

Abuse of the Article 316 of the Armenian Penal Code to hinder the citizens rights

Joint briefing note - February 12, 2016

FIDH and its member organisation in Armenia Civil Society Institute (CSI) would like to draw the attention to the case of "New Armenia" activist **Gevorg Safaryan** as an example demonstrating the misuse of the Penal Code by the law enforcement in order to exert pressure on activists. Detained on New Year's Eve during a peaceful assembly, G. Safaryan faces prolonged imprisonment on charges of violence against police under Article 316 of the Penal Code.

The latter article penalises threats of violence and violence without danger to life or health of a representative of authorities with up to five years imprisonment. Violence susceptible to cause damage to health or life is punishable with up to ten years in prison. Our organisations claim that the article introduces disproportionate penalties and is often abused by law enforcement and justice administration authorities.

For the last three years, CSI conducted a monitoring of convictions under Article 316. Its results show that in the overwhelming majority of cases the accused were handed down prolonged prison sentences for rather minor law infringements and simple disobedience to the police.

Below we provide a more detailed account of the state of affairs that sheds light to other concerns related to the application of the Article 316 of the Penal Code, such as abuse of pre-trial detention, failure to ensure equality of arms and abuse of the Article in order to hinder citizens' rights to peaceful assembly.

Special attention is being paid to specific cases presented in the brief that illustrate the abuse of the Article 316. FIDH and CSI urge the Armenian authorities to safeguard the rights of these citizens by amending the Article 316 of the Penal Code and by replacing pre-trial detention with non-custodial measures of restraint of those charged with violation of the said article. Our organisations call for an impartial investigation of cases falling under the Article 316 in order to ensure the equality of arms and the respect of the right to a fair trial.

Peaceful assembly and police conduct

Recent cases of prosecutions under Article 316 of the Penal Code show persistence of the practice of to charge participants of peaceful assemblies of resorting to violence against police officers. In latter cases, the said provision of the Penal Code is used by the law enforcement as a tool to exert pressure on protesters, hereby violating the right to peaceful assembly. The most recent example is the case of **Gevorg Safaryan**.

On 3 January 2016, the Court of General Jurisdiction of Kentron and Nork-Marash of Yerevan authorized a two-month pre-trial detention of Gevorg Safaryan, a member of "New Armenia" political movement. He is charged with resorting to violence against a police officer under the Article 316(1) of the Armenian Penal Code and faces a penalty ranging from a fine in the amount of 300 minimal salaries up to imprisonment for the term of five years.

The incident took place on December 31, 2015, at the Freedom Square in Yerevan. "New Armenia" supporters gathered in the square to celebrate New Year. A New Year's tree was then brought to the square and was instantly confiscated by the police, hereby provoking demonstrators' disagreement that led to a confrontation with the police. As a result, some of the protesters were summoned to police station, including Gevorg Safaryan who was charged with the Article 316 based on a testimony of a police officer claiming having been hit by G. Safaryan.

FIDH and CSI consider pre-trial detention and charges against G. Safaryan as well as the penalty he faces to be disproportionate and aimed to sanction his political activities.

Use of pre-trial detention: a norm rather than an exception

In 2015, 19 people were convicted under the Article 316 compared to 29 in 2014 and 38 in 2013. Although the trend is diminishing, our organizations are deeply concerned with the fact that in a vast majority of cases, the accused are held in custody for months leading to their trial, regardless of the seriousness of the circumstances, of police actions, of the conduct of the accused and of the potential danger the defendant is allegedly poses to the society.

Rather than being a well-grounded measure of restraint, such practice is *de facto* used as a punishment for disobeying a police officer. 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.

The practice of a large-scale use of pre-trial detention affects the fairness of the verdict as well. All of the cases monitored by CSI in 2013-2015 end with guilty verdicts in order to justify the lawfulness of the pre-trial detention.

Failure to ensure equality of arms and police bias

As a rule, the indictments under Article 316 are handed down solely based on the testimonies of police officers. As a result, the investigations fail to objectively investigate the lawsuit, to objectively assess the conduct of the defendant and police officers in question, including the lawfulness of the police requests, use of force by police and damage caused by police. Hereby the right to the equality of arms is undermined.

There were cases when misuse of the Article 316 led to absurd charges, qualifying pushing a police officer under controversial circumstances as a resort to violence against a representative of the authorities disregarding any possible consequences of the use of police force. Moreover, the courts often fail to duly assess the defendant's conduct from the perspective of the *mens rea*, i.e. the intent to use violence against a police officer. As a result, citizen are convicted to lengthy prison terms for having entered into confrontational situations with police officers.

Charged with Article 316(2) "Use of violence, dangerous for the life or health of <a representative of the authorities or his/her close relative>" for hitting a police officer in a face, S.K¹. was convicted to 5 years of imprisonment in 2013. More specifically, on the day of the incident, the defendant injured himself on the way home. He was not sober and swore loudly. Passers-by gathered wanting to help him. The crowd was noticed by a police patrol and intervened in order to see how they "can help the person", according to police testimonies.

Disregarding the fact that S.K. refused police assistance, the officers not only continuously tried to "help him", but also called a back-up. When the back-up arrived, S.K. was summoned to police station, despite S.K. requests to call the ambulance. When at least four police officers tried to arrest him by lifting S.K. from the ground, S.K. tried to free himself and, according to him, by accident hit the face of a police officer. S.K. spent hours in the police station. He was interrogated despite the fact he was not sober and in pain. The ambulance

¹ The identity of the individual is not communicated for confidentiality reasons.

was called only after police processed all the documentation. Diagnosed with a broken leg, S.K. spent months in pre-trial detention in an overcrowded cell. He served his term in prison until released on parole in 2015.

This case is an eloquent example of imprisoning a citizen for a minor incident that degraded into a conflict with police officers after the latter created conditions for confrontation. During the trial, no other testimonies were taken into account except those of the police officers.

Disproportionate sanction

The Article 316 sanctions violence and attempts of thereof with up to 10 years of imprisonment . The analysis of the cases in question demonstrates that in the overwhelming majority of cases were minor administrative offenses inflicting no real danger on the police officer and thus were not supposed to entail to such penalties as imprisonment. As a result, the Article leads to disproportionate sentences.

*In 2015, K.H.² was charged with Article 316 (2) and convicted to 5 years of imprisonment. More specifically, K.H. was involved in a car accident followed by an argument between passengers and drivers of two cars. Police arrived at the scene and summoned the participants to police. The accused was not sober, showed resistance and hit one the face of a man **in plain clothes** who appeared to be a police officer. The accused stated not having been aware that the person was a police officer as the latter has not introduced himself, nor did he presented his police badge. K.H. was held in pre-trial detention and his motions to be released on bail were dismissed by a court.*

Conclusion and recommendations

In its Resolution 1677 (2009)³ on Armenia, the Council of Europe's Parliamentary Assembly has already denounced court verdicts handed down based solely on police testimony, without any other substantial corroborating evidence. Such practice undermines citizens rights to the equality of arms and cripples their trust in the national justice system. Moreover, application of the Article 316 contributes to the persistence of other serious issues of justice administration in Armenia, such as the abuse of pre-trial. Finally, Article 316 might be used to sanction the activities of political activists which severely violates the right to peaceful assembly.

FIDH and CSI call upon the Armenian authorities to:

- Change the pre-trial detention of Gevorg Safaryan into non-custodial measure of restraint and ensure a fair and impartial investigation of his case;
- Amend the Penal Code to ensure proportionality of penalties set out in the Article 316
- Ensure that no verdicts are handed down based solely on incriminating police testimonies;
- Ensure equality of arms in court and impartial assessment of corroborative evidence;
- Ensure that pre-trial detention is used only as an exceptional measure of restraint where alternatives are not effective and are not proportionate to the alleged crime.

² The identity of the individual is not being communicate for confidentiality purposes.

³ The Parliamentary Assembly of the Council of Europe Resolution 1677 (2009) "The functioning of democratic institutions in Armenia", <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17758&lang=en>.