic legislation in line with the standards of the European Court of Human Rights. This chapter will discuss the current Code of Criminal procedure in relation to the pretrial detention in Armenia and problems concerning the relevant provisions. Furthermore, even though legal system of Armenia belongs to the continental one, the landmark cases by the highest court of the Republic of Armenia, the Court of Cassation will also be discussed. In addition, the new code of criminal procedure will be analyzed in line with the draft Constitution of the Republic of Armenia.

After regaining independence in 1991, Armenia has ratified a series of international human rights documents, undertaking the obligation to bring the domestic legislation, such as Constitution, Criminal Code, Code of Criminal Procedure and other relevant legal acts, in line with the international standards. The latter also streams from the Sixth Article of the Constitution of the Republic of Armenia the fourth paragraph of which stipulates as follow:

> "...The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty

> shall prevail. The international treaties not complying with the Constitution cannot be ratified".[107]

Nevertheless, the Armenian legislation still bears the remnants of the Soviet legal school. In their paper[108] on the Soviet legacy of Armenia in the context of pre-trial detention A. Khechumyan and S. Margaryan summarized the studies on the effects of the Soviet principles and practices that were in force for around 70 years. They point out "lack of judicial independence in pretrial detention decisions"[109], "weak institutional capacity to undertake reforms in the area of pretrial detention"[110], corruption[111] as the main factors decelerating the crucial reforms in pretrial detention in Armenia. They conclude that "Armenia has not fulfilled its international obligations" concerning pretrial detention, in spite of the fact that Soviet Union has collapsed and Armenia is a newly independent state for already 24 years[112].

Furthermore, the Constitution of Armenia enshrines the right to liberty and security under Article 16. It stipulates the grounds for detention as follows:

> "Everyone shall have a right to liberty and security. A person can be deprived of or restricted in his/her liberty by the procedure defined by law and only in the following cases:
>
> 1) a person is sentenced for committing a crime by the competent court;

[107] Article 6, Constitution of the Republic of Armenia, adopted in 1995, amended in 2005
[108] Aleksandr Khechumyan, Satenik Margaryan; The practice of pretrial detention in Armenia: an examination of the role of the Soviet Legacy, published online, 6 June, 2014, European Journal on Criminal policy and research
[109] Ibid, p. 8
[110] Ibid, p. 10
[111] Ibid, p. 12
[112] Ibid, p. 15

2) a person has not executed a legitimate judicial act;

3) to ensure the fulfillment of certain responsibilities prescribed by the law;

4) when reasonable suspicion exists of commission of a crime or when it is necessary to prevent the commission of a crime by a person or to prevent his/her escape after the crime has been committed;

5) to establish educational control over a minor or to present him/her to the competent body;

6) to prevent the spread of infectious diseases and other social dangers posed by mental patients, persons addicted to alcohol and drugs, as well as vagrants;

7) to prevent the unauthorized entry of a person into the Republic of Armenia, as well as to deport or extradite him/her to a foreign country".[113]

It goes on stating that "if the arrested person is not detained within 72 hours by the court decision he/she must be released immediately".[114] Consequently, we can conclude that the grounds for detention are in conformity with the standards set by the ECtHR.

The close look at the jurisprudence of the European Court of Human Rights shows that the European Court does not differentiate between the notion of arrest and further detention. However, the current Code of Criminal procedure of Armenia[115] stipulates two means of

[113] Article 16, paragraph 1, Constitution of the Republic of Armenia, adopted in 1995, amended in 2005
[114] Ibid, par. 3
[115] Code of Criminal procedure of the Republic of Armenia, 1998

preventative measures involving deprivation of liberty in the criminal procedure: detention and arrest that are regulated in a different way. Moreover, the Constitutional Court of the Republic of Armenia has stated[116] that arrest and further detention pursue similar, but at the same time not identical goals. Thus, they require different regulation[117].

Hence, under current Code of Criminal procedure "arrest is detention, his delivery to the inquiry body or body which carries out the criminal proceeding, compiling an appropriate protocol and informing the detainee about this, the places and conditions provided by law for short-term detention"[118].

This means that the procedure of arrest consists of the following actions: actually depraving the person of his or her liberty; bringing him or her to the competent authority; making a protocol on arrest and announcing it to the arrested. This means that the person will gain the status of arrested after the last, forth action. Thus, it can be concluded that before the moment of announcing the protocol the person is, in fact, deprived of any rights enjoyed by the arrested.

Meanwhile, the ground for bringing the person to the competent authority is the directly emerged doubt that the person committed a crime combined with the purpose to prevent absconding. Thus, Article 129 of the Code of Criminal procedure stipulates as follows:

> "1. A person suspected in committing a crime can be detained by the officer of inquiry body, investigator or prosecutor if any of the following grounds is present:

[116] ՀՀ Սահմանադրական դատարանի 2009թ սեպտեմբերի 12 ՍԴՈ-827 որոշում, կետ 6 4-րդ պարբերություն (Case SDO-827, 12 September 2009, point 6 par. 4, Constitutional Court of the Republic of Armenia)

[117] Ibid

[118] Article 128, Code of Criminal procedure of the Republic of Armenia, 1998

1) when he is caught while or immediately after committing an action forbidden by criminal law;

2)when the eyewitness of the incident identifies a person as being the one who committed an action forbidden by criminal law;

3) when obvious traces of committing an action forbidden by law is found on the person himself, his clothes, items used and possessed by him, in his apartment or his means of transportation;

4)when there are other grounds to suspect in committing a crime a person who tried to escape from the crime scene or from the body which carries out the criminal proceeding, or who does not have a permanent place of residence or who resides in another area and whose identity is not established"[119].

Moreover, the level for grounding the reasonable doubt is lower than for arrest. If the investigating authority completes the arrest procedure, than the term of the arrest is being counted retrospectively from the moment of actual deprivation of liberty. Thus, the person who is brought to the investigating authority cannot understand his or her status before the announcement of the arrest protocol. According to Article 131^1 the latter should be formulated within three hours from the moment of bringing the person to the investigator, prosecutor or the investigating body[120].Furthermore, it is quite feasible that he or she can be released, never gaining the status of the arrested.

Interestingly enough there is another means of coercive measures used during pretrial detention that is known as apprehension. Article 153 of the current Code of Criminal procedure stipulates as follows:

[119] Ibid, Article 129 par. 1
[120] Ibid, Article 131^1 ,par. 1

> "Apprehension is forcibly bringing the suspect, the accused as well as the witness and the injured, upon availability of a substantiated order of the inquiry body, investigator, prosecutor, to the investigating body. It may be accompanied with the restriction of some rights and liberties of the apprehended"[121].

Moreover, the second paragraph of this Article stipulates that the person can be apprehended pursuant to the decision of the investigating body or the prosecutor. Thus, the person is basically deprived of their liberty without a court order.

Then we come across the same term of apprehension in Article 180 of the Code that concerns the procedure of examining the reports about crimes. It enshrines the following:

> "1. Reports about crimes must be considered and resolved without delay, and when necessary to check the legitimacy of the reason for the initiation of prosecution and the sufficiency of the grounds, no less than in 10 days after their receipt.
>
> 2. Within this period additional documents can be requested, explanations and other materials, the examination of the locus criminis and expert examination, in case of sufficient grounds for suspicion of having committed a crime the person can be apprehended and be subjected to personal search and seizure, samples can be taken for examination and be sent to expertise"[122].

Moreover, it should be noted that the term of apprehension is not included in the list of the terms used in the Code of Criminal procedure[123]. The close look at the Article 6 of the Code reveals that this term is missing from the general framework of the Code of Criminal

[121] Ibid, Article 153, par. 1
[122] Ibid, Article 180
[123] Article 6, Code of Criminal procedure of the Republic of Armenia, 1998

procedure. Furthermore, as we can see, there is no detailed procedure concerning the conduction of apprehension or the time frames for its application. What is more important is that there is no mentioning about possible judicial review of the apprehension which basically is a form of deprivation of liberty.

As we can see, the detained person for the period before he or she is presented with the detention protocol as well as the apprehended person for the whole duration of being deprived of their liberty is also not granted with the basic rights of the arrested. Moreover, apprehension does not fit any of the lawful grounds enlisted in Article 5 paragraph 1 of ECHR. Unlike detention that is applied when there is already an initiated criminal case and the person is being deprived of his or her liberty on the ground of having committed a crime, apprehension is applied when the investigating body is still examining the grounds for initiating a case. Furthermore, the apprehended has no procedural status which means that he or she is not entitled to any rights.

As for the time limits for these measures of deprivation of liberty, it should be noted that apprehension, in principle, can last indefinite period of time as the law does not set time frames for its application. What concerns the arrest, it should last 72 hours as a maximum. By the time this period elapses charges should be pressed against the detainee. "The charges do not have to be pressed against the detainee if he or she has been released due to selection of another means of preventive measures not involving deprivation of liberty or non-selection of any preventive measure"[124].

To sum up, in Armenia, a country with Soviet history, the process of letting go of the soviet past proceeds quite slowly. In spite of the Constitutional norms on deprivation of liberty that are in line with the standards of the European Court of Human Rights, the current Code of

[124] Ibid, Article 129, par. 2

Criminal procedure stipulates problematic provisions regulating pretrial detention. The detention on the ground of reasonable suspicion at first glance seems to be in conformity with the jurisprudence of the European Court. Nevertheless, there may be episodes when the person is deprived of not only his or her liberty but also from the rights of the arrested. As for the apprehension, it does not practically fit the standards of the European Court. Furthermore, the norms on the procedure of its application and duration are missing. Thus, we can conclude that there are substantive issues on the level of regulation of pretrial detention in Armenia.

2.2 Overturn in the case law

As we all know, practice is where the law is tested and assessed. Interestingly enough the upcoming changes in the legal regulations and practice in Armenia were actually a result of the practical cases. Hence, this chapter will examine and discuss the events that triggered the changes as well as landmark cases of the highest court of the Republic of Armenia, the court of Cassation.

The catalysts for these changes were the incidents during the March 1, 2008 events in Yerevan, Armenia. After the presidential elections in Armenia in 2008 the opposition was demonstrating against, as they alleged, the forged results of the elections. The protesters camped in downtown Yerevan and for some time the authorities indulged them. However, "a police pre-dawn raid on the camp on March 1, justified as a search for weapons, triggered the convening of a much larger demonstration elsewhere in the city center"[125].This resulted in

[125] Summary section of "Democracy on Rocky ground: Armenia's disputed 2008 presidential election, post-election violence and the one-sided pursuit of accountability", Human Rights Watch report, February 25, 2009

the declaration of state of public emergency for 20 days, banning demonstrations and public assemblies[126].

Human Rights Watch reports the following:

> "In the opening episode on March 1, riot police raided, dispersed, and dismantled the protestors' camp, beating protest participants including people who were entangled inside collapsed tents. Protestors regrouped in another part of the city center and their numbers swelled in the course of the morning; participants began to erect barricades and arm themselves with makeshift weapons. Police negotiated with protest leaders for relocation of the demonstration to a different venue, and withdrew to allow the protestors to move, but the large crowd stayed put. Confrontation flared between protestors and some police officers departing from the scene, leading to police cars being set alight and protestors attacking police who were guarding the nearby Yerevan city hall"[127].

During the incidents on March 1 the police used brutal force against the protesters as well as detained some of the protesters. As Human Rights Watch accounts, "in the aftermath of the violence there were more than 100 arrests"[128]. Some of these cases went all the way up to the highest court, the Court of Cassation of the Republic of Armenia. Hence, as we will see, the decisions of the latter on several cases resulted in a groundbreaking change in the law enforcement in regards to pretrial detention in Armenia.

It is important to note that according to Article 92 of the Constitution of Armenia stipulates that "the highest court instance in the Republic of Armenia, except for matters of

[126] Ibid
[127] ibid
[128] ibid

constitutional justice, is the Court of Cassation, which shall ensure uniformity in the implementation of the law"[129]. Moreover, according to Article 50 of the Judicial Code, "the Court of Cassation, while carrying out its duties, should strive for promoting the advancement of the law"[130]. This means that those decisions of the Court of Cassation that aim at ensuring the uniformity in the implementation of the law are of precedential nature. Furthermore, most importantly, even though there is no provision stating the binding nature of these decisions, the court of lower instances, namely the first instance court of general jurisdiction and the courts of appeal, usually follow the precedents of the Court of Cassation. Hence, pursuant to its constitutional obligation, in the landmark case of Gagik Mikayelyan[131] the Court of Cassation of the Republic of Armenia has listed the minimum rights to be guaranteed to every person who is being deprived of his or her liberty regardless of the actual status. Mr. Mikayelyan was arrested at 03:05 am on 8 September 2009. The motion for further detention was filed to the court at 7 pm on 11 September 2009. The Court of first instance approved the motion at 9 pm on 11 September 2009. Although the 72 hours term elapsed on 03:05 am on 11 September 2009, Mr. Mikayelyan was still in detention when the motion was filed. Hence, he spent in arrest 16 hours more than he should have under the law. Moreover, for the purposes of this thesis, it is important to underline that the uncertainty of the status of the apprehended also includes the uncertainty over the period of how long the person can remain in this status. As it has been stated earlier, under current Code of Criminal procedure there is no indication of time frames for the investigating authority to make the protocol and announce it to the apprehended. However, in the case of Gagik Mikayelyan the

[129] Article 92, Constitution of the Republic of Armenia, adopted in 1995, amended in 2005
[130] Article 50,par. 1, Judicial Code of the Republic of Armenia, adopted in 2007
[131] ՀՀ Վճռաբեկ դատարանի 2009 թ դեկտեմբերի 18 Գագիկ Միքայելյանի ԵԱԴԴ/0085/06/09 գործով որոշում (Case of Gagik Mikayelyan, par. 22, EADK/0085/06/09, 18 December 2009, Court of Cassation of RA)

Court of Cassation has stated that the rules for issuing a protocol for arrest should apply to apprehension[132]. Under the Code of Criminal procedure it is stipulated that the arrest protocol should be issued within three hours from the moment when the person in relation to whom there is reasonable doubt of having committed a crime is brought to the investigating authority[133]. Thus, the Court of Cassation ruled that the same rule should be applied in cases of apprehension. This means that the protocol of apprehension should be issued within three hours.

Furthermore, as an additional guarantee the Court stated that the protocol should be announced to the apprehended immediately, and if that is not possible than within one hour. The only reasonable exception established by the Court concerns the situation when the apprehended is under the influence of alcohol, drugs or in a similar condition that deprives the investigating authority of the chance to announce the protocol to the apprehended[134]. Thus, if after four hours from the moment of being brought to the investigating authority the apprehended is not informed about the protocol, he or she gains the status of arrested and is entitled to all the guarantees.

As we already know, the Code of Criminal procedure stipulates that the maximum term of keeping the person in arrest is 72 hours. Charges should be pressed within those 72 hours. If no charges have been pressed and the time has elapsed, the person should be released[135]. Alternatively, no charges can be pressed against the arrested if another means of preventative measure not involving deprivation of liberty was applied to the arrested within 72 hours or no other means was applied. In those cases the person should be released as well.

[132] Ibid, par. 27
[133] Article 131, par.1, Code of Criminal procedure of the Republic of Armenia
[134] Case of Gagik Mikayelyan, par. 28
[135] Article 129, par. 2, Code of Criminal procedure of the Republic of Armenia

However, in practice the motion on further detention usually is filed if the person is detained and charges are to be pressed against him or her[136]. Leaving aside the negative effects of this common practice, it should be underlined that the current Code of Criminal procedure does not identify the time frames for filing the motion for further detention. This had its reflection in the landmark case of Gagik Mikayelyan. It can be concluded that the absence of the rule regulating the time frames for filing the motion on further detention, makes these kind of situations uncertain in relation to the period the person may spend in detention. It can reasonably be assumed that this period can be more than four day, the maximum period set by the European Court in its jurisprudence. Thus, in this regard, this legal uncertainty may result in the violation of the Convention.

As we can see, having indentified the gaps in the legislation at issue, the Court of Cassation has made an effort to solve the current situation. The legal uncertainty over the status of the apprehended and the absence of any safeguards have been underlined by the Court and in the landmark case of Mikayelyan it stated the list of the minimum rights that the apprehended should enjoy. Moreover, the Court has identified the gaps in the regulation of the time frame for filing a motion on further detention. The guidelines by the Court of Cassation served as inspiration for the drafters of the new Code of Criminal procedure. The latter's provisions stipulate a more certain and comprehensive rules on pretrial detention. Thus, it can be concluded that positive changes are taking place. However, there is still a lot to be done.

Another landmark case concerns the interpretation of the reasonable doubt and the criteria of its application by the Court of Cassation. In the case of Vahram Gevorgyan[137], the accused

[136] P. 32, American Bar Association Rule of Law Initiative. Detention procedure assessment tool for Armenia, 2010

[137] ՀՀ Վճռաբեկ դատարանի 2011 թ դեկտեմբերի 24 Վահրամ Գևորգյանի ԵԿԴ/0678/06/10 գործով որոշում (Case of Vahram Gevorgyan, EKD/0678/06/10, 24 February, 2011, Court of Cassation of RA)

was brought before the competent judicial authority only one and a half hours before the 72 hour period of detention was about to lapse. The Court has ruled on the matter of further detention within 7 hours, during which Mr. Gevorgyan remained in custody. The Court of Cassation, citing the leading case law of the European Court, stated that the Court of General Jurisdiction did not even address the issue of the existence of reasonable suspicion[138]. As for the Appellate Court, the Court of Cassation continued, it simply stated that there is a reasonable suspicion that the accused has committed the crime, without grounding the statement or mentioning any facts that would substitute the assertion[139].

The Court of Cassation went on stating that the detention of the person can be considered as legal and plausible only if there is a reasonable doubt that the person has committed the crime as well as that there are the grounds for depriving the person of his or her liberty, such as the danger of fleeing, possibility of reoffending, etc[140]. Thus, the Highest Court has underlined that the courts should assess the existence of the conditions and criteria of deprivation of liberty while they are examining the motion for detention. The conditions for the detention are the factual circumstances the absence of which excludes the application of the preventive measure. Among those conditions one of the most important ones is the reasonable suspicion of having committed the crime. Hence, the courts should assess its existence and only afterwards proceed with the examination of the existence of the grounds for detention. If there is no reasonable suspicion, then the assessment of possible grounds for detention is unreasonable[141].

[138] Ibid, par. 24
[139] Ibid
[140] Ibid, par. 19
[141] Ibid, par. 19

Finally, the Court of Cassation has established that the suspicion can be considered as reasonable only if the investigator or the prosecutor that bring the motion for detention presents information, facts or evidence concerning the acts or inaction of the person. Those facts, information or evidence should directly indicate the connection of the person in question with the crime as well as should prove that it is the same crime as the one of which the person is being suspected[142]. As we can see, this is a very low standard for reasonable suspicion, unlike the one set by the European court. It would be very easy for the investigating body to find a piece of information, a fact or evidence as alternatives to one another proving the involvement of the suspect in the commission of the crime. In comparison to the meaning of reasonable suspicion by the European Court, in this way it can hardly be concluded that an objective viewer would reasonably believe that the person has committed the crime. Hence, this interpretation by the Court of Cassation is not in line with the standards set in the jurisprudence of the European Court.

Additionally, Mr. Gevorgyan alleged the unlawfulness of the grounds for his detentions. The grounds for applicant's detention were his refusal to accept his guilt as well as the fact that other co-offenders fled and were under investigation. The Court of Cassation stated that the person can be deprived of the liberty only pursuant to the grounds stipulated under the law. The ones put on the basis of the detention decision at issue were not ones enshrined in any legal act and were contrary to the international documents which are binding for the Republic of Armenia as a signatory state, according to Article 6 of the Armenian Constitution[143] as well as the interpretations of those documents. Moreover, the decision was breaching the presumption of innocence and several other safeguards that Mr. Gevorgyan was entitled to[144].

[142] Ibid, par. 21
[143] Ibid, par. 35
[144] Ibid, par. 34

Interestingly enough, in a similar case the defendant Mr. Grigoryan has launched an application to the European Court of Human Rights alleging the violation of his rights under Article 5 paragraph 1 (c)[145].The ECtHR has concluded that there was no violation as the national authorities had fulfilled their obligations by bringing the person to the competent legal authority within the 72 hours before the term for arrest has elapsed. Nonetheless, in my opinion, the decision of the Court was triggered by the fact that Mr. Grigoryan had ten attorneys that one after another filed motions to the court[146]. Hence, the European Court considered the extension of the time the applicant spent under custody as a result of the actions his legal representatives[147].

It is important to note that although there are no more decisions against Armenia regarding the issues of importance for this thesis, it has been decided to adjourn the examination of the complaints in the cases of Gagik Jhangiryan v. Armenia[148] and Vardan Jhangiryan v. Armenia[149]. In both cases the applicants alleged the violations of their right to liberty and security under Article 5 paragraph 1 and 3. The cases concern the arrests and apprehensions in the aftermath of the events of March 1, 2008. Mr. Vardan Jhangiryan is Gagik Jhangiryan's brother[150]. Back then Mr. Gagik Jhangiryan was the Deputy General prosecutor of the Republic of Armenia[151] and during the protests after the Presidential elections of 2008 he made a speech supporting the opposition[152]. Both cases are of utmost importance for the

[145] Grigoryan v. Armenia, Application no. 3627/06, ECHR, 10 July, 2006
[146] Ibid, par. 86
[147]Ibid
[148] Gagik Jhangiryan v. Armenia, Application nos. 44841/08 and 63701/09,ECHR, Decision, 11 December 2012
[149] Vardan Jhangiryan v. Armenia, Application nos. 44765/08 and 10607/10,ECHR, Decision, 11 December 2012
[150] Vardan Jhangiryan v. Armenia,par. 4
[151] Gagik Jhangiryan v. Armenia, par. 5
[152] Ibid, par. 5

issues of pretrial detention discussed in this thesis. However, it should be awaited until they are examined and decided upon by the European Court of Human Rights at some point.

In short, the practice revealed the gaps in the legal regulation of the pretrial detention under the current Code of Criminal procedure. The Highest Court of Armenia, the Court of Cassation, being guided by the jurisprudence of the European Court, in its landmark case of Gagik Mikayelyan has established that the person should be entitled to the basic rights of the detainee from the moment of the deprivation of liberty regardless of the actual duration of the deprivation. Hence, the Court tried to find a solution to the situations when the detainee could find himself or herself without any status. Nevertheless, even though the Court was led by the standards of the European Court, in fact, it drifted away from it by establishing a quite low standard for the reasonable suspicion. Thus, in spite of positive changes, the situation still requires some improvements.

2.3 Possible solutions?

Making an attempt to reflect upon the landmark decisions of the Court of Cassation of the Republic of Armenia that revealed the gaps in regulation of the pretrial detention as well as trying to bring the legislation into conformity with the standards of the European Convention, the Republic of Armenia initiated a revolutionary amendment process on the Code of Criminal Procedure in 2011. The committee on the amendments worked for more than a year and came up with an innovative draft law[153] on Code Criminal Procedure. Furthermore, in

[153] Draft law on Code of Criminal Procedure, 2012

2013 Armenia started the works on the Constitutional amendments[154]. Thus, this chapter will discuss the drafts of the Code of Criminal Procedure and Constitution as well as the possible assets and pitfalls concerning their relevant provisions.

Even though the Constitution of Armenia is the supreme law of the land[155], we would start with the discussion of the draft law on the Code of Criminal Procedure in order to reflect the chronology of the amendments in the legal system of Armenia. In the Concept note the Commission on the Amendments of the Code of Criminal Procedure(hereinafter the Commission) has stated that one of the aims of these amendments is to create a court-centered criminal procedure[156]. In order to achieve those aims the Commission identified the conceptual directions for the development of the new draft code, among which the review of the grounds, conditions and the procedure for the application of the preventive means, such as arrest and detention[157].

The concept note envisioned fundamental novelties that should principally improve the current field of criminal procedure and boost the increase of its efficiency. In particular it is planned to clarify the objectives, grounds, conditions as well as the procedure of the arrest and detention[158]. In the section dedicated to the arrest and the preventive measures, it is stated that the aim of the arrest is bringing the person suspected in committing a crime before the court[159]. The person can be arrested on the basis of the immediate reasonable doubt or in

[154] ՀՀ Նախագահի հրամանագիր ՆՀ-207-Ն Հայաստանի Հանրապետության Նախագահին առընթեր սահմանադրական բարեփոխումների մասնագիտական հանձնաժողով ստեղծելու մասին (President Decree no. NH-207-N on the establishment of the Constitutional reforms committee adjacent to the office of President)

[155] Article 8, par. 2, Law on legal acts of the Republic of Armenia, adopted on 03 April 2002

[156] Par. 1.15, Քրեական դատավարության նոր օրենսգրքի հայեցակարգ, 2011թ մարտի 10 (Concept note of the new Code of Criminal Procedure, March 10, 2011)

[157] Ibid, par. 1.17 (b)

[158] Ibid, par. 1.18

[159] Ibid, par. 2.18

order to bring the suspect before the court pursuant to the court order[160]. The Commission has underlined that the application of this measure is dictated by the need to conduct specific procedural actions and making protocols in the presence of the person[161].

Furthermore, if the person is detained on the ground of reasonable doubt, the protocol should be written and presented to the suspect within 6 hours from the moment of the deprivation of liberty[162]. What is more important is that the person should be brought before the judge within the 60 hours from the moment of arrest; otherwise, the person should be released[163]. While reviewing the motion for detention, the court should also assess the legality and reasonable of the arrest[164]. The Commission has established that if within 24 hours the Court does not grant the motion for detention, the person should be released[165].

More than a year after publicizing the concept note, the Commission on the Amendments presented the draft law on the Code of Criminal Procedure. Hence, taking into account this gap in law and consequently practice, the drafters of the new Code of Criminal procedure have come up with a solution in the new draft Code.

In draft Article 108 we can find the reflection of the concepts from the earlier concept note of the Commission. Hence, Article 108 stipulates the notion of the arrest as follow:

> "1. Arrest can be applied when
>
> 1. There is immediate suspicion of the commission of the crime;
> 2. There is need to bring the defendant who is not under custody before the court;

[160] Ibid, par. 2.19
[161] Ibid, par. 2.20
[162] Ibid, par. 2.21
[163] Ibid, par. 2.22
[164] Ibid, par. 2.23
[165] Ibid, par. 2.24

3. The defendant has violated the conditions for preventive measure;

4. There is need to bring the participants of the criminal process(except, the defense attorney and legal representative) as well as the expert, witness or the translator to the court (short term arrest)"[166].

As we can see, the definition of arrest has been made clearer, reflecting the notions that are in line with the understanding developed by the European Court. Most importantly, the ambiguous concept of apprehension is reviewed.

Furthermore, the second paragraph of Article 108 provides that the person is considered to be arrested from the moment of being deprived of his or her liberty. It is specifically enshrined in the second sentence of the same paragraph that the time period for arrest starts running from that moment[167]. Consequently, we can witness the adjustment of the problematic norm discussed in the first subchapter of this chapter.

Additionally, it follows from the above-mentioned provision on the start of the time period for arrest that the person has a specific status of arrested from the moment of actual deprivation of liberty. Moreover, in the draft law there is a specific provision stipulating the special rights the arrested person is entitled to. Article 110 provides that all the rights that can be enjoyed by the defendant are applicable to the arrested, such as right to know the reasons for his arrest, right to remain silent, right to council, etc[168]. Therefore, it can be concluded that progressive changes have been implemented into the draft law.

[166] Article 108, par. 1, Draft law on Code of Criminal Procedure,
[167] Ibid, par. 2
[168] Article 110, par. 2

As for the concept of the reasonable suspicion, it should be mentioned that the draft law stipulates that the person can be arrest on the basis of immediate reasonable suspicion in the following cases:

> 1. "If the person is caught committing a crime or immediately after its commission;
> 2. The witness points the person as the one who has committed a crime;
> 3. On the person or on his or her clothes or on the items used by the person, in his or her possession or in their home or vehicle obvious traces were discovered in connection with the act categorized as a crime in the Criminal Code;
> 4. There are other grounds proving the connection of the person to the crime and simultaneously the person has attempted to escape from the crime scene or from the law enforcement agents or the person has no permanent residency or his or her identity has not yet been established"[169].

As we can see the draft law does not follow the interpretation of the Court of Cassation establishing a standard in conformity with the one developed by the European Court.

In relation to the issue of the time frames of the arrest, it should be mentioned that the draft law stipulates that the maximum term is 72 hours from the moment of actual deprivation of liberty[170]. The latter provision is in line with the Constitution in force. The protocol of the arrest should be made and presented to the suspect within 6 hours from the moment of

[169] Article 109, par. 1
[170] Ibid, par. 7

arrest[171]. Moreover, the provision stipulates that the motion on further detention should be filed within 60 hours from the moment of the deprivation of liberty[172]. This gives the courts of first instance the reasonable time to rule on the detention.

Additionally, the draft law provides that the preventive measure cannot be applied if there is no reasonable doubt[173]. The second paragraph goes on enlisting the grounds for detention, such as the risk to flight, the prevention of the commission of new crimes as well as for the purpose of the fulfillment of the obligations pursuant to a law or a court order[174]. Nevertheless, the next paragraph stipulates the exceptions not requiring proving the existence of the grounds under the second paragraph of the same Article. Those exceptions are, first, when the alternative preventive measures are applied, and second, the initial detention or alternative preventive measure of the person who is being accused of a grave or particularly grave crime[175]. Here it should be noticed that we witness the situation when the gravity of the crime solely plays a role in the process of determining the application of preventive measure. Thus, this situation contradicts the standard of the European Court that clearly states that the gravity of the crime should play a significant role, but only in combination with other factors.

In short, the draft law on the Code of Criminal procedure stipulates almost all the changes necessary to fill in the gaps in the regulation of pretrial detention in Armenia. The Commission on amendments did its best to find suitable solutions taking into account the issues revealed in the case law of the Court of Cassation as well as striving to bring the Code of Criminal Procedure in conformity with the jurisprudence of the European. As it can be seen, the institute of apprehension is removed in the form it is stipulated in the current Code. Furthermore, the draft attempted to reflect upon the issues on the time frames, providing a

[171] Ibid, par. 5
[172] Article 109, par. 7
[173] Article 116, par. 1
[174] Ibid, par. 2
[175] Ibid, par. 3

quite reasonable solution. Even though 12 hours seem to be a feasible time frame for the courts to examine and decide upon the motion for detention, the practice would only reveal the challenges to this new regulation. Nevertheless, we would have to wait to until the draft law is adopted.

Meanwhile the Commission on Constitutional reforms has finished its work on the Draft Amendments to the Constitution. Article 27 of the draft stipulates the right to liberty and security. The close study of the provisions shows that the new Article reflects the standard set in Article 5 of the European Convention. It almost literally repeats the safeguards such as the right to be promptly brought before the competent judicial authority[176], the right to inform about his or her deprivation of liberty to the person of their choice[177], etc. As for the time limits, the maximum time frame for the deprivation of liberty without a court order is 72 hours[178]. Thus, it can be concluded that the draft Constitution does not enshrine any provisions that would undermine the right to liberty.

Nevertheless, it is important to turn to the opinion of the European Commission for Democracy through law, also known as the Venice commission. Even though the latter is an advisory body of the Council of Europe, the member states of the Council of Europe try to be guided by the opinions of the Commission. In its opinion about the chapter on fundamental rights of the Draft Constitution, the Venice Commission has stated that the Article 27 of the Draft Amendments is "an example of Article whose wording is very close to the ECHR and also incorporates certain case-law of the European Court"[179]. Then the Venice Commission goes on commenting on the Fourth paragraph of Article 27, that stipulates the time frames for

[176] Article 27, par. 5, Սահմանադրական բարեփոխումների նախագիծ,2015 (Draft Amendments to the Constitution of Republic of Armenia, 2015)
[177] Ibid, par. 3
[178] Ibid, par. 4
[179]Par. 37, Preliminary opinion on the draft amendments to Chapters 1 to 7 and 10 of the Constitution of the Republic of Armenia, Venice Commission, Strasbourg, 10 September, 2015

arrest. On this provision the Commission emphasizes that "the paragraph settles a time limit for a detention without a court order which is in conformity with the case law of the Strasbourg Court"[180]. Nevertheless, "this wording does not allow for flexibility and a possible more favorable time-limit"[181].

On the one hand, the Venice Commission greets the provisions on right to liberty, stating that they are in conformity with the Strasbourg jurisprudence. Nonetheless, the last remark by the Commission gives an unclear sense to the wording of the comment. It is not certain whether the Commission meant that the time frames are too strict and, thus, they restrict the freedom of action of the investigating body. The discussion over the ambiguity of the statement can go on forever. Nevertheless, it is important to underline that the Venice Commission itself has acknowledged that the draft Constitution stipulates provisions that correspond to the jurisprudence of the European Court.

In conclusion, as we have seen the Republic of Armenia is in the state of major amendments in the legal system. Whether it was the draft law on the Code of Criminal Procedure or the Draft Amendments to the Constitution, it should be underlined that progressive changes in regulation of the pretrial detention in Armenia are to be detected. Having taken account of the loopholes in the criminal procedural legislation and the relevant practice indicated by the Court of Cassation, the Commissions on the amendments have attempted to find reasonable solutions. Nonetheless, the real value of the drafts would be revealed in practice soon.

[180] Ibid, par. 38
[181] Ibid

Chapter 3: Challenges to pretrial detention in Russia

3.1 Russian approach to regulation of pretrial detention

Similar to Armenian legal system, Russian one also has undertaken the period of transition after the collapse of Soviet Union. In the first years after the declaration of independence Russia became a member to several international organizations, such as United Nations at 1992[182], as well as was one of the founding states of Commonwealth of Independent States. Later, after ratifying the ECHR in 1998, Russia undertook the duty to comply with the requirements of the Convention and the criteria established by the European Court. Nevertheless, as it will be argued in this chapter the practice shows that these obligations are not completely fulfilled. Hence, this subchapter will discuss the current legislation regulating the pretrial detention in Russia, namely the Code of Criminal Procedure of Russian Federation, and the ongoing issues in relation to the legal basis.

As it has been stated earlier, the European Court does not differentiate between the arrest and further detention. Nevertheless, Russian legislator adopted a peculiar view. Thus, arrest and further detention are separately defined and regulated under the current Code of Criminal procedure of the Russian Federation[183].

Hence, Article 91 of the Russian Code of Criminal Procedure states the grounds for arrest of the suspect and Article 92 stipulates the procedure for arrest. The former stipulates that the investigating body or the investigator is authorized to detain the person on the suspicion of having committed a crime, if one of the following grounds is present:

[182] Note: Member to UN from 1945 as USSR
[183] Code of Criminal procedure of Russian Federation, adopted on 22 November, 2001, entered into force July 1, 2002

"1) this person is caught red-handed when committing the crime, or immediately after committing it;

2) the victims or the witnesses point to the given person as the perpetrator of the crime;

3) on this person or in his clothes, near him or in his dwelling undoubted traces of the crime are found"[184].

Thus, the wording of the provision suggests that only one of the above mentioned grounds should exist for the legitimate ground of detention to be in place. As for the procedure of the arrest, it is enshrined in the Code that "after the suspect is brought to the body of inquiry or to the investigator, a custody report shall be compiled within a term of not over three hours, in which shall be made a note that the rights, stipulated by Article 46 of the present Code, have been explained to the suspect"[185].

One of the significant amendments that have been made to the legislation on criminal procedure was handing over the authority to review the lawfulness of the detention from the prosecutor to the judge. As Victor Filipov underlines, pursuant to the previous Code of Criminal procedure the prosecutor had a wide range of rights, such as "authority to arrest suspects, give permission for a person to be arrested, read private correspondence and tap telephone conversations"[186].However, currently the situation has changed. The prosecutor, after being informed by body of inquiry, inquiry official, or investigator within twelve hours from the moment of deprivation of liberty[187], should get the judicial order for conducting

[184] Article 91, par. 1, Code of Criminal procedure of Russian Federation, 2001
[185] Ibid, Article 92, par.1
[186] Victor Filippov, The new Russian Code of Criminal Procedure: The Next Step on the Path of Russia's Democratization, Demokratizatsiya. Summer2003, Vol. 11 Issue 3 p. 398
[187] Article 92 par. 3, Code of Criminal procedure of Russian Federation, 2001

arrest[188]. This regulation seems reasonable and corresponds to the requirements of the European Court in relation to the fulfillment of the obligations under Article 5 paragraph 3.

When speaking about the time limits in relation to arrest, the constitutional standards should be mentioned in the first place. Hence, it is stipulated that "no person may be detained for more than 48 hours without a judicial order"[189]. Furthermore, "upon the expiration of forty-eight hours after the detention occurred, the suspect shall be released if a restraint measure in the form of custody has not been imposed on him or a detention period has not been extended by a court in accordance with the procedures set forth in point 3 of part 7 of Article 108 of the Code"[190]. Meantime, Article 108 stipulates as follows:

> "7. After considering the motion, the judge shall issue one of the Following decrees:
>
> […] 3) to extend the period of detention. Extension of a period of detention shall be permitted, on the condition that a court finds the detention legal and well-founded, for a period of time not exceeding seventy-two hours from the time of the court's decision, on the basis of a motion of one of the parties requesting presentation of additional evidence regarding whether the imposition of a restraint measure in the form of confinement under guard is well-founded or ill-founded. A decree to extend the period of detention shall specify

[188] Article 94 par. 2, Code of Criminal procedure of Russian Federation, 2001
[189] Article 22, par.2, Constitution of the Russian Federation, December 12, 1993
[190] Article 94, Code of Criminal procedure of Russian Federation, 2001

the date and the time until which the detention period is extended"[191].

Nevertheless, there is an exception stipulated in the Code. If the petition was brought before a judge, the judge can extend the term of detention "for a term of 72 hours at most as of the time of rendering the court decision on the petition of one of the parties for presenting additional proof of reasonableness or unreasonableness of taking the measure of restraint in the form of placing under detention"[192]. This means that although the Constitution sets the time limit of 48 hours, the person can, in fact, be arrested, for up to five days. Nevertheless, the Constitutional Court found this provision to be in line with the Constitution, reasoning that "it is the judge, within the 48 hour period required by the Constitution, who orders the additional period"[193].

However, this provision is in conflict with the case law of the European Court of Human Rights because, as it was stated earlier, the European Court has established that the maximum duration of the arrest should not exceed four days. The general rule under Russian legislation stipulates that the person can be detained without a court order for only two days. If the above mentioned rule is applied then the person may remain in detention for another three days. Thus, the overall period of detention will exceed the established maximum period in the jurisprudence of the European Court.

In spite of the above mentioned, Boris Govrilov argues that this provision provides more time for the defendant and his or her lawyers to gather information and get prepared for the presentation of the case in their defense. He exemplifies by bringing the statistics that show

[191] Ibid, Article 108 par. 7 point 3
[192] Ibid Article 108.7 (3)
[193] Определение Конституционого Суда (Determination of the Constitutional Court) No.53-O, 6 February 2004

that "in only around 3.5% of cases from mid-2002 to mid-2003 the additional seventy-two hour detention was requested and granted"[194]. He continues stating that "statistics from the Ministry of Justice show a drop of 34.7% in the number of persons in pretrial detention between 2002 and 2003, thus suggesting judicial control of detention has had a positive effect"[195]. Thus, he concludes that it is better for the defendant to spend some seventy-two hours behind the bars, but improve the chances of properly defending in court.

Nevertheless, as William Burnham and Jeffrey Kahn argue the Old Code of Criminal procedure adopted in 1992 did not regulate the initial length of the pretrial detention[196]. They state that the prosecutor "merely had to be notified that an arrestee was in detention within forty-eight hours, at which point he/she then had an additional forty-eight hours to act."[197] Then they go on mentioning the following on the current Code of Criminal procedure:

> "The route to this change was not exactly straightforward, however. The 'Transitional Provisions' of Part II of the Constitution provided that "[u]ntil the criminal procedure legislation of the Russian Federation is brought into conformity with the provisions of this Constitution, the former procedure for arrest, custodial confinement and detention of persons suspected of committing crimes shall be preserved". Because of a lack of progress on a new criminal procedure code, the old detention regime had continued all through the 1990s"[198].

[194] Boris Gavrilov, "Новеллы уголовного процесса на фоне криминальной статистики" Российская юстиция (Novels of criminal process against the background of criminal statistics, Russian justice), 2003

[195] "Обзор деятельности федеральных судов обшчей юрисдикции и мировых судей в первом полугодии 2006ого года" (Digest of jurisprudence of the federal court of general jurisdiction and world judges in the first semester of 2006), 3

[196] William Burnham, Jeffrey Kahn, Russia's Criminal Procedure Code Five Years Out**,** Review of Central & East European Law. Jan2008, Vol. 33 Issue 1 ,p. 11

[197] Ibid

[198] Ibid, p. 12

After the 2001 Code entered into force there was a reasonable fear that the courts are not ready to deal with this new work load. Thus, a new provision was inserted in the newly adopted code, delaying entrance to force of the provisions in regards to pretrial detention.

Nonetheless, the Constitutional Court of Russia in its decision for the so called Malenkin case stated that it was unconstitutional to delay the entrance into force of the provisions at issue[199]. In their petition Mr. Malenkin and others challenged the constitutionality of Article 90 in light of the right of liberty and security enshrined under Article 22 of the Constitution of Russia. In its decision the Constitutional Court furthermore argued that "Part II of the Constitution only contemplated a "period of time essential for [the] introduction of appropriate legislative amendments" and, given the passage of time, suggested that the "temporary norms are becoming permanent"'[200]. It is interesting to note that the Court grounded its decision by mentioning Article 22 paragraph of the Russian Constitution as well as by underlining the obligations that Russian Federation undertook as a High Contracting state to ECHR[201]. As for Article 22 of the Constitution on the right to liberty and security it is important to mention that it has direct effect as "all the rights and freedoms of man and citizens are directly operative"[202].

Last, but not least it is important to note that pursuant to Article 79 on Legal Force of Decisions of the Federal Constitutional law of the Constitutional Court of Russian Federation "the decision of the Constitutional Court of the Russian Federation shall be final and may not be appealed. The decision of the Constitutional Court of the Russian Federation shall be

[199] Постановление Конституционного Суда (Decision of the Constitutional Court) No 6-P of 14 March 2002, *VKS* (2002) No.3 (petition of Malenkin)
[200] Ibid, par. 2-3
[201] Ibid
[202] Article 18, Constitution of Russia

directly applicable and shall require no affirmation by other bodies and officials"[203]. Thus, the interpretation of this provision suggests that the decisions of the Constitutional Court are to be followed and applied directly.

In sum, it can be concluded that the crucial shifts from the Soviet legal school to a more human rights oriented system are envisioned. The fact that pretrial detention should be authorized by the judge gives a high standard to the protection of the rights of the detained. Moreover, the constitutional and statutory limits for unauthorized deprivation of liberty are significant steps as well. However, the provision allowing the prolongation of the arrest for 72 hours appears to be in violation of the ECHR and the case law of the European Court. Nevertheless, the positive tendency towards a system that is in line with the Convention can be noticed.

3.2 Russia and European standards for pretrial detention: Landmark cases

As it has already been stated Russia as member to Council of Europe signed in 1996 and ratified the European Convention on Human rights and fundamental freedoms in 1998, hence, undertaking the obligations to ensure and protect the rights enshrined in the Convention. Throughout those more than 15 years when Russian citizens had the right to lodge complaints against their state for violations of their various fundamental rights, the relationship between the European Court of Human rights and Russian Federation developed in a very interesting way as you will see further. Thus, this subchapter will discuss the landmark cases before the European Court in relation to Article 5 paragraph 3 brought

[203] Federal Constitutional law of the Constitutional Court of Russian Federation, adopted on July 21, 1994

against Russia as well as will analyze the recent legal developments in Russia connected to the decisions of the European Court.

It is important to mention that Article 15 of the Russian Constitution stipulates as follows:

> "4. The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied"[204].

As we can see, the constitutional norm states that when the norms of international law that stipulate different rules than they have supremacy over the national norms. Nonetheless, in mid 2015 Chairman of the Investigative Committee Aleksandr Bastrykin proposed to amend the Federal Constitution in order to end the supremacy of the international law over the domestic[205]. Interestingly enough, a group of members of Parliament of Russia submitted a request to the Constitutional Court on direct applicability of the decision of the European Court stating that "participation in international cooperation should not lead to a breach of human rights or contradict the fundamental principles of constitutional system"[206]. On July 14, 2015 the Constitutional Court of Russian Federation held[207] that there is supremacy of

[204] Article 15, par. 4 of the Constitution of Russian federation
[205] Russian Official Calls for Obligations to International Law to be Struck from Constitution, news article, the Moscow times, July 24, See at : http://www.themoscowtimes.com/news/article/russian-official-calls-for-obligations-to-international-law-to-be-struck-from-constitution/526147.html
[206] Russian Constitutional Court Affirms Russian Constitution's Supremacy over ECtHR Decisions, article, EJIL: Talk! See at: http://www.ejiltalk.org/russian-constitutional-court-affirms-russian-constitutions-supremacy-over-ecthr-decisions/
[207] Decision of the Constitutional Court of Russian Federation, July 14, 2015, par. 6

Russian Federal Constitution over the decision of the European Court. In particular the Court stated the following:

> "Membership to different international organizations and ratification of conventions is not contrary to the principle of state sovereignty. However, European Convention and the system of protection of human rights under the European Court cannot overturn the supremacy of the Federal Constitution. The same shared principles underlie the basis of both the European Convention and the Federal Constitution. It follows that in the majority of cases there would not be any collisions between the two. Nevertheless, a conflict is feasible if the European Court is to give an interpretation that contradicts the Federal Constitution"[208].

Hence, it can be concluded that the decision of the Federal Constitutional Court has initiated a new era in ECHR-Russia relations. Starting from July 2015 the decisions of the European Court are not directly applicable in the territory of Russian Federation and whenever there is a contradiction between the interpretation of the European Court and the Russian Federal Constitution in the decisions against Russia, the latter is not to be applied in the territory of Russian Federation.

Moreover, on November 18, 2015 in the Russian Parliament they started to discuss a new bill which will grant more powers to the Federal Constitutional Court[209]. According to RIA Novosti news agency, "the bill was drafted by all four Russian Parliamentary parties"[210].

[208] Ibid, par. 4-5
[209] Russian Constitutional Court gets priority over international courts in new bill, news article, RIA Novosti, See at : https://www.rt.com/politics/322560-mps-draft-bill-setting-russian/
[210] Ibid

This means that the new draft law has a strong support among the leading Russian political forces.

The draft law, according to the proposers, aims at defending the "legal sovereignty" of Russia as well as "opposed the prejudices rulings" that grant the applicants great amount of compensation to be provided by the state[211]. In fact, it would yield the Constitutional Court the right to determine which decisions of the European Court against Russia would actually be implemented.

Hence, in my opinion, this would significantly undermine the effect and influence of the European Court in Russia, resulting in more reluctance from Russia to abide by the decisions of the Court and be mindful of the worrying picture of human rights violations in the country as reflected in the applications and subsequent decisions. If after the decision adopted in July the Constitutional Court declared that only those decision that are contrary to the Federal Constitution will not be directly applicable, currently if the draft law at issue is adopted, the Constitutional Court would have unprecedented power over deciding the faith of the decision against Russia. In any case, further advancements in this regard would be known very soon as according to RIA Novosti "the head of the parliamentary group that prepared and submitted the bill, MP Vladimir Pligin (United Russia), said that he and his colleagues expected the draft to be considered by the Lower House in the first reading on December 1"[212].

Nonetheless, even prior to these developments the human rights violations in regards to pretrial detention took place in the territory of the Russian Federation. In the case of Belevitskiy v. Russia the applicant was deprived of liberty without any official record. He

[211] Ibid
[212] Ibid

was captured while trying to sell drugs in Moscow[213]. Later he alleged that he was beaten in the police station and his detention was unlawful[214]. In its judgment the European Court established that the initial detention was not "in accordance with the law"[215]. When assessing the complaints under Article 5 paragraph 3, the Court reiterated that "by failing to address concrete relevant facts and by relying solely on the gravity of the charges, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "sufficient"'[216]. Thus, the Court found violations of Article 5 paragraph 1 (c) and Article 5 paragraph 3.

In another case of Menesheva v. Russia, the applicant's boyfriend was believed to be a suspect of a murder[217]. When the policemen came to search the applicant's house in order to find the suspect, the applicant did not let them in as they were not in possession of a search warrant[218]. The next day policemen in plain clothes were waiting for her near her apartment again without any search warrant. The applicant once again refused to let them in and they had a heated debate. Afterwards, she was arrested, threatened and insulted[219]. Importantly, she was not notified about the reasons of her arrest[220]. "For about two hours they administered kicks and blows to her legs, threw her across the room, beat her with a baton and hit her head against the walls"[221]. The policemen refused to inform her relatives about her arrest[222]. She was taken to her apartment after some time so that the policemen can conduct a search even though they still did not have a search warrant[223]. The applicant, being arrested on February 13, 1999 on 4:30 pm remained in the detention until February 14, 1999

[213] Belevitskiy v. Russia, par. 7, Application no. 72967/01, EHCR, 01 March 2007
[214] Ibid, par. 11-15
[215] Ibid, par. 93
[216] Ibid, par. 103
[217] Menesheva v. Russia, par. 9, Application no. 59261.00, ECHR, 9 March 2006
[218] Ibid, par. 11
[219] Ibid, par. 12
[220] Ibid, par. 13
[221] Ibid, par. 14
[222] Ibid, par. 15
[223] Ibid, par. 17

2:30 pm[224]. On February 14 she was brought before a judge that sentenced her to five days of administrative detention for "administrative offence of forceful resistance to the police"[225]. The European Court has stated that the applicant remained in custody undocumented for 20 hours[226]. Moreover, it has concluded that:

> "That fact in itself must be considered a most serious failing, as it has been the Court's traditional view that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision"[227].

Furthermore, although the ECtHR underlined that even though "the substantive correctness of this order generally falls outside the Court's review"[228], "the judge in the instant case, on the contrary, exercised his authority in manifest opposition to the procedural guarantees provided for by the Convention"[229]. Thus, the Court found a violation of Article 5 paragraph 1[230].

One of the primary landmark cases against Russian in the field at issue is Kalashnikov v. Russia. According to Alastair Mowbray, "this judgment demonstrates the contemporary approach of a full-time Court to assessing whether a (lengthy) period of pretrial detention on remand is reasonable under Article 5 paragraph 3"[231]. In fact he underlines that "the Court will subject the reasons for the detention given by the domestic judiciary to a close and strict

[224] Ibid, par. 18
[225] Ibid, par. 20
[226] Ibid, par. 87
[227] Ibid, par. 87
[228] Ibid, par. 92
[229] Ibid
[230] Ibid, par. 93
[231] Alastair Mowbray, p. 314

evaluation"[232]. The applicant in this case was he president of the North East Commercial Bank[233] and was suspected of embezzlement[234]. During the pretrial detention the applicant was kept in a small cell with 24 other inmates[235] in terrible sanitary conditions[236]. The European Court has stated that the total period of the applicant's detention was four years, one month and four days[237]. The continuous detention was grounded by the gravity of the offence, possible pressures on the witnesses as well as tampering the evidence[238]. Nevertheless, the Court has established that "the reasons relied on by the authorities to justify the applicant's detention, although relevant and sufficient initially, lost this character as time passed"[239]. Thus, the Court found a violation of Article 5 paragraph 3 in regards to reasonable time[240].

Another interesting case is Khudoyorov v. Russia when the applicant "was arrested on suspicion of the unlawful purchase and possession of drugs"[241]. His detention was remanded several times and in sum he was deprived of is liberty for five years, four months and six days[242]. In its decision the European Court reestablished its prior standards for continuous detention. Moreover, it stated that "any *ex post facto* authorization of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness"[243]. Hence, for certain periods of detention the Court has found a violation of

[232] Ibid
[233] Kalashnikov v. Russia,par. 11, Application no. 47095/99, ECHR, 12 July, 2002
[234] Ibid, par. 12
[235] Ibid, par. 14
[236] Ibid, par. 15
[237] Ibid, par. 110
[238] Ibid, par. 115
[239] Ibid, par.118
[240] Ibid, par. 121
[241] Khudoyorov v. Russia, par. 11, Application no. 6847/02, ECHR, 08 November, 2005
[242] Ibid, par. 175
[243] Ibid, par. 142

Article 5 paragraph 1[244]. As for Article 5 paragraph 3 the Court concluded that the domestic authorities failed to act with "special diligence" during the proceedings[245]. Thus, another violation was found for this account.

Last, but not least the case of Khodorovskiy v. Russia is also among the landmark ones. The applicant was a businessman, a board member and the major shareholder of Yukos, a large oil company[246]. He was arrested in frames of a criminal case initiated against him. "In total it had lasted one year, six months and twenty-one days"[247]. When analyzing the case under Article 5 paragraph 3 the European Court has established that "the domestic courts ought to have considered whether other, less intrusive, preventive measures could have been applied and whether they were capable of reducing or removing completely the risks of fleeing, re-offending or obstructing justice"[248]. Moreover, there were breaches of lawyer-client privilege[249]. In addition, the Court noted that "the Russian courts on two occasions failed to indicate reasons for the continued detention of the applicant"[250]. Thus, the Court found a violation of Article 5 paragraph 3[251].

To sum up, in spite of the high number of cases against Russia brought before the European Court, this handpick of landmark cases shows that there are various issues regarding pretrial detention in Russia both on the level of legislation and its implementation. Furthermore, the recent developments concerning the legal restrictions on the direct application of the decisions and judgments of the European Court give new dynamics to Russia-ECtHR relations. Even though the tendency seems to be going in the direction of decreasing the

[244] Ibid, par. 168
[245] Ibid, par. 188
[246] Khodorovskiy v. Russia, par. 7, Application no. 5829/04, ECHR, 31 May, 2011
[247] Ibid, par. 167
[248] Ibid, par. 197
[249] Ibid, par. 198
[250] Ibid, par. 202
[251] Ibid

possible influence of the European Court in Russia, the further discussions and voting on the new draft law already mentioned in this subchapter should be followed up. Thus, it might be the beginning of a new era of the clashes between the ECtHR and Russia.

3.3. Armenian approach versus Russian approach

As it was stated earlier both Armenia and Russia are members of the Council of Europe and, thus, are signatory states to the European Convention on Human Rights and Fundamental Freedoms. This means that they are under the jurisdiction of the European Court. Hence, they have to comply with the requirements of the Convention and the criteria established by the European Court. Moreover, both countries are post-Soviet states and have taken the road for transition from early 1990s. Thus, this subchapter will compare and analyze the differences and similarities between the Armenian and Russian approaches on regulating pretrial detention.

As it can be concluded from the subchapter on the Armenia approach, one of the issues under current legislation is the lack of legal certainty. The principle of legal certainty has a crucial importance for Article 5, in particular for Article 5 paragraph 3. Each and every depravition of liberty should be executed only pursuant to the grounds stipulated in the law, hence, be lawful. This means that domestic laws should be clear and foreseeable so that they meet the criteria of just and fair procedure. In addition, this requirement safeguards the individual from the arbitrary deprivation of liberty[252].

The above mentioned should be reflected in the domestic laws. The 'lawfulness" of the law emanate from the principle of rule of law. Among other requirements the law should be

[252] Bizzotto v. Greece, par. 31, Application No. 76/1995/582/668, ECHR, 15 November 1996

precise, foreseeable and clear[253]. As it was stated in the previous chapter, under the current Armenian legislation there exists the intermediary means of deprivation of liberty, namely apprehension. However, the Code of Criminal procedure does not even stipulate the definition of the term. Moreover, there are no safeguards or rights available to the apprehended. Therefore, the Court of Cassation, the highest judicial authority in the legal system of the Republic of Armenia, established the rule to be applied in order to fill the current legal gap.

Additionally, there is uncertainty concerning the time limits of being held under apprehension. Hence, in the case of Gagik Mikaelyan the Court of Cassation has held that Article 128 of the Code of Criminal procedure should be interpret in light of Article 131 and establish that if after four hours from the moment of being brought to the investigating authority the protocol on apprehension has not been announced to the apprehended, the latter gains the status of the arrested and enjoy all the rights that the arrested are entitled to. Thus, the current legislative regulation creates a situation of uncertainty when the person can find himself or herself without any safeguards or rights. Hence, the relevant provisions of current Code of Criminal procedure lack legal certainty as the person is unable to foresee the legal consequences to be applied to him or her before the protocol is announced.

As for the Russian approach, it has already been stated that the general constitutional and statutory regulation are in line with the standards of the European Court. However, the statutory exception of extending the detention for maximum 72 hours creates a situation which, in fact, violates the standards established in the jurisprudence of the European Court in relation to the maximum term of the arrest.

[253] See e.g. Amuur v. France, Application no. 19776/92, ECHR, 25 June, 1996;
Varbanov v. Bulgaria, Application No. 31365/96, ECHR, 5 October 2000

However, it should be underlined that the new regulation stipulates that the instances of deprivation of liberty should be pursuant to the authorization of a judge. This is in line with Article 5 paragraph 3, establishing a crucial safeguard to the right to liberty and security. Hence, this brings Russia closer to fulfillment of the requirements of the ECHR and the European Court in relation to the legislative regulations.

Another issue can be detected in the Armenian and Russian relevant legislation concerns the notion of reasonable doubt. As it was stated earlier, the case law of the European Court reveals that one can speak about reasonable doubt in case of facts that will convince the objective observer that the defendant has committed the offence. Similar notions are stipulated under Article 129 of the Code of Criminal procedure of Armenia and Article 91 of the Russian Code of Criminal Procedure. However, the close study of these provisions reveals that they contain a different notion. Those provisions enlist the circumstances in case of which there can be a suspicion of the person's immediate commitment of crime. Hence, the notion of reasonable doubt is not identical to the one formulated by the European Court. Moreover, the Court of Cassation of Armenia has established a very low standard for proving the existence of reasonable suspicion. Thus, the current situation in this respect is not in line with the European Convention.

Thus, it can be concluded that having undertaken the responsibility of fulfilling the requirement of the ECHR and the European Court, both Armenia and Russia has done some steps towards bringing their legislation in line with the standards. However, gaps in the Armenian legislation create a disadvantaged situation for the people deprived of their liberty. Even though the Court of Cassation of the Republic of Armenia has established some rules in order to solve the issue, the latter requires a systematic solution from the legislator. Hence, an amendment to the Code of Criminal procedure is needed.

Moreover, as for Russian legislation, the opting for the judicial authorization of the deprivation of liberty should be considered as a significant step forward. Nevertheless, the provision establishing an exception to the general rule on duration of the arrest is not in compliance with the European criteria. If applied, this provision will breach the rights under Article 5 of ECHR.

Furthermore, the absence of the notion of reasonable doubt in both legislations creates a situation which is not in line with Article 5 paragraph 1. Being an essential component of that provision it requires explicit stipulation in the law. Moreover, it is directly connected to the procedural safeguards under Article 5 paragraph 3. Thus, the relevant provisions in the domestic Codes of Criminal procedure should be amended to include the clear notion of reasonable doubt.

In spite of these advancements, the recent development in Russia in regards to the direct application of the European Court's decisions creates a new reality for the possible improvements with the help of the system of the European Court. The examination of the current state of affairs shows that most probably vast majority of the decisions adopted against Russia signaling violations of various fundamental rights would not be implemented in Russia. Nevertheless, to my mind, the faith of the draft law on extending the powers of the Federal Constitutional Court on deciding upon which decision would be directly applied is going to be very decisive for the future of Russia-ECtHR relations.

In short, even though Armenia and Russia are moving into different directions trying to deal with their international obligations, the above mentioned gaps and issues should be filled and solved in the near future to ensure the effective protection of the individual rights and freedoms.

Conclusion

In this thesis I intended to reveal and analyze the current issues in legal regulations and practice in regards to arrest in Armenia, particularly concerning its time frames. The results of the research were compared to the standards of the European Court of Human Rights under Article 5 paragraph 3 and assessment was made on whether the current situation with regards to arrest in Armenia is in line with those criteria. Last, but not least comparative analysis was conducted between the Armenian and Russian views on regulating arrest in light of the recent developments in Russia concerning the new rules on direct applicability of the judgments of the European Court of Human Rights.

After discussing the lawful grounds of deprivation of liberty under Article 5 paragraph 1 (c) as well as the criteria of reasonableness and promptness under Article 5 paragraph 3, I analyzed the current regulation of arrest under Armenian legislation, namely under Code of Criminal Procedure. The assessment revealed that there are issues concerning the apprehension of persons as this term is not particularly regulated under the Code which creates major issues for securing the protection of the right to liberty and security for the detained. This means that the regulation of arrest in Armenia is not fully in line with the European criteria.

Afterwards the analysis of the practice disclosed that the highest court of Armenia, the Court of Cassation attempted to resolve these issues in its landmark decisions. In particular, the Court has stated that the minimum rights applicable to the detained should also be provided to the apprehended. However, the Court has established a lower standard for reasonable doubt than it is in the jurisprudence of the ECtHR. Nevertheless, these decisions, in fact, considerably impacted the drafters of the new Code of Criminal Procedure. The latter

actually makes efforts to find sound solutions for the current issues. Nonetheless, the genuine value of these resolutions would be tested in practice when the Draft Code is adopted.

Lastly, this thesis discussed the Russian approach on the regulation of pretrial detention. Even though, in general, positive changes are noticed, the provision allowing for extension of arrest for maximum 72 hours is contrary to the case law of the ECtHR. Nevertheless, the situation is more troubling in light of the recently adopted new regulations allowing the Federal Constitutional Court to decide which decision of the ECtHR will be applied in Russia. At the same time the comparative analysis of Armenian and Russian views on regulating arrest revealed that though both states have post-soviet legacy they actually move in different directions in their attempts to protect and secure the human rights within their territories.

In conclusion, the results of this research have revealed that in spite of current major issues concerning arrest Armenia makes efforts to find solutions and bring the situation in line with the standards of the European Court of Human rights. Nonetheless, we would have to wait to see whether these resolutions are as viable as the drafters expect them to be.

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