

OVERVIEW OF MAJOR HUMAN RIGHTS ISSUES IN THE REPUBLIC OF ARMENIA

A report drafted by the FIDH along with its partner organization in Armenia, the Civil Society Institute (CSI).

The Republic of Armenia presents a contrasted picture as far as respect for Human Rights is concerned. On paper, they are pretty much a model for the South Caucasus region as they have ratified most of the European Human Rights instruments and conducted major law reforms in conformity with them.

However the following concerns are noticeable:

- although the country showed exceptional growth over the last years, the economic and social situation does not benefit equally to the whole population. The failed transition from a soviet communist system to a liberal economy created enormous disparity between an elite group of persons or clans, who, on the one hand, monopolised the majority of the resources, and the rest of the population on the other. Although the country witnesses the emergence of a middle-class, it is still at the very bottom of the social scale.

Furthermore, these new wealthy people, which are interrelated with the spheres of political power, have instituted private armed polices, thus subjecting the country and the citizens to tangible threats and acts of violence, be they motivated by political or economic reasons. In addition, the country witnesses a high level of institutional corruption, endemic in the whole region.

Factual anti-democratic events are perceived as a growing and threatening trend over rights and freedoms before crucial parliamentary elections in 2007 and presidential election in 2008. A population indifferent to internal politics, an ethnically homogeneous country, a strong support from the Diaspora are all factors that ease the ruling of the country but also enable abuses by the holders of power. Political and economic powers enjoy impunity.

Rule of Law

Constitutional Reform: Balance of Powers and extended Right to Appeal

The Constitutional amendments adopted on 27 November 2005, and assessed positively by the Venice Commission, reaffirm the principle of separation of powers and establish a better balance between the Executive and the Legislative. Independence of the Judiciary gained more strength since the ombudsman is elected by the Parliament, the members of the national commission for radio and television and the members of the Council of Justice (the highest authority of the Judiciary, responsible for the nomination, promotion or revocation of judges) are nominated by the Executive and the Legislative at parity. Besides, the President of the Republic, the Minister of Justice and the Prosecutor General do not sit any longer at the Council of Justice. The 9 judges members of that Council are designated by the General Assembly of Judges. In addition, 2 experts are designated by the President and 2 others by the Parliament. The right of appeal before the Constitutional Court has been quite extensively broadened. The right is now provided to every individual, local government authorities, and the ombudsman. Until the reform, only the President, at least one third of the National Assembly representatives, and presidential and parliamentary candidates had the legal right to appeal to the highest judicial body.

Amongst the many law reforms that occurred recently, one shall notice the abolition of the death penalty, along with the adoption of a new criminal Code in 2003, the establishment of a new labour Code in 2005, and the abrogation of administrative detention sanctions inherited from the old soviet

administrative code (sanctions that were used in 2003 and 2004 against street demonstrators and members of the opposition).

Law implementation remains weak, a situation which is further exacerbated by the very wide scale corruption in the institutions. Violations of human rights remain unpunished or even worse give rise to arbitrariness of the judiciary.

The Buzand street case: infringements of the right of property

Local residents living in the primarily old and torn down houses of Buzand Street as well as other older parts of central Yerevan were evicted from their homes these past two years. A Joint Declaration¹ made by several local and international human rights organizations in January 2006 stated: “Owners of houses on this street have been compensated on the basis of an evaluation made by a company selected by the buyer, whose result did not satisfy them. However, the Court denied them the right to conduct a counter expertise. Those families of modest condition are unable to find substitution houses for the amount of money they have been offered. As a result, a Court’s decision was made and the families who refused to leave have been forced out from their houses by the judiciary enforcement agents.”

In March 2006, Ombudsman Armen Harutyunyan applied to the Constitutional Court in order to question the constitutionality of the government’s decision No. 1151 and corresponding articles of the civil and land Codes that served as legal grounds for the decision which called for the demolition of hundreds of old houses.

On April 18th, the Constitutional Court of Armenia ruled out that the government’s decision does not comply with the RA Constitution because it considered that a legislation establishing the conditions of expulsion by the state is still lacking. The last point of the Constitutional Court decision states that the National Assembly must adopt a new law no later than October 1st 2006. Until then, current laws will apply. This last clause turned out to be controversial and drew a variety of interpretations from legal experts. Even though the Constitutional Court had claimed that the government’s decision was unconstitutional, the government continued to allow for the demolition of these houses. Since Parliament has not yet adopted a new Law up to now and the “state need” is not defined, the risk entirely persists for occurrence of similar cases.

The case of Sylva Asatryan: corruption and instrumentalisation of the judiciary

This case is one of the numerous examples of citizens’ harassment by public bodies where official charges that are not proven actually hide economic and/or personal retaliation. Mrs. Sylva Assatryan and her husband Arthur Gurdjinian were minority shareholders of a limited company, whose headquarters was located in a building belonging to a Diaspora Armenian. They also own an apartment in the same block. A local business man, Mr. Melik Gasparyan had undertaken to acquire most of the lands in this area. He acquired their apartment but paid only 80% of the agreed amount and promised to pay the remaining later. At the same time, he succeeded in obtaining the eviction of the limited company from the other building by producing cadastral registry. The owner of the building went into court and obtained liabilities by proving that Mr. Melik Gasparyan had forged false land registry documents. The Court condemned Mr. Melik Gasparyan to pay a 300 000 US\$ compensation fee to this Diaspora Armenian. As a consequence, Mr. Melik did not want to pay the 20% due amount of the real estate transaction to Mrs. Assatryan and husband Arthur Gurdjianian. Shortly after, a blast destroyed the car of Mr. Melik Gasparyan. He accused the couple to be at the origin of the blast. On 29 December 2001, the prosecution arrested their son and detained him in prison for almost one year without being able to prove his involvement in the blast. He was released on 27 September 2002. In November 2004, they arrested Mrs. Assatryan, the mother, and kept her in jail for one year without more success in proving her involvement in the blast. As reported by the Public Monitoring Group at the Detention Facilities of the Penal Services of the Ministry of Justice, the detention date of Sylva Asatryan was to expire on 23 November 2005. The court of first

¹ Regression of the Rule of Law and Democracy in Armenia, 31 January, <http://www.fidh.org>

instance had rejected the petition to extend her detention (preventive detention is limited to one year by law). On 23 November 2005, Sylva Asatryan was brought to the appeal court. The session of the appeal court was adjourned until the next day, but instead of releasing her as law imposes, the judicial employees took her to the detention facility of the National Security ministry where she was kept in secret till the next day. The next day the appeal court passed a resolution extending the date of her detention in her absence; the two investigators of the prosecutor office pretended that they did not know where she was. The judicial institution has not only violated the law by not releasing her on the 23th of November, but it has also abducted Mrs. Assatryan and prevented her from attending the trial the next day. She is still in prison. In addition, pressures on her husband occurred: he has been imprisoned for 5 months early 2006. The prosecutor tried to charge him with a case that occurred 14 years ago. They finally released him due to lack of evidence. According to the defense lawyers, the harassment of this family is explained by the fact that Mr. Melik Gasparyan, who is a controversial person, former officer of the National Security ministry, uses pressures on this family to get back money from the Diaspora Armenian who got compensation from him. That individual was the associate in the limited company run by the Assatryan/Gurdjinian couple. Mr. Melik Gasparyan probably used its connections to the National Security to enable the abduction of Mrs. Assatryan and her secret detention.

Harassment, threats and violence against politicians

Suren Abrahamyan, former Minister of Internal Affairs, former mayor of Yerevan, and member of the Republican Party political council, was attacked on 8 October 2006. Two people assaulted him, threw him down to the ground and started to kick him, his Party said. Suren Abrahamyan, who is a vocal detractor of Armenia's current leadership, especially the Minister of Defence, had recently made a speech within the framework of the "Anti-criminal movement". When the journalists asked him to mention names, he mentioned that of Prime Minister Andranik Margaryan as "a criminal element". A Preliminary investigation by the Police is under way.

On 30 November 2005, the National Security Service conducted a search on Mr. Raffi Hovhannisian, the first Foreign Minister of independent Armenia, when he was boarding a plane. They were looking for documents containing alleged "State secrets". Hovhannisian was going to Kiev to attend an international public forum for democratic elections. In 2006, Harassment on the "Heritage" Political Party headed by Mr. Raffi Hovhanissian continued. The access to their office venue has been forbidden by a decision of justice because of a conflict between the owner of the building and other persons not related to the Party or to Mr. Hovhanissian. That one decided to lodge a complaint in Court, but the Court refused him the right to access to the building, in first instance and in appeal. In parallel, while the office was sealed, on 8 March 2006 it has been subjected to search and robbery by unknown people. The scientific police found out that a computer containing a database with confidential information, in particular the database of party's members, had been violated and the data downloaded.

Threats and Harassment on Human Rights Defenders

Vahe Grigoryan has been jailed from September 2005 to February 2006, charged with fraud and extortion. Vahe Grigoryan was the attorney of four families living in *Buzand* Street, who continue protesting against forced eviction from their homes. According to the *Buzand* Street inhabitants, the reason for arrest is Vahe Grigoryan's role in speaking out against the forced expulsions and protection of their rights at various Courts. He was released on 15 February 2006.

State prosecutors have launched criminal proceedings against the defense attorneys of three Armenian soldiers sentenced to life imprisonment - a case where local and international human rights groups assessed trumped-up murder charges against the three young soldiers.

The lawyers Zaruhi Postanjian, Ashot Atoyán and Stepan Voskánian are being investigated for allegedly showing contempt of the three judges of the Armenian Court of Appeal that handed down the ruling last May.

It is not clear when the judges lodged a formal complaint to the Office of the Prosecutor-General. The latter opened a criminal case against the lawyers on October 10, the day after the Court of Cassation, Armenia's highest body of criminal justice, agreed to consider their appeal against the extremely controversial life imprisonment sentences.

The lawyers strongly deny the contempt of Court accusations that could be levelled against them and see the prosecutors' move as a retaliation for their vocal support for the jailed soldiers. "They are thereby trying to force us to abandon the case," Voskánian told RFE/RL. He said that "the three judges that repeatedly insulted the defense lawyers during the appeal proceedings must be prosecuted".

The extraordinary criminal proceedings bring a new twist to the saga of Razmik Sargsian, Musa Serobian and Araik Zalian. The three young men were originally convicted of murdering two fellow servicemen in Nagorno-Karabakh and sentenced to 15 years in prison by a local court of first instance in April 2005. They protested their innocence throughout the trial and appealed against the verdict only to see it toughened to life imprisonment by the appeal Court.

Military prosecutors allege that Sargsian, Serobian and Zalian murdered two other soldiers and dumped their bodies into a reservoir in northern Karabakh in December 2003 following a brawl over a food parcel that was delivered to one of the servicemen. The accusations are based on Sargsian's pre-trial testimony in which he admitted this version of events.

However, Sargsian subsequently retracted the testimony, saying that he incriminated himself and his comrades under brutal torture. Sargsian, who was a healthy young person, suffers today of the after-effects of ill-treatment. The two other defendants, who never pleaded guilty, also claim to have been mistreated in custody.

Both courts refused to investigate the alleged torture, denied by the prosecutors, leading the defense lawyers and Armenian human rights activists to denounce the trials as a parody of justice.

Ruben Sahakian, chairman of Armenia's Chamber of Advocates, expressed serious concern at the proceedings launched against the three lawyers.

The case has also had a resonance outside Armenia, with Human Rights Watch finding the torture allegations "credible" and urging the Court of Cassation to give the young men a fair trial. They wrote on 12 September a letter to the Armenian Court of Cassation saying: "Human Rights Watch believes that it is very important that ... a prompt investigation into the allegations is ordered, and that all measures are put in place to ensure that any conviction based on evidence coerced under torture does not stand".

Aaron Rhodes, executive director of the Vienna-based International Helsinki Federation for Human Rights, echoed those concerns in a similar letter sent to Yerevan three days later: "The investigation into the murders, and the subsequent trials, were marred with irregularities that raise questions about Armenian prosecutors' and judiciary's professional qualifications and commitment to international standards for a fair trial".

The defense trio suspects that both murders were committed by a well known officer of the Karabakh army unit where the dead soldiers served. According to their version of events, the officer beat one of the soldiers to death and killed the other a few days later after he refused to "confess" the crime.

Torture and Ill-treatments

On 31 May 2006, the National Assembly of Armenia ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). A Public Monitoring Group at the Pre-Trial Detention Facilities of the Police (2006) has been recently established. A Public Monitoring Group at the Detention Facilities of the Penal Services of the Ministry of Justice of the Republic of Armenia and has already published two annual activity reports.

However, despite the fact that these monitoring groups are a real progress, there are still some cases of torture and human rights violations.

Both Public Monitoring groups have the right to free and unannounced visits at any time to all pre-trial detention places, detention places and prisons. However, the Police's public monitoring group cannot enter the Police stations where the predominant number of cases of violations, torture and ill-treatment occur. Moreover, a number of closed institutions still remain out of control such as military detention facilities, psychiatric clinics, children's institutions, facilities for elderly people, and army camps.

A number of well known cases have been reported as qualified torture or ill-treatment. Two of the most prominent cases, widely reported in Armenian media, are the following ones.

- In Goris Criminal Institution, an incident occurred between a convicted person and an investigator, who was not the investigator of this particular convicted person's case. After the incident ended, the convicted person was punished. Yet, all the convicted persons and persons deprived of their liberty residing in the prison were also punished collectively. They were beaten and their personal belongings burnt. And until now, there has been neither an investigation ordered nor official feedback regarding these violations.
- Case of Razmik Sargsyan, Musa Serobyan and Arayik Zalyan

This case is emblematic of the violence existing inside the army camps in total opacity and affecting young soldiers. Razmik Sargsyan, Musa Serobyan and Arayik Zalyan were presumed guilty of having committed a double murder of fellow soldiers (see above). Razmik Sargsian explained in Court that he had been tortured and beaten during the pretrial investigation and forced into making a confession. Serobyan and Zalyan also reported that they were tortured and never pleaded guilty. However, the Syunik Regional Court did not investigate or allow for the defense lawyers to present complaints regarding the ill-treatment and torture. The Court of First Instance condemned them to 15 years of imprisonment, while the Appeal Court condemned them to Life Sentence.

The Police Headquarters speaker mentioned that 815 disciplinary procedures had been instituted in 2005 against law enforcers depending on the Police. 68 of them have been definitely fired from the Police ranks and 11 cases resulted in preliminary criminal investigations. However, the motivations for the firing of the 68 are not provided. It is also worth mentioning that the Military Police, systematically used for soldiers under charges, but also for some sensitive criminal cases, has its own detention facilities, which are not accessible to the Public Monitoring group. Besides, the Military Police has no legal existence according to the current laws of the Republic of Armenia.

Freedom of Press and Media

It is worth to mention that Armenia went down from the 83rd (2004) to 102nd (2006) rank according to *Reporters Sans Frontières* (RSF) annual index assessing freedom of the press in the world.

On 17 July 2006, the heads of 8 newspapers, 2 journalistic and 2 human rights organizations made a joint statement, expressing their concern over the increasing pressure on media representatives and called on authorities to respect the democratic institutions, including the press. "Journalistic community is greatly concerned that as the parliamentary elections draw nearer in Armenia, there is intensification of pressure and threats to media representatives from the forces and individuals that have a reason to fear criticism and disclosure of some of their activity aspects".

All TV channels are subjected to censorship after *AI+* and *Noyan Tapan* TV Companies were put off the air. Monitoring of the Armenian mass media has revealed that pluralism of views is not ensured and that there exists internal censorship.

While performing his professional duties as free lance correspondent of *Chorrord Ishkhanutiun* and *Aravot* newspapers, **Gagik Shamshian** was attacked, physically abused and robbed. In their appeals to the RA National Security Service and to the Prosecution office, both newspapers noted as possible grounds for attacks a “discontent” with their journalistic activities. Gagik Shamshian even named specific names of people who threatened and harassed him. However, no measures were taken against the assaulters.

On 6 September, the editor-in-chief of *Iravunk* newspaper, **Hovhannes Galajian** has been reportedly attacked when leaving home. Two young men with shaved heads assaulted him, threw him on the ground and started kicking. According to the medical report, Hovhannes Galajian received slight corporal injuries. The victim said at the Police that he had been threatened over the phone the night before and had seen one of his assaulters the next day. He allegedly named out a possible organizer of the assault in the person of RA Minister of Defence explaining that the alleged attack was in retaliation for critical articles he published. Facing a general demand from all political and journalistic forces for finding the perpetrators of this act of violence, President Kotcharyan declared that “the law enforcement bodies will do everything possible to reveal and prosecute those guilty”.

In this context the absence of any kind of reaction from the RA General Prosecutor's Office to number of appeals to put an end to the preventive detention against *Zhamanak-Yerevan* daily Chief Editor **Arman Babajanian** is not a surprise. The climate in which the parliamentary elections will take place in a few months is fully dependent on the readiness of the State to protect its citizens from criminal groups striving for power at any price and to respect the democratic institutions, in particular, the press. Arman Babajanian was arrested on 27 June 2006, charged for having forged false documents (art.324, part 2, Criminal Code) in order to avoid military service (Art.327, part 2, clause 2, Criminal Code). He has been found guilty only of this latest charge and been sentenced on 8 September 2006 by the Court of first instance of *Kentron* and *Nork-Marash* communities of Yerevan to 4 years' imprisonment. The sentence was challenged at the Court of Appeal on September 25. At the session of 24 October, it became known that the RA General Prosecutor's Office challenged himself the ruling of the court of first instance, demanding to make the sentence tougher. Arman Babajanian on his side announced he had refuted his former attorney and asked for time to recruit a new lawyer for his defense. The Court secured the motion. The next session is scheduled on November 7. The ombudsman, on the occasion of a press conference on 14 September, said that “from a legal point of view, the punishment defined for Arman Babajanian is probably grounded. However the sentence is too strict”. He added later that: “there are opinions that the strict approach to the case is explained by the fact that he (Babajanian) is the editor of an opposition newspaper”.

Corruption

The corruption is a complex issue for Armenia and the whole post soviet world. The Parliamentary Assembly of the Council of Europe “is worried about the dimension of the corruption in Armenia, which reached intolerable proportions. They expect from the authorities to prove a real change of behavior and to show a real political will to combat efficiently against the corruption”. Armenia is ranked 88th according to the 2005 Corruption Perception Index established by Transparency International with a rating of 2.9 over 10, although the Republic of Armenia adheres to the Group of States Against Corruption (GRECO) and benefits of the World Bank aids to implement anti-corruption measures.

The main reasons for the failure of the government in anti-corruption initiatives are the following:

- The lack of true political will to fight corruption
- The interrelated political and economic interests resulting in the state capture by a small “elite” group within a highly hierarchical governance system
- The criminalization of the political arena while there is an absence of protection of basic human rights for the average citizens
- There is no accountability of state officials and those in power enjoy impunity
- A poor law enforcement and no real control and punishment mechanisms
- Deficiencies of the main legislation and its non compliance with sub-legislative acts
- A public mistrust to the state and high tolerance to corruption within the whole society
- The absence of a strong and consistent position of the international community with regards to corruption

Conclusion

Armenia has with no doubt adopted a European-conformant Constitution and an impressive and subsequent number of Laws. However, the practices and realities, especially in the judiciary, are there to prove that Rule of Law and Democracy exist only on paper. It is urgent for the Armenian authorities to eradicate the climate of impunity, to combat the institutional corruption and to protect equally each citizen’s rights and freedoms. The short delay left before the coming parliamentary elections challenges the Executive authorities of Armenia.

Recommendations

FIDH and CSI express their deep concern with regards to the persistence of many serious human rights violations in Armenia and call upon the Armenian Government to:

- ◆ conform in any circumstance to European human rights conventions ratified by the Republic of Armenia;
- ◆ put an end, immediately and without any condition, to torture, ill-treatment or other inhuman treatments in custody or during detention;
- ◆ fight against the culture of impunity in the political and economical circles; elaborate a code of conduct for all officials, including those involved in the fight against organized crime, as well as introduce regular monitoring by an independent oversight body;
- ◆ draft and implement a wide-scale and globally thought anti-corruption program into the institutions;
- ◆ promote a culture of human rights by ensuring that a policy of zero tolerance against violence is developed and implemented at all levels of the law enforcement bodies and in the army, as well as for all staff in penitentiary facilities ;
- ◆ put an end to all forms of harassment and intimidation against human rights defenders, journalists, political opponents or other civil society representatives.

FIDH and CSI call upon the European Union to:

- ◆ reinforce its political commitment and financial contribution for the establishment of the rule of law in the Republic of Armenia;
- ◆ focus its Action Plans on support for democracy, rule of law, respect for human rights, and the fight against corruption, especially in the judiciary;
- ◆ invest meanwhile in education and sciences infrastructures that will enable the Republic of

Armenia to build a knowledge-based economy, the only viable model for its highly educated population with an isolated and enclave territory.

◆foresee independent monitoring programs and mechanisms, including the participation of Armenian and international civil society organisations, in the framework of those Action Plans.