CSI-FIDH joint advocacy paper

EU-Armenia :
Seeking a more efficient support to justice sector reform

May 19, 2015

Support to human rights and justice reform has been a continuous priority of the EU-Armenia relations since the entry into force of the Partnership and Cooperation Agreement in 1999. In recent years, the Armenian Government made efforts to bring its legislation governing the justice sector into compliance with its commitments under international human rights instruments.

However, FIDH and its member organisation in Armenia, the Civil Society Institute (CSI), deplore that the reform process remains slow and mostly formal in nature. This is particularly the case in the areas of the 1) strengthening of the independence, transparency and accountability of the judiciary and the right to a fair trial; 2) prevention of torture and combating impunity for it; 3) penitential reform and the promotion of the use of alternative sanctions and measures.

1. Independence of the Judiciary and right to a fair trial

Although Armenia accepted several Universal Periodic Review recommendations in 2010 that concerned the independence of the judiciary and the separation of powers, actions have not been taken in an appropriate way[1]. On 27 February 2014, the Government approved an '**Action Plan for the National Strategy on Human Rights Protection',** which only incorporates a limited section on the right to a fair trial[2]. Activities envisaged in that regard are very limited. NGOs have regularly raised concerns with regard to the independence of judiciary such as the routine violation of the principle of equality of arms, specifically in cases when one of the parties is a government entity. However, the Action Plan fails to address these concerns.

The **right to an effective remedy and equality before the law** are infringed upon in Armenia. In particular, cases were observed where decisions were made to either not initiate criminal proceedings at all, or to interpret the facts of the case in a biased way to protect perpetrators with certain political affiliations and/or financial/economic status. This only reinforces public mistrust in the judicial system of the country.

For example, on 1 June 2013, Avetiq Budaghyan was killed during a shooting. The suspects were

[1] See the Report of the UPR Working Group dated 6 July 2010, paragraphs 94.16 and 94.17, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/149/42/PDF/G1014942.pdf?OpenElement

[2] Three activities are mentioned: 1) The training of judges and law enforcement bodies on International Covenant on Civil and Political Rights and their Optional Protocols; 2) exclusion of double jeopardy of tax law violators, under both tax and administrative liability; and 3) the adoption of a legal framework aimed at increasing publicity of the proceedings of the Armenian Council of Justice, providing for the possibility of introduction of public hearings according to the international standards.

the son of the head of Syuniq region and his bodyguard. After spending several months in pre-trial detention the suspects were released. Their actions were deemed to be 'necessary defence' which relieved them from criminal responsibility. According to the victim's attorney, the case was very controversial and many facts were not properly investigated[3].

Another example that illustrates the continuous lack of effective investigation of politically sensitive cases are the events of 1 March 2008 when excessive force was used by law enforcement officers which resulted in the death of ten opposition activists. The lack of political will to ensure an effective investigation was reaffirmed in March 2014 when the National Assembly voted against the creation of an interim parliamentary commission in charge of investigating the actions of law enforcement authorities.

Finally, on 15 April 2015, CSI expressed its concern that law enforcement bodies had not provided convincing grounds for detention of five members of the political movement *Founding Parliament* (FP) and called upon their immediate release. Although on 4 May 2015 the detainees were released pending investigation into controversial charges of plotting "mass disturbances", FIDH and CSI continue closely monitoring the case ensuring that it is independently investigated and that the right of the FP members to freedom of thought, expression, and assembly is respected.

The Human Rights Defender (Ombudsman) of Armenia also denounced the **lack of transparency in the work of the Armenian Council of Justice** in his 2013 report on Fair Trials, as well as in his Annual Report. In particular, concern was expressed that the Council of Justice[4] was used by the Court of Cassation as a tool to directly or indirectly exercise pressure on judges.[5] The Council of Justice applied double standards in comparable cases concerning the instigating of disciplinary procedures against judges.[6] Double standards are clearly used in the biased and differentiated application of disciplinary penalties against judges in cases of comparable violations.[7]

The existing legal grounds and the practise of imposing disciplinary measures for both procedural and substantial breaches of the law violate the international standard of the independence of the judiciary. Decisions subjecting a judge to a disciplinary action, including his suspension and removal, without any right of appeal infringe judges' personal immunity.[8]

The Ombudsman also highlighted in his Annual Report that **corruption** jeopardises the right to a fair and impartial trial.[9] According to Transparency International's Global Corruption Barometer, 67% of Armenians view the judiciary as corrupt or extremely corrupt.[10] The EU also pointed out in its 2014 Progress Report that "a lack of convincing results in the fight against corruption, including among the police and judiciary".

Excessive use of prolonged and unjustified pre-trial and preventive detention is another serious

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3 Article in Armenian media at http://en.aravot.am/2013/11/04/162335/.

4 The Council of Justice is the body tasked with matters related to the selection of judges and court chairs, as well as promotions and discipline of judges. It prepares the list of judicial candidates and the official promotion list, and presents them to the President of the Republic for approval. It is empowered to impose disciplinary sanctions on judges, and to submit recommendations to the President for to their dismissal.

5 RA Human Rights Defender's Annual Report for 2013, p. 50 file:///C:/Users/Tatevik%20Gharibyan/Downloads/pdf_9885964738_eng_RA_HRDI_ANNUAL_REPORT_2013%20(2).pdf

6 Ibid, p.52

7 Ibid, p.58

8 Submission by a group of civil society organisations assessing human rights situation after the UPR review, p. 3 http://www.upr-info.org/sites/default/files/document/armenia/session_21_-_january_2015/js1_upr21_arm_e_main.pdf

9 Ibid, p.49

10 Transparency International, Global Corruption Barometer Armenia-2013. Retrieved from http://www.transparency.org/gcb2013/country/?country=armenia

issue in Armenia. According to official statistics for 2013, 94.9% of motions for detention were granted by courts of general jurisdiction,[11] illustrating the fact that detention appears to be the norm rather than an exception. Although the law requires decisions on pre-trial detention to be well-founded, FIDH and CSI are seriously concerned that Armenian courts routinely fail to provide relevant and sufficient reasoning to support detention. Instead, they limit themselves to *in abstracto* and stereotypical restatements of legal grounds of detention, or repeat justifications stated in the Prosecutor's motions requesting detention, rather than referring to the circumstances of the case[12]. In 2013, only 22.4% of motions to replace detention with bail were authorised by courts of general jurisdiction[13].

While the law provides for a periodic review of detention practices[14], in practise it has only a perfunctory character: once detention is authorised, its extension is almost universally granted upon request, and on the same grounds without due regard to the changed circumstances. A great majority of these cases end with guilty verdicts in order to avoid providing financial compensation for unfounded excessive detention.

The EU should...

...urge the Armenian authorities to:

- Ensure effective implementation of the right to an effective remedy and equality before the law in all cases, irrespective of the political affiliation, social or economic status of the accused;
- Increase the use of alternative measures of restraint as an alternative to pre-trial detention;
- Ensure that decisions on pre-trial detentions are well-founded, and closely scrutinise motions to extend their term.

...complement its set of indicators concerning its support to Justice reform by adding the following indicators:

- The percentage of all accused awaiting trial in detention (per year);
- The average number of days spent in pre-trial detention up to the verdict reached by a court of general jurisdiction;
- The length of the criminal proceedings, starting from institution of a case to its completion in a court of general jurisdiction (average number of days);
- The number of grounded and substantiated decisions in regard to motions to review the term of a pre-trial detention;
- The percentage of persons represented by legal counsel during criminal proceedings, and the percentage of those who benefited from the services of a public defender;
- The percentage of persons who were represented by a public defender, but who refused the defender's services during the proceedings;
- The number of complaints against judges on alleged violations of the principle of presumption of innocence;
- The number of acquittals by courts per year, with a breakdown of the percentage of

[11] Judicial System of Armenia, "2013 report on issues in RA courts of general jurisdiction concerning judicial supervision of pre-trial investigation and implementation of judicial acts", available in Armenian at http://www.court.am/?l=lo&id=50

[12] Joint Statement of FIDH and CSI concerning the application of detention as a measure of restraint in Armenia - See more at: http://www.hra.am/en/position/2014/05/06/statement#sthash.fSYdTK8Y.dpuf

[13] Judicial System of Armenia, "2013 report on issues in RA courts of general jurisdiction concerning judicial supervision of pre- trial investigation and implementation of judicial acts", available in Armenian at http://www.court.am/?l=lo&id=50.

[14] Article 139 of Republic of Armenia Criminal Procedure Code.

acquitted persons represented by a legal counsel in a court, and the percentage of them represented by a public defender; and
- The percentage of the population who consider that the justice system in Armenia is fair.

2. Torture and ill-treatment

Despite significant international attention paid to torture and to the efforts to combat it, **torture and ill-treatment in police custody and impunity for it remains a serious issue** in Armenia. Most instances of torture occur in police stations with the purpose of extracting self-incriminating confessions or testimony against other persons. Despite some efforts, the Armenian authorities have failed to ensure effective investigation of torture allegations and to prosecute those responsible. The EU 2014 Progress Report refers to "consistent allegations of the routine use of torture and ill-treatment in police custody"[15].

The definition of torture in Article 119 of the Armenian Criminal Code (ACC) **has still not been brought into compliance** with the United Nations Convention against Torture (UN CAT). The Government drafted amendments to the Criminal Code which were accepted by the National Assembly during its first reading on 7 May 2015. Under the current legislation, crimes falling within the scope of the Convention are most commonly qualified and investigated under other articles of the Criminal Code, i.e. Article 309 (abuse of powers) or Article 308 (trespass of official powers)[16], which do not allow the crime of torture to be addressed in line with international standards. As a result, the *corpus delicti* of torture in the Criminal Code continues to fall short of the CAT's requirements.[17]

The official statistics demonstrate that in 2013-2014, there was a noticeable increase in the number of criminal proceedings instituted by the Special Investigation Service (SIS) in response to allegations of ill-treatment. **However, out of 87 criminal cases instituted in 2014, only one was sent to a court for trial.**[18] In 2013, two cases out of 114 allegations reached the court. In most instances, prosecutions were dismissed due to the lack of evidence, as the complainant stands alone in his/her allegations. A major reason explaining this alarming statistics is the fact that initial inquiries into allegations of torture and other ill-treatment are mostly carried out by the police, the institution that the perpetrators often belong to, which results in the dismissal of the majority of the complaints.

This practice creates **an atmosphere of impunity**, which is further augmented by the fact that in recent years, police officers convicted for torture or ill-treatment (under the meaning of the Convention) were able to systematically **avoid criminal prosecution or punishment through amnesty or pardon**[19], in violation of Armenia's commitments under the UN CAT[20].

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15 European Commission, Joint Staff Working Document, Implementation of the European Neighbourhood Policy in Armenia, Progress in 2013 and recommendations for action, 27 March 2014, http://eeas.europa.eu/enp/pdf/2014/country-reports/armenia_en.pdf

16 See official reply of the General Prosecutor's Office of Armenia on the practice of investigating allegations of torture and ill-treatment dated 20 March 2013

17 Civil Society Institute (CSI) and International Federeation for Human Rights (FIDH), "Alternative Report to the Committeee Against Torture in Connection with the Third Periodic Report of the Republic of Armenia", April 2012, p. 6-8, available at http://www.hra.am/i/up/CSI-FIDH%20Alternative%20Report-CAT48%20ArmeniaENG.pdf

18 "SIS fails to institute criminal proceedings with regard to the majority of torture allegations", 21 February 2014, available in Armenian at http://www.hra.am/hy/events/2014/02/21/torture.

19 CSI statement "Torture Perpetrators Shall not be Granted Amnesty",15 October 2013, available in Armenian at http://hra.am/hy/position/2013/10/15/torture.

20 UN Committee against Torture, General Comments 3, paras 38, 41; UN Committee against Torture, General

General amnesties are granted every two years, and are applicable to perpetrators of torture who were prosecuted under Articles 308 or 309 of the Armenian Criminal Code. For example, in 2013, two police officers were convicted for acts which fall under the scope of Article 1 of the UN CAT, but they were released directly from the courtroom following the application of amnesty.

Moreover, Art. 74 of the Criminal Code allows the prosecutor to drop charges against a defendant who pleaded guilty for committing a low- and medium-gravity crime for the first time and who is deemed no longer dangerous to the society as a result of new circumstances. Police officers charged with torture under Art. 308 and 309 of the Criminal Code - both qualified as medium gravity crimes - often resign from the office to create "new circumstances" under the Art. 74 allowing them to be regarded as no longer dangerous and thus exempted from criminal liability. It should be noted that the legislation allows the police officer to return to service at any time. Such an approach is deemed lawful both by the police and the Prosecutor's Office,[21] but it contributes to the general state of impunity for torture amongst law-enforcement agents. Moreover, as a result of such practice, victims are deprived of any opportunity to seek compensation, or any other form of redress under the Armenian law[22].

In practice, **Armenian courts demonstrate reluctance to properly respond to allegations of torture** made in a courtroom. The ruling of the Armenia's Court of Cassation of 2010 (No ԵԱՔԴ / 0049/01/09) implies that upon identification of evident elements of torture or ill-treatment during the examination of a case, a judge shall apply to the Prosecutor with a motion to institute criminal proceedings. However, in practice Armenian courts demonstrate reluctance to refer cases to the relevant authorities for investigation by simply dismissing them on the basis of a lack of evidence.

The EU should...

...urge the Armenian authorities to:

- Adopt the amendments to the Criminal Code bringing the Armenian legislation in line with the provisions of the UN Convention Against Torture;
- Amend the national legislation to disallow exemption from liability of state officials charged with torture and other forms of ill-treatment;
- Amend the national legislation to disallow amnesty of state officials found guilty of torture or other forms of ill-treatment; and
- Ensure prompt, thorough, impartial, and independent investigations into all allegations of torture, ill-treatment, and death in custody, and bring those responsible to justice.

...integrate into its programming document the following complementary indicators to measure the "improved conditions and reduced ill-treatment in penitential institutions and police custody"[23]:

- The number of complaints filed alleging torture, and the number of criminal prosecutions instituted;
- The number of officials brought to justice under the charges of torture or other form of ill-treatment; and

Comment 2, para. 5.

21 See more at CSI report on Torture in Armenia in 2013-2014, p. 50-52, available at http://www.hra.am/i/up/torturereport2601eng.pdf.

22 See Art. 1087.1 of the Armenian Civil Code.

23 Currently the programming documents include the following indicators: the implementation of recommendations of the National Preventive Mechanisms; the ratio of prisoners to cel space; No./Percentage of prison population with access to vocational education and training / medical care.

- The number of victims of ill-treatment who received access to effective compensation and remedy.

3. Situation in Penitentiaries

Overcrowding and poor medical services in penitentiary institutions remain a serious problem in Armenia. There are currently twelve penitentiary institutions (PIs) in the country. Some of the PIs remain overcrowded despite regular amnesties granted every two years. The last amnesty took place in the end of 2013, and proved to be a short-term solution. The opening of a new prison in the end of November 2014, which is not yet fully operational, did not help to resolve the problem. The Nubarahsen PI in Yerevan can be used to illustrate the situation. This PI, the biggest remand prison in the country, has the capacity to accommodate 820 persons but currently holds 1033 inmates (figures from February 2015).

The most concerning aspect is the overcrowding in the unit for remand prisoners: 800 remand prisoners are kept there while the maximum overall envisaged capacity is 550 persons. On average, 14 persons are kept in a cell whose average size is 34m², in blatant violation of the minimum standard of 4m² per inmate. This problem was highlighted in the July 2014 report of the National Preventative Mechanism, and in annual reports of the Public Monitoring Group, which exercises oversight over penitentiary institutions.[24]

Overcrowding of prisoners is partly the result of continued practice of overusing pre-trial detention[25] discussed in the first part of this paper (*see above*). Another reason is the **inefficiency of the mechanism for early conditional release**. Most requests for early conditional release are rejected. Only 5% of those prisoners eligible for release were paroled in 2013, and the number decreased further in 2014.

Overcrowding essentially impairs inmates' enjoyment of other rights, including contact with family members, access to medical assistance, etc. Problems with the poor quality of both food and medical care remain largely ignored. CSI's observations show that some PIs lack medical personnel with adequate qualifications. Given the lack of effective complaint mechanisms, many prisoners resort to extreme measures, such as hunger strikes, thirst strikes, or self-harming.

To solve the problem, in February 2014, the President of Armenia adopted a Concept Note on the Establishment of a Probation Service. The probation service is supposed to tackle the problem of the overuse of pre-trial detention, to decrease the use of custodial sentences and to deliver a rehabilitation programme. However, the Government fails to meet the deadlines imposed in its own national policy papers and **the establishment of the Probation Service is being delayed.**

Finally, rehabilitation programmes aimed at **re-socialization of inmates are not being implemented**.[26] Despite legal requirements, no individual plan has been developed to work with prisoners. The overwhelming majority of inmates serve their sentences without being offered

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[24] See, Report of the Ombudsman as the National Preventative Mechanism under OPCAT for 2014, available at http://ombuds.am/storage/files/library/pdf_1146031080_arm_report.pdf (in Armenian only), the Annual report of the Public Monitoring Group over Penitentiaries for 2013, available at www.pmg.am (in Armenian only).

[25] For more details, see, 'NGOs Statement Against Inhuman and Degrading Attitude Towards Detainees', available at http://www.hra.am/en/events/2011/05/20/statement (last accessed on 20 December 2012); 'Statement on the overcrowding of the penitentiary institutions', <http://www.hra.am/en/point-of-view/2010/07/26/statement> last accessed on 20 December 2012.

[26] See Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 7 December 2011, <http://www.cpt.coe.int/documents/arm/2012-23-inf-eng.htm> last accessed on 19 December 2012.

activities, such as vocational training to have a paid job when released. Upon release, former inmates find it impossible to obtain employment, which in turn contributes to recidivism.

The EU should...

...urge and help the Armenian authorities to:

- Review the mechanism for early conditional release in order to render it more independent, impartial and predictable;
- Adopt the legislation on Probation Service and implement it without delay;
- Implement rehabilitation programmes for inmates.

...include the following indicators to measure the progress of the penitential reform:

- The number of persons serving alternative, non-custodial sentences and measures;
- The number of persons released on parole;
- The number of rehabilitation programmes available to inmates; and
- The number of medical personnel, psychologists and social workers working in PIs, as well as their ratio per prison population, etc.

Conclusion: a comprehensive approach to justice reform

CSI and FIDH urge the EU to tackle the issue of justice reform in a comprehensive way through both discussion of the above-mentioned recommendations in the political dialogue and through a review of indicators the EU has set to evaluate its support in the area. These indicators should reflect both a qualitative and a quantitative approach of the progress to be made so that the EU can effectively evaluate the progress made in terms of financial expenditures, implementation of programme activities, meeting of the deadlines and accomplishment of results. Finally, the EU should reinforce and better integrate the civil society in its monitoring and evaluation mechanisms of the justice reform in Armenia.