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TABLE OF CONTENTS

FOREWORD	4
EXECUTIVE SUMMARY	6
GOOD GOVERNANCE	8
INDEPENDENCE OF THE JUDICIARY AND ACCESS TO JUSTICE	13
FOSTERING CIVIL SOCIETY SYSTEM	22
IMPROVEMENT OF CIVIL SERVICE	26
HUMAN RIGHTS: CURRENT ACTIVITIES OF THE HUMAN RIGHTS DEFENDER, PROPERTY RIGHTS	30
MINORITIES, VULNERABLE GROUPS, GENDER ISSUES	37
PENITENTIARY SYSTEM REFORM: PREVENTION OF TORTURE	50
FREEDOM OF ASSEMBLY	55
MEDIA FREEDOM, RIGHTS OF JOURNALISTS	60
IMPROVING THE ELECTORAL SYSTEM	71

FOREWORD

Since 2005 Yerevan Press Club (YPC) has implemented in three stages a monitoring of democratic reforms in Armenia. These included fulfillment of the commitments to democratic reforms undertaken by the Republic of Armenia before the Council of Europe, the course of democratic and social reforms within the framework of the Millennium Challenges Corporation (MCA) Program, as well as the political, economic and institutional reforms envisaged by the European Neighbourhood Policy Action Plan for Armenia.

Based on this practice, YPC believes that it is time for Armenia's civil society organizations (CSOs) to formulate their own criteria for assessing democratic reform, using previous experience and the reform programs put forward by the Council of Europe (CoE), MCA, European Union (EU), taking into account local perceptions of reforms, as well as the Action Plan of the Eastern Partnership (EaP).

In 2008-2010 several negative developments occurred in Armenia: post-election conflict, tragedy of March 1, political prisoners, censorship, violence against journalists, restrictions of freedom of speech, human rights violations, economic crisis, exacerbation of social issues, etc. The political and economic regress urges the CSOs to perform a more active role in the implementation of the reforms, i.e. to alleviate the conflict between the government and the opposition by strengthening democratic institutions and political pluralism. International organizations, especially the pressures coming from the Council of Europe have forced the government to search for ways to improve the political image of the country, as well as to implement reforms in such fields as the judiciary, criminal justice, broadcasting, etc. The deepening economic crisis forced the government to request financial aid from international organizations, which was often conditioned upon implementation of democratic reforms in the country. At the same time the government understands that overcoming the economic crisis is impossible without genuine liberalization and elimination of the oligarchic system. It is necessary to note that throughout this period there has been widespread resistance in the society against attempts by the government to restrict democratic liberties. At the same time, the new concept of the Eastern Partnership suggests to 6 countries, including Armenia, a solid package, which provides stability and development on the eastern borders of the EU, with the condition that the participant countries ensure significant progress of democratic reform.

Everything described above, along with the pressures upon the Government of the RA, have created an atmosphere, in which it is possible to identify the obstacles to democratic developments and make serious changes in the country. Using the opportunity, Yerevan Press Club decided to implement the program "Monitoring Democracy Indicators to Gauge Armenia's Reform Progress". It can be used by the CSOs, the Government of the RA, international organizations in order to assess the democratic processes in the country and to identify the spheres that need reforming.

The aim of this work is to create a comprehensive study of the process of reform in Armenia in the context of democratic developments, European values and priorities of EaP.

The study can serve for internal observation of democratic processes; it can also be used by the beneficiaries, including the Government of the RA, CSOs, international community and CoE.

The research has been carried out by Yerevan Press Club, in the framework of the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Good Governance Program of the Open Society Institute.

The report has been compiled by Yerevan Press Club and its partners: Chairman of the Helsinki Committee of Armenia Avetik Ishkhanyan, Executive Director of Transparency International Anti-corruption Center Varuzhan Hochtanyan, Chairman of Victims of Public Needs NGO Sedrak Baghdasaryan, Chairman of “Hazarashen” NGO Hranush Kharatyan, Jemma Hasratyan, Chairwoman of Armenian Association of Women with University Education, as well as independent expert, Candidate of Sciences Davit Tumanyan.

EXECUTIVE SUMMARY

GOOD GOVERNANCE. Armenia has manifested slow progress in implementation of the provisions related to the field of local self-government introduced by the constitutional amendments, as well as the implementation of principles of the European Charter of Local Self-Government. From the three branches of government the executive is dominant. The lack of checks and balances between the branches of government is an obstacle on the way of successful reforms in the country.

INDEPENDENCE OF THE JUDICIARY AND ACCESS TO JUSTICE. Reforms aimed at securing independence of the judicial system failed to ensure real independence of the judges and the judiciary. The judicial system, *de jure* independent, *de facto* involves non-independent judges, who practically prove their dependence on current authorities. Existence of 10 political prisoners in the country is a sign of that dependence. The Council of Justice *de facto* is not the unique and ultimate body on issues related to the activities of courts. Among components of judicial reform are issues of access to justice, particularly widening the framework of free of charge legal assistance, as well as creation of efficient mechanisms of providing such assistance. The experience of structures created within the first stage of judicial reform, as well as its comparison with the international experience and legal practices show that implementation of this component of access to justice is possible only through systemic reform. Though the initiative to introduce changes to only one article of the RA Law “On Bar” was incomplete, it was presented as an example of fulfillment of the commitments undertaken by state within the framework of ENP.

FOSTERING CIVIL SOCIETY SYSTEM. In spite of anti-corruption policies and anti-corruption programs of the government and NGOs, the level of corruption in country is rising, according to the opinion of the majority of Armenia’s citizens. Widespread corruption and weak protection of property rights reduce the level of Armenia’s economic freedom.

IMPROVEMENT OF CIVIL SERVICE. Though reform of the state sector has commenced in Armenia years ago, with the support of several international institutions, the progress recorded so far has been insufficient. No legal concept of state service, as integrity of state institutions and services, exists. In addition to that, a number of legislative and sub-legislative acts have caused misunderstanding and controversy.

HUMAN RIGHTS: CURRENT ACTIVITIES OF THE HUMAN RIGHTS DEFENDER, PROPERTY RIGHTS. Though in the field of human rights Armenia has assumed numerous international commitments, as well as developed its own legislation, however, apart from further improving this legislation, the country still has a lot to do in the field of law enforcement practice. Enhancing the role of the RA Human Rights Defender and especially of the human rights organizations and human rights activists can ensure the democratic perspective for the country’s development.

MINORITIES, VULNERABLE GROUPS, GENDER ISSUES. Time after time national programs aimed at improving the situation of women and enhancing their role in the society are adopted, however Armenia still does not have an efficient national institutional mechanism, corresponding to the obligations stemming from Armenia’s international commitments, in order to ensure the implementation of such programs. Though in Armenia freedom of religion is granted by the Constitution, acting legislation contains certain restrictions of religious freedom of adherents of minority religious groups. No cases of

open discrimination against national minorities are recorded; the latter express their discontent regarding the difficulty to receive education in their native language. The violations of the rights of religious minorities are more pronounced and are not related to their belonging to a national minority.

Issues related to implementation of the rights of the disabled include health care, social and psychological spheres, recovery, transportation, communication, ensuring access to employment, social protection. Difficulties in almost all these fields are a consequence of an environment inaccessible for persons with disabilities

PENITENTIARY SYSTEM REFORM: PREVENTION OF TORTURE. To a certain extent public supervision has positive effects: the work of institutions has become transparent to an extent, more attention is paid to the rights of prisoners. However, the situation is still far conforming to international standards. The general situation in the places of detention, as well as rising numbers of convicts is causes for concern. Representatives of civil society organizations have the opportunity to enter prisons, but not police stations. Bad treatment (cruel treatment, beatings, torture) is still practiced as a method of extracting evidence.

FREEDOM OF ASSEMBLY. Though the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” has been considered as generally corresponding to European standards by the Council of Europe, it has rather a restrictive than regulatory character. The main legislative obstacle is the Point 3 of Paragraph 4 of Article 9. The implementation of the law is also basis for concern, when the authorized body, i.e. the Yerevan Community, without serious grounds creates obstacles and prohibits holding meetings and especially rallies. The police restrict the right to free movement in the capital and the public transportation from the regions to the capital mostly does not work on those days. The practice of court appeals is also unsatisfactory, since it does not ensure fair trial and proportionality, the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

MEDIA FREEDOM, RIGHTS OF JOURNALISTS. With regard to freedom of speech and protection of journalists there are numerous issues in Armenia, even though certain reforms, including reform of legislation are taking place. Journalists still become victims of violence, those guilty of such violence often remain without punishment. Mass media, especially the television continuously fails to ensure pluralism of opinions and objective reporting. The activities of the National Commission on Television and Radio do not help to improve the situation, since it remains non-independent in its capacity of the main regulating body in the field. The biggest obstacle to freedom of mass media is self-censorship. “A1+” TV company still remains without access to broadcasting, in spite of the decision of the European Court of Human Rights.

IMPROVING THE ELECTORAL SYSTEM. Though Armenian legislation provides the citizens with the right to peaceful change of government, in practice that right has been restricted as a result of repeated election violations, which had significantly influenced the election results. Changes in the electoral law do not lead to a practical effect, since a radical improvement can be registered only in case an electoral culture improvement national program is developed and implemented, as well as in case the government has the political will to hold transparent and fair elections.

GOOD GOVERNANCE

Armenia ratified the European Charter of Local Self-Government on January 25, 2002. The constitutional changes that were adopted on November 27, 2005 reflected several new provisions regarding local self-government. The existing legislation was to be brought into accordance with those provisions and the demands of the European Charter. These changes mostly referred to the status of the city of Yerevan, local taxes, the prerogatives of the head of the municipal community, the principles of merging and division of the communities, inter-municipal unions. As a member of the Council of Europe Armenia has the obligation to include the recommendations of the Congress of Local and Regional Authorities of Europe into the legislation and to implement the corresponding mechanisms. According to the assessment by local civil society organizations, the fulfillment of these obligations, albeit in progress, is continuously postponed, and the country is significantly lagging behind in practical implementation of the principles of the European Charter of Local Self-Government¹.

In the field of good governance and separation of powers Armenia also has clear obligations within the framework of cooperation between Armenia and EU that emerged during the latest years, particularly the cooperation within the European Neighborhood Policy (ENP) and Eastern Partnership (EaP). The EU/Armenia ENP Action Plan and the 2007-2010 European Neighborhood and Partnership Instrument National Indicative Program for Armenia include provisions related to the implementation of constitutional changes and ensuring the implementation of the European Charter of Local Self-Government. According to Armenian experts' evaluations the progress in this direction is slow.

Relations between the government and local self-government bodies are regulated by Armenia's Constitution and the RA Law "On Self-Government". In 2005 the chapter on administrative supervision was added to the latter.

Armenia's civil society sees problematic aspects in the relations between the state government and local self-government bodies, which, even though regulated by legislation, in most cases follow a top-down pattern of relations. Thus the *marzpets* (regional governors), who represent the government in the *marzes* (the regions), often interfere into the work of local self-government bodies. "It is necessary to note, that this tendency is to a large extent aided by the local self-government bodies themselves, who, because of their own incompetence and fear often do not oppose such interference."²

In some cases the central authorities and local self-government bodies cooperate, sometimes the issues in their relations are solved before court.

The control over the work of local self-government is carried out through the National Assembly of RA, the RA Government and the Control Chamber of the RA. The latter checks (not more often than once a year) the targeted spending of finances provided to the communities from the state budget. However, in practice the checks are performed more often and by several government bodies, which lead to breaches in the normal

¹ "Local Self-Government Reforms in Armenia" 2009 Report of the Communities Finance Officers Association

² David Tumanyan, "Local Self-Government in Armenia", "Caucasian Accent" current affairs magazine, 2010 [in Russian]

rhythm of the working process of local-self-government bodies, creating an atmosphere of fear and paralyzing their activities³.

In December 2008 the National Assembly of RA adopted the Law “On Local Self-Government in the City of Yerevan”, which introduced indirect elections of the mayor of Yerevan. In 2009 the Government of RA adopted the Concept Paper on Community Mergers and Enlargement of Communities, with the aim of reducing the number of communities and at the same time strengthening their capacities, as well as the comprehensive and efficient development of the local self-government bodies’ prerogatives.

Taking into account the suggestions of civil society institutions the following suggestions can be made:

- To ensure harmonious interaction between the activities of local self-government bodies and regional government systems, as well as their efficiency, transparency, and accountability;
- To develop capacities of local self-government bodies and complete the community service system through narrowly specialized trainings;
- To strengthen the institution of municipal council (“council of the elderly”), through the enlargement of communities and the creation of the institute of the head of council of elderly;
- To reform the election procedures of self-government bodies, to fix by law the mechanisms and forms of the population’s participation in the local self-government;
- To work out and to approve a Strategic Program of the decentralization and/or development of local self-government, which would encompass all issues and questions related to local self-government;
- To increase the level of financial independence of local communities and the efficiency of their budget expenditure management;
- To provide the local communities with necessary financial resources in order to allow them to fully exercise the powers ascribed to local-self government bodies by the law;
- To increase the efficiency of the state’s financial assistance to the budgets of the local communities, as well as its transparency, accountability and publicity;
- To fix in the Law “On Local Self-Government” and the Law “On the Budgetary System of the Republic of Armenia” the percentages of commissions transferred to the budgets of the local communities from the taxes entering the state budget, rather than leave that to the RA Law “On State Budget” adopted every year;
- In order to enlarge the financial resources available for the activities of the local self-government bodies, and to secure large and long-term investments into local community infrastructure, to work out and approve procedures for securing loans from commercial

³ David Tumanyan, “Local Self-Government in Armenia”, “Caucasian Accent” current affairs magazine, 2010 [in Russian]

banks and financial institutions, as well as for issuing security bonds by the local communities.

Armenia has never adopted a special program regarding local self-government. In 2003 the Government of RA endorsed the Poverty Reduction Strategic Program (PRSP), which included ten directions that were related to the field of local self-government in 2004-2006.

In October 2008 the RA Government adopted the Program of Stable Development, which includes almost the articles repeating the PRSP. These articles also almost completely repeat the provisions of the program adopted by the RA Government in 2007.

Based on the requirements stemming from the constitutional changes the Law “On Local Self-Government in the City of Yerevan” was adopted in 2008. According to the law the capital received the status of a municipal community. In May 2009 the elections of the Council of Elderly of Yerevan took place for the first time. The elections were held according to proportional principle of representation, and based on these results the mayor of Yerevan was elected (the existing law offers such opportunity).

Numerous local and international organizations evaluated this as a positive development. Thus, in the Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia this fact was evaluated as a step towards securing local democracy⁴.

In 2009 an inter-agency committee was created, with the objective of formation of inter-municipal unions units and enlargement of the communities. According to local and international experts this would strengthen the system of local self-government and foster the creation of communities’ networks.

This, in turn, is necessary for improving the quality of community services, since the larger communities will have the necessary resources for this improvement, as well as for expanding the list of currently available services. These opportunities will be given to the communities by the adoption of the new law “On the Order of Implementation of the Prerogatives of Local-Self Government Bodies”, the need for which emerged from the changes in the Constitution.

Many local experts believe that efficient implementation of the self-government reform to a large extent depends on the administrative-territorial division of the country, i.e. on the definition of the size of the territorial units, within which local self-government is exercised⁵.

According to the RA Constitution state power is exercised through division of legislative, executive and judicial powers as well as checks and balances between them.

The RA Constitution reserves the exercise of the local self-government to communities. The Constitution particularly states: “Local self-government is the right and the capacity of the local residents, to solve questions of local significance under their own responsibility, in the interests of welfare and in accordance with the Constitution and the laws”. The prerogatives of the state government bodies can be transferred by the law to local self-government bodies in order to ensure more effective implementation.

⁴ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p. 4

⁵ “Local Self-Government Reforms in Armenia” 2009 Report of the Communities Finance Officers Association

In the laws referring to local self-government numerous changes were made in 2006-2010. Thus, only in the Law “On Local Self-Government” 19 amendments were made. Changes and additions were also made in the Law “On Municipal Service”.

The National Assembly of RA has also adopted in first reading the new Law “On Financial Leveling”, which significantly improves the mechanisms of distribution of the subsidies among communities.

Local self-government in Armenia is exercised in communities. Out of the existing 915 communities 49 are urban communities and 866 are rural communities.

According to the data provided by the Communities Finance Officers Association, the population of Armenia constituted 3, 249, 500 by January 2010, therefore the average number of population per community is 3551, in communities of the capital it is 2333. According to the organization, this means that the number of small and weak communities is still substantial; as a result they are too fragmented and unable to provide services to their population.

According to the report prepared by the Communities Finance Officers Association there has been a certain acceleration of the process of changes implemented in the field of local self-government since 2008, however in general the pace of systemic development in the field is quite low.

In Armenia the legislative basis that regulates the community finances is already formed. However, the fact that communities have not become subjects of finance relations remains a major obstacle on the way of development in this field.

International organizations have assessed the scope of the prerogatives of the local self-government bodies as limited. According to “Freedom House” human rights organization, the index of democratic development that Armenia received for 2009 was 5.39, it had not change since the previous year. In 2009, compared to the previous year, the indexes for sections “local self-government” and “civil society” have also remained unchanged - respectively 5.50 and 3.75 (the grade scale is from 1 to 7, where 1 is the best grade and 7 is the worst).

The 2010 Bertelsmann Transformation Index Report, which evaluated the process of transition, as well as rankings on democracy market economy and political management in 128 transition and developing countries, has touched upon the issue of rule of law in Armenia. According to the report, amendments to the Constitution enhanced both the legislature and judiciary; the executive branch still holds a dominant position over other branches of government and retains control nearly over all of the main instruments of state power. According to the report, lack of effective “checks and balances” or a separation of powers remains the most serious obstacle to Armenia’s democratic transformation⁶.

It is one of the obligations of Armenia as an OSCE member to ensure the rule of law, for which independence of the judiciary is a necessary prerequisite. Armenian judiciary is in practice subordinate to the executive branch even though officially it is considered independent.

⁶ <http://www.bertelsmann-transformation-index.de/148.0.html?&L=1>

At the expense of the state budget of RA, in line with the programs approved by the RA Ministry of Territorial Administration, the first job training program for community service workers was carried out in the former “centers of districts”, which ended in 2009. Re-training programs have also been implemented with funding from other sources, particularly from donor organizations. Organizations were concerned about issues of local self-government and pointed at certain shortcomings of these training programs. First, sometimes, training and re-training programs are implemented by several different organizations during the same period of time, while during other time periods no programs are implemented at all. In other cases the same community is periodically included in such programs, while others are not. Moreover, in those communities that are included into such programs periodically a skeptic attitude is formed toward those re-training programs, which affects their focus and efficiency.

According to the RA Constitution the communities form their budget autonomously. The law designates sources of funding for the communities, which ensure the implementation of their prerogatives, while the prerogatives, commissioned by state government to local self-government bodies, are subject to mandatory funding from the state budget.

Community finances in the field of local self-government are regulated based on the following legislative bases: the Constitution of RA, adopted in 1995, amended in 2005, the European Charter of Local Self-Government (Armenia ratified it in 2002), and the Laws “On Local Self-Government” (2002), “On Budgetary System of the Republic of Armenia” (1997), “On Local Duties and Fees” (1998), and “On Reimbursement by the State of the Losses Suffered by Community Budgets Due to Implementation of RA Laws Reducing the Incomes of Community Budgets” (2006).

In April 2009 the National Assembly of RA adopted in the first reading the new law “On Financial Leveling”, which takes into account the financial assets and needs of communities to a higher extent than the existing law. On February 22 2010, again in first reading, the amendments to the RA Law “On Local Duties and Fees” were adopted. These amendments included a new chapter on local taxes, which assigned local duty types. Based on this law the proposals for the law “On Local Tax” are being worked out, which are considered to be a major factor for development of the financial systems of the communities⁷. The Law “On Introducing Amendments and Supplements to the RA Law ‘On Local Duties and Fees’” was adopted in full text on April 27, 2010.

⁷ David Tumanyan, “Local Self-Government in Armenia”, “Caucasian Accent” current affairs magazine, 2010 [in Russian]

INDEPENDENCE OF THE JUDICIARY AND ACCESS TO JUSTICE

Armenia joined the European Convention for the Protection of Human Rights and Fundamental Freedoms on January 25, 2001. The Article 6 of the Convention refers to the right to free trial. Point 1 of Article 6 states that “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”, and according to Subpoint C of Point 3 of Article 6 “Everyone (...) has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”.

Armenia also has commitments before the international community and Armenian society as a member state of the OSCE, since in that capacity Armenia has joined the Brussels Declaration on Criminal Justice Systems (2006), the Helsinki Final Act (1975), the Vienna Concluding Document (1989), the Copenhagen Document (1990), the Charter of Paris for a New Europe (1990), the Moscow Document (1991), the Budapest Document (1994) and the Charter for European Security (1999). Besides, the decisions of the OSCE Ministerial Council on Combating Transnational Crime and Upholding Human Rights and Rule of Law in Criminal Justice Systems (Ljubljana, 2005) are in force in Armenia.

According to these documents Armenia is obliged to “ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated”. OSCE member states are “determined to support and advance those principles of justice which form the basis of the rule of law”, moreover it is considered that “the rule of law does not mean merely formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality”. It is important that according to one of the commitments OSCE “member states decide to accept the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law”.

Provided by the commitments of the OSCE member states they need to ensure the independence, impartiality and integrity of the judicial office, propriety, and the appearance of propriety, a guarantee of equality of treatment to all before the courts, competence and diligence (Brussels 2006). The qualities of the prosecutors are also defined, and among the qualities listed in the document there are more human than professional qualities. The qualities of the law-enforcement officials and lawyers are also provided for.

Analysis of issues related to access to justice and independence of the judicial system shows that in the reforms carried out in the judicial system have failed to correct most of the shortcomings present in the field. In this regard it is necessary to:

- To make changes in the Judicial Code of the RA, providing legal mechanisms to ensure real independence of judges;
- To exclude to possibility for Prosecutors' Office to lead investigations of criminal cases, by making necessary amendments in the RA Law “On Special Investigative Service”;

- To bring the RA Law “On Operative-Searching Activities” in accordance with international standards;
- To adopt the Law “On State-Funded Legal Aid” and to make corresponding changes in respective legal acts;
- To reconsider the right of the RA President to interfere with the elections of the judges, securing this right for the RA Council of Justice, to provide mechanisms of public control over appointment and dismissal of judges;
- To establish monitoring of the activities of the judges, to carry out investigations of clearly unfair decisions, to apply necessary sanctions to those judges that have acted against the law;
- To prohibit by the law the distribution of cases by the chairman of the court and subjectivity in judicial process;
- To raise the level of responsibility of judges for unfairly prolonging the hearings, as well as to demand from the judges a written explanation for each case of prolonging the hearings;
- To strengthen the institute of the public defender, in order to raise the quality of the free of charge legal aid;
- To demand written explanations from the judges in cases of refusing to allow recording of court sessions, as well as in cases of closed court sessions;
- To ensure the publication of court verdicts and all decisions of the courts in electronic format;
- To make more severe the punishments for unethical behavior by judges and other participants of the judicial process, in order to minimize the risks of corruption.

Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms by Armenia determined the directions of the future development of Armenia’s legal system based on the European system of values. With the changes to the RA Constitution the process of reforming the country’s judicial system continued, with an objective to guarantee the rights of a person, in accordance with the internationally acknowledged principles and norms, in other words to raise the quality of justice. Thus, several laws were adopted: the Judicial and Administrative Procedure Codes of RA, the RA Laws “On Constitutional Court”, “On Bar”, “On Prosecution”, which created a certain legal basis for reaching this goal. However, these efforts can remain futile without special mechanisms to ensure real access to justice.

There is no legal norm in the legal system of the RA that would directly mention the right of a person to access to justice, the main element of the right to fair trial. An independent component of the right to access to justice is the financial element, when the state has the obligation to neutralize financial obstacles related to going to court. According to the Article 20 of the RA Constitution everyone has the right to legal assistance. In cases provided for by law, legal assistance shall be provided at the expense of state funds. The institutional basis for free of charge legal assistance is the RA Chamber of Advocates, the Office of Public Defender. According to the Article 6 of the RA Law “On Bar”, the state shall

guarantee legal aid in criminal cases pursuant to the procedure and in cases provided for by the RA Criminal Procedure Code, as well as pursuant to the procedure prescribed by the RA Civil Procedure Code only in the cases related to collecting maintenance payments, compensation for losses incurred as a result of mayhem or other injury to the health, as well as the death of the bread-winner. Thus, the RA legislation does not comprehensively ensure the right to access to justice through legal assistance at the expense of the state.

The number of public defenders currently included in the Office of Public Defender (34) is objectively too low for providing free of charge legal assistance to the socially vulnerable groups of population, especially in the regions.

According to the RA Constitution only the courts can perform the judicial function in the country, and the final acts of the courts are adopted in the name of the RA.

The Constitution also defines the types of courts: first instance courts of general jurisdiction, courts of appeal, Court of Cassation, and in cases provided by the law - specialized courts. With the exception of issues of constitutional justice, the highest court of the Republic is the Court of Cassation, which should ensure the uniform application of the law. The Constitution prohibits creation of extraordinary courts, guarantees the independence of courts and judges. The Constitution of RA entitles everyone to effective legal remedies to protect his/her rights and freedoms before judicial; to have the support of the Human Rights' Defender; to apply to the international institutions protecting human rights and freedoms, as well as to get state-funded legal assistance, and o the right to assistance of a legal defender chosen by him/her starting from the moment of his/her arrest, subjection to a security measure or indictment.

With the amendments made in the RA Constitution on November 27, 2005 implementation of the second stage of judicial reforms started in Armenia. In general the changes to the Constitution included the following effects:

- the Constitutional Court received more democratic and detailed regulations;
- the status of the Court of Cassation was changed;
- the judges received supplementary guarantees of their independence;
- the circle of constitutional bases for justice was widened and some of them received more detailed regulation;
- the order of formation and activities of the Council of Justice was reworked.

Though together with the constitutional changes several new legal acts were adopted and numerous amendments were made to acting laws, it is not clear to what extent the amendments made matched the commitments undertaken by Armenia within the context of the EU-Armenia ENP Action Plan.

A new legal act, the Judicial Code, referring to the status of the judges, the judicial system and the Council of Justice was adopted, however no guarantees of real independence of the judges were created and their practical implementation was not ensured.

A new RA Law “On Prosecution” was adopted, which reduced some of the prerogatives of the prosecutor’s office, however subsequent legal amendments not only restored the previously held positions of the prosecutor’s office, but also added new privileges in the field of criminal justice. In fact, the previously held prerogatives of the prosecutor’s office were restored, against a background of absence of serious obligations and responsibility.

The Council of Justice, which received a new status by the Constitution is in fact unable to guarantee the independence of judicial bodies and play the role of the ultimate instance on issues referring to activities of the judges since its decisions either need to be approved by the president or can be modified by him.

No improvement of the system of free of charge legal assistance took place, since no systemic reforms were initiated.

The Administrative Court was founded, however, in order to assess the activities of this extremely important judicial institution further research and monitoring is necessary.

Point 1 of Article 284 of the RA Criminal Procedure Code defines that operative-searching activities concerned with the restriction of the individual's right for the confidentiality of correspondence, telephone conversations, mail, telegrams and other communications, except the cases when the one of the interlocutors gave his consent to supervision, are carried out only with a court ruling.

Article 23 of the RA Constitution states that “Everyone shall have the right to respect for his or her private and family life”. According to the same Article “Everyone shall have the right to secrecy of correspondence, telephone conversations, mail, telegraph and other communications, which may be restricted only by court decision in cases and in conformity with the procedure prescribed by the law”.

However, it stems from the RA Criminal Procedure Code that if one of the participants of conversations or communication has previously given consent to overhear or control them, then the body carrying out operative-searching activities can perform this activity without a court decision. The restriction of that right without a court decision, based only upon the decision of the body carrying out operative-searching activities and the consent of one of the participants of the conversations or communication to overhear or control them, contradicts the Constitution of the RA since it clearly states that the right to secrecy of correspondence, telephone conversations, mail, telegraph and other communications may be restricted only upon a court decision.

In late 2010 preparation work was carried out for amendments in the Judicial Code of the RA, which envisaged improvement of the principles of the activities of the Council of Justice, reworking the procedures of formation of qualification and promotion lists⁸. Changes to the RA Law “On Notary Service” and the Civil Code of the RA were also expected.

In April 2009 by the order of the President of the RA a strategic program of judicial reforms for 2009-2011 was adopted. In the European Commission Staff Working Document on Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia the raise in the judges’ salaries that took place in 2009 was welcomed as a positive development. However, according to the report, the independence of the system continues

⁸ <http://hetq.am/am/society/laws/#more-44672>

to remain a subject of concerns and there is need to undertake further efforts for strengthening it⁹.

According to the OSCE ODIHR report "Trial Monitoring Project in Armenia (April 2008 - July 2009)", Warsaw, March 8, 2010, in 42 % of the cases under monitoring biased attitude by the judges was registered, and in most cases the bias was in favor of the prosecution. The report points that the "hand in hand" cooperation between the judges and the prosecutors violates the impartiality of the judges in particular and the judicial system in general¹⁰.

In his 2009 annual report for RA Human Rights Defender has also warned about the unsatisfactory level of implementation of the right to fair trial in Armenia. Monitoring of court sessions by the Office of the Human Rights Defender has registered the following cases: shortcomings of the legal base and implementation; lack of legal bases for organizing private engagement and meetings in the court building; absence of special rooms for the witnesses in some courts, as a result of which the witnesses willy-nilly communicate with the state prosecutors and defense lawyers.

The Constitution of the RA and the RA Law "On Bar" guarantee state-funded legal assistance, however both local and international organizations warn about the low quality of that help or its complete absence.

The Report on Human Rights Practices 2009 of the US Department of State registers that in Armenia the defendants often reject their public defenders, since in their view, the defenders cooperate with the prosecutors¹¹. "Armenia's ENP Implementation in 2009: Partnership for Open Society Perspective" report published by the Partnership for Open Society does not register any improvement of the institution of public defender¹².

OSCE ODIHR Report "Trial Monitoring Project in Armenia (April 2008 - July 2009)" also concludes that the institution of legal assistance provided by public defenders is in need for improvement¹³. Moreover, it is not only the quality of the assistance that is in need of improvement: often defendants do not use the opportunity for receiving free of charge legal assistance, since judicial and other officials simply do not inform them about it.

Practicing lawyers have brought public attention to the fact that since March 1 2008 a new obstacle has arisen for them: the defendants are not permitted to meet with their lawyers¹⁴.

Any research that deals with independence of the judicial system in Armenia contains concerns on the order of appointment of judges in Armenia. The prerogative to appoint judges is reserved to the President of the Republic. The Constitution also gives the president right to remove their legal immunity, moreover that can be done in defiance of the opinion of the Council of Justice.

⁹ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p. 4

¹⁰ "European Neighborhood Policy: Monitoring Armenia's Anti-Corruption Commitments 2010", TIAC Final Report, p. 85-86

¹¹ Report on Human Rights Practices 2009, US Department of State

¹² "Armenia's ENP Implementation in 2009: Partnership for Open Society Perspective"

¹³ "Implementation of the Right to Fair Trial in the Armenian Judicial System", Monitoring Results, Open Society Institute, Yerevan, 2009, p. 215

¹⁴ <http://www.a1plus.am/am/politics/2010/02/26/ara-zohrabyan>

According to “European Neighborhood Policy: Monitoring Armenia’s Anti-Corruption Commitments 2010” Final Report “the political leadership uses the judiciary as an effective tool to control the society as a whole, while judges loyal to the political regime remain immune to detection and punishment”¹⁵. Similar concerns have been voiced in the Report on Human Rights Practices 2009 of the US Department of State¹⁶ and “Armenia’s ENP Implementation in 2009” report by the Partnership for Open Society¹⁷.

The December 2010 events connected to the then Mayor Gagik Beglaryan can testify to the level of independence of the judiciary. Beglaryan was forced to resign by the president for committing an illegal act, but he was not brought to legal responsibility. The Vice-Chairman of the NA Standing Committee on State and Legal Affairs Rafik Petrosyan was quoted in the media saying that the President of the Republic had ordered to initiate a criminal case against the Mayor of Yerevan Gagik Beglaryan for beating and abducting Aram Kandayan who worked at the Protocol Department of the Administration of the President¹⁸. Though the President’s spokesman denied that such an order existed, reminding that the legal bases for initiating criminal cases are other than an order by the President, however the words of the Vice-Chairman of the NA Standing Committee on State and Legal Affairs, albeit carelessly spoken, willy-nilly reflect at least the public perceptions of the state of independence of the judiciary in Armenia

The OSCE ODIHR “Final Report Trial Monitoring Project in Armenia (April 2008 - July 2009)” has registered shortcomings in the outcomes of the court proceedings on cases related to the post-election violence on March 1-2, 2008 in Yerevan. From April 2008 to July 2009, 93 criminal cases, involving 109 defendants were monitored¹⁹. Numerous issues of concern were registered related to violations of the right of the defendants to fair trial and personal freedom. The information acquired raises concerns regarding the existing legislation and practices related to the right to freedom. Judicial review of arrest and detention was not always in line with the relevant international standards and national legal requirements. Concerns were raised with regard to the quality and efficiency of the work of public defenders.

On April 6-10, 2010 in Yerevan the 37th Congress of the International Federation for Human Rights took place. On March 10 a report on judicial practices in Armenia was published, which expressed concerns about the work of the judicial system in Armenia. It mentions numerous violations of the right to fair trial in Armenia: a wide use of preliminary detention; violations of the principle of presumption of innocence and the right to legal defense; partiality at the court hearings against the leaders of the opposition. The report also mentions that many of the political prisoners were released according to the amnesty declared by the National Assembly on June 19, 2009, however 10 political prisoners remained in prison.

The Report on Human Rights Practices 2009 of the US Department of State also refers to the issue of political prisoners in Armenia, noting that by the end of 2009 there were 13 prisoners, who were either waiting for their court hearing or serving their term²⁰. The report mentioned that the arrests that followed March 2008 events displayed different degrees of

¹⁵ “European Neighborhood Policy: Monitoring Armenia’s Anti-Corruption Commitments 2010”, TIAC Final Report, p. 4

¹⁶ Report on Human Rights Practices 2009, US Department of State, p.7

¹⁷ “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective”, pp. 8-9

¹⁸ <http://www.azatutyun.am/content/article/2245325.html>

¹⁹ OSCE ODIHR “Final Report Trial Monitoring Project in Armenia (April 2008 - July 2009)”, pp.6-7

²⁰ Report on Human Rights Practices 2009, US Department of State

political influence. The government continued to deny the existence of political prisoners in the country and declared that the political opposition had planned post-election violence in order to seize power. According to the assessment by “Tesaket” (“Perspective”), “the courts were used in accordance with old Soviet traditions of control and oppression”²¹.

In the report “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective”, published in November 2009, notes that the manner, in which the cases of “political prisoners” were treated, raised a lot of concerns and manifested the lack of independence of the judicial system.

Recently international organizations have stepped up their pressures on Armenia with regard to these issues. Opposition supporters interpreted these external pressures as a result of internal pressure applied by the opposition within the country. This opinion was also voiced by the Coordinator of the Committee of Political Prisoners and Politically Persecuted Persons, human rights activist Vardan Harutyunyan. “I think the pressures on the authorities are quite substantial both from the European structures and from within. The authorities are looking for a way out, trying to win some time. They will try to postpone it as much as they can. I think now the European structures have put forward this demand”, said V. Harutyunyan on November 17, 2010²².

Since then till the end of 2010 two more political prisoners were released.

Nikol Pashinyan, active participant of the opposition rallies in ahead of 2008 presidential elections and Chief Editor of “Haykakan Zhamanak” newspaper was accused for inciting violence against the authorities and organizing mass disorders, and was sentenced to a prison term of seven years in January, 2010²³. The Chairman of the RA Chamber of Advocates Ruben Sahakyan, referring to the Nikol Pashinyan’s trial, said “this was a disgraceful trial”²⁴.

In March 2010 amnesty was applied to Nikol Pashinyan, according to which his remaining term was reduced by half. Several times incidents involving Nikol Pashinyan took place in the place of detention, which became a cause of concern for “Haykakan Zhamanak” Chief Editor’s safety on the part of local and international civil society.

International and local organizations, human rights activists, journalists aired the demands to set Nikol Pashinyan free²⁵. Thus “Human Rights House Foundation” NGO expressed serious concern with regard to the attacks against political prisoner Nikol Pashinyan and called upon the authorities of Armenia to set him free without delay²⁶.

By the end of December 2010 Nikol Pashinyan was still in prison as one of the remaining nine political prisoners.

According to data of the Center for Legal Assistance of the Armenian National there were about 50 cases related to those persecuted as a result of post-election events of 2008 in Congress in the European Court of Human Rights; the majority of these cases refers to

²¹ “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective”, p.4

²² <http://www.azatutyun.am/content/article/2222553.html>

²³ <http://www.ypc.am/bulletin/t/44992/In/ru>

²⁴ <http://www.a1plus.am/am/social/2010/02/26/ruben-sahakyan>

²⁵ <http://www.ypc.am/bulletin/In/ru/t/44330>

²⁶ <http://humanrightshouse.org/Articles/15602.html>

violations of the right to fair trial, security, as well as violations of the right to freedom of speech and freedom of assembly²⁷.

Among the cases submitted to the European Court of Human Rights is the case of a former National Assembly deputy Sasun Mikayelyan, who was sentenced to an eight year prison term in 2008 for organizing mass disorders and illegal possession of firearms and ammunition. Sasun Mikayelyan has serious health issues, has undergone heart surgery several times and the appealing side believes that keeping him in prison is a breach of the right to freedom from torture. His detention and court proceedings were carried out with violation of the rights to security and fair trial²⁸.

By the end of December 2010 there were already 9 political prisoners in Armenia.

Opposition leaders believe that even though 30 political prisoners were released in 2009, the Resolution 1677 (2009)¹ of the Parliamentary Assembly of Council of Europe remains unfulfilled²⁹.

The annual 2010 report of “Freedom House” human rights organization notes that by the end of 2009 only a small number of policemen were punished for the post-election violence of 2008: “Though there were reportedly hundreds of internal inquiries, only a handful of officers were charged with using excessive force”.

The CoE Parliamentary Assembly co-rapporteurs criticized the results of the monitoring of the cases related to the March 1-2 events, carried out by the Standing Committee on State and Legal Affairs of the RA National Assembly, which stated that the dispersion of the post-election rallies was “lawful and adequate”³⁰.

Armenian pro-opposition politicians also expressed their discontent with this assessment calling it “distorted” and “aimed against the people, against the society”³¹. Artsvik Minasyan, deputy from the ARF “Dashnaktsutyun” faction of RA National Assembly declared that “the activities of the monitoring committee related to the cases of March 1-2, 2008 show that the authorities continue to violate elementary rights of man and citizen and move in a direction opposite to that of democracy”³².

In 2009-2010 the successful investigations of cases of corruption in the judiciary become more consistent, however, according to some specialists, this lead to even worse consequences. The Chairman of the RA Chamber of Advocates Ruben Sahakyan noted that “the judges have begun to take fewer bribes, however this does not lead to successful implementation of justice”³³. According to him, “everybody is afraid that if the punishment they give is mild, if an offence is qualified as mild rather than serious, people will think the judge has taken a bribe”. “Many judges are afraid for their own skin, as a result they punish people more severely than it should be done”, said Ruben Sahakyan.

According to Bertelsmann Transformation Index Report, an international ranking of 128 developing and transition countries, which is assessing the political and economic status of

²⁷ <http://www.hra.am/am/events/2010/03/12/sasun>

²⁸ <http://www.hra.am/am/events/2010/03/12/sasun>

²⁹ <http://www.azatutyun.am/content/article/2275036.html>

³⁰ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

³¹ <http://hetq.am/am/politics/march-1-32/#more-44472>

³² Ibid.

³³ <http://www.a1plus.am/am/social/2010/02/26/ruben-sahakyan>

each country as well as the political management performance, among the weaknesses of the judiciary system in Armenia are widespread corruption and general incompetence. The abuse of power among Armenian officials remains rampant and unchecked. According to the report abuse of power by Armenian officials is matched by the entrenched level of corruption within state institutions³⁴.

In this regard the report notes that civil rights are protection of civil rights in Armenia remains incomplete and far too arbitrary. Particularly, the report mentions several incidents of the state's blatant violation of civil rights, most of which were related to political issues, which have only reaffirmed the need for proper oversight by an independent judiciary. The sole exception, according to the report, has been the appointment of a RA Human Rights Defender, who has actively challenged the state's lack of protection and violation of civic liberties.

In 2010 there had been media publications alleging that Armenian national Sargis Poghosyan, who was persecuted by the court of the state of Virginia, USA, was arrested not on the basis of court decision, but on the basis of a written order given by the Deputy Prosecutor General. According to media reports, during the court hearings of the lawsuit submitted by several human rights organizations against the Prosecutor General's Office, the judge who had previously worked in the Prosecutor General's Office, often did not allow the claimants to ask questions to the representatives of the Prosecutor's Office, "especially when it was clear that they would not be able to give a convincing and comprehensive response"³⁵. The lawsuit was ultimately rejected, which raised concerns that "such a decision by the court could become a precedent, and if the case is rejected, the fact that a person can be kept under detention for longer than 72 hours without a court order, could be legalized, though this contradicts the RA Constitution". Claimant organizations, including Helsinki Committee of Armenia, Civil Society Institute, Vanadzor Office of Helsinki Citizens Assembly, appealed against the court decision. The media article on this topic was named "Constrained Judge", pointing to the fact that the judge had previously worked in the Prosecutor General's Office, therefore he felt constrained and unable to be impartial in the case.

³⁴ <http://www.bertelsmann-transformation-index.de/148.0.html?&L=1>

³⁵ <http://www.lragir.am/armsrc/right43009.html>

FOSTERING CIVIL SOCIETY SYSTEM

The RA is a signatory to all essential global and regional (European) anti-corruption conventions. The Council of Europe Civil Law Convention on Corruption was adopted by Armenia and came into force in May 2005, the Council of Europe Criminal Law Convention on Corruption - in May 2006, and the United Nations Convention against Corruption in March 2007. In January 2004 Armenia became a member of GRECO and in June and December of the same year the Armenian National Assembly ratified the Council of Europe Civil Law Convention on Corruption and the Council of Europe Criminal Law Convention on Corruption, as well as the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption.

Among the obligations stemming from the UN Convention against Corruption (UNCAC) are transparency and participation of the civil society in the fight against corruption, which is fixed by the Article 13 of the UNCAC and other provisions. In the provisions referring to the evaluation mechanism of the UNCAC implementation it is stated that this mechanism should be “transparent, efficient, interference-free, open for wide participation and unbiased”.

In September 2009 Armenia signed the Astana Statement on Good Governance and Fighting Corruption of the Organization for Economic Co-operation and Development (OECD).

Within the framework of the European Neighborhood Policy Action Plan approved by EU and Armenia, the fight against corruption is one of the priority areas.

In all of the above-mentioned documents the decisive role of the civil society control over state institutions is emphasized, since, as international organizations have noted, and local NGOs have warned, the main obstacle to Armenia’s economic, political and social development is corruption³⁶.

Armenia is currently in the course of implementation of a five year program of good governance and public administration improvement (2007-2012), and the fight against corruption is among its components. The new Anti-Corruption Strategy has come to replace the old one, which was considered implemented by September 2007.

The following steps critical for fighting corruption have been suggested:

- To ensure the availability of detailed information on the course of implementation of the ENP Action plan;
- To raise the efficiency of the work of anti-corruption bodies in order to ensure the fulfillment of Armenia’s international obligations;
- To ensure constant and regular communication between state anti-corruption and other bodies, donor organizations and civil society organizations;
- To create mechanisms of separation between business and politics and mechanisms of monitoring that process;

³⁶ <http://www.osce.org/yerevan/26617.html>

- To raise the aid coordination effectiveness of the international aid provided to Armenia in order reduce the level of corruption;
- To ensure proper and unbiased monitoring of anti-corruption measures, combining official and alternative sources;
- To implement appropriate measures in case of non-fulfillment of the international commitments assumed by Armenia;
- To demand strict control over the process of declaration of property and possessions by high level officials, to focus special attention on the issue of political corruption, which so far has been completely ignored by Armenia's government;
- To develop a model of periodic trainings for policemen, prosecutors and judges on issues of corruption and money laundering;
- To create guidelines for public servants on conflict of interest;
- To reduce the number of officials enjoying immunity from persecution: particularly to remove the immunity of prosecutors and judges, candidates to National Assembly, members of the Central Electoral Commission, local and territorial electoral committees, candidates for mayors' offices and council of elderlies' elections, as well as to reduce the role played by high level officials (President of the Republic, Prosecutor General) in these processes;
- To collect and evaluate information regarding breaches of code of ethics in the field of state government, in order to make necessary improvements and adjustments on the basis of that information;
- To apply the principle of rotation in those spheres of state government which contain corruption risks;
- To develop code of conduct for state government officials and organize trainings on the basis of the code of conduct.

During 2010 the Draft Law "On Public Service", which defines a mechanism for financial accountability of officials, was developed and sent to the National Assembly. According to this law the officials need to complete declaration forms, new both in form and content, which will be posted on the web-sites of the corresponding institution, in order to be constantly accessible for the public³⁷.

By December 2010 the draft law was still not adopted by the National Assembly.

According to the "Global Corruption Barometer" survey implemented by Transparency International Anti-Corruption Center, half of Armenia's citizens believe that in 2007-2010 the level of corruption in Armenia has been on the rise. Moreover, 53 % think that the anti-corruption measures of the government are inefficient³⁸, and this is in spite of the fact that the Control Chamber of RA National Assembly has revealed major abuses in different state bodies, information about which is often published in the media.

³⁷ <http://hetq.am/am/society/gevork-kostanyan/#more-28486>

³⁸ <http://www.azatutjun.am/content/article/2243972.html>

The larger the role of NGOs in the fight against corruption, the more important it is to create a favorable field for their activities. However, human rights organization “Freedom House” evaluates the regulations for establishing an NGO as “difficult and time-consuming”. According to “Freedom House” more than 3000 NGOs registered in the Ministry of Justice are not active in reality. The trade unions are especially weak and inactive, even though Armenia’s Constitution formally grants the right to form trade unions³⁹.

The report “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective” claims that the amendments to the Law “On Public Organizations” have been developed without proper discussions and consultations with the civil society, while the only objective of these amendments should have been “the creation of mechanisms of control for NGOs”⁴⁰. As a result under the pressure of civil society and international community the process of amending the law was temporarily halted. The efforts of the civil society in this direction continued also in 2010. In February of the same year several NGOs demanded from the RA NA Standing Committee on Protection of Human Rights and Public Affairs to withdraw the draft law⁴¹. This demand was based on the argument that the draft presents a major threat to development of the civil society in Armenia. The petition signed by 278 NGOs and 74 individuals stated that “Giving the bureaucrats control over the civil society will lead to destruction of democratic processes in Armenia, replacing them by an imitation of democratic processes, which ultimately can lead to a return of neo-Bolshevism”⁴².

The Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia published by the EU mentions important steps in the fight against corruption, which are not limited to the realm of legislation. In October 2009 the Anti-corruption Strategy and Anti-corruption Measures Program for 2009-2012 were adopted, which included establishing a system of monitoring and evaluation. Both international organizations and local civil society organizations took part in the preparatory work for this. The Government has developed a Concept paper of political processes transparency, which was aimed at regulating the conflict of interests and creating a public registry for declaring the property and incomes of high-level officials and persons related to them. Steps were taken in order to organize anti-corruption training courses for civil servants. In 2009, mostly with the help of international organizations, such programs as the “Anti-corruption Education Summer Camp”, “Monitoring of Armenia’s Notary Offices’ Activities”, “Fight against Corruption in Street Traffic regulation” were carried out.

However, the Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia states that throughout 2009 the studies and reports by international organizations did not register a fall in the actual levels of corruption⁴³.

The role of the civil society control is particularly important in the field of public sector procurement, which is confirmed by the Armenian legislation. In particular, according to the Articles 3,6 and 16 of the Law “On Procurement”, civil society organizations can be involved as observers in the process of procurement and receive relevant information, if

³⁹ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

⁴⁰ “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective”, November, 2009, p.4

⁴¹ <http://www.a1plus.am/am/politics/2010/02/26/aram-safaryan>

⁴² <http://www.a1plus.am/am/politics/2010/02/26/aram-safaryan>

⁴³ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p. 4

this information does not contain state secrets. And according to the June 5, 2008 RA Government Decision representatives of civil society organizations can take part in the work of the body responsible for procurement control and investigation of complaints regarding procurement.

However, according to the Transparency International Anti-Corruption Center's report "European Neighborhood Policy: Monitoring Armenia's Anti-Corruption Commitments" the procurement sphere does not receive the necessary attention from the civil society institutions⁴⁴. According to the RA Ministry of Finance there are only 6 civil society organizations, which time after time are dealing with issues of procurement, and in case of 5 out of 6 there is no data available regarding the monitoring they had carried out. At the same time states that during its monitoring which had been carried out for several years it has not met any obstacles on the part of officials dealing with procurement⁴⁵.

According to the 2010 Index of Economic Freedom published by the Heritage Foundation and Wall Street Journal, Armenia's economic freedom index is 69.2, and it occupies the 38th place in the world with regard to economic freedom⁴⁶. Compared to the previous year it has declined by 0.7. In the European region Armenia is 21st among 43 countries, which is above the global and regional average. According to the report, during the latest decade, Armenia has implemented important reforms in several sectors of the economy, and as a result the incomes have risen and poverty has been reduced, leading to macroeconomic stability.

However, the widespread corruption and the weak protection of the property rights continue to hold down the general level of economic freedom in Armenia. Complicated bureaucratic procedures and arbitrary decisions of state officials fuel corruption. The slow pace of structural reforms also inhibits the increase of economic production base.

According to Transparency International's statement of December 9, 2010, which quoted the data of the Transparency International's Corruption Perceptions Index (CPI) published in October of the same year, Armenia's CPI score diminished⁴⁷. From 2007 a slow and gradual deterioration has been registered. Another index published on the same date - the 2010 Global Corruption Barometer is not favorable for Armenia either. According to these data only 15 % of the surveyed thought that the level of corruption in the country had diminished and only 27 % thought that the Government's anti-corruption measures were effective. According to the respondents the most corrupt field is education (by the way on the last working day of 2010, on December 30 the "Comprehensive Program of Activities for 2011-2012 to Fight Corruption in the Education System" was approved, which according to sources from the Ministry of Education and Science had gone through all the phases of public discussion⁴⁸. Transparency International also makes a reference to the "governance and anti-corruption" indicator from World Bank's Worldwide Governance Indicators and "freedom from corruption" indicator of the Heritage Foundation's Index of Economic Freedom, as well as to the "Freedom House" Corruption Ratings, which also register deterioration of the situation with regard to corruption.

⁴⁴ "European Neighborhood Policy: Monitoring Armenia's Anti-Corruption Commitments", Transparency International Anti-Corruption Center, 2010, Armenia, pp. 48-49

⁴⁵ "European Neighborhood Policy: Monitoring Armenia's Anti-Corruption Commitments", Transparency International Anti-Corruption Center, 2010, Armenia, pp. 48-49

⁴⁶ www.heritage.org

⁴⁷ <http://www.transparency.am/news.php?l=am&id=322&inside=1>

⁴⁸ <http://hetq.am/am/society/edu-7/#more-46532>

IMPROVEMENT OF CIVIL SERVICE

The RA is involved in the program Istanbul Anti-Corruption Action Plan, which was initiated by the Organisation for Economic Co-operation and Development (OECD) for 8 former Soviet Union countries. In the suggestions referring to Armenia there is a group of suggestions titled “Civil service transparency and financial control”. The majority of these suggestions are consistent with other international obligations undertaken by Armenia (see Section “*Fostering Civil Society System*”), such as GRECO, which provides that a clear and transparent accountability mechanism of corruption prevention and prosecution should be in place.

Improvement of civil service is also among other conditions provided by the international obligations undertaken by Armenia. International organizations emphasize that despite certain improvement in the field of good governance and anti-corruption, “serious challenges continue to exist, including the legislation regulating conflict of interest of state officials”⁴⁹.

Reform of the system of civil service is implemented within the framework of cooperation between Armenia and EU, which aims at harmonizing the systems of civil service of Armenia and EU member states.

In 2009 the President of Armenia established a working group on civil service reform. The reforms envisage creation of a Code of Ethics for Civil Servants, improvement of mechanisms and procedures of recruitment in the civil service system, training and re-training of state servants. The work on the program of the reform was set to be finished by June 2010⁵⁰.

However, this deadline has passed long time ago, and even by December 2010 the program was still being prepared.

The head of the Armenian Union of Civil Servants Vache Kalashyan stated in late 2010 that “everything has stayed on the level of project preparation”.

The problem is that improvements in the field of civil service need to follow a reform of the public service, for which the adoption of the Law “On Public Service” is a necessity. The law has been adopted by the National Assembly of Armenia in the first reading, but it has been sent back in order to be amended and reworked.

According to the head of the Armenian Union of Civil Servants Vache Kalashyan, it is the provisions referring to political officials that are the main subject of concern. According to the expert, these issues are extremely urgent and need regulation; however they need to be regulated by a completely different law. In order to maintain personnel stability both political officials and civil servants need legal protection, however this protection should be provided not by the same law, but by different laws, presupposing differing rules of conduct. In spite of that, the Law “On Public Service” adopted in the first reading includes also provisions referring to political officials.

⁴⁹ <http://hetq.am/am/finances/hamashxarhayin-bank/#more-28701>

⁵⁰ <http://www.aysor.am/am/news/2009/10/14/civilservarm/>

There have always been concerns about domination of civil service by political parties, which were voiced after a Government session in May 2010 by Manvel Badalyan, the Chairman of the Civil Service Board of Armenia. "I would be happy, if being a member of a political party would be prohibited for civil servants, as it is the case in other countries", Badalyan told the media⁵¹. Using a language that is stronger than that of the representatives of the civil society, he compared state institutions to "stock exchange operated by political parties"⁵².

Next year in 2011 it will be the 10th anniversary of the civil service system in Armenia. According to experts, during these years the system in Armenia has progressed, however, apart from domination by political parties, it faces other challenges of institutional development, particularly in the field of attestation⁵³.

According to experts, before Armenia's civil service system can be harmonized with the civil service systems of EU member states, it has to fulfill its primary mission, i.e. provide a capacity for qualified and adequate decision-making⁵⁴.

In order to reach this goal, the following measures are suggested:

- To improve the competition and attestation, to ensure the confidentiality of the names of attestation participants, to abandon the practice of face to face interviews, to develop new mechanisms of assessing the work of civil servants;
- To develop and put into practice stricter criteria of selection of attestation commissions, thus ensuring a higher level of expertise and preventing conflict of interest;
- To define clear criteria of selection of competition winners and advancement of civil servants based on attestation;
- To develop and put into practice code of conduct of state officials, taking into account the conflict of interest.

From the measures stemming from GRECO suggestions the most important are the creation of guidelines on conflict of interest for state officials, as well as the implementation of the principle of rotation of civil servants in the administrative offices that carry corruption risks, reduction of the appropriate value of presents accepted by civil servants (which also have to be subject to mandatory declaring) to the level that would exclude the risk of bribery, the development of public administration guidelines, etc.

According to the assessment given to Armenia's state officials by the "Freedom House" "bribes and nepotism are in general characteristic for state officials"⁵⁵.

According to Transparency International's Global Corruption Barometer survey, state servants are among the top five categories rated as the most corrupt groups⁵⁶ (see Section "Fostering Civil Society System").

⁵¹ <http://www.slaq.am/am/news/24566.htm>

⁵² <http://hetq.am/am/society/m-badalyan-2/#more-44084>

⁵³ <http://www.armradio.am/arm/news/?part=pol&id=40505>

⁵⁴ <http://www.armradio.am/arm/news/?part=pol&id=40505>

⁵⁵ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

⁵⁶ <http://hetq.am/am/society/transparency-2/#more-44666>

According to the RA Law “On Civil Service” the appointment and career advancement of civil servants takes place through attestation and competition announced for vacant office. The competition for vacant offices of higher and senior civil servants is organized by the Board of Civil Service of Armenia (BCS), while those for lead and minor offices are organized by the administrative staff of the respective bodies. One third of the members of competition and attestation commissions are representatives of the BCS, one third represent the corresponding office, and one third represent academic and educational institutions. The competition has two phases: testing and interview, the results are assessed by the commission members who vote for each applicant. The head or the head of staff of the corresponding office make an appointment picking a candidate from the list of candidates who have passed the minimal requirements. Every civil servant has to go through attestation once in three years. Special attestation can be held based on a substantiated decision by the officer the civil servant works for. Attestation can take the form of checking documentation and interview, or test and interview. Members of the attestation commission vote for each civil servant undergoing attestation and report the attestation results to responsible officials of the respective office, who are qualified to take the final decision.

Though the law regulates these processes, local and international experts believe that there are pressures applied both on the BCS, as well as on the competition and attestation commissions, especially since the law does not regulate the final decision making on appointment and career advancement of the civil servant, which creates space for biased decisions. In Armenia there are numerous cases, when the competitions are won or attestations are passed not by the candidates that have the highest professional qualities, but by persons loyal or related to the head of the office.

Time after time reports appear in the media about civil service competitions, which reveal the obviously biased and predetermined nature of these competitions, when a candidate who has hardly passed the testing phase with a minimal score, becomes the winner of the competition as there is an order to “pass him through” from above⁵⁷. The size of the bribe and the likelihood of pressures are rising parallel to the importance of the office. As a result an unqualified candidate can be appointed to a vacant office, or, on the contrary, a highly qualified candidate may end up not being appointed. There are also numerous cases of abuse of power by the civil servants during elections.

The law is used in its full strength against those candidates or state servants who have pro-opposition political views. Their political views or even sympathies can become a cause for being fired. Such reports in the media were particularly numerous after the presidential elections of 2008⁵⁸.

On June 24, 2010 the National Assembly passed in the first reading the Draft Law “On Public Service”. Different groups in the society have perceived and interpreted this fact in different ways. Civil society has expressed concern regarding the fact that the law includes provisions that refer both to public servants and political officials. At the same time government representatives, who interpreted this as a sign of progress, consider as one of the strengths of the law that not only civil servants but also the president of the Republic, prime-minister, ministers, the chairman of the National Assembly, and National Assembly members are considered public servants, therefore they are also covered by the

⁵⁷ http://tert.hrparak.am/hodvac.php?h_id=4731

⁵⁸ European Neighborhood Policy: Monitoring Armenia, Azerbaijan and Georgia’s Anti-Corruption Commitments, Transparency International Anti-Corruption Center, 2010, Armenia, p.59

regulations referring to the ethics of public service⁵⁹: These regulations envisage creation of ethical issues commissions in all state bodies, as well as a commission dealing with ethical issues concerning high level officials, including declarations of property, incomes and financial reports. Responsibility for ethics violations is also envisaged. It is suggestive that these commissions will be striving to investigate issues of ethics referring to such high level officials as the President of the Republic, the chairman of the National Assembly and the prime-minister. The claim of the draft supporters that it is possible to ensure institutional independence of this commission raises questions.

⁵⁹ <http://hetq.am/am/society/gevork-kostanyan/#more-28486>

HUMAN RIGHTS: CURRENT ACTIVITIES OF THE HUMAN RIGHTS DEFENDER, PROPERTY RIGHTS

In the field of human rights Armenia has international commitments as a signatory to the following treaties: the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. Armenia has also signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Armenia has also signed the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, according to which the state is obliged to ensure the accessibility of information on environment as well as public participation in decision-making on environmental issues.

In the field of human rights the following suggestions are made:

- To develop public awareness and human rights education programs, in order to ensure tolerance, respect for human rights, respect of individual's dignity in the Armenian society;
- To raise the prestige of the Human Rights Defender as an institution that should play one of the most important roles in the society;
- To ensure the fulfillment of Armenia's international commitments, including fulfillment of these commitments the level of local self-government bodies;
- To admit publicly the importance of human rights activists and human rights organizations for development of democracy in the country;
- To implement an unbiased investigation of cases of attacks against human rights activists and to bring those responsible for such acts before the court;
- To create an atmosphere favorable to creation of trade unions, to raise the importance of actually existing organizations in workers' rights advocacy;
- To develop procedures of public access to environment-related information, and public participation in environment-related decision-making;
- To ensure the broadest possible public participation in decision-making on environment-related issues.

Armenia has started periodic cooperation with the EU on human rights since 2009. In this respect the EU attaches extreme importance to the institution of the Human Rights Defender, and raising its role in the political system of the country and in the field of human rights advocacy. According to the European Commission Staff Working Document on Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia the increase in the number of complaints received by the Human Rights Defender's Office shows a rise in the prestige of the institution⁶⁰.

⁶⁰ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy

In absolute figures the picture is the following: in 2009 the Human Rights Defender received 3783 complaints from 4683 persons, out of which 2363 were verbal complaints. Out of all these complaints 78 received positive resolution; as a result the violated rights of 378 persons were restored. In 2010 the Human Rights Defender received 4089 complaints from 5221 persons, out of which 2836 were verbal complaints. 123 complaints received positive resolutions, as a result the violated rights of 562 persons were restored. According to the HR Defender's 2010 Annual Report "Experience suggests that in 2010, as before, the majority of those submitting verbal complaints avoided submitting written complaints and sharing their personal data"⁶¹.

Based on the amount of complaints received by the HR Defender's office, the rights of citizens are most often violated by the police, courts, the Ministry of Labour and Social Affairs, the Municipality of Yerevan and the Ministry of Justice.

Since 2008 the institute of the Human Rights Defender is the national prevention mechanism, provided by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In late 2010 changes were made in the Law "On Temporary Disability" (see Section "Minorities, Vulnerable Groups, Gender Issues"). Changes were also made in the RA Labor Code. The changes, effective since June 24, 2010, to a certain extent improved the defense of the labor rights, but on the other hand, they contain possibilities for violations of the labor rights. Particularly, the employer can terminate the contract on the basis that the worker has reached the pension age, unless this is prohibited by the contract. The employer can take this circumstance into consideration before the contract is signed. As a result the employer can always avoid such situation, since usually it is the employers who dictate the provisions of labor contracts, even though according to the law these provisions are determined based on mutual agreement.

2010 was a year noted for a significant number of well-publicized cases of human rights violations, which have become so frequent and widespread that it might seem that society has stopped paying attention to such cases. In September the members of the Group of Public Observers who visited the Nubarashen penitentiary institution, found that RA citizen Sargis Poghosyan, without any legal basis, solely on the basis of an order given by the Prosecutor General, had been kept there for 28 days. According to the Constitution of the RA a person can be jailed only on the basis of a court decision. As of December 2010 Sargis Poghosyan was free, awaiting the arrival of the materials of the criminal case initiated against him in the USA. Before that human rights organizations had been trying to prevent similar violations, as the representative of the claimant had stated in mass media⁶². "If the court does not satisfy our claim, this will create a precedent for unlawful detaining of people based on prosecutor's orders", has said E.Marukyan. He reminded that the judge who presided over the case had previously worked in the RA Prosecutor General's Office, so in case the claims were satisfied, this would mean a decision against his former "boss". In other words, this case not only should prevent unlawful detentions of people in the future, but also is a test of independence of the courts from prosecutions (see Section "Independence of the Judiciary and Access to Justice").

⁶¹ RA Annual Report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2010 p. 10

⁶² <http://www.lragir.am/armsrc/right42353.html>

A peculiar way of assessing the level of protection of human rights was suggested by the RA Human Rights Defender Armen Harutyunyan in an briefing for journalists: “If you go out in the street and ask regular citizens if they feel protected in their interactions with state institutions, I am sure that 9 out of 10 would say they do not feel protected”⁶³. However, Armen Harutyunyan also claimed that he had registered positive trends in the field of human rights during the recent years⁶⁴.

As for Armenia’s citizens’ constitutional labor rights and liberties in the sphere of labor rights, issues of implementation and protection of these rights are regulated by Armenia’s labor legislation, which defines the state guarantees for person’s labor rights and liberties, defends the rights and interests of the employees and the employers.

In Armenia the employment rights are often violated not only as a result of breaches of laws, but also as a result of gaps and contradictions in Armenian labor legislation. As the Human Rights Defender of RA Annual report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009 mentions, according to the First Part of the Article 144 of RA Labor Code, there can be two types of overtime work: by the demand of the employee or by the agreement of both sides. According to the second part of the same Article the employer can involve the employee in overtime work only in exceptional cases, provided by the next article. The law does not define the cases in which overtime work may be allowed. The Labor Code also does not provide the procedure, which has to be used by the employer in order to determine the correspondence of the professional knowledge of the employee to the position occupied, while one of the bases of the employers’ right to terminate labor contract is the inadequacy of the employee to the position occupied or the work done, which is determined by the employer.

There are differences in the way the issue of overtime work and night shift work are regulated by RA Labor Code and the RA Law “On the Remuneration of Labor”.

Throughout 2009-2010 the most common violations of citizens’ labor rights included refusal by the employers to grant severance packages, to pay the sum of the severance package, failure to inform the workers properly about their dismissal, failure to provide information about the basis for dismissal, dismissing workers with violations of the law.

In 2009, and to a lesser extent in 2010, both the Human Rights Defender’s Office and human rights organizations received numerous complaints regarding violations of the right to free movement of those traveling from the regions to Yerevan on the days when opposition rallies were held in the capital. On these days previously announced transportation schedules are breached, the regular work of public transportation from the regions to the capital is sabotaged. Often, without offering any explanation, the police prohibit the drivers to work on the route, or the drivers themselves, according to their own words, receive “a verbal order from above” not to transport passengers, especially during the first half of the day.

Both civil society and political opposition have voiced concerns about the country’s failure to comply with the four Resolutions of the CoE Parliamentary Assembly regarding Armenia. In December 2010 the First President of Armenia Levon Ter-Petrosyan, who leads the opposition Armenian National Congress (ANC), sent letters to the Chairman of the European Council, the EU structures of Foreign Affairs and Security Policy, as well as

⁶³ <http://www.tert.am/am/news/2010/12/10/ombudsman/>

⁶⁴ <http://www.tert.am/am/news/2010/12/10/ombudsman/>

Human Rights Office suggesting to make serious efforts in order to ensure the compliance of Armenia's government with the demands expressed in the four latest PACE Resolutions on Armenia and EU Presidency's statements of March 4 and 12, 2008 and March 10, 2010. Several issues have been highlighted, particularly the existence of political prisoners in Armenia, necessity for unbiased investigation of the murders that took place on March 1, 2008, the refusal to provide frequency to "A1+" TV company, violation of the citizens' right to peaceful protests⁶⁵ (see Sections "*Independence of the Judiciary and Access to Justice*", "*Media freedom, Rights of Journalists*" and "*Freedom of Assembly*").

According to an assessment by the "Freedom House" in Armenia "citizens have the right to own private property and establish businesses, but an inefficient and often corrupt court system and unfair business competition hinder such activities"⁶⁶.

Currently the majority of the cases submitted to the European Court of Human Rights is related to violations of property rights.

On June 23, 2009 the European Court of Human Rights announced its first ruling on the issue of human rights violations, which were related to alienation of property situated in Yerevan, which was deemed necessary for the needs of the state and society. According to the European Court's ruling the rights of the owners were violated. However, the applicant demanded also a compensation of moral and material damage. The European Court postponed the ruling regarding the size of the compensation until receiving in written form the observations of the government of Armenia and the applicant.

According to a statement made by the Human Rights Defender it is important "to eliminate violations of property rights within the borders of the state, because in case the property rights are restored through international court's decision, both the state budget and the prestige of the country are suffering"⁶⁷.

The CoE Committee of Ministers has made a recommendation on this issue: "The respondent state needs to ensure that there is a domestic advocacy tool for all potential complaints to apply to a competent legal body on the national level, a tool which can be used also for current complaints. Such a fast and efficient tool would allow receiving compensations on the national level".

In early 2010 the trade center "Olymp" was ejected from its own property on Abovyan 4 street in the center of Yerevan. In 2007 this territory was proclaimed "eminent domain" by a government decision and it was acquired by the company "Avo FMH" LTD which already owned the adjacent territory. The latter company refused to offer compensation to the previous owner and appealed to the court with the demand to terminate the property rights of the "Olymp" trade center and to evict them from the area. As a result of eviction and property seizure of the shop of "Olymp", was situated at the spot stopped working for half a year, which resulted in huge financial losses.

"The Law 'On Alienation of Property for the Needs of Society and State' serves the interests of a small circle of people and the whole government and judicial system of the country is put to work for that purpose", has announced in the media the owner of the

⁶⁵ <http://www.a1plus.am/am/politics/2010/12/6/ter-petrosyan>

⁶⁶ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

⁶⁷ RA's Human Rights Defender's Annual report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009, p. 98

“Olymp” shop⁶⁸. Besides, the RA Constitution and international norms state that property alienation cannot lead to groundless material losses for the owner, and the compensation has to be adequate. By the end of 2010 there were numerous cases in process submitted by “Olymp” to various instances.

A fire that took place in central Yerevan in November 2010 started a new set of cases related to human rights. Families living in 14 private houses remained without a home: forced to send the women, children and the elderly to stay in the houses of relatives, the men of these families spent the nights in tents pitched on the spots of their burnt houses⁶⁹. People feared that an attempt to free territory for building elite housing under the name of “eminent domain”, as it had been done before, without an adequate compensation. In the last days of 2010 they met with the new Mayor of Yerevan Karen Karapetyan, who promised that they would be transferred to rented apartments, and the rent would be paid by the Community of Yerevan⁷⁰.

Citizens have addressed complaints regarding property rights violations to the Human Rights Defender of RA. In 2009 there were 56 such complaints, in 2010 their number reached 84. “This means that the concerns, which have been voiced in the Human Rights Defender’s previous reports have been ignored” - the Human Rights Defender of RA Annual report states, repeating word for word the 2009 Annual Report⁷¹.

Concerns continue to be voiced that the compensations for properties alienated in the “paramount public interests” are inadequate. In most cases this happens because of violations of the procedure of negotiations on the sum of the compensation for alienated property. As a result the price suggested by the buyer becomes the amount of the compensation and the objections of the receiving side are not taken into account.

Many property owners have tried, without success, to challenge in the courts the references to “eminent domain”, which have been made in corresponding decisions of the government. They claimed that under the name of “eminent domain” a transfer of property rights from one private person to another is done, with the participation of the Armenian government. Moreover, even though usually the basis for declaring certain territories “eminent domain” is realization of certain construction projects, no information is made public on projects implemented on the territories in question, including the financial resources and sources of financing. “In essence, the realization of construction projects, which is presented as equal to the concept of public interest, aims at justifying arbitrary redistribution of property.”⁷²

Report of several international organizations, as well as the Annual Report of the RA Human Rights Defender have registered cases of violations of the rights of persons summoned to the police stations, detained, later arrested: particularly, they are often held in the location of detention longer than it is prescribed by law. The observer body has discovered in the course of monitoring of penitentiary institutions that other rights are also violated in these institutions (see *Section “Independence of the Judiciary and Access to Justice”*).

⁶⁸ <http://www.panorama.am/am/law/2011/01/18/olimp/>

⁶⁹ <http://www.aravot.am/am/articles/society/86129/view>

⁷⁰ <http://www.a1plus.am/am/social/2010/12/24/kentron>

⁷¹ Human Rights Defender of RA Annual report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009, p.14

Human Rights Defender of RA Annual report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009, p.15

⁷² <http://www.hra.am/file/sepakan-pasht.pdf>

In 2010 there was an unprecedented rise in cases of violence in the military and in police stations, which in many cases lead to a lethal outcome.

As the civil society expressed its discontent with the failure to investigate the circumstances of the death of Levon Ghulyan in a police station in 2007, in April 2010 Vahan Khalafyan, 24 years old, suspected of theft by the police, died in a police station in the Kotayq region. According to Khalafyan's family and human rights activists his death was a result of violence. A police officer was sentenced to 8 years in jail, however according to Khalafyan's family, the real murderer is not the person convicted, but a higher level officer, who has not received proper punishment.

2010 was noted for high number of cases of violence in the military. Several cases of murder, or, according to the official version, suicide took place in the military. A serious scandal emerged as a result of a YouTube video showing degrading treatment of two soldiers by a high level officer. In July 2010 in one of the army units 6 men died, and a month later in another army unit 4 died and 4 were wounded. As a consequence of these cases the RA Ministry of Defense had to admit that an unhealthy atmosphere exists in the military and that the cause of such cases are non-statutory relations that exist in the army.

Taking into account the increase in the number of deaths of servicemen in the military, the Vanadzor Branch of the Helsinki Citizen's Assembly initiated a court case against the Ministry of Defense of Armenia in fall 2010, demanding information on the cases of deaths of servicemen, including those serving on the basis of draft and those serving on the basis of contract. Based on the Law "On Freedom of Information" the organization had requested information from the Minister of Defense Seyran Ohanyan, but the request was refused. As the court also refused the request, the head of Vanadzor Branch of the Helsinki Citizen's Assembly Arthur Sakunts voiced his negative reaction in the press: "In the explanatory part of the court ruling, cases of deaths in the military are classified as secret information, however if these cases are considered extraordinary, the definition of the responsibility of the Ministry of Defense for each extraordinary case remains without control"⁷³. Thus, the military are put outside of civic control, which contradicts the Constitution.

International and Armenian human rights organizations believe that conditions most likely to lead to torture are created in the course of preliminary investigation in the police stations, as well as in penitentiary institutions (see Section "*Independence of the Judiciary and Access to Justice*").

Though in the course of 2010 four prisoners sentenced for organization of mass disorders in connection to the March 1 affair were released, however, according to opposition, eight political prisoners remain in prison (see Section "*Independence of the Judiciary and Access to Justice*").

Experts evaluate positively the decriminalization of defamation and insult in 2010. However, it is the RA Criminal Code, which regulates "the false denunciation", definition of which virtually coincides with that of defamation, something which gives wide opportunities to initiate criminal proceedings against media outlets and journalists⁷⁴. "In this field a matter of concern is the large sum of the compensation that has to be paid by the media

⁷³ <http://www.lragir.am/armsrc/right41108.html3>

⁷⁴ Helsinki Committee of Armenia Human Rights NGO "Observer: Human Rights in Armenia", # 1, 2011, p. 4

outlet for causing damage to reputation” ⁷⁵(see Section “*Media Freedom, Rights of Journalists*”).

During the 2009 Community elections in Yerevan Arshaluys Hakobyan, an observer for the Helsinki Committee of Armenia was expelled from the polling station. After submitting a complaint he was summoned to the police station. The policemen who had brought the summoning notice arrested him on the charge of resisting the police. Later Arshaluys Hakobyan declared that in the police station he had been beaten and tortured, however his declarations, even those made in the court, remained without a proper investigation.

⁷⁵ Helsinki Committee of Armenia Human Rights NGO “Observer: Human Rights in Armenia”, # 1, 2011, p. 4

MINORITIES, VULNERABLE GROUPS, GENDER ISSUES

Armenia has joined several international treaties that contain provisions referring to women's rights, including the UN Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the UN Convention on the Political Rights of Women, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, the Convention on Action against Trafficking in Human Beings, as well as other treaties concluded within the frameworks of the Council of Europe and the International Labor Organization.

In 2003 Armenia joined the European Social Charter, which fixes social rights without discrimination with regard to gender.

Armenia has stated its support for several CoE documents including: the 1997 Declaration of Equality Between Men and Women as Fundamental Criterion of Democracy, Gender Mainstreaming (1998), "Gender Equality: a Core Issue in Changing Societies" (2003), Declaration on Implementation of Gender Equality (2009), the 2010 CoE Parliamentary Assembly Resolution 1706(2010)¹ "Increasing women's representation in politics through the electoral system", and though they do not have a compulsory nature like treaties and conventions, they create certain commitments and represent certain guidelines for states.

Based on these commitments the 2004-2010 Republic of Armenia National Action Plan on Improving the Status of Women and Enhancing Their Role in Society was developed. However, Armenia does not have an efficient mechanism for coordinating the implementation of this program, which would also correspond to the demands stemming from RA's international commitments.

Based on the priorities accepted in the course of the reforms and the current situation, the following suggestions are made:

- To encourage the balanced presence of women in the political and social life through implementation of the legislation and international commitments;
- To develop and implement programs aimed at defense of women's rights and ensuring their full participation in the social and political life;
- To ensure the efficiency of the system of quotas, which is provided by the RA Electoral Code;
- To create special measures of ensuring the factual equality between women and men;
- To develop and adopt legislation on domestic violence;
- To identify and eliminate the causes of trafficking;
- To create sufficient number of asylums for victims of trafficking and domestic violence.

In Armenia there exists no comprehensive law that would regulate all issues related to gender equality. Draft laws "On Ensuring Equal Rights and Equal Opportunities between

Women and Men” and “On Fight Against Domestic Violence” are currently in the stage of development; by the end of 2010 they had not become acting laws.

The principle of gender equality is reflected in the Point 1 of Article 14 of the Constitution of the RA: “All human beings shall be equal before the law (...) discrimination based on sex (...) shall be prohibited”.

The RA Labor Code, adopted in 2005 and the RA Law “On Labor Inspection” regulate the spheres of labor and employment, taking into account the gender factor and prohibit gender based discrimination.

Though the principle of legal equality of genders is fixed in the RA Constitution and Armenia has joined the above mentioned international documents and undertaken certain commitments, women, who constitute 51.8 % of the population and 60 % of persons with higher education are alienated from the systems of management and decision-making of the social, political and economic spheres. The intellectual potential and organizational capacities of women are not fully incorporated in the process of democratization and development of the Armenian society.

Though according to the RA Electoral Code of the minimum quota for proportional lists of parties for elections has been defined at 15 %, as a result of the elections of 2007 only 9.2 % of the deputies of the National Assembly were women. In 7 out of 12 standing committees of the National Assembly there are no women at all.

No steps have been undertaken in the country aimed at ensuring balanced representation of women and men in the legislative branch of government. This is in spite of the fact that in 2009 at the 43rd session of the UN Committee on Elimination of Discrimination against Women a call was made upon Armenia to discuss the possibility of raising the suggested quota over 20 %. The CoE Parliamentary Assembly Resolution 1706(2010)¹ adopted in January 2010 urges the countries that have a proportional electoral system to discuss not only raising the quota for women (in the best case up to 40 %), but also defining a strict order of the party lists, where one male candidate should be followed by one female candidate. However, the RA Electoral Code defines a quota of 20 % for women, and in the upper ten of the list there is a minimum of only one woman, thus a norm that is discriminatory in terms of gender has come into existence.

Moreover, according to the same Electoral Code the gender quota for the elections to the Council of Elderly in Yerevan is only 10%.

The levels of representation of women and men in the system of executive power remain unbalanced. According to data obtained in 2011, out of 18 ministers only 2 are women, out of 65 deputy ministers there were only 6 women. There are no women among the *marzpet* (regional governors) and out of 21 deputy regional governors only 1 is a woman. In higher level offices of civil service women comprise only 11 %. Lack of gender balance exists among the heads of municipalities and local self-government bodies. There are no women among 48 city mayors, only 1 deputy mayor out of 51 is a woman.

Unequal representation of men and women on the level of decision makers is an obstacle to social justice and further democratic development of the country.

The level of representation of women in rural community self-government is extremely low. From 924 heads of rural communities only 24 or 2.8% are women.

In the councils of elders in the rural communities the representation of women is 6.3 % (341 out of 5002), in the councils of elders of towns the representation is 3.6 % (20 out of 548), in the Yerevan Council of Elderly - 9.6 %.

The report “Local Self-Government Reforms in Armenia in 2009”, prepared by the Communities Finance Officers Association, and funded by the Initiative of Local Self-government and Civil Service Reform of the Open Society Institute, also mentions the low level of representation of women in the local self-government bodies, stressing that this is equally true for both for the capital and for the regions.

According to expert Jemma Hasratyan in Armenian society there is no culture of perception of gender equality. Though the UN Committee on the Elimination of Discrimination against Women has noted that gender stereotypes are widespread in the country in its observations on all 4 periodic reports submitted by Armenia, so far the government has not undertaken steps for overcoming them and developing the culture of gender respect.

It is not only a large portion of the society that is refusing to admit that discrimination against women exists in Armenia, but also some state officials.

In the field of gender legislation it can be said that regress happened in Armenia, at least with regard to several laws.

By the end of 2010 there was a public outcry in connection with the initiative of the Government of the RA to make amendments in the RA Law “On Temporary Disability”. According to these changes, working pregnant women during the maternity leave were supposed to be paid for 100 days only, instead of 140 as it was provided before. As opposed to the older version of the law, this allowance was subject to taxation, and the base of the allowance could not exceed 150 000 AMD even if a woman had been receiving a much higher salary, though the previous law did not have such restrictions.

Working women, especially those who received high salaries considered this a violation of women’s rights and organized protests before the residences of the executive and legislative branches of the government. The law continued to be a subject of discussion even after the amendments in question were accepted, and even members of the National Assembly expressed opinions that in case there are new amendments in the future there should a re-calculation of allowance sums in order to compensate those women who suffered financial losses as a consequence of the law that came into power on December 1, 2010⁷⁶.

In the program of activities of the RA Government for 2008-2012 ensuring gender equality was fixed as one of the priorities, it was noted that the policy of the government “will be aimed at securing equal rights and equal opportunities for men and women in the social, political and economic spheres”.

According to the order NK-68-A by the RA President issued on May 6, 2009, among the priorities of implementation of the Armenia-EU ENP Action Plan it is planned “to continue the process of amendment and improvement of legal acts referring to gender equality”, to adopt the RA Law “On Guarantees of Equal Rights and Equal Opportunities for Women and Men” and legal acts necessary to ensure its implementation.

⁷⁶ <http://www.azatutyun.am/content/article/2258277.html> 24.12.2010:

In the beginning of 2010 the RA Government gave its approval to the Concept of Gender Policy and obliged the ministries interested to present to the RA Ministry of Labor and Social Affairs projects for gender-related policy in their fields of competence for 2010-2015, and in perspective these projects were expected to be submitted to the RA Government⁷⁷.

However, on the web-site of the Government of the RA and the Ministry of Labor and Social Affairs it was impossible to find the Concept paper, which was devoted to enhancing the role of women, including involvement of larger numbers of women in the electoral lists of parties.

According to an assessment by the OSCE, “though local legislation more or less provides equal rights for men and women, in reality men and women do not enjoy equal rights. Women are subject to all kinds of discrimination from employment discrimination to domestic violence. Thus, while existing on paper, the larger part of the legislation remains unimplemented”⁷⁸.

According to another report of the OSCE Office in Yerevan “Women empowerment and cooperation in Armenia with a focus on the Syunik region” another obstacle to enhancing gender equality is that the Government of Armenia has adopted the National Action Plan on Improving the Status of Women and Enhancing Their Role in Society in 2004-2010 without creating a national machinery and financial resources to implement the plan. The report notes that this has been addressed for several years in the analysis by CEDAW Committees and by many NGOs, “without any action taken by the government so far”⁷⁹.

“Women's achievements, experiences and conditions are made invisible and not even attainable for discussions or change, as there are no facts or figures to refer to. The only real reliable gendered figures appear to be the results from the elections which explains why these figures are debated and attract a lot of interest”⁸⁰.

In order to promote reporting on gender issues, as well as to overcome the prejudices and stereotypes existing in the society the OSCE Yerevan Office together with the British Council initiated and implemented a journalistic competition “Na/Ne”, awarding the best article and TV coverage on gender issues. The competition served its aim to a certain extent.

The report “Local Self-Government reforms in Armenia in 2009”, prepared by the Communities Finance Officers Association and the Initiative for reform of local self-government and civil service, concludes, based on official statistics, that “the level of representation of women in the elective bodies of local self-government remains low”. This is equally true for both the capital and the regions.

In 2009 the implementation of the “National Action Plan on Improving the Status of Women and Enhancing Their Role in Society in 2004-2010” continued. However, the amended draft law on equal rights and opportunities has not been adopted yet. At the same time, the draft law criminalizing domestic violence is still in stage of discussions. It is necessary to

⁷⁷ <http://hetq.am/am/politics/gende/>

⁷⁸ <http://www.osce.org/yerevan/20146.html>

⁷⁹ <http://www.osce.org/hy/yerevan/29606>, p. 6

⁸⁰ <http://www.osce.org/hy/yerevan/29606>, p. 6

adopt legislation on gender equality which would be aimed against domestic violence and would promote participation of women in political and economic life.

In the Human Rights Defender of RA Annual report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009 it is noted that during the year in question the Office of the Human Rights Defender did not receive any complaints.

The 2010 “Freedom House” report notes that domestic violence and trafficking in women and girls for the purpose of prostitution remain serious problems for Armenia⁸¹.

On October 1, 2010 Zaruhi Petrosyan, 20 years old, died after receiving a severe beating from her husband and mother-in-law. This case became a watershed in the struggle against domestic violence in Armenia. It raised huge public outcry; an initiative group of NGOs was created, which aimed at publicizing this case and following the criminal investigation. On November 25, the International Day for the Elimination of Violence against Women a protest action in remembrance of Zaruhi Petrosyan was organized. By December 2010 the court hearings on the case had not started yet.

Armenia has commitments to defend the rights of national minorities not only according to its own legislation, but also as an OSCE member state that has joined the Pact on Stability in Europe, Paris, 1995.

In principle Armenia has joined all international conventions on the rights of national minorities, which are successfully implemented in the legislation of the RA and in practical programs. These include the Universal Declaration of Human Rights, December 10 1948, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; the International Covenant on Civil and Political Rights, December 16, 1966; the Convention on the Rights of the Child, June 1, 1992; the Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948; International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973; 1965 Geneva International Convention on the Elimination of All Forms of Racial Discrimination; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992; Convention against Discrimination in Education, 1960; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984; Geneva Convention Relating to the Status of Refugees, July 28, 1951 and its October 4, 1967 Protocol; the CoE Framework Convention for the Protection of National Minorities, 1995 February ; the European Charter for Regional or Minority Languages, 1992.

Armenia has undertaken the commitment to ensure non-discriminatory attitude to the minorities, effective legal equality, promotion of culture, religion, language and tradition, as well as freedom of assembly, unions, expression, conscience and religion.

With regard to these issues, legislation of the RA has significantly improved, articles ensuring the rights of national minorities had been included in numerous legal acts. Apart from fixing the equality of everyone before the law the RA Constitution makes a special reference to the right of ethnic identity: “Everyone shall have the right to preserve his or her national and ethnic identity. Persons belonging to national minorities shall have the right to preserve and develop their traditions, religion, language and culture.”

⁸¹ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

National identity is not considered a pre-requisite for obtaining the citizenship of the RA. Persons who have acquired the citizenship of the RA in accordance with the law “On Citizenship of the Republic of Armenia” are considered citizens of the RA. Every person has the right to receive citizenship of Armenia, as prescribed by the law. According to the Point 1 of Article 20 of the RA Civil Code, adopted in 1998, “civil rights and responsibilities of all citizens are considered as equal”.

According to the RA legislation no information on national/ethnic belonging of a person is demanded in any sphere of political, economic, social, cultural life, no registration is made, with the exception of those cases when the citizen demands it, and in those cases the choice of ethnic identity is left to the individual. This is reflected in Point Z of Article 6 of the RA Government “On the Statute of the RA Passport System and the Description of the RA Citizen's Passport” (N 821, December 25, 1998). When a citizen of the RA is choosing his national belonging no proof is required.

Apart from these general principles that ensure the civic and political equality, norms which secure the equality of the rights of national minorities and prevent discrimination are reflected in numerous laws of the RA, which regulate the economic, cultural, educational, social life of the population of the RA. Thus, the Point 3 of Article 3 of the 1st Chapter of the RA Labor Code states “legal equality of the sides of employment relationships, regardless of their sex, race, nationality, language, origin, citizenship, social standing, religion, marital status and family situation, age, beliefs or opinions, belonging to parties, trade unions and NGOs, and other circumstances not related to the professional qualities of the worker”. In practice, when a person is admitted to work, no request on their national belonging is made. Article 9 of the RA Law “On Basis of Legislation on Culture” states that “taking part in the cultural life of the society on the territory of Armenia and implementing cultural activities is the inherent right of every person, irrespective of their nationality, race, sex, language, religion, beliefs, social origin, property or other status”. Article 4 of the RA Law “On the Rights of a Child” states legal equality of children, regardless of the nationality of their parents: “children have equal rights, irrespective of their nationality, race, sex, language, religion, social origin, property or other status, education, place of habitation, circumstance of birth, health or other circumstances, or those of their parents, stepparents, guardians or trustees”.

Provisions of a number of other RA laws are aimed at ensuring the culture of non-discrimination in different spheres of life. These include the RA law “On Bar” according to which, Article 29, “Discrimination of any kind on the basis of national origin, nationality, race, sex, language, religion, political or other opinions, social origin, property status or any other status shall be prohibited”. The RA Family Code also prohibits restriction of the rights of citizenship on the basis of nationality. According to Point 5 of Article 1 of the Code “any restriction of the rights of the citizens to marry and have family relations based on social, racial, national, linguistic or regional belonging is prohibited”. Discrimination on the basis of nationality is prohibited also by the RA Law “On Charity” and other laws. Among the laws striving to promote a society without discrimination there are also laws and legal provisions aimed at prevention of the use of insulting expressions with regard to persons belonging to national minorities or insulting a person on the basis of their nationality. The RA Laws “On Holding Assemblies, Rallies, Marches and Demonstrations”, “On Public Organizations”, “On Advertising” include provisions against “inciting national, racial, religious hatred” or “insulting expressions”. And Article 9 of the RA Law “On Parties” states that “establishment and operation of political parties, the objectives or activities of which are aimed at (...) incitement to national, racial and religious hatred, propaganda of violence and war, shall be prohibited”.

Several articles of the RA Criminal Code provide punishments for violating the legal equality of citizens and inciting national hatred between nationalities, Articles 143, 226, 226.1, 226.2, while Articles 392 and 393 provide severe punishments particularly for crimes against the humanity committed on the basis of “racial, ethnic belonging, political views and religion of civilian population” and for severe crimes such as genocide. Article 393 of the Criminal Code, entitled “Genocide”, starts with the description of crimes committed on the basis of ethnic belonging: “complete or partial extermination of a national, racial or religious group”.

The RA Law “On Genocide” contains a reference to protection of the identity of national minorities. Active protection and development of national minorities is also reflected in several internal laws of the RA: such components of ethnic identity as language, religion, culture, traditions are included in the provisions of the RA laws referring to national minorities. Thus, there is no prohibition for all citizens of the RA of organizing education on all levels in all languages and of receiving information in all languages. This means that the national minorities in Armenia can have educational institutions in their languages on all levels from pre-school to higher specialized education.

Positive steps protecting the identity of national minorities and encouraging multicultural environment exist in several RA laws, including the RA Laws “On Language”, “On the Rights of a Child”, “On Protection and Use of Immovable Monuments of History and Culture and Historical Environment”, “On Basis of Legislation on Culture”, “On Freedom of Conscience and Religious Organizations”, “On Holidays and Days of Remembrance of the RA”, “On Television and Radio”, as well as the Family Code, the State Program on Language Policy. Particularly, according to Article 1 of the RA Law “On Language”, “RA guarantees free use of the languages of national minorities on its territory”. The State Program on Language Policy stresses that the languages of the national minorities are an inseparable part of the linguistic culture of the RA and its asset. The program envisages “the use of the scientific and educational potential of the intelligentsia of a certain nationality in order to ensure the implementation of the right of the religious minorities to receive education in their own language”, “assistance to training and re-training of teachers of languages of national minorities”, as well as “analysis of the opportunities for creation of textbooks of the languages of national minorities development of a program of publication of textbooks”.

The languages of the national minorities of the RA can be used in the course of criminal and civil court proceedings and administrative relations.

According to Article 40 of the RA Constitution, “Everyone shall have the right to freedom of literary, aesthetic, scientific and technical creation, to make use of the scientific advancement and to participate in the cultural life of the society”. The RA laws do not contain any restrictions regarding the language of “literary, artistic, scientific and technical creativity”, and according to Article 8 of the Law “On Basis of Legislation on Culture”, which is aimed at protecting the cultural identity of the national minorities, “the RA encourages the preservation and development of the cultural identity of the national minorities living in its territory, supports through state programs the creation of conditions for preservation and development of their religion, traditions, language, culture, cultural heritage”. In the RA Law “On the Rights of a Child” there is a provision aimed at protection of ethnic identity, according to which “every child has the rights to be communicated the history, traditions, spiritual values of his people and global culture”. According to the Article 111 of the RA Family Code “Children deprived of parental care are subject to giving for

rearing to a family (adoption), guardian or foster family, and in case of absence of such possibility, all kinds of organizations (rearing, medical, population social protection etc.) for children deprived of parental care”.

In order to assure the protection of ethnic identity of national minorities, according to Article 5 of the Law “On Freedom of Conscience and Religious Organizations”, adopted as early as 1991, religious organizations of the national minorities can receive local registration using a simplified procedure.

According to the European Charter for Regional or Minority Languages different levels of protection are envisaged for different languages and the countries themselves decide which level of protection is assigned to which language, based on the needs of specific languages.

When Armenia ratified the European Charter for Regional or Minority Languages in 2002, it committed itself to creating supplementary conditions for the development of 5 languages defined as “minority languages” by the state: Russian, Assyrian, Yezidi, Kurdish and Greek. Thus, RA has indirectly accepted the speakers of these languages as national minorities. Though on the level of national law Armenia so far has not given legal status to the languages chosen, as the Charter demands, however the selection of these languages, according to expert Hranush Kharatyan creates certain question marks:

- Based on what criteria were these groups recognized or accepted as national minorities, and how are their rights different from those of ethnic communities?
- Are there or can there be other national minorities in the RA, apart from those mentioned above?
- Should the policies and actions of the RA with regard to national minorities be uniform or should there be differences between the rights and policies with regard to different minorities?

According to expert Hranush Kharatyan neither national nor international legislation provide answers to these questions.

Meanwhile the European Charter for Regional or Minority Languages itself demands to clearly define the status of languages and to differentiate the actions taken according to the language status. Moreover, the expert believes that certain terms used in the international conventions are subject to different interpretations and are in need of clarification.

According to the commitments undertaken by Armenia within the framework of the Charter, Yezidi, Assyrian and Kurdish language textbooks have been published and continue to be published in Armenia. At schools teaching of these languages is organized, radio programs are broadcast in the 5 languages mentioned above, re-training courses and specialized training for teachers of Assyrian and Yezidi are organized - albeit rarely. Publishing of information periodicals in these languages is subsidized by the state budgets. Attempts to organize pre-school teaching are carried out.

Based on the priorities accepted by the institutions of civil society, it is suggested to carry out the following activities, based on the interests of the minorities, given the current situation:

- To adopt a law “On Protection of the Rights of National Minorities”;
- To raise public awareness regarding national minorities;
- To ensure the accessibility of qualified teachers, pre-school education and textbooks for the national minority communities;
- To ensure state support for national minorities;
- To develop and implement a new Law “On Freedom of Conscience and Religious Organizations”;
- To reform the RA Law “On Alternative Service”.

The Office of the RA Human Rights Defender is cooperating with 24 NGOs representing 11 minorities. This cooperation highlights the circle of issues, which are a matter of concern for representatives of national minorities. They point at the following issues: lack of funding from the state budget, issue of providing tax privileges to the NGOs representing national minorities, ensuring TV and radio programs in the native languages of the national minorities, ensuring access to electronic and print media of the countries of historical origin of national minorities, state support to creation and printing of textbooks in native languages of the national minorities, non-existence of pre-school institutions in native languages of the national minorities, restricted opportunity for taking part in state government through quotas, the issue of organizing training courses of Armenian⁸².

Expert Hranush Kharatyan says that there are radio programs in the languages of most minorities - Greek, Kurdish, Georgian, Yezidi, Russian and Assyrian. Other national minorities - Poles, Germans, Jews, Ukrainians, Byelorussians are Russian-speaking, so that there are no listeners to programs in their native language. She stresses that the expression “native language” is absent from the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Charter for Regional or Minority Languages is using the expression “minority language”, while Assyrians and some other minorities chose Russian.

Textbook of native languages (and textbooks in native languages) are created with state support for Assyrian, Kurdish, Yezidi languages.

There are primary schools in Greek, Russian, Assyrian in the places of compact population of these minorities, and Yezidi villages: these should be created by the initiative of local self-government. In Yezidi-Kurdish villages it is the Yezidi and Kurds themselves who perform local self-government.

While there are no quotas for minorities in the elections at all there can be no discussion of their restricted nature.

According to the RA Human Rights Defender’s 2009 Annual report, “the few complaints that were received by the Defender from representatives of national minorities in most cases referred to human rights violations of general nature and were not connected to the

⁸² RA Human Rights Defender’s Annual Report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009, p. 173

circumstance of belonging to a national minority”. These issues included housing problems, social services, lack of access to justice or biased attitude.

The “Freedom House” 2010 report does not register any cases of open discrimination against national minorities, even though the latter had expressed their discontent with the difficulties of receiving education in native languages. In this regard expert Hranush Kharatyan explains that in terms of education Armenia has commitments exclusively with regard to Russian, Assyrian, Kurdish, Greek and Yezidi, with regard to all other languages the country is only obliged not to implement restricting measures. If any other minority wishes to receive education in “native language”, the country is obliged not to prohibit it. There are minorities that want to do it using funding from state budget, but the country does not have such obligations. The expert makes a clear distinction between the concepts “education in native language” and “learning the native language”. It is only Russians and Russian-speaking national minorities who want to receive education in native language. The “Freedom House” 2010 Report states that time after time members of the Yezidi community complain of discrimination on the part of local bodies and the police⁸³.

The RA Constitution reserves for everyone the right to freedom of thought, conscience and religion, which includes the freedom to change religion or beliefs, and freedom to express them through sermon, church rites and other rituals.

The report “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective” registers changes contradicting CoE standards in the RA Law “On Religious Organizations”. The amendments contained provisions that restricted the activities of religious organizations by providing definitions of “Christianity” and “soul hunting.”

The Report on International Religious Freedoms, published by the US Embassy in the RA in November 2010 mentions the concerns of minority religious groups, human rights organizations, European Commission for Democracy through Law (Venice Commission) and the Advisory Panel on Freedom of Religion or Belief of OSCE ODIHR related to this issue⁸⁴.

The report does not feature accurate data of the number of religious minorities, and among the religious groups mentions the following: Catholic, Orthodox Christian, Armenian Evangelical Christian, Molokan, Pentecostal, Seventh-day Adventist, Baptist, various groups of charismatic Christians, Jehovah's Witnesses, Mormons, Yezidis (non-Muslim Kurds who practice Yezidism), Jews, Sunni Muslim Kurds, Shiites Muslims, Baha'is, and others, who all together constitute less than 5 percent of the population.

The report notes that the constitution provides for freedom of religion; however, the law places some restrictions on the religious freedom of members of minority religious groups.

What the report means by legal restrictions is that according to the RA Laws “On Freedom of Conscience” and Law “On the Relations of the Republic of Armenia and the Armenian Church” the Armenian Apostolic Church has a special status as a national church and is granted certain privileges that are not available to other religious groups. Expert Hranush Kharatyan believes that the term “national” with regard to the Armenian Church does not contain a legal meaning, i.e. this term does not grant any legal privileges to it. In this

⁸³ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

⁸⁴ <http://armenian.armenia.usembassy.gov/news111810.html>

context the term “national” should be perceived as having ethnic and social-cultural meaning, rather than related to “the state”.

It is commonly accepted that the holidays of the Apostolic Church are celebrated on a state level. In reality there are only two holidays that can be described as religious, one of them is Christmas which is celebrated on June 6 and the other is the holiday of St. Etchmiadzin, which is celebrated 64 days after the Easter, i.e. on Sunday. According to expert Hranush Kharatyan this holiday can be described as historical rather than religious. And the Mondays following the 5 major celebrations of the Armenian Church have been declared non-working days by the government since on these days Apostolic Armenians usually visit graves.

The Report on International Religious Freedoms published by the US Embassy in the RA, registers without any commentary: “the Law ‘On the Relations of the Republic of Armenia and the Armenian Church’ formally recognizes the moral as well as ethnic role that the Armenian Church plays in society, since most citizens see it as an integral part of national identity and cultural heritage⁸⁵”.

From July 1, 2009 to June 1, 2010 there had been no cases recorded of the government’s refusal to grant registration to a religious group.

The report notes that “there were reports of societal abuses based on religious affiliation, belief, or practice”⁸⁶. Some religious groups reported that negative attitudes towards teachers and children involved in religious groups other than the Armenian Church continued at schools, however government officials denied these reports.

In November 2009 the Coordinating Commission for Charitable Programs of RA Government denied the NGO’s application for charitable status, which confers certain tax privileges. The NGO denied allegations that it had breached the RA Law “On Charity”.

The Jehovah’s Witnesses congregation reported that it was unable to rent large premises for annual gatherings. The group alleged that cause of this was that the owners and managers of the premises were pressured by the Armenian Church and representatives of law-enforcement bodies. As a result they turning down requests of the group even though in some cases there had already signed contracts, which were later revoked.

The US Embassy report mentions among improvements and positive developments in respect for religious freedom the fact that in June the public television, showed a documentary on alternative service, which offered different perspectives on the topic, including interviews with Jehovah’s Witnesses imprisoned for draft evasion. Besides since March 2010 the number of allowed visits by Jehovah’s Witnesses to their adherents in prison increased from one every two months to once a month.

The report also records that minority religious groups at times continued to be targets of hostile sermons by Armenian Church clerics, and members of minority religious groups experienced societal discrimination and intolerance.

Between July 1, 2009 and June 1, 2010 the media continued to call the religious groups, with the exception of the Apostolic Church, “sects” and “enemies of the state and of the unity of the nation”. The Jehovah’s Witnesses reported about a case of arson in their

⁸⁵ <http://armenian.armenia.usembassy.gov/news111810.html>

⁸⁶ <http://armenian.armenia.usembassy.gov/news111810.html>

kingdom hall, and in May 2010 about insulting graffiti that appeared on the wall of the same hall, as well as about distribution of leaflets denouncing Jehovah's Witnesses in Yerevan.

According to media reports representatives of minorities have said during a public debate that they do not feel organized pressure against them, that the pressures are of private nature⁸⁷.

On the other hand according to the commentaries of certain experts⁸⁸, in part the absence of pressures can be explained the fact that there is no new law "On Religious Organizations".

"Freedom House" 2010 report records that freedom of religion is generally respected, though the dominant Armenian Apostolic Church enjoys certain exclusive privileges, and members of minority faiths sometimes face societal discrimination⁸⁹.

In 2010 the "Emo" movement appeared in the focus of the RA Police. Head of the RA Police Alik Sargsyan explained the campaign against this movement by saying that "they have brought serious moral harm to our people"⁹⁰.

Thus he completely ignored the opinion of psychologists that "'Emo' movement is a social, emotional need (...) the emos' need for maximum emotional expression, which is absolutely normal in adolescence, can't be suppressed and repressed. One simply has to look at it from a psychological viewpoint - not to punish but understand and try to make it socially more acceptable"⁹¹.

These developments will probably continue and reach certain conclusion in 2011 since by the end of 2011 there was no clarity in this regard.

The Republic of Armenia, apart from its internal legislation, has undertaken international commitments for ensuring equal rights and opportunities for people with disabilities and preventing discrimination against them. These include the UN International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the modified European Social Charter, etc.

Year after year the issue of the disabled as the most vulnerable group in the society travels from one international organization's report to another, but in spite of the demands of existing international and local legislation, for years there has been no substantial progress in the field.

The RA Law "On Social Protection of the Disabled" works in Armenia, as well as a number of other legal acts, which contain provisions referring to persons with disabilities. These define the basic provisions for a state policy aimed at social protection and ensuring equal opportunities for people with disabilities.

⁸⁷ <http://hetq.am/am/society/kronakan-kazmakerputyunner/#more-28579>

⁸⁸ <http://hetq.am/am/society/kronakan-kazmakerputyunner/#more-28579>

⁸⁹ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

⁹⁰ <http://www.hra.am/am/interview/2010/12/23/emo>

⁹¹ Ibid.

The RA Human Rights Defender's 2009 Annual report mentions those fields, where the problems related to implementation of the rights of the disabled are the most acute: health care, social and psychological spheres, recovery, transportation, communication, ensuring access to employment, social protection. Difficulties in almost all these fields are a consequence of an environment inaccessible for persons with disabilities.

Particularly, inclusive education, jobs, public transportation, cultural and sport centers are inaccessible. An example of that are the May 31, 2009 elections of the Council of Elderly of Yerevan, "when satisfactory conditions for participation of disabled voters had not been created".

PENITENTIARY SYSTEM REFORM: PREVENTION OF TORTURE

Armenia has joined several international treaties that include the principle of prevention of torture: the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1950, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987 (Armenia signed it in 1993), the European Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Armenia joined these two treaties in 2002). In 2006 Armenia also joined the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In 2001 Armenia became a member of Council of Europe, assuming several commitments, including the transfer of the authority over penitentiary institutions from the Ministry of Internal Affairs to the Ministry of Justice, as well as public control over penitentiary institutions. The reason for the transfer is the necessity to separate the institution which has carried out the investigation from the institution where the accused are kept in order to make the latter less vulnerable.

Though observations and recommendations of the Committee Against Torture (CAT) have been taken into account by Armenian government, some of these remain unanswered. Particularly, it is necessary to change the definitions of the articles of the RA Criminal Code that define the punishment for torture so that these definitions are in conformity with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This is important for fighting torture since often torture is taking place not under direct orders of officials, as it is provided by Article 341 of the RA Criminal Code, but with their incitement, knowledge and tacit approval. According to the OPCAT all such acts suppose responsibility for practicing torture. Therefore, it is important that the definitions provided by the Article 341 of the RA Criminal Code are brought in accordance with the definitions of the Article 1 of the OPCAT .

In Armenia's legislation the principle of prevention of torture is fixed in the Constitution of the RA, in the RA Code of Criminal Procedure, in the RA Criminal Code.

Armenia's legislation prohibits torture, cruel, inhuman or degrading treatment or punishment. According to the Article 17 of the Constitution of the RA "No one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment. Arrested, detained or incarcerated persons shall be entitled to human treatment and respect of dignity. No one shall be subjected to scientific, medical and other experiments without his/her consent."

According to Article 119 of the RA Criminal Code, "Torture is willfully causing strong pain or bodily or mental suffering to a person, if this did not cause consequences envisaged in Articles 112 ("Infliction of willful heavy damage to health") and 113 ("Infliction of willful medium-gravity damage to health"), is punished with imprisonment for the term of up to 3 years." In a number of cases it is punished by incarceration for the term of 3 to 7 years. Another article of the Criminal Code, the Article 341, states the responsibility of the persons carrying out the criminal investigation for this crime:

“Forcing the suspect, the accused, the defendant, the aggrieved, the witness or the expert, or the translator, by the judge, the prosecutor, the investigator or person in charge of inquiry, by using extortion or any other illegal action, to make a false testimony, conclusion or translation, which has been done by using torture, insult or other violence, are punished with imprisonment for the term of 3 to 8 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years”.

Based on the Article 47 of the RA Law “On Treatment of Arrestees and Detainees” adopted on February 6, 2002, on May 14, 2004 the group of public observers supervising of the places of detention of the Penitentiary Service of the RA Ministry of Justice was formed. Members of this group have the jurisdiction to enter penitentiary institutions serving as places of detention, to have access to various documents, the state of the institution, to meet with the detained persons. On December 24, 2004 the RA Penitentiary Code was adopted, after which the jurisdiction of the group was widened to include also the penitentiary institutions serving as places of imprisonment.

In 2006 by the decree of the RA President the independent commissions for parole were created. The majority of the commission members were representatives of the executive, and the heads of the commissions were representatives of law enforcement bodies. As a result, while before the creation of the commissions it was the administration of the institution, which presented the parole lists to the courts, now the list is presented to the commission and only those applications which have received a positive opinion from the commission are sent to the court. As a result, the number of paroled convicts has diminished almost 10 times (in some cases 90 % of those, presented for parole by the administration of the penitentiary institution, are declined). The decisions of the commissions are subjective, made by voting and are not substantiated in any way. As a result, the activities of the commissions create discontent not only among the convicts but also among the administration of penitentiary institutions. The latter point to the fact that there is no more motivation for the convicts to behave in accordance with the law⁹².

Based on the current situation in the penitentiary system of the RA and the recommendations of the Group of Public Observers implementing supervision in the penitentiary institutions of the Ministry of Justice, the following suggestions are made:

- To strengthen the institute of public supervision of the penitentiary system, including necessary changes of the legislation;
- To raise the efficiency of the parole commissions, by revising the principle of formation of the commissions;
- To create legal and other bases for the use of alternative forms of punishment;
- To make records of each case of the use of special tools in special books, and after the use of such tools to register the physical harm brought about by the use of these tools;
- To exclude all cases of pressure against the convicts by the administration;
- To raise the efficiency of the prosecutor’s control over cases of bad attitude.

⁹² Helsinki Committee of Armenia Human Rights NGO “Observer: Human Rights in Armenia, # 8, 2009

According to European Commission Staff Working Document on Implementation of the European Neighborhood Policy in 2009 Progress Report Armenia there were cases of torture and inhuman treatment in places of detention and police stations, including cases involving men drafted for military service and persons arrested after the events of March 1, 2008. At the same time, in the report concern is voiced with regard to lack of data on cases of torture and inhuman treatment and to shortcomings of the investigations on such cases⁹³.

According to the report in 2009 Armenia continued the process of OPCAT implementation and presented the report on this process in 2009. It is also deemed necessary to ensure the legal bases for civil society participation in the national prevention mechanism, as envisaged by OPCAT. This point was made in spite of the fact that in January, 2010 the Office of Human Rights Defender founded a Council of Torture Prevention, which consists of 4 representatives of the civil sector and three experts, and is chaired by the Human Rights Defender.

In December 2009 the Government of RA adopted a Concept paper of penitentiary infrastructure reform, as well as the project for a new penitentiary institute.

However, all studies on penitentiary system, whether international or local, have registered the same unsatisfactory state of affairs in all penitentiary institutions: "Overall conditions in places of detention and the excessive use of pre-trial detention as well as the rising number of the prison population remains an issue of concern. Civil society representatives are guaranteed access to detention facilities but not to police stations"⁹⁴.

Similar concerns are expressed by the "Freedom House" in its 2010 report. "Police make arbitrary arrests without warrants, beat detainees during arrest and interrogation, and use torture to extract confessions. Prison conditions in Armenia are poor, and threats to prisoner health are significant"⁹⁵.

The most urgent is the issue of over-population of the penitentiary institutions. In 2010, compared to the previous year the number of prisoners rose by 20 %. As of June 1, 2010 4850 convicts were held in penitentiary institutions, while institutions have been designed for 4396 people. Thus in the penitentiary institution "Nubarashen" in a cell designed for 8 people, often the double of that number are staying, and sometimes even 20 people. Thus every convict has less than 2 square meters of space, while according to the Armenian law and international standards, the minimum amount of space per convict should be 4 square meters. According to the statement of the Group of Public Observers "On over-Population in penitentiary institutions", since there are not enough beds, "the convicts often sleep in shifts, suffer from psychosomatic problems, lack of oxygen, health deterioration, psychological strain and conflicts". "According to the European Court of Human Rights such conditions constitute cruel or inhuman, degrading treatment, and in some cases even torture"⁹⁶.

It is indicative that, in spite of all these issues, throughout 2009 the Human Rights Defenders' Office did not receive any complaints regarding any cases of violence against

⁹³ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p. 5

⁹⁴ Ibid, p 6

⁹⁵ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

⁹⁶ "Statement on Over-Population of the Penitentiary Institutions", July 26, 2010, Group of Public Observers

convicts or detained persons by the staff of penitentiary institutions, not even complaints about degrading attitude, as indicated by the annual report for that year. However, representatives of the Human Rights Defender had visited penitentiary institutions and detected such issues. "Problems were detected, related to over-population of penitentiary institutions, food given to detained persons and convicts, medical services, issues of their relations to the outside world"⁹⁷. The staff of the Human Rights Defender' Office has also detected shortcomings of the legal acts that regulate this sphere; as a result of these shortcomings the advocacy of the rights of detained persons and convicts in practice becomes quite difficult. The report "Ensuring the rights and legal interests of persons in penitentiary institutions of the Ministry of Justice of the RA" states the following issues: 1. issues that do not receive a practical solution because of lack of material and technical resources, even though the legal bases exist for the solution; 2. issues stemming from existence of gaps and shortcomings in the legislation; 3. issues coming forward in the course of the use of coercive means related to deprivation of freedom, as a result of failure of the penitentiary institution's staff to implement their duties appropriately.

In December 2010 the Prosecutor General's Office Department Supervising Enforcement of Sentences and Other Compulsory Measures presented to local and international community its study, devoted to the state of the prosecutorial control over investigation of crimes committed in 2008-2009 in penitentiary, psychiatric and minors' correction facilities, and causes of crime.

In all these institutions there has been an unprecedented rise in the crime rates: 185 cases were registered, i.e. there was a rise of 69 cases of 59.4 %. The share of penitentiary institutions in the overall figure is also rising: in 2008 110 cases of crime out of 116 were committed in penitentiary institutions (i.e. 94.8 %), while in 2009 177 cases out of 185 were committed in penitentiary institutions (i.e. 95.6 %)⁹⁸.

Analysis has shown that this rise has been mostly due to an unprecedented rise in the number of general crimes, particularly crimes related to illegal drug trafficking.

These data have been revealed by the study of the Prosecutor General's Office of RA, though similar revelations are often made in other analogous reports: "In the penitentiary institutions of the Ministry of Justice of RA there is no unified procedure of the recording, discussing and registering legal offenses. In many cases legal offenses are registered in different books or materials are prepared without registering them in any of the books"⁹⁹.

International organizations have expressed concerns particularly related to the continuous nature of cases of torture of the arrested. Lack of public supervision of police stations is the main cause of the atmosphere of cruelty and impunity that exists in police station.

Armenian law demands that within 3 hours after the person has been arrested a protocol has to be written and the maximum length of the preliminary detention cannot exceed 72 hours. However, the Group of Public Observers supervising the places of detention of the Police of the RA, created in 2006 by the order of the Chief of RA Police, has registered numerous cases of detention without protocol. The group supervises exclusively places of detention and not the places where interrogation is carried out. Cases of torture in the places where interrogations take place usually become known when they lead to the death

⁹⁷ Human Rights Defender of RA Annual Report on his activities and on violations of the human rights and fundamental freedoms in Armenia during 2009

⁹⁸ <http://www.panorama.am/am/law/2010/12/23/genproc/>

⁹⁹ <http://www.panorama.am/am/law/2010/12/23/genproc/>

of the person detained or interrogated. The 2007 case of death of Levon Ghulyan, who was interrogated as a witness, was not solved, moreover, in 2010 another case of death in a police station was added - that of Vahan Khalafyan, a suspect in a theft case. In both cases it was announced that a suicide had taken place, however the families of the victims and human rights activists claim that they had been tortured and were ultimately killed by the interrogators.

It is notable that the judges often ignore the fact that a confession has been obtained through torture and inhuman treatment, and sometimes such a confession may even become the basis of a verdict. "Often, even in cases there are objective bases for suspicions of torture, e.g. traces of injuries on the defendant's face, the courts do not initiate a discussion on this issue"¹⁰⁰.

¹⁰⁰ Analysis of the Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Courts of the RA, Yerevan, 2009, p. 36

FREEDOM OF ASSEMBLY

According to Point 1 of Article 20 of the Universal Declaration of Human Rights everyone has the right to freedom of peaceful assembly and association.

According to Article 21 of the Covenant on Civil and Political Rights “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

According to the Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, “Everyone has the right to freedom of peaceful assembly and to freedom of association with others. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ”

It is one of the obligations of the OSCE member states to “take all necessary measures to ensure that law enforcement personnel, when enforcing public order, will act in the public interest (...) as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement”. Among these commitments is also “to ensure that law enforcement acts are subject to judicial control, that law enforcement personnel is held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments”.

According to Article 29 of the Constitution of the RA, “Everyone shall have the right to freedom of peaceful and unarmed assembly”. According to the Article 43, the fundamental human and civil rights and freedoms, including the right to freedom of assembly, may be “temporarily restricted only by the law if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as honor and reputation of others”.

In Armenia holding of assemblies is regulated by the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. According to the Article 1 of this law, “The objective of this law is to create necessary conditions for citizens of the RA, foreign citizens, stateless persons and legal persons to exercise their constitutional right to conduct peaceful, weaponless meetings, assemblies, rallies and demonstrations while protecting national security and public safety of a democratic state, public order, public health and morals, rights, freedoms, dignity and reputation of others”.

Public events, which can be organized and implemented in accordance to the Law, include assemblies, meetings, rallies (processions) and demonstrations (including pickets).

Stemming from the priorities defined by civil society organizations, based on Armenia's practice of holding assemblies, meetings, rallies and demonstrations and the reactions of law enforcement authorities, the following suggestions are made:

- To repeal the 2nd Paragraph of the Point 3 of the part 4 of Article 9 of the “On Holding Assemblies, Rallies, Marches and Demonstrations”;

- To make more efficient the procedure of appealing in court;
- Not to prohibit holding rallies and meetings in central Yerevan. Every restriction has to be defined by law and be adequate to possible risks;
- Not to restrict the right to free movement and not to prevent work of public transportation during large meetings;
- To carry out discussions with participation of NGOs and officials from the Community of Yerevan and the police;
- On the part of civil society organizations to initiate dialogue with the police and the Community of Yerevan, on how to bring the implementation of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” into accordance with the international standards and principles.

After the mass opposition protests of April 12, 2004, the National Assembly adopted the Law “On Holding Assemblies, Rallies, Marches and Demonstrations» on April 28 of the same year. However, this law was not so much aimed at regulating assemblies, as restricting them; therefore it received a critical response from the CoE Venice Commission and OSCE ODIHR. On October 4, 2005 the RA National Assembly, taking into account the suggestions of the Venice Commission and OSCE ODIHR, made changes to the Law. However, several considerations were not taken into account, particularly the restrictions provided by Article 9, according to which it is prohibited to hold public events next to the Residence of the President, Public Television and Radio of Armenia and 4 other buildings.

After presidential elections of February 19, 2008 the opposition, which disagreed with the official results of the elections, held continuous meetings, which were accompanied by massive rallies in the streets of Yerevan and a sit-in at the Liberty Square of Yerevan. In early morning on March 1 the police forcibly dispersed the participants of the sit-in at the Liberty Square. Several hours later opposition supporters gathered and barricaded themselves near the statue of Myasnikyan in one of Yerevan’s squares. In the evening of March 1 as a result of clashes between protesters and law-enforcement bodies 10 people died (including 2 people from the law-enforcement forces), many people were injured, cars were burnt. On the same day, by the President’s decree, state of emergency was declared in Yerevan, as a result of which it was prohibited to hold assemblies.

On March 17, 2008 the National Assembly made changes in the existing Law, which represented a regression from democratic principles, as they gave a restricting nature to the Law.

According to these amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” the Point 3 of the Part 4 of Article 9 was altered in such a way that holding of a public event could be prohibited by the authorized body, “in case, according to reliable information, such events are aimed to overthrow forcibly the constitutional order, instigate national, racial or religious hatred, campaign for violence or war, may lead to mass disorders and crimes, violation of public health and morality or others’ constitutional rights and freedoms”. First of all, restrictions were added, on the basis of which the authorized body may prohibit the event, besides, it is added that such information may be considered reliable in case there is an official opinion on this issue by the Police or the National Security Service of the RA.

In the Joint Opinion issued on March 28, 2008 by the Venice Commission and OSCE ODIHR these amendments were severely criticized: these provisions were considered illegitimate, and suggestion was made to repeal them, as well as to make additions that would ensure the possibility of court appeals. The article 12.3 of the CoE PA Resolution 1609 suggested that “the amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect”.

On June 11 2008 the National Assembly adopted amendments and supplements to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, which mostly followed the suggestions of the Joint Opinion of the Venice Commission and OSCE ODIHR, made on March 28, 2008, with the exception of suggestions regarding Part 4 of Article 10 and Parts 1 and 4 of Article 12.

After the changes made on March 17 numerous applications submitted by opposition and NGOs were rejected and public events were prohibited by authorized bodies on the basis of the restrictions included in Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”.

On December 26, 2008 the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was changed again, which came into force immediately after the official announcement regarding the results of the first elections of the members of the Community of Yerevan (on the next Monday). Before these changes, according to Point 5 of Article 13 of the Law, the alternative location for holding public event suggested by the authorized body had to be situated within the borders of the municipal community chosen by the organizers. According to the new changes, the words “municipal community” were removed, i.e. if the organizers have informed the authorities about a certain location, the suggested alternative location cannot be out of that location.

In a monitoring carried out from January 1 to June 30, 2009 by the Helsinki Committee of Armenia 89 gatherings were monitored (both those that received authorization, and those that were denied authorization by government bodies, as well as spontaneous gatherings and those that did not apply for authorization). In 33 cases out of 89 the law-enforcement authorities intervened into the course of the gatherings by creating obstacles for rallies, dispersing participants from certain locations, preventing participants from being present at certain locations, etc. During 6 gatherings use of force by the law-enforcement authorities was registered, which included beatings, scuffles and other similar actions¹⁰¹.

Prohibitions of rallies and meetings in central Yerevan as a rule are explained by references to the fact that in this part of the city hosts the most heavily used streets of the capital, full of transport junctions, with heavy pedestrian traffic, therefore holding a rally or another type of public event might disrupt normal functioning of the city, lead to traffic jams, etc. However, massive gatherings and rallies have been held in central Yerevan and without any disruptions of the normal life of the capital.

The authorized body has declined numerous applications of the Armenian National Congress to hold meetings at the Liberty Square, suggesting the territory adjacent to Matenadaran, which was not considered to be a violation of the rights of the opposition by Armen Harutyunyan, the Human Rights Defender¹⁰²:

¹⁰¹ “Ditord”, periodical publication of the Helsinki Committee of Armenia, # 9, 2010

¹⁰² <http://www.hraparak.am/2010/10/11/armen-harutyunyani-erkar-spasvac-asulise/>

During massive meetings the right to free movement is being restricted, especially for the population of the regions, since on these days the public transport coming to Yerevan from the regions mostly does not function. Especially during the most populous gatherings massive concentrations of the police and anti-riot equipment in different parts of the city are exaggerated and overwhelming. Often the policemen break the principles of proportionality and apply violence to peaceful protesters and journalists.

Since 2008 there is a growing tendency to refuse renting hotels and other public spaces to NGOs for public discussions, round tables or debates. Some hotels privately confess that “certain bodies” have ordered them not to provide spaces to certain organizations.

The issue of informing the population about public events by organizers and NGOs is also problematic. As a rule TV companies refuse to air announcements about such gatherings, even if the announcements are paid. Informing about public events is usually carried out either through independent or pro-opposition media (newspapers and web-sites) or by leaflets. Activists who spread leaflets are subject to violence by policemen or unknown persons wearing civilian clothes, which is accompanied by beatings.

According to the “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective” report: “Implementation of the law on freedom of assembly demonstrated persistent practice of curbing the right to rally through selective and arbitrary bans on demonstrations and wide-spread harassment of demonstrators”¹⁰³.

The European Commission Staff Working Document on Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia also expressed concern regarding the articles of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” related to the bases for denying authorization to hold public gatherings, even though the law in general corresponds to European standards. The report records cases of police interference with the opposition gatherings in 2009, as well as cases when during such gatherings it was partly impossible to reach Yerevan from the regions using public transportation¹⁰⁴.

According to “Freedom House”, “in the aftermath of the 2008 post-election violence, the government imposed restrictions on freedom of assembly”. The majority of opposition requests to hold demonstrations in 2009 were rejected, and the authorities allegedly restricted road access to the capital ahead of planned opposition rallies”. The organization also cites cases of interference of police into the course of opposition gatherings, and reminds that 4 police officers were convicted of abusing protesters in the 2008 clashes, but they avoided jail time under a general amnesty enacted in June¹⁰⁵.

From September 26 to March 31, 2009 the Community of Yerevan received 31 authorization requests out of which 18 were accepted, in 12 cases the event was prohibited and in 1 case an agreement was reached to hold the event in a different location. According to the letter DD-9-E-46964 of the Administrative Court of the RA during 2008 the Administrative Court received 21 cases against the Community of Yerevan

¹⁰³ “Armenia’s ENP Implementation in 2009: Partnership for Open Society Perspective”, November, 2009, p.4

¹⁰⁴ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p. 6

¹⁰⁵ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

challenging decisions by the Community of Yerevan to prohibit public events. Out of 21 appeals in 2 cases the court refused to admit the case to hearings, 16 were rejected, in 3 cases decisions to satisfy the appeals were made, out of which in one case - partly. Throughout 2009 the Administrative Court received 3 similar cases against the Community of Yerevan, all of them from the Armenian National Congress. In all three cases the Court refused to hear the cases, and the decisions were not appealed.

Decisions of the court satisfied the appeals lodged by the ARF “Dashnaksutiun” party (1 case), by citizen Levon Ter-Petrosyan (1 case), and partly satisfied an appeal by citizen Aram Sargsyan (holding the meeting was authorized, but holding of a rally was not).

According to the communication 5/22514 by the Yerevan Municipality of November 12, 2012, the Municipality has received 207 authorization requests, out of which 117 were for public events, and 90 for other events. Out of these in 153 cases the events were authorized, in 4 cases public events were prohibited, in 4 other cases public events were considered “not appropriate”, in 35 cases rallies were authorized and for the gatherings alternative locations were suggested according to the law, and 11 authorization requests were removed by the applicants.

After the Liberty Square was reopened all authorization requests by the Armenian National Congress (opposition political coalition) were rejected. Every attempt to organize a non-massive public event on this location was met with resistance from the police.

On May 31 a group of young Armenian National Congress supporters attempted to hold a non-massive public event at the Liberty Square, during which 10-15 people were detained by the police. Later, criminal accusations were laid against two of them, Sargis Gevorgyan and Davit Kiramijyan, the latter was accused of violence against a representative of power.

The Human Rights Defender together with the Administration of the President of Armenia and with the participation of experts of German Organisation for Technical Cooperation (GTZ) developed a project of a new law on peaceful assembly. Discussions on the project started on November 9, 2010, with the participation of the Venice Commission and OSCE ODIHR. It is expected that the new Law “On Freedom of Assembly” will be adopted by the RA National Assembly in 2011.

MEDIA FREEDOM, RIGHTS OF JOURNALISTS

The right to freedom of speech, which in turn is the basis for media freedom, is included in several international agreements regarding fundamental human rights and freedoms, which have been signed by the RA, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other commitments in frames of CoE, EU-Armenia, OSCE, UN. In order to secure the freedom of the media the RA is obliged to ensure the independence of media outlets, to develop a national policy of the development of the field, to bring in accordance with the European standards the audio-visual legislation sphere, to replace the analogue TV broadcasting system by digital TV broadcasting, to bring the digital broadcasting into accordance with European standards, to respect the rights of journalists, etc.

Based on the priorities of the civil society organizations and the situation that has emerged in field of journalists rights, the following suggestions are made:

- To hold public discussions with the participation of CSOs, local and international experts on how to make sure that the conceptual framework of digitalization corresponds to international standards and the needs of the public;
- To rework the legislation in the field of broadcasting, in order to bring it into accordance with the international standards: to improve the RA Law “On Television and Radio” and adjust it to the adjacent legislation; to improve the Law “On Mass Communication” and adjust it to the adjacent legislation, to ensure the practical implementation of the Law “On Freedom of Information”;
- To assist development of independent and qualified media, to ensure the citizens’ access to objective information;
- To introduce self-regulation mechanisms in the functioning of the media, to encourage following general norms of professional behavior, parallel to liberalization of the legislation, to develop journalist ethics guidelines, to create mechanisms that can contribute to the introduction of self-regulation mechanisms.

In Armenia the field of mass media is regulated mostly by the RA Laws “On Mass Communication”, “On Freedom of Information” and “On Television and Radio”.

According to the RA Constitution everyone has the right to freely express his opinion and no one shall be forced to recede or change his opinion. Besides, according to Article 27 of the Constitution, “Everyone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of state borders”. The freedom of mass media and other means of mass information are also guaranteed by this article. The state also guarantees the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertainment programs.

While the freedom of speech and mass media are protected by the Armenian Constitution in practice this right is not always respected. Throughout 2009-2010 cases of violence, intimidation against mass media, as well as cases of self-censorship took place. Mass

media, especially, the television have so far have not been able to ensure pluralism of opinions and objective reporting.

According to the 2008 amendments to the Law “On Television and Radio”, competitions for broadcasting licenses were frozen for two years before July 2010, which according to experts, was a serious blow to freedom of speech and media.

Television in most cases avoids pluralism of opinions and criticism of government in order to avoid the danger of losing the broadcasting license or becoming subject of extensive tax checks. If a certain media outlet does not enjoy the backing of the government, it loses some of its advertisements, which leads to a loss of profit.

Print media are mostly able to ensure pluralism of opinions, however they are usually under the influence of certain political or economic groups.

The most open in terms of pluralism is the Internet. However, because of limited access to Internet, online media have a limited number of readers.

The circulation of print media remains limited. The same can be said about 18 radio stations that exist in the country.

Before the 2010 digital broadcast licensing competitions 45 TV companies functioned in Armenia, out of which 4 were public, and 41 were regional or local. The majority of owners of TV stations are pro-government politicians or businessmen. Major broadcasters mostly present the viewpoints of the government and avoid presenting materials criticizing the government.

In contrast to the February 2008 elections, when state-controlled media displayed apparent bias in favor of the government candidate, during the election campaign for Yerevan municipal elections on May 31, 2009 the media coverage was more neutral. According to a monitoring conducted by Yerevan Press Club, in the course of the campaign 95.8% of all references to the political parties and/or party coalitions taking part in the elections were neutral¹⁰⁶. The monitoring confirmed once more that pre-election developments are negatively affected by lack of adequate supervision of the legislation in the field of TV and radio. Without adjusting the broadcasting legislation to international standards, as well as without implementation of this legislation in accordance with developed democratic standards, in Armenia it is impossible to achieve a civilized electoral process¹⁰⁷.

Throughout 2009 attacks and violence against journalists continued - a fact that was addressed by the OSCE Representative on Freedom of the Media Miklos Harasti. The Human Rights Defender of Armenia has stated that journalists in Armenia are vulnerable and there is a lack of tolerance and respect towards free speech.

In the European Commission Staff Working Document on Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia concern is expressed with regard to the fact that even though cases of violence and intimidation against journalists have

¹⁰⁶ Monitoring the Armenian TV Coverage of Elections to Yerevan Council of Elderly on May 31, 2009 - research by Yerevan Press Club, administered on April 16 - May 29, 2009, p.10

¹⁰⁷ Monitoring the Armenian TV Coverage of Elections to Yerevan Council of Elderly on May 31, 2009 - research by Yerevan Press Club, administered on April 16 - May 29, 2009, p.18

decreased in 2009, however in the course of investigations on these cases no culprits have been identified¹⁰⁸.

On May 13, 2009 photojournalist Gagik Shamshyan was severely beaten by the security guards of the Yerevan State Linguistic University, when he entered the university without permission. The police had initiated criminal proceedings in connection to the incident against one of the security guards, however the case was dropped as part of the amnesty declared on June 19, 2009.

Violent attacks have been registered in the period preceding the elections of the Yerevan mayor on May 31, 2009. On April 8 a journalist from “A1+” TV company Davit Jalalyan was attacked by the police, when he was trying to cover an opposition gathering in Yerevan.

On April 30, 2009 Argishti Kiviryan, coordinator of news agency Armenia Today was attacked: three unknown persons attacked and severely beat him with wooden clubs. The National Security Service arrested three people, however, for unclear reasons, they were released in March 2010.

On May 7, 2009 Nver Mnatsakanyan, a host at “Shant” TV company was attacked by unknown persons. The case was dropped several months later.

Cases of violence against journalists took place on the day of Mayor’s election on May 31. On the election day violence and abuses against journalists were often committed in the presence of policemen and election officials, who did not interfere to stop the disorders. Journalists Armine Avetyan and Marine Kharatyan from “168 Zham” newspaper, Nelli Grigoryan from “Aravot” daily, Gohar Veziryan from “Chorrord Ishkhanutyun” and Tatev Mesropyan from “Hayq” newspapers, and others were involved in these incidents. It is necessary to point out that these outlets are not pro-government, to say the least. No criminal proceedings were initiated as a consequence of these cases.

According to the Annual report of the Committee to Protect Journalists, “throughout 2010, police officers routinely harassed, assaulted, and arrested journalists, according to local press reports and media analysts”. The report particularly highlights the cases of assault on the photo reporter Gagik Shamshyan who was taking pictures next to the RA Prosecutor General’s Office, the detention at the Liberty Square of journalists Ani Gevorgyan and Syuzanna Poghosyan from “Haykakan Zhamanak” daily and Lilit Tadevosyan from “Hayq” newspaper on May 31, 2009¹⁰⁹.

In connection to the electoral violations that occurred in the 10/19 precinct on January 19, 2010, including incidents involving journalists, criminal cases were initiated, but later these were dropped due to lack of evidence¹¹⁰.

With regard to various attacks against the “Asparez” Journalists Club Gyumri of in 2008, there has been no progress during the two following years.

In February 2010 as a result of an incident next to the building of Prosecutor General’s Office involving Gagik Shamshyan and a prosecution investigator the photojournalist had

¹⁰⁸ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p. 6

¹⁰⁹ <http://www.cpj.org/2011/02/attacks-on-the-press-2010-armenia.php>

¹¹⁰ <http://www.ypc.am/bulletin/t/42221/ln/ru>

received an ear injury. The Prosecution Office of Kentron Administrative District of Yerevan instituted criminal proceeding on Articles 164 (“Impeding the legitimate professional activities of journalist”)¹¹¹.

In February 2010 the founder of the newspaper “Haykakan Zhamanak” was forced to pay a fine, which was imposed by the court as a consequence of a lawsuit on damage to honor and dignity of Armenia’s Second President Robert Kocharyan’s son. The Court of Appeal diminished the amount of the fine, which was imposed by the court of general jurisdiction of Kentron and Nork-Marash administrative districts of Yerevan, reducing it by 620 000 AMD. Thus, the respondent was obliged to pay a fine of 3 million AMD and a state duty of 72 000 AMD. The newspaper was also obliged to publish a refutation.

In late 2010 the RA Civil Court of Appeal issued a decision on the case of Investigative Journalists NGO versus Ijevan Municipality, according to which the Investigative Journalists NGO was obliged to refute information which compromised the business reputation, the honor and dignity of the Ijevan Municipality and pay a compensation for attorney fees 450 000 AMD¹¹².

In September 2010, without any prior public discussion, the National Assembly made changes in the Law “On Television and Radio”, according to which the issue of new broadcasting licenses was frozen till July 2010. This freeze was implemented right before the expiration of the terms of several licenses. At the same time, TV stations received the right to prolong their licenses till January 2011. The government insisted that the freeze on issuing licenses was necessary in order to for switching to digital broadcasting before 2015. The moratorium on licensing competitions strongly harmed the principles of competition and pluralism in the broadcasting market of Armenia.

The explanation offered by the government, that it was impossible to carry out a competition with participation of “A1+” TV company, previously put off the air, since there are no unused frequencies available, became obsolete when in 2009 during parliamentary hearings in Yerevan a CoE expert Alex Thomas suggested an audit of the frequencies, since there actually were unused frequencies available¹¹³. In this regard the Committee to Protect Freedom of Expression issued a statement, which reminded that the CoE expert statement substantiated the opinion of various journalist organizations that the actual reason for the competitions moratorium was to maintain the state of total control in the field of broadcasting and to prevent entrance of new “players” in the field.

However, in the process of transition from analog to digital broadcasting it was impossible to avoid an audit, which was ordered by Armenia to the Canadian company “Aero Systems International”.

Taking into account that the it was urgent to conduct a study of the situation in the field of broadcasting in relation to transition from analog to digital broadcasting, the Committee to Protect Freedom of Expression (CPFE) addressed a request to the RA Ministry of Economy to answer the following questions: which broadcasting frequencies in Armenia are occupied and which are unused, which frequencies can be used for TV broadcasting and which cannot. The Ministry replied to this request that the final report of the audit was not accepted by the Armenian side and was sent back for reworking¹¹⁴. For Armenian

¹¹¹ <http://www.ypc.am/bulletin/t/42227/ln/ru>

¹¹² <http://hetq.am/am/court/het-ijevan/#more-45918>

¹¹³ hahr.am/files/Report2009arm.doc

¹¹⁴ <http://khosq.am/2010/12/1551>

society in general, and for Armenian journalists in particular the answers to several questions remain unclear: why were the results of the audit unacceptable for the Armenian side, why these results were not made available to interested organizations, as the Minister of Economy had previously promised in an explanation given to CPFE. The organization also made a request for information on the number of frequencies in Armenia to Armenian Republican Broadcasting Center State non-commercial organization, and the Head of the Center Ashot Verdyan replied that there were 241 frequencies in Armenia. The organization expressed its concern on “whether these frequencies would be rationally used in order to widen the public’s choice of information sources”.

On April 21, 2011 11 Armenian TV companies, with the initiative of the RA Public Council under President of Armenia, signed a Charter of Ethic Principles of TV and Radio Broadcasters of Armenia, which received a mixed response in the journalist community. The concerns of journalist organizations and certain media were expressed in the commentary made by Yerevan Press Club. While welcoming the desire of media to follow norms of ethics, YPC raised several questions. Thus, do the status and functions of the Public Council allow it to govern or regulate the sphere of broadcasting, as there is no legal basis for that? “Therefore, the Charter, is nothing more but an awkward attempt to actually influence television, coming from authorities, but disguised as voluntary safeguarding of public interest by our broadcasters”- commented YPC on this, “surrogate initiative”¹¹⁵.

YPC also expressed its concern as to why leading broadcasters that for many years were denying the idea of unified professional standards and now rush to sign the Charter all together. YPC explained this step by the reality that the broadcasters, who “have grown used to the role of obedient implementers”, were expecting the broadcast licensing competitions in December of the same year¹¹⁶. Considering the Charter an appearance of improvement at best, YPC argued such cosmetic make the prospect of improvement of Armenian TV air even more distant¹¹⁷.

On February 15, 2010 the NCTR, based on the demands of the RA Law “On Television and Radio” established the criteria for TV and radio programs of erotic nature, films involving scenes of horror and violence, as well as the criteria for programs that might have negative consequences on the health, mental and physical development and education of minors. The Law permits broadcasting of such programs from 24:00 to 06:00. However, the criteria found a mixed public reaction since some of them were not clearly defined and could provide grounds for subjective interpretation. Later the document was reworked, but concerns remained¹¹⁸.

Independent “A1+” TV company has remained without a broadcasting license for 8 years, though it continues to function online. Since 2002, when it was cut off the air, because its license was not renewed, it has submitted 13 applications for broadcasting license. All the applications were refused by the authorized bodies. In June 2008 the European Court of Human Rights decided that the government had violated the Article 10 of the European Convention of Human Rights, which refers to freedom of speech, by refusing to present a written explanation on the reasons of the license denial. By the decision of the European Court the Government of Armenia was obliged to pay a fine of 30,000 Euro to the founder of “A1+” TV company “Meltex” LLC. In December 2008 “A1+” lodged an appeal before the

¹¹⁵ <http://www.ypc.am/bulletin/ln/ru/t/42202>

¹¹⁶ <http://www.ypc.am/bulletin/ln/ru/t/42202>

¹¹⁷ <http://www.ypc.am/bulletin/ln/ru/t/42202>

¹¹⁸ <http://www.ypc.am/bulletin/t/42221/ln/ru>

RA Court of Cassation in order to amend the previous decisions, but the Court refused to re-open the case, after which the company submitted a complaint to the Constitutional Court. The latter granted an opportunity for the claimant to re-appeal to the Court of Cassation, since the Article of the Civil Procedure Code, according to which the Court of Cassation had refused to re-open the “A1+” case had been declared unconstitutional¹¹⁹. The Parliamentary Assembly of the Council of Europe in its Resolution 1677 (2009)1 reaffirmed its position that the technical implications of the introduction of digital broadcasting in Armenia should not be used to delay unduly the holding of open, fair and transparent licensing competitions and thus the execution of the judgment of the European Court of Human Rights in the case concerning the denial of a broadcasting license to the television channel “A1+”.¹²⁰

The “Human Rights Watch” international organization in its Annual Report for 2009 has referred to the fact that “A1+” has remained deprived of air in spite of the decision by the European Court of Human Rights¹²¹.

On April 2, 2010 several local and international NGOs issued a statement on the occasion of the 8th anniversary of withdrawal of the license of “A1+”: they called upon the Government of Armenia to create conditions for freedom of expression in Armenia, which would be possible if impartiality and transparency of future broadcast licensing competitions are ensured¹²². On May 15 of the same year the TV company started its broadcast in Internet.

On October 18, 2010 several journalistic and human rights organizations of Armenia announced the creation of “People’s TV” foundation for assisting “A1+”. The foundation expected to define the potential audience of the “A1+” by organizing donations to the company, which in turn would make more clear the public demand for the return of the TV company.

In December 2010 “A1+” for the 13th time was denied a broadcasting license. This time the National Commission on Television and Radio explained its refusal to grant a license by saying that the application package of the “Meltex ” LLC contained fake documents. “A1+” replied to the NCTR by announcing that they would start court proceedings against the National Commission on Television and Radio.

In December 2010 Ashot Melikyan, the Chairman of the Committee to Protect Freedom of Expression called this licensing competition “a farce”. “It is well known that the Commission is simply a tool, since all these issues are solved in the highest levels of government” stated Ashot Melikyan¹²³. The board of trustees of the “People’s TV” foundation characterized the NCTR decision “unprofessional and predetermined”¹²⁴.

“Human Rights Watch” commented on this issue: “Armenia refused to issue a broadcasting license to independent “A1+” TV company in spite of the decision by the European Court of Human Rights, according to which previous refusals constituted a violation of freedom of expression”¹²⁵. “Human Rights Watch”’s Caucasus expert Giorgi

¹¹⁹ <http://www.ypc.am/bulletin/t/42227/ln/ru>

¹²⁰ “Functioning of democratic institutions in Armenia” Resolution 1677 (2009)1, CoE Parliamentary Assembly, p. 5

¹²¹ <http://www.ypc.am/bulletin/t/42250/ln/ru>

¹²² <http://www.ypc.am/bulletin/t/42208/ln/ru>

¹²³ <http://www.azatutyun.am/content/article/2249840.html>

¹²⁴ <http://www.azatutyun.am/content/article/2249840.html>

¹²⁵ <http://www.azatutyun.am/content/article/2250939.html>

Gogia called the December 16 decision of the NCTR as another step backwards in terms of freedom of speech and freedom of expression: “It is clear that keeping the opponents out of the TV air is more important for the government than its international legal obligations”¹²⁶.

On the day preceding the announcement of the competition results the Board of Trustees of the “People’s TV” foundation issued a statement on the breach of principle of transparency by the NCTR. The NCTR had previously refused the request of “A1+” to share the application packages of two other companies taking part in the competition - founders of “Armenia” and “Armnews” TV channels. The latter was the opponent of “A1+” in the broadcast licensing competition. NCTR failed to provide the requested information, which should have been open, to “Meltex” LLC, within reasonable time, thus violating the principle of transparency, as provided by the law. “By not granting “Meltex” LLC with the requested documents in reasonable time, NCTR failed to ensure the transparency of the competitions. Thus, NCTR violated the right of “Meltex” LLC to freedom of information, undermining the impartiality of the competition”, the statement of “People’s TV” Board of Trustees said.

Representatives of “A1+” declared in their press conference that they were planning to initiate a lawsuit against the NCTR to challenge its decision on the competition where “A1+” TV company participated.

As a result of the December 16 NCTR decision “Gala” TV company from Gyumri also lost air, even though it will continue its analog broadcasting till 2015, like other regional TV companies, which have not received broadcasting licenses. The owner of “Gala” Vahan Khachatryan declared to the press: “We did not expect any other decision. Two months ago we said that there would be a political decision and it was clear what the decision would be, taking into account all the previous decisions of NCTR”.¹²⁷ It is necessary to remind that the pressures against the TV company started in 2007 when it broadcast a speech by the First President of Armenia Levon Ter-Petrosyan.

The pressures against “Gala” TV company continued: in 2010 State Revenue Committee by the RA Government demanded the founder of the TV company, “CHAP” LLC, to repay income tax for 2008 and the delinquency charge, in spite of the fact that in 2008 the company had not received any profit and registered losses, since it did not have any advertisement orders¹²⁸.

The Committee to Protect Journalists has registered that officials in Gyumri, escalated their campaign of harassment against “Gala” during 2010¹²⁹.

In April 2008 legal amendments were made that established the new order of selection of NCTR members. According to it, 4 members of the Commission are appointed by the President of Armenia (previously he appointed all members), and the remaining 4 are proposed and elected by the National Assembly for a 6 year term. On December 9, 2009 the National Assembly elected its 4 members of the NCTR. Since the President and the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President, the order of selection of NCTR members did not lead to any positive changes in this field.

¹²⁶ <http://www.azatutyun.am/content/article/2250939.html>

¹²⁷ <http://www.azatutyun.am/content/article/2257176.html>

¹²⁸ <http://www.ypc.am/bulletin/t/42216/ln/ru>

¹²⁹ <http://www.cpj.org/2011/02/attacks-on-the-press-2010-armenia.php>

European Commission Staff Working Document on Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia notes that in April of that year, the legal amendments concerning the National Commission on Television and Radio and Public Television and Radio Council mostly followed the recommendations of the Council of Europe. “However, the composition and the means of appointment of members of the broadcasting regulatory bodies raise questions regarding their full independence”, concludes the report¹³⁰.

In 2009 the Government of Armenia, again without public discussions, adopted the Concept Paper on Digitalization of Television Broadcasting, and on May 13, 2010 the project of amendments to the Law “On Television and Radio”, prepared by the Ministry of Economy, was presented to the National Assembly. The National Assembly adopted it on June 10 of the same year. On all stages of development this law was constantly criticized by journalists and international organizations. The latter argued that the law did not solve the main issues of regulation of the field of broadcasting. Moreover, after the adoption of the law journalistic and international organizations started a new wave of criticism. Thus, the US Ambassador to OSCE expressed his concern that the changes in the law “would rather reduce pluralism on television, and would restrict Armenian public’s access to various information and opinions”¹³¹. While welcoming the fact that suggestions of Dunja Mijatovic, the OSCE Representative on Freedom of the Media were taken into account, the Ambassador expressed his opinion that several concerns and suggestions had been ignored. All such criticisms, including the statement by OSCE Representative on Freedom of the Media, point to the fact that the number of TV companies is reduced, which directly harms pluralism of opinions and information. Though the amended law was aimed at regulating issues related to digitalization, it also includes provisions not related to digitalization, e.g. the maximum limit of advertisement broadcast by the Public Television of Armenia was lifted from 5 % to 7 %¹³².

Apart from these criticisms, suggestions were also made on how to improve the law, and readiness to assist Armenia in that issue was expressed. “Human Rights Watch” urged President Serzh Sargsyan to refrain from signing the law and instead return it to the parliament in order to bring the document into compliance with Armenia’s international obligations on freedom of expression¹³³.

The President of Armenia signed the law on June 17. According to the annual 2010 report of the Committee to Protect Journalists “The government tried to deflect attention from the restrictive amendments by embedding them into a package of measures meant to move radio and television stations from analog to digital signals. Sargsyan ignored domestic and international protests over the restrictions, which are seen as benefiting his Republican Party as it approaches parliamentary elections set for 2012”¹³⁴.

In September 2010 President Serzh Sargsyan announced an initiative to form working group to improve the legislation, regulating the process of switching from analogue to

¹³⁰ Implementation of the European Neighbourhood Policy in 2009 Progress Report Armenia, European Commission Staff Working Document, Accompanying the Communication from the Commission to the European Parliament and the Council of Taking Stock of the European Neighbourhood Policy, p.6

¹³¹ <http://www.ypc.am/bulletin/y/2010/m/06/In/ru>

¹³² The RA Law “ On Introducing Amendments to the RA Law ‘On Television and Radio’”, Article 26

¹³³ <http://www.ypc.am/bulletin/y/2010/m/06/In/ru>

¹³⁴ <http://www.cpj.org/2011/02/attacks-on-the-press-2010-armenia.php>

digital broadcasting in Armenia headed by the Human Rights Defender Armen Harutiunyan¹³⁵.

On May 18 RA National Assembly adopted in second hearing and finally the draft law package “On Introducing Amendments and Supplements to RA Civil Code”, “On Introducing Amendments to RA Criminal Code”, “On Introducing an Amendment to RA Criminal Procedure Code”, which can be assessed as generally positive. The amendments eliminated from the RA Criminal Code articles providing criminal persecution for defamation and insult, which were transferred to the RA Civil Code, and established financial compensation for defamation and insult. However, together with generally positive trends the law also had serious shortcomings, and during its first reading in the NA it was criticized by journalists and NGOs. Representatives of several journalistic organizations took part in the discussions on the issue, in the non-formal working group, which was created in the NA. However, though some of their suggestions were approved, in its final version the amendments package contained several serious shortcomings. Particularly, the size of the financial compensation is not substantiated. The amendments provide that when deciding on the sum of the compensation the courts should take into account the forms of defamation and insult, the degree of their circulation, as well as the financial state of the person accused of spreading defamation and insult. Given the absence of court precedents this can lead to arbitrary decisions by the courts. At the same time the terms “defamation” and “false denunciation” are not defined in Civil and Criminal Codes, which can also lead to different interpretations and confusion. Taking this into consideration it is impossible to talk about complete decriminalization of defamation.

While admitting the positive effects of decriminalization of defamation and insult, media experts have reservations, especially since the fines envisaged by the Civil Code were introduced only in the same year - 2010. “As a legal amendment, it is positive, satisfactory, but, since we have not seen it implemented in practice, it is difficult to say, will it be used like other laws - against the media, or it will be implemented normally” - stated expert of the Committee to Protect Freedom of Expression Mesrop Harutyunyan¹³⁶.

The Committee to Protect Journalists also evaluated the decriminalization of defamation positively, however it registered that public perceived this measure as a formality, since officials retain “numerous other tools” of influencing journalists¹³⁷.

On March 17, 2010 RA National Assembly adopted in the second hearing and finally the draft law “On Introducing Amendments and Supplements to the RA Criminal Code”, making the punishment for impeding the journalistic activities more severe, as well as providing supplementary protection for the source of information¹³⁸.

“Freedom House” report noted that in the end of 2009 there were restrictions of media freedom in Armenia: the government was using indirect pressures in order to establish control over broadcast media, which were the main source of information for the majority of Armenia’s population, though the government mostly did not interfere with access to Internet¹³⁹.

There are numerous concerns expressed with regard to self-censorship, one of the issues that are most characteristic for Armenia’s media.

¹³⁵ <http://www.ypc.am/bulletin/y/2010/m/09/ln/ru>

¹³⁶ <http://hetq.am/am/media/media-2010/#more-45763>

¹³⁷ <http://www.cpj.org/2011/02/attacks-on-the-press-2010-armenia.php>

¹³⁸ <http://www.ypc.am/bulletin/t/42266/ln/ru>

¹³⁹ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

The Report on Human Rights Practices 2009 of the US Department of State ¹⁴⁰ report also highlights that issue: “News outlets, especially in the broadcast media, practiced a high degree of self-censorship, and authorities continued to restrict media pluralism, including through a moratorium on renewal of broadcasting licenses. There were multiple attacks against journalists, and the government rarely identified or prosecuted perpetrators” ¹⁴¹.

Already in 2010 the Committee to Protect Journalists states in its report on persecution of mass media that the Government of Armenia, particularly the president Serzh Sargsyan, continue to control the TV and radio stations. The Committee also mentioned self-censorship as one of the main issues ¹⁴².

On July 7, 2010 the Human Rights Defender of Armenia characterized the situation in the field of freedom of speech as “a matter of strong concern”, issuing an ad-hoc public report, “Right to Freedom of Expression in the Republic of Armenia” and suggested several measures, including legislative changes, which “will reduce the number of legal provisions that impede the establishment of the freedom of expression”.

According to the research published by the Committee to Protect Freedom of Expression in December 2010 Armenian media have been rated “partly free”. According to the same research the freedom of Armenian media is restricted as a consequence of economic causes. However, there are also political restrictions. In a commentary to their research the Chairman of the Committee to Protect Free Speech Ashot Melikyan said: “There are also issues of concern regarding political aspects, since in a partly free political sphere it is quite difficult to work; besides the media feel political influences upon them. Often the content of their publications is conditioned by influence of one or another political force” ¹⁴³.

The right to receive information continues to be violated. Thus throughout 2007-2009 the Freedom of Information Center (FOI) initiated 20 lawsuits regarding the right to receive information. Some lawsuits received positive solutions, others did not. 4 out of 20 lawsuits are still in process. As a rule the lawsuits demanding requested information have been satisfied by the courts, which indicates progress in the fulfillment and legal defense of the right to receive information.

However one type of demand, the demand of administrative responsibility for the official, who had breached the right to receive information, was rejected by the courts, with the exception one case. This demand has been rejected because of a gap in legislation: the RA Code on Administrative Violations does not define the bodies authorized to draw the protocol on administrative offense, while according to the Articles 151 and 152 of the Administrative Procedure Code, no official can be subject to administrative responsibility without such protocol. It was this gap in legislation that became the basis for the RA Constitutional Court’s decision to declare these articles unconstitutional, as a result of the lawsuit by the Freedom of Information Center.

In some cases, when there is a contradiction between different legal acts, the judges prefer to drop the case, instead of giving it a solution.

¹⁴⁰ <http://www.azatutyun.am/content/article/1981510.html>

¹⁴¹ http://armenia.usembassy.gov/uploads/Wj/Ao/WjAo5DN1EYYDBJzd3coi5w/hrr2009_arm.pdf

¹⁴² <http://www.cpj.org/2011/02/attacks-on-the-press-2010-armenia.php>

¹⁴³ <http://www.azatutyun.am/content/article/2246832.html>

The level of citizens' trust toward the courts has not changed, since the courts often refrain from restoring their rights to receive information through courts.

There are also some issues in the stage of implementation of court decisions. In 2 out of 16 cases the Freedom of Information Center has applied to the Compulsory Execution Service of the Ministry of Justice.

IMPROVING THE ELECTORAL SYSTEM

Electoral processes in Armenia are regulated by the RA Constitution, the RA Electoral Code and related legal acts. Legal acts of the Central Electoral Commission are also legally binding. Armenia also has international commitments in this respect according to international conventions, such as the Optional Protocol to the Convention on the Protection for Human Rights and Fundamental Freedoms, which includes obligation to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Taking into account the challenges of the Armenian experience of electoral processes, the following suggestions are made:

- To ensure the proper administration of electoral processes;
- To change fundamentally the procedure of formation of the electoral commissions in order to ensure their balanced and impartial work;
- To limit the de facto vast influence which the president and executive powers have on the work of electoral commissions;
- To minimize the violations of equality between the candidates and to prevent the use of administrative resources in favor of one of the candidates;
- To ensure equal access of all candidates to the mass media in the course of the election campaign;
- To clarify and tighten the responsibility for violation of RA electoral legislation;
- To improve the mechanisms of control over electoral violations, especially the mechanism of post-election control over cases of multiple voting;
- To develop and implement an electoral education program to increase the electoral culture in Armenia.

According to RA Constitution, the elections of the President of the Republic, the National Assembly, local self-government bodies on the basis of the right to universal, equal and direct suffrage by secret ballot. Citizens of the RA, who have reached the age of 18 have the right to vote. In case of local self-government election everyone who has been registered for at least a year and has actually lived in the respective community, have the right to vote.

The year 2011 is a pre-election year for the RA: in 2012 parliamentary and local self-government elections will take place, followed by presidential elections in 2013. In this regard, apart from the new technologies, reforming the legislation is important. The adoption of a modified version of the Electoral Code stems also from the suggestions of the OSCE ODIHR and CoE Venice Commission¹⁴⁴.

¹⁴⁴ http://www.elections.am/images/docs/finalreport_arm.pdf

Though international organizations have registered certain progress, they continue to point at the gaps in the legislation that have been left by the changes adopted in 2007. Thus, “the Election Code does not address what constitutes campaigning and how to distinguish between regular political party activities and campaign activities, or fundraising by election participants and third parties, prior to and during the campaign period”¹⁴⁵. Besides, inconsistencies remain in the regulations for complaints and appeals.

In 2010 debates regarding reform of Armenia’s electoral legislation continued. The discussions focused on issues of administering the elections, fundraising for parties and campaigning, electoral conflicts and their judicial solutions, prevention of electoral fraud, with the aim of ensuring maximum transparency and accountability in the electoral processes.

The latest changes in the Electoral Code were made in June 2010, when the National Assembly, following the suggestions of international organizations, removed the immunity from persecution of the members of Central Electoral Commission, Territorial Electoral Commission and Precinct Electoral Commission members, as well as that of the candidates for deputy, heads of Community and Council of Elderly elections. The immunity of the candidates for the post of the President of the Republic has not been removed (members of the Council of Elderly of Yerevan did not have immunity all along). It is expected that the new, edited version of the electoral code will be adopted in 2011.

Though Armenian legislation provides the citizens with the right of peaceful change of government, in practice this right has been restricted as a result of repeated significant elections violations.

Since Armenia’s independence in 1991 it was the President of the Republic who appointed the Mayor of Yerevan. After the changes of the Constitution in 2005 Yerevan received the status of a community (previously it had the status of a region) and on May 31, 2009 elections of the Council of Elderly of Yerevan (which has 65 members) were held for the first time. The Mayor of Yerevan, unlike the heads of all other municipalities is chosen through indirect elections, by the newly elected members of the Council of Elderly. According to the RA Law “On Local Self-Government in the City of Yerevan”, the number 1 candidate in the campaign list of the party, which wins the elections for the Council of Elderly, i.e. receives more than 40 % of the places in the newly elected municipal council, automatically becomes the Mayor of Yerevan. On May 31 six parties and one pre-election alliance competed in the Council of Elderly elections.

Local and international observers, journalists recorded that significant violations took place during the elections: an atmosphere exclusively favorable for the ruling coalition parties and their candidates; staff disparity in the electoral commissions in favor of the ruling coalition parties; cases of ballot stuffing; attempts of vote buying and bribing the observers; cases of transporting people from outside of Yerevan by buses in order to participate in the voting; intimidation of voters; cases of violence and intimidation against journalists, observers and opposition proxies; cases of restriction of civil and political rights of persons; cases when unauthorized persons or proxies of candidates were managing the work of polling stations; cases of open and multiple voting; suspiciously high voter turnout in some polling stations.

¹⁴⁵ http://www.elections.am/images/docs/finalreport_eng.pdf

According to analysts, the violations started before the elections, when on March 4 the President of the Republic replaced the acting mayor with a member of the Republican Party of Armenia Gagik Beglaryan, who at the moment was the head of Kentron community of Yerevan. By putting Gagik Beglaryan at the top position in its electoral list the Republican Party of Armenia gave its candidate for the mayor's office the advantage of being the acting mayor. According to practice that had become common in the country, pro-government candidates are using the administrative resources under their discretion to advance their own election campaign. On June 2 the preliminary statement on the elections was made by "Choice is yours" local NGO, which is one of the prominent organizations observing elections in the country. The statement indicated that "in the course of the election campaign the administrative resource was widely used"¹⁴⁶.

The election campaign was accompanied by violence, including clashes between pro-government and opposition supporters, as well as between supporters of different pro-government forces. Some local observers have expressed the opinion that attacks against journalists Argishti Kiviryan on April 30, 2009 and Nver Mnatsakanyan on May 6, 2009 might have been related to the Yerevan Council of Elderly elections since both journalists have been involved in journalistic activities unfavorable for some influential figures involved in the election campaign.

During the electoral campaign of Council of Elderly elections Yerevan Press Club (YPC) has carried out a monitoring of media coverage of the election campaign. Based on the results of that monitoring YPC released a statement on the next day of the election, according to which 96 % of coverage on parties and the electoral alliance taking part in the elections has been neutral¹⁴⁷. In that respect the elections of Yerevan Council of Elderly were significantly different from 2008 presidential elections. However, YPC has noted that certain TV channels have given preference to pro-government parties and their candidates and the paid campaign broadcast was used completely by the pro-government parties. This fact, according to YPC, reflects the extremely expensive prices of political advertising, an issue which was raised by many commentators during the election campaign. As the elections showed, these concerns were justified, since as a consequence of extremely high rates the principle of equality was violated¹⁴⁸.

The local office of Transparency International Anti-Corruption Center (TIAC) mentions numerous cases of electoral violations, which the Center has recorded in the course of monitoring carried out at the 8th electoral district. TIAC observers noted violations before opening of the polling stations, in the course of the voting, and after the closing of the polling stations.

According to a general assessment by the organization, elections in this electoral district were accompanied by gross violations and generally did not meet the requirements of Armenian legislation and international standards of free, fair and transparent elections¹⁴⁹: "Yerevan Council of Elderly elections ay the 8th electoral district do not reflect the free will of the voters"¹⁵⁰.

¹⁴⁶ <http://www.iyc.am/arm/documents/1.arm.pdf>

¹⁴⁷ Monitoring the Armenian TV Coverage of Elections to Yerevan Council of Elderly on May 31, 2009 - research by Yerevan Press Club, 2009, p.11

¹⁴⁸ Monitoring the Armenian TV Coverage of Elections to Yerevan Council of Elderly on May 31, 2009 - research by Yerevan Press Club, 2009, p.15

¹⁴⁹ Monitoring the Armenian TV Coverage of Elections to Yerevan Council of Elderly on May 31, 2009 - research by Yerevan Press Club, 2009, p. 2

¹⁵⁰ "Elections to Yerevan Council of Elderly Election Monitoring Report", May 31, 2009, Transparency International Anti-Corruption Center, p. 4

Several electronic news media also reported similar violations on the day of voting and during the vote count.

Harassment of journalists, as something that has become a regular phenomenon during all elections, was criticized by the RA Human Rights Defender. Observers who witnessed violations almost in all cases recounted that policemen were usually quite passive in terms of preventing electoral violations and violence in polling stations.

According to the Prosecutor General's Office three criminal cases were opened. One of these cases was discontinued, the other two were suspended.

After the elections vote recount in certain electoral districts inconsistencies and errors were detected and in 6 electoral precincts the elections were declared void. 8 criminal cases on voting fraud were initiated, for which 5 people were sentenced to different prison terms. Later they were released as a result of the amnesty declared by the National Assembly on June 19.

In many cases the electoral commissions refused to register complaints regarding the voting.

The Central Electoral Commission, the members of which were mostly from pro-government parties, rated the elections as free and fair, declaring that they had investigated opposition's accusations of vote fraud and had found the majority of these accusations unsubstantiated¹⁵¹. Prosecutor General's Office also declared that it had investigated the opposition's claims regarding vote fraud and some of them were considered unsubstantiated. Certain pro-government political leaders and officials accepted that there had been deficiencies, drawbacks in the organization of the election process, but refused to admit that these deficiencies have been substantial enough to influence the final results of the elections.

"Freedom House" has stated in relation to May 2009 Yerevan Council of Elderly elections that "The HHK (Republican Party of Armenia, **Ed. Note**) secured 35 of 65 seats in the city council, meaning the appointed HHK incumbent was reinstated as mayor. Opposition parties refused to recognize the results, accusing the ruling party of fraud. Observers with the International Foundation for Electoral Systems (IFES) reported witnessing "egregious violations," and the Council of Europe similarly cited 'serious deficiencies'¹⁵².

The Resolution 1677(2009)1 of the Parliamentary Assembly of the Council of Europe, referring to the Council of Elderly elections in Yerevan notes the conclusions of the Council of Europe's of the observer mission of the Congress of Local and Regional Authorities of the Council of Europe "the numerous allegations that fraud and violations were widespread during these elections demonstrate that public trust in the electoral process is still very low in Armenia"¹⁵³. The Resolution concludes that electoral reform should be a priority for the authorities.

On January 2010 at the 10th electoral district by-elections were held for the majoritarian mandate of member of the National Assembly.

¹⁵¹ <http://www.elections.am/images/docs/court.htm>

¹⁵² <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7772>

¹⁵³ "Functioning of democratic institutions in Armenia" Resolution 1677 (2009)1, CoE Parliamentary Assembly

On December 2, 2010 in the center of Yerevan a group of about 20 people beat up 4 young activists who were distributing campaign leaflets for Nikol Pashinyan, the opposition candidate in the 10th electoral by-election district. According to reports, attackers used metal items and some of the young activists received serious injuries so that they were taken to a hospital. According to the opposition, the attack was carried out by supporters of another candidate in this election, representative of a pro-government "National Unity" party Ara Simonyan and of the ruling Republican Party of Armenia. Ara Simonyan denied the accusation. On December 29 the police initiated a criminal case regarding the incident, however those guilty were never found.

In February 2010 Anahit Sargsyan, the Head of the Observer Mission of Armenian Parliamentary Center, who had carried out a long-term election observation mission during the National Assembly by-election and later signed documents on violation registered in the course of the election, declared that she and her daughter have become victims of violence - intimidation using firearms. She also declared that before the incident she had received an intimidating letter, which she reported to the police, however with no consequences¹⁵⁴. "These attempts of intimidation have a long history. This is related to my activities, but I am not going to stop what I am doing", Anahit Sargsyan said¹⁵⁵.

¹⁵⁴ <http://hetq.am/am/society/a-sargsyan-6/#more-26683>

¹⁵⁵ <http://www.a1plus.am/am/social/2010/02/11/anahit-sargsyan>