Yerevan Press Club

Partnership for Open Society Initiative

Open Society Institute Human Rights and Governance Grants Program

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

2005

CONTENT

FOREWORD

By becoming a fully-fledged member of the Council of Europe on January 25, 2001, the Republic of Armenia assumed certain commitments as laid down in Armenia's Application for CoE Accession and PACE Opinion No. 221 (June 28, 2000) on the Application *(see Appendix 1)*. Progress towards honoring of these commitments has been discussed in the Parliamentary Assembly of the CoE on several occasions, and resolutions have been passed *(see Appendices 2, 3, and 4)*.

This study, initiated by the Yerevan Press Club (in collaboration with several non-governmental organizations that are members of the "Partnership for Open Society" initiative) in October 2004, is aimed at revealing Armenia's progress towards honoring its commitments and obligations in the field of human rights and democracy since Council of Europe accession; the monitoring gauges performance against not only the actual commitments, but also the resolutions of the PACE concerning their honoring.

The monitoring of each commitment covers the background of the issue, legislative amendments, practice, progress, and suggestions on how to make the reforms more effective. Laws, legal amendments, and various other legal acts adopted since 2001 have been reviewed, alongside with the correspondence between citizens and various structures. Relevant statistics and publications concerning the honoring of obligations, and facts of human rights violations have been studied. Surveys, individual interviews, mass media monitoring, institutional reform analysis, and monitoring of various institutions have been made.

The most significant event for Armenia in 2005 was the finalization of the draft Amendments to the Constitution of Armenia and their adoption in the Referendum. The authorities, the opposition, and international organizations equally viewed the Constitution prior to amendment as an obstacle to democratic reform in Armenia, and the amendments as the key to the promotion of such reform. However, from a certain point in the drafting of amendments on, the opposition refused to cooperate with the authorities; during the referendum campaign, the opposition was first calling for a "No" vote to the amendments, which it subsequently replaced with a call for a boycott. Lack of transparency in the constitutional amendments process was pointed out by the Partnership for Open Society, which considered that the Armenian public was not sufficiently involved in the constitutional amendments process, and that a number of suggested essential alternatives had not earned any attention, which had caused serious dissatisfaction about certain provisions in the draft. The voting on the draft put to the

Referendum on November 27, 2005 gave rise to numerous concerns. In the opinion of experts, laws were violated during the process and, despite the apparent low turnout, the Central Electoral Commission published numbers that raised serious doubt. Oversight of the actual voting process was hampered by the opposition calling upon their representatives in the electoral commission to refrain from attending the polling stations on voting day. Suspicion about the reported voter turnout was also expressed by the 17-member observer mission of the PACE Council of Europe Congress for Local and Regional Authorities, which mentioned in its report that the Referendum was generally in line with the international standards, but took place with serious abuse. Both CoE observers and, later, the US Department of State expressed regret that the Armenian authorities had not invited OSCE observers. Local observers believe that the Referendum took place with numerous violations, in empty polling stations, and that the high voter turnout was ensured by means of ballot stuffing.

Anyhow, the draft Constitutional Amendments are officially considered to have been adopted, and this analysis is based on the reality thereof.

An interim version of this report was published in May 2005, covering an overview of Armenia's democratization process as of March 1, 2005. This report assesses the status of democratic reform in Armenia as of December 15, 2005.

This study was undertaken by Yerevan Press Club under the "Monitoring of Democratic Reforms in Armenia" project. Sections of this report were developed by members of the "Partnership for Open Society" Initiative: "Democracy: Center for Political and Legal Studies", the Helsinki Committee of Armenia, Caucasus Center for Peace Initiatives, "Cooperation for Democracy," Internews Armenia, Yerevan Press Club, Committee to Protect Freedom of Expression and the Bar Association of Armenia.

The project was funded by the Open Society Institute Human Rights and Governance Grant Program.

EXECUTIVE SUMMARY

THE ADOPTION of the Amended Constitution was expected to be an important step towards democratic reform in Armenia. Though the commitments assumed upon accession to the Council of Europe did not directly require the Constitution to be amended, the honoring of a number of commitments was contingent upon the Constitutional amendments, among other factors. The National Assembly approved the draft Constitutional Amendments in third final reading on September 28, and the Referendum was held on November 27, 2005; subsequently, the draft was deemed adopted by a decision of the Central Electoral Commission. Though the Amended Constitution, on the whole, represents progress compared to the Constitution prior to amendment (replacing hyper-concentration of power with an effectively semi-presidential system, and enhancing institutional safeguards of judicial independence and respect for human rights), the Amendments have addressed only a part of the obstacles to Armenia's democratic development and the construction of a state based on the rule of law.

SINCE ARMENIA'S accession to the Council of Europe, none of the elections (as well as the November 27, 2005 Referendum) conducted in Armenia have been assessed by observers as fully free and fair; moreover, the public remains doubtful of the outcome. In effect, the Republic of Armenia lacks three conditions necessary to organize and conduct free and fair elections and referenda, including: electoral legislation in line with democratic standards, certain level of the culture of elections, and will of authorities to conduct proper elections. Respect for and protection of other rights and freedoms (freedom of expression, freedom of assembly, right to free movement, etc.) supporting free and fair elections.

THE CONSTITUTION PRIOR TO AMENDMENT promulgated safeguards of judicial independence. However, judicial appointment (as well as termination and disciplinary sanctions) was performed by the President of Armenia upon nomination by the Justice Council, which was also headed by the President (the Deputy Chairmen of the Justice Council were the Minister of Justice and the Prosecutor General). The 2005 Constitutional Amendments changed the composition of the Justice Council. However, the President remains the final decision-maker in these matters, and there are no provisions as to what the Justice Council can do if the President fails to accept the nomination or suggestion of the Justice Council. Though a positive step, the Constitutional Amendments fall short of providing institutional safeguards to judicial independence.

IN 2004, the Law on Holding Meetings, Demonstrations, Rallies, and Protests was adopted: this Law allowed the authorities to prohibit the holding of demonstrations near administrative buildings located in downtown Yerevan. At the requirement of the Council of Europe, this Law was amended. However, it conceptually remains a law that restricts the freedom to organize and hold public events. During political tension both prior and after the adoption of this Law, the authorities have obstructed the holding of public events (prohibiting such events on the alleged ground of their failure to comply with the Law, or restricting the provision of buildings for meetings); moreover, the police arbitrarily prosecute participants of demonstrations. Citizens' constitutional right to freedom of movement has been violated, too, by blocking highways and taking vehicles away from their owners to police sanction sites.

A GROUP of Public Observers over penitentiary institutions has been functioning since 2004, i.e. since three years after the transfer of penitentiary institutions to the Ministry of Justice. The Group, as well as a number of non-governmental organizations, have found during their monitoring of penitentiary institutions that such institutions have been reformed and renovated with the support of various international organizations. However, the detention facilities continue to suffer from inadequate medical services, food, and access to information. In 2005, the Group of Observers revealed some cases of violations of the rights of detainees. The Group believes that the scarcity of torture facts in penitentiary institutions is due to the reluctance to report, rather than the lack of such cases.

IN OCTOBER 2003, a Law on the Human Rights Defender was adopted, which provided that pending constitutional amendments, the Defender would be appointed by the President upon consultation with the groups and factions of the National Assembly. However, the President appointed the Human Rights Defender in February 2004 without consulting with the groups and factions of the National Assembly. Subsequently, the Deputy Defender that was appointed was the President's preferred candidate, rather than a nominee of the Defender - as is required by the Law on the Human Rights Defender. Under the Law, the Human Rights Defender is deprived of the right to examine complaints against judicial bodies and judges, as well as complaints regarding cases pending before court. The first Annual Report of the Human Rights Defender of the Republic of Armenia was criticized by the authorities; a number of questions raised in 2005 were not answered. Moreover, there was some pressure on the Defender. Under the Amended Constitution and the Republic of Armenia Law on the Human Rights Defender, the National Assembly shall, in early February 2006, elect a new Human Rights Defender for a 6-year term by 3/5 majority vote of the total number of MPs, "*from among candidates nominated by the President of Armenia and at least 1/5 of the Members of the National Assembly.*"

THE REPUBLIC OF ARMENIA Law on Freedom of Faith and Religious Organizations was adopted on June 17, 1991, on the basis of a 1990

USSR law that had the same name. Since then, the Law was amended twice - once in each of 1997 and 2001. The Law has many shortcomings. Some of its provisions are contradictory. The Government of the Republic of Armenia has undertaken to draft a new Law on Religious Organizations. The Armenian press and television periodically publish calls of intolerance or even violence against certain religious communities. During 1992-1995, there were attacks on the offices of some religious organizations in Armenia, causing the infliction of physical injury upon members of different religious communities. Since 1995, such attacks have not been reported.

SINCE 2004 the Government has shown positive moves since 2004 in the area of protecting the rights of national minorities more actively than before. A new draft law has been commended by experts of the Helsinki Committee of Sweden and the Center for Ethnic Minority Affairs (ECMI). Most probably, the year 2006 will be decisive for determining how serious the Government is about its declared intentions.

INSTEAD OF alternative civil service, the Law on Alternative Service introduced alternative military service for a term of 36 months and alternative labor service for a 42-month term. Alternative labor service is undertaken in organizations named by the Government (psychiatric hospitals, homes for the disabled and the elderly, neuro-psychiatric hospitals, and the “Nork” hospital for patients with infectious disease). Alternative servants are supervised by agencies of the Ministry of Defense. Sanctions of alternative military servants are handled in the same procedure as those prescribed for regular military servants. The citizens enrolled for alternative service during the 2004 fall draft declared their unwillingness to continue performing the service from May 2005 on. 13 of them have been convicted to imprisonment sentences of various lengths. Others are still pending trial. No one applied for alternative service during the drafts of 2005. 19 Jehovah’s Witnesses have been convicted to imprisonment for evading the regular military draft.

THOUGH Armenia has adopted a number of progressive laws regulating the freedom of expression and information (such as the Law on the Freedom of Information and the Law on Mass Media), there still remain numerous negative phenomena in this sphere. The Republic of Armenia Law on Television and the Radio continues to obstruct broadcast media progress and development. The Public Television Company of Armenia remains the microphone of the authorities. Even the Constitutional Amendments adopted on November 27, 2005 will not have a considerable impact on the composition of broadcast media regulators. The Amended Constitution contemplates the existence of only one regulatory body, whereas the procedure of its formation (with 50% being appointed by the National Assembly, and 50% by the President) restricts the possibility of further amending the Law on Television and the Radio. There are concerns about the freedom of broadcast media. Since 2002, the results of tenders for television and radio frequency licensing and the activities of regulatory bodies in this sphere suggest that in several respects, these bodies and,

therefore, also broadcasters are guided by political and other vested interests, rather than the requirements of laws; there is clearly selective application of laws. Another dangerous trend is the article on “Restriction of Information on Anti-Terrorist Activities” in the Law on Fighting Terrorism, which can become another one of the obstacles to the media representatives’ freedom of expression and freedom to receive information. Finally, the free dissemination of information has been hindered since late-2005 by the Law on Postal Communication and the Amended Law on Licensing, which require licensing of companies engaged in print periodicals distribution by subscription. In addition to the Laws being imperfect, there are dangerous phenomena such as intimidation of mass media and journalists and impunity (or superficial punishment) of perpetrators, excessive concentration of ownership in the information sphere, latent censorship of television, and the lack of pluralism.

1. CONSTITUTIONAL AMENDMENTS

Originally, the Council of Europe did not specifically impose a requirement of constitutional amendments upon Armenia, because Armenia had already officially launched the constitutional reform process, and the authorities were closely cooperating with the Venice Commission of the CoE on this matter. In its Opinion No. 221 (June 28, 2000) on Armenia's Application for membership in the CoE, the PACE only noted that "Armenia (...) intends (...) to grant access to the Constitutional Court, within two years of accession, also to the government, the Prosecutor-General, courts of all levels, and - in specific cases - to individuals; to reform the Justice Council in order to increase its independence within three years of accession (...)".

In Resolution No. 1304 adopted on September 26, 2002, PACE invited the Armenian authorities, in view of their commitment to adopt a new Constitution in 2003, to collaborate with the Venice Commission and to follow its recommendations. Moreover, Resolution 1304 invited the Armenian authorities to consider the possibility in the draft Constitution of enhancing the oversight function of the National Assembly.The Armenian authorities, which, in effect, stopped collaborating with the CoE Venice Commission in constitutional reform matters after receiving the July 2001 Opinion of the Commission, failed to adhere to PACE's suggestion: on May 25, 2003, the Armenian authorities held a referendum on a draft, the text of which was unknown to the Commission.

The constitutional amendments did not pass the referendum of May 25, 2003. In Resolution 1361 of January 27, 2004, PACE noted that the honoring of a number of legislative commitments by Armenia was still conditioned by the revision of the Armenian Constitution. PACE highlighted such issues as increased local self-government, introduction of an independent ombudsman, establishment of independent regulatory authorities for broadcasting, modification of the powers of and access to the Constitutional Court, and reform of the Justice Council. PACE once again called the Armenian authorities to speed up constitutional amendments and to hold a referendum as soon as possible and not later than June 2005. In Resolution 1405 of October 7, 2004, PACE noted progress in the constitutional reform process and called for the referendum to be held not later than June 2005. In its new Resolution 1458 of June 23, 2005 concerned only with the process of constitutional amendments in Armenia, the PACE urged the Armenian political forces and civil society to ensure the success of constitutional reforms that would be fully in line with Council of Europe standards.

In collaboration with the Venice Commission during 2000 and 2001, a draft was produced, on which the Venice Commission issued its opinion (CDL-INF(2001)17) during the 47th Plenary Session of the Commission held on July 6-7, 2001. Later, on September 8, 2001, the draft was submitted to the National Assembly by the President with virtually no modification.[1] Following debates in the National Assembly, the President submitted his supplemented draft to the National Assembly on March 27, 2003,[2] which was considerably different from the first draft. On April 2, 2003, the National Assembly endorsed the draft, after some revisions. On May 25, 2003, a referendum was held on the draft amendments, which did not pass.

During the summer and fall of 2004, three drafts of constitutional amendments were submitted to the National Assembly: (i) the draft of the three ruling coalition parties (August 8, 2004); (ii) RoA NA deputy Arshak Sadoyan's draft (August 16, 2004); and (iii) United Labor Party's draft (September 17, 2004). In its 61st Plenary Session held on December 3 and 4, 2004, the Venice Commission adopted its Interim Report (CDL-AD (2004)044) on these three drafts.

In this document, the Venice Commission mentioned that the presented drafts were not fully in line with the European standards and that the reforms should have been based on the 2001 draft.

Despite the Commission's opinion, the National Assembly decided on May 11, 2005 to use as a basis the Coalition Draft, which had in many important respects ignored the Venice Commission's opinion issued in December 2004. On May 27, the Press Service of the Council of Europe disseminated a press release in which the Venice Commission's Working Group for constitutional amendments in Armenia expressed profound disappointment about the draft adopted in first reading and emphasized that the draft needed fundamental revision.

The round table intended for the Venice Commission Working Group and the Armenian political forces to discuss the draft constitutional amendments on June 1 and 2, 2005 in Yerevan did not take place. Instead, the Venice Commission representatives arrived in Yerevan to communicate their profound dissatisfaction to the Armenian authorities. On June 2, the Venice Commission Working Group and the representatives of the Armenian authorities adopted a memorandum. In this document, the Venice Commission took note that the draft adopted in first reading still contained important flaws in three core issues, including checks and balances, independence of the judiciary, and the procedure of appointing the Mayor of Yerevan. In the Memorandum, the Armenian authorities undertook to harmonize the draft with the requirements of the Venice Commission on these matters.

---

1 "Hayastani Hanrapetutiun" daily, February 1, 2002.

2 "Official Bulletin of Republic of Armenia", April 12, 2003, Issue 19 (254). "Hayastani Hanrapetutiun" daily, April 12, 2003.

According to the timetable enshrined in the Memorandum, a meeting between the Armenian authorities and the Venice Commission Working Group took place in Strasbourg on June 23 and 24, 2005, as a result of which agreement was reached on the principles based on which to resolve the outstanding issues in the draft. Under the approved new timetable, the Armenian authorities undertook to implement these principles before July 7. A draft was then submitted to the Venice Commission, on which the Commission issued its draft opinion on July 21 (CDL(2005)054), which was mainly a positive assessment of the revisions made. The amended draft was adopted by the National Assembly in the second reading on September 1, and in the third reading and finally on September 28. The constitutional referendum took place on November 27, 2005. On November 29, 2005, the Central Electoral Commission adopted a decision ratifying the Draft "On Introducing Amendments to RA Constituton".

COMMENTS ON THE SECOND CHAPTER OF THE AMENDED CONSTITUTION ON FUNDAMENTAL HUMAN AND CIVIL RIGHTS AND FREEDOMS

One of the most important achievements of the Amended Constitution is the constitutional provision on abolishing the death penalty. This provision will have effect in any situation, including a state of war.

The Amended Constitution enshrines the principle of respect for human dignity, which essentially means that the state is for humans, and not the other way around. A constitutional provision enshrining the principle of respect for human dignity means that activities and goals of the authorities may be justified only if they serve humans.

Another improvement is its enshrining of the general principle of freedom. This principle allows a person the freedom to do anything that is not prohibited by law and does not violate the rights and freedoms of others.

Unlike the Constitution prior to amendment, the Amended Constitution defines an exhaustive list of all the cases in which a person may be deprived of liberty. It means that there may be no grounds for depriving a person of his liberty other than those specified in the Constitution.

The Amended Constitution prescribes the human right to have access to information on his person held in central and local government bodies. A person will have the right to correct inaccurate information on him or eliminate such information, if it has been obtained unlawfully.

The Amended Constitution more precisely defines the right to express one's opinion freely. The state will safeguard the existence and activities of independent public radio and television offering a diversity of information, educational, cultural, and entertainment content.

Everyone will have the right to present applications or suggestions to central and local government bodies and officials regarding the protection of

personal or public interests and to receive a proper response within a reasonable period.

The Amended Constitution provides that persons who do not have Armenian citizenship may also participate in local government elections and local referendum.

The Constitution prior to amendment groundlessly reserves a number of rights only to Armenian citizens. The constitutional amendments will eliminate this discrimination. The Amended Constitution gives the rights to employment, assembly, and free movement within the country to all those that lawfully reside in Armenia.

Though the Constitution prior to amendment does enshrine a number of fundamental human and civic rights and freedoms, the safeguards of respect for such rights and freedoms are lacking, because a person whose fundamental human rights and freedoms have been violated may not appeal to the Constitutional Court to find remedy of such rights: Amended Constitution enshrines everyone's right to appeal to the Constitutional Court to challenge the constitutionality of laws on the basis of which a final court decision was taken in respect of the person (Article 101, Point 6). However, it unnecessarily restricts the scope of the Constitutional Court's review, on the basis of this sub-legislative acts will not be the subject of a constitutional appeal.

A person will be able to defend his constitutional rights also through the Human Rights Defender. The Human Rights Defender, too, will have the right to appeal to the Constitutional Court (Article 101, Point 8) and to other competent authorities. The Amended Constitution considerably strengthens the safeguards of the Human Rights Defender's independence. Under the Amended Constitution, the Defender will be appointed by 3/5 of the National Assembly (Article 83.1), rather than the President of the Republic. This appointment procedure will allow a person enjoying the confidence of various groups of society to be appointed as the Human Rights Defender. Alongside the improvements in the Amended Constitution, however, there are numerous shortcomings and omissions.

The Amended Constitution will amend the formation procedure of the independent body regulating the sphere of broadcasting (National Television and Radio Commission- NTRC) by providing that half of its members will be appointed by the National Assembly, and the other half - by the President of the Republic (Article 83.2). Ignoring the urge of the PACE, the Amended Constitution does not require the incumbent National Television and Radio Commission composition to be replaced immediately. The members of the incumbent Commission will stay in their offices until the end of their respective terms (Article 117, Point 11).

The Amended Constitution contains a number of declarative provisions, which cannot be implemented and protected directly on the basis of the

Constitution. The Constitution cannot directly provide housing, a healthy environment, and other conditions to people: in other words, these rights will never be implemented.

The Amended Constitution does not differentiate between civil and political rights, on the one hand, and social rights, on the other. The Chapter on Human Rights and Freedoms should only contemplate the rights backed by judicial remedy. The Chapter on Human Rights and Freedoms should contemplate economic, social, and cultural rights only to the extent to which the state is able to ensure judicial protection of such rights. Otherwise, such economic, social, and cultural rights should be prescribed in the special chapter on the obligations of the State.

The Amended Constitution does not clearly prescribe the grounds for limiting human rights, as such grounds have not been enshrined in the articles that provide the specific rights. This omission can create wide possibilities for abuse.

There is no direct reference to the principle of proportionality, which is crucial for human rights protection in a state where the rule of law is established. The principle of proportionality implies that a law may prescribe only such limitations of human and citizen's fundamental rights, which pursue a constitutional purpose and are relevant, necessary for attaining such a purpose.

By abolishing the absolute ban on dual citizenship, the Amended Constitution, however, does not provide a constitutional solution to the political rights of dual citizens. This is rather dangerous, because the legislature may decide to grant voting rights to dual citizens that do not have permanent residence in the Republic of Armenia. It means that the presidential and parliamentary elections can be decisively influenced by the votes of those that reside outside Armenia and are not subject to the jurisdiction of Armenia.

The article in the Amended Constitution concerning the deprivation of ownership is a step back compared to the Constitution prior to amendment. Under the Constitution prior to amendment, a separate law must be adopted for each case of depriving a person of ownership. The Amended Constitution, however, does not contain such a requirement.

SEPARATION OF POWERS; CHECKS AND BALANCES (CHAPTERS 3-5)

The Amended Constitution has taken a number of important steps towards enhancing the Government's role and eliminating the complete dependence of the Government on the President. The Government's role has been clearly prescribed: the Government will develop and implement domestic policies, whereas foreign policies will be developed and implemented jointly with the President of the Republic (Article 85 Part 1). The Government will also acquire organizational autonomy in that the Government's sessions will be summoned and chaired by the Prime

Minister (Article 86 Part 1), and its decisions will be taken by the members of the Government, and there will be no longer a requirement for the President to endorse the Government's decisions. Considering the semi-presidential government principle whereby a directly-elected President has a strong influence over foreign policy, national security, and defense, the Amended Constitution provides that the President may summon Government sessions on these matters and chair such sessions (Article 86 Part 2), while the decisions will be adopted by the Government members and signed by the Prime Minister. The structure of the Government will be defined by law, rather than a presidential decree.

The most important improvement in the chapter in the Amended Constitution on the government system is that the Government will no longer be subject to double responsibility before both the President and the National Assembly. The Prime Minister will be responsible only before the National Assembly and the President will in no case be able to dismiss him. The President may only propose no confidence to the Government, while the National Assembly will have the exclusive power to take such a decision (Article 84).

However, the Amended Constitution has not fully eliminated the Government's dependence on the President. Thus, in compliance with Article 85 Part 2, "On the basis of, and in order to ensure the implementation of, the Republic of Armenia Constitution, international treaties, laws, or presidential decrees, the Government shall adopt decrees that shall be subject to enforcement throughout the Republic." This provision is redundant. On the one hand, Articles 5 and 6 of the Amended Constitution make the law in effect (the Constitution, laws, and international treaties) binding for the Government, and on the other, the President does not have any powers regarding domestic policies, which means that he cannot adopt any decree on domestic policies that would be binding for the Government. Although the President will no longer have the power to endorse Government decrees, there is still a provision that provides that the President will have the power to suspend any governmental decision or decree and to challenge their constitutionality before the Constitutional Court (Article 86, Part 4). The President of the Republic may use this possibility not only in extraordinary substantiated cases, but also as a political tool against Government decisions that do not fit his political objectives. Moreover, involvement of the Constitutional Court is dangerous in the sense that the Constitutional Court may become engaged in urgent and politically important disputes between the President and the Government, which may undermine the reputation of the Court.

The Amended Constitution does not stipulate any participation of the Government in the decision-making by the President. The Venice Commission emphasized back in 2000 that if the constitutional reforms are designed to increase parliamentary oversight of the President's activities, then it can be achieved by involving ministers in the process of decision-making by the President and by requiring that Presidential decrees by

signed also by the respective minister. The President could also be required to consult with the respective state bodies, such as the National Security Council.

In a semi-presidential system, it would be logical for the Government to enjoy the confidence of the parliamentary majority. Therefore, the Parliament would need to be involved in the formation of the Government at the very early stages so that the Government, based on the support of the parliamentary majority, could efficiently carry out domestic and foreign policies. Since the President of the Republic will no longer be the de-facto head of the executive branch, the influence of the Parliament over the formation of the Government will grow considerably. On the basis of consultations with the Members and factions of Parliament, the President of the Republic would appoint a Prime Minister that enjoyed the confidence of the majority of MPs and, if it is impossible, then a person that enjoys the confidence of the largest number of MPs. The Amended Constitution, however, does not clearly define the mechanisms of the Government's formation, which may create difficulties in practice.

It does not clearly define the degree to which the President of the Republic is bound to follow the Prime Minister's proposals on the appointment and dismissal of ministers.

In the Amended Constitution, there is no reference to the provisions of Article 49 of the Constitution prior to amendment, regarding the functions of the President. The legal significance of Article 49 and the linkage between Article 49 and the list of the President's powers under Article 55 is not made clear. The present text of Article 49 of the Constitution could be interpreted as additional norm for President authority. Clearly, this uncertainty in the Constitution could be used to expand the President's authority beyond the powers defined in Article 55. Such a situation would undermine the principle of the separation of powers, because it would distort the political balance between the President and the other constitutional bodies, including the Parliament, the Government, and the courts. Since the provisions of Article 49 regarding the President's functions could be a source for constantly expanding his powers, it was necessary to add to this Article that the President shall exercise his functions through the powers vested in him by the Constitution and the laws. Such a provision would clarify that Article 49 is a description of the general function of the President's office.

The Amended Constitution maintains the language of Article 56 of the Constitution prior to amendment: "The President of the Republic publishes decrees and instructions that may not contradict the Republic of Armenia Constitution and laws and shall be enforceable throughout the Republic of Armenia." Taken alone, this Article enables the President to be the primary law-maker in any sphere in the absence of legislation. Such a power of the President is not consistent with the amendment proposed in Article 6 Part 5, which provides that normative legal acts shall be adopted on the basis of the Constitution and the laws to ensure their implementation. Therefore,

the provision requiring that the President's acts not contradict the Constitution and the laws is redundant, because any sub-legislation must be adopted on the basis of the Constitution and the laws to ensure their implementation. Article 56 should be understood and interpreted jointly with Articles 49 and 55, i.e. in accordance with the separation of "functions" and "powers." In its opinion of 2001, the Venice Commission mentioned that the general provision in Article 49, which provides that the President of the Republic will ensure the normal operation of the legislative, executive, and judicial branches, cannot serve as a ground for the law-making activity of the President. Article 56 should be worded clearly in order to prevent abuse of power by the President. Therefore, Article 56 should provide that the President shall issue decrees and instructions to further the exercise of his powers.

In April 2000,when the constitutional reform activities were launched jointly with the Venice Commission, both the Commission and the Armenian side believed that the President had broad powers of appointment (Article 55 Parts 5, 8, 10, and 11), and that the Government and the Parliament should be engaged in the appointment process. The Commission also noted that the President's power to appoint civil servants may be limited only to the appointment of senior administrative officials, whereas Article 55 Part 5 of the Amended Constitution represents a step in the opposite direction, because it refers to a much broader category of servants, i.e. "public servants" instead of "civil servants."

There can be no logical justification for maintaining the existing procedure for the appointment and dismissal of Governors (Marzpets), which provides that the President of the Republic will endorse Government decisions on the appointment and dismissal of Governors. Since the primary function of Governors is to implement the regional policies of the Government, and the President is not a part of the Government, the requirement of endorsement is groundless. Under the existing procedure, if the President does not endorse a Government decision on the appointment or dismissal of a Governor, then this may endanger the "cohabitation" because the new Government will be unable to carry out its regional policy.

The Amended Constitution clarifies the issue regarding the immunity of the President (Article 56.1), but a major omission in the Draft is that the grounds for real accountability of the President are limited to state treason or other grave crimes (Article 57). Since the President does not carry political responsibility in a semi-presidential system, almost all of the constitutions in Eastern Europe prescribe a violation of the constitution as a ground for impeaching the President, as a ways of somewhat mitigating the inconsistency between the large political authority of the President and his political unaccountability.

In the Amended Constitution, there is no reference to Article 62 Part 3, which unduly restricts the powers of the Parliament by stating that the Parliament's powers shall be limited to those defined in the Constitution. This restriction is not typical of a Parliament, because it is clear that the

Parliament, as a representative body of the people, should have the authority to define its powers also by law in accordance with the principles of democracy. It is understandable that in defining its powers, the legislature will be bound by the Constitution in the sense that any new powers may not contradict the Constitution. If such a restriction remains, there arises a danger that if new political challenges necessitate augmentation of the powers of the Parliament, it may require constitutional amendments.

The Amended Constitution maintains another anti-parliamentary principle of the Constitution prior to amendment, i.e. the limitation on the number of standing committees in the Parliament (Article 73 Part 1). This provision limits the right of the people's representatives to define the internal procedure of the Parliament's activities independently. Insofar as the number of committees and the purposes of their creation are concerned, the people's representatives should have the freedom to take decisions independently in order to be able to effectively exercise control over the executive. The Amended Constitution follows the approach of the Constitution prior to amendment by defining the core functions of standing committees, but the list of functions does not include a key function such as parliamentary oversight. It would be appropriate either for this function to be clearly enshrined in the Constitution or for the definition of standing committees' functions to be reserved for the Regulations of the Parliament, like many democratic countries have done.

Since the Amended Constitution strengthens the role of the Government based on the parliamentary majority in the development and implementation of country policies, and the political struggle will mostly take place between the parliamentary majority and minority, it would be appropriate to follow the example of Article 44 of the German Constitution by defining the right of the minority to create investigating commissions (in Germany, one quarter of the MPs may exercise this right). Besides, protection of the rights of the minority could be facilitated by following the example of Article 91 of the Croatian Constitution, which provides that the chairman of an investigating commission shall be appointed by the parliamentary majority from among opposition MPs.

Article 69 of the Amended Constitution has abolished the provision on the length of regular sittings and provides that this matter will be regulated by law. It would be more appropriate to maintain the constitutional provision defining the length of parliamentary sittings, which is the case in the constitutions of many other states. Since the experience of the Armenian Parliament has shown that the length defined in the Constitution prior to amendment is too short, it would be appropriate to define that the length of a regular sitting of the Parliament is 9 or 10 months.

An important amendment is proposed to Article 70, which states that an extraordinary session or sitting of the Parliament may be convened by the Chairman of the National Assembly at the initiative of the President of the Republic, at least one third of the total number of MPs, or the Government. An extraordinary session or sitting shall be held with the agenda and length

defined by the initiator. On the one hand, this amendment deprives the President of his right to convene an extraordinary session or sitting. On the other it gives the President the right to demand that an extraordinary session or sitting be convened to discuss an issue proposed by the President.

Article 74.1 Part 2(a) of the Amended Constitution provides that the Parliament may be dissolved if during three months of the regular sitting, the Parliament does not reach a decision on a draft law that was deemed urgent by a governmental decision. Such a provision is too vague. First of all, it is unclear what the word “decision” encompasses: only positive decisions or negative decisions, as well? Secondly, the wording “draft law that was deemed urgent” is not found in any other provision of the Draft, and it is not clear what draft laws are meant here and at what frequency the government may decide that various draft laws are urgent.

The Amended Constitution maintains the provision in the Constitution prior to amendment whereby the Government may define the sequence of discussing draft laws submitted by the Government and demand that they be voted only with amendments acceptable to the Government. In connection with this power, the Venice Commission mentioned in its opinion of 2004 that in this way, the Government can decide the way in which the Parliament should exercise its legislative power and decisively suggested removing this provision from the final text.

Similar to the Constitution prior to amendment, the Amended Constitution provides that in a state of war or state of emergency declared by the President, the Parliament may declare the measures already undertaken as null and void (Article 81 Part 3). However, the Parliament has no right to abolish a state of war or state of emergency, which may result in conflicts between the President and the National Assembly. The necessity of providing this power to the Parliament was mentioned in the 2001 Opinion of the Venice Commission (CDL-INF(2001)17, para. 45).

Under the 2001 draft, this provision was intended to broaden the scope of the exclusive legislative regulation by the Parliament and the powers of the Parliament. In its Opinion of 2004, the Venice Commission noted with regret that the number of matters pertaining to the exclusive legislative authority of the Parliament was reduced (37 matters in the 2001 draft, and 18 in the draft as of August 2004); moreover, in the Amended Constitution that has been put to the Referendum, there are only 11 legislative matters, over which the Parliament will have exclusive legislative authority.

The Amended Constitution continues to ignore the issue of independent commissions, as a result of which unconstitutional bodies will remain, because under Article 2 Part 2 of the Constitution, central and local government bodies must be prescribed by the Constitution. Moreover, the Constitution exhaustively defines the powers of the Parliament (Article 62 Part 3), which precludes the involvement of the Parliament in the formation of any independent commission. The only exception in the Amended

Constitution has to do with the National Television and Radio Commission, which shall be formed jointly by the Parliament and the President.

CHAPTER 7 ON LOCAL SELF-GOVERNMENT

The Amended Constitution contains a number of important amendments to Chapter 7 of the Constitution, which is concerned exclusively with local self-government. The provisions on state government have been moved to the chapter on the Government. The Amended Constitution no longer contains the unnecessary constitutional restriction on the number of community council members and increased the term of office of local self-government bodies from 3 to 4 years. Local self-government bodies will have the right to appeal to the Constitutional Court challenging the constitutionality of normative acts of state bodies that violate their constitutional rights (Article 101, Part 1(5)). Article 107 Part 4 of the Amended Constitution provides that community members may directly participate in the governance of community affairs by means of deciding community matters in local referendum. The provisions of Parts 2 and 3 of Article 106 of the Amended Constitution regarding the financing of community functions are crucial. Article 105.1 enshrines the important principle whereby land within the administrative boundaries of a community, with the exception of land necessary for state needs and land owned by individuals and legal entities, shall be the ownership of the community. In order to ensure the fully-fledged exercise of this constitutional provision, it would be important for the transitional provisions to specify the period during which the state would transfer land to communities as ownership.

The local self-government chapter of the Amended Constitution contains some omissions and shortcomings, which are due to conceptual misperceptions of local self-government as an autonomous and independent system of democracy. Article 109 is inconsistent with democratic principles, it maintains the institutional possibility for the Government to dismiss an elected community head. In this respect, the Venice Commission emphasized in its 2004 Opinion that “the exercise of this power may undermine the principle of local self-government, especially because there is no longer a requirement for the Government to make an inquiry with the Constitutional Court before taking such a decision.” Though the requirement to make an inquiry with the Constitutional Court was added to the Draft on July 20, 2005 it still does not resolve the issue. It is clear that this recommendation of the Venice Commission has the nature of a compromise, because in the same Opinion, the Venice Commission suggested in respect of the National Democratic Union draft completely removing Article 109 of the Constitution prior to amendment.

By ratifying the European Charter on Local Government, Armenia has adopted the binding force of the principle (Article 3 Part 2 of the Charter) that provides that a community head shall be responsible before the community council, because the community council is the primary representative body of the community. Such a provision must be enshrined in the Constitution to define what will happen if the community council expresses

no confidence in the mayor. Since both the community council and the mayor are elected by direct suffrage, it would be appropriate to define that in the event the community council expresses no confidence in the community mayor, concurrent elections of both the council and the mayor shall be held. Another possible solution would be for the council to be given the right to initiate dismissal of a community mayor by means of a local referendum.

The Amended Constitution finally clearly defines the status of Yerevan as a community. Under Article 108 of the Amended Constitution, the Mayor of Yerevan may be elected directly or indirectly. However, this Article ignores the other problems of local government in Yerevan, including the issue of the levels of local government. Essentially, the Amended Constitution abolishes the constitutional basis for the district communities within Yerevan, which means that the district communities may later be abolished by law. It would be appropriate for the Constitution to enshrine two levels of local government in Yerevan - community level and district level. The distribution of functions could be done in such a way as to ensure that the city bodies (the city council and the city mayor) took decisions on issues of “city-wide significance,” whereas the districts, through district councils and district mayors, would be entitled to take decisions on issues of “district-wide significance.” Moreover, one could prescribe that certain city-wide functions could be delegated to the districts in order to maintain direct contact with the citizens.

The Amended Constitution prescribes the possibility of creating inter-community unions, but does not regulate this issue in sufficient detail. Article 108.1 of the Amended Constitution regarding oversight (legal and professional oversight) over the activities of community bodies is not sufficiently clear and needs to be elaborated further.

Since about 40% of Armenia’s territory is currently not included in any community, the Constitution should have defined that local government shall be performed throughout the territory of the Republic of Armenia.

2. ELECTIONS, REFERENDA: LEGISLATION AND PRACTICE

By becoming a fully-fledged member of the Council of Europe and ratifying [on December 30, 2000] the Charter of the CoE signed in London on May 5, 1949 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (on March 20, 2002), which provides in Article 3 of the First Protocol that "the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot", the Republic of Armenia has undertaken to harmonize elections held in the country with the requirements of the Council of Europe since ratification.

The Code of Good Practice In Electoral Matters adopted by the Council of Europe's European Commission for Democracy Through Law, known as Venice Commission (adopted in the 52 Plenary Session of the Venice Commission in Venice during October 18 and 19, 2002, and endorsed by PACE in 2003) defines the CoE's standards on democratic elections with which elections held in the Member States must comply.

After signing the aforementioned documents, the legitimacy of elections held in Armenia and their compliance with international standards have been assessed primarily on the basis of these documents.

The first presidential and parliamentary elections held since accession to the CoE (i.e. the 2003 elections) were assessed by CoE Parliamentary Assembly as an "electoral process which as a whole had not complied with international standards [for democratic elections]." *(see PACE Resolutions 1361 (2004) and 1374 (2004).)* This was also the assessment of the OSCE Observer Mission.

Here are the main political and legal obstacles to the administration of free and fair elections in the Republic of Armenia in line with international standards:

- The Armenian authorities do not have the will to conduct elections in line with international standards in the Republic of Armenia;

- There are no democratic traditions in Armenia; civil society and a multiparty system are just emerging, there is no legislative stability, and the existence of mass media independent of the state is questionable;

- As a consequence of fraud, elections in Armenia do not become a means for expressing the majority will, addressing political conflict, and forming the political elite; thus, the authorities do not become legitimized;

- Neither stakeholders nor society have ever concluded that elections were fair in Armenia (with the exception of the 1990 parliamentary and the 1991 presidential elections); as a consequence, elections in Armenia exacerbate in-country tension instead of fostering political stability;

- The political regime that has emerged in the Republic of Armenia as a consequence of regular election fraud, among other things, is characterized as a "nomenclature democracy," i.e. a democracy of limited possibilities, where there are restrictions on all the rights the exercise of which may hinder "self-reproduction" of the authorities;

- As a consequence of fraudulent elections, the people and political forces that come to the power are unknown and have a suspicious past; most often, they do not have much in common with the collective will of society;

- The outcome of elections is decisively influenced by the administrative and financial resources, rather than the collective will of the voters;

- In Armenia, elections have been transformed from a democratic institution to an institution that serves the personal interests of individuals or inner circles;

- As political parties remain underdeveloped at best, campaigns turn into a struggle between individuals, with virtually no debate on core values and alternative paths of development;

- Those who perpetrate crimes during elections go unpunished. Even when the perpetrator is known and evidence is available, nothing is done about it. On the days following both the presidential and parliamentary elections in 2003, *Haikakan Jamanak* and *Aravot* published a long list of irregularities many of which contained elements of crime; however, no criminal cases were instigated in response. Even if any administrative penalties were ordered, they were ordered mostly against opposition representatives. To date, nothing has been done about the calls of the international community and the opposition to punish the perpetrators of electoral violations (which could have mitigated both political tension and the conclusions of the international community). The public conscience still fails to treat as crimes the criminal acts against electoral rights (forcing a voter to say how he voted - in order to violate the secrecy of the vote; checking the voted ballot to find out how the voter has voted; entering into the voting booth; violating secrecy of the vote in other ways; intentionally miscalculating the votes in the referendum or in elections; approving manifestly erroneous "results" of elections or the referendum; stealing ballot boxes; forging election or vote results in various ways; voters' producing fake documents and misrepresenting themselves to vote instead of someone else or to vote more than once; obstructing the free administration of elections or referendum; impeding the activities of the electoral or referendum commissions; obstructing the exercise of their rights by members of electoral or referendum commissions, or members of initiative groups, or candidates or their proxies, or observers, the mass media representatives, or party (party

alliance) proxies. The persons who committed these crimes still do not receive the due public attitude.

Shortcomings of the electoral legislation, too, hinder the administration of free and fair elections in the Republic of Armenia. Since the adoption of the Electoral Code in 1999, over 100 amendments have been introduced into the text. Interestingly enough, these amendments are typically made on the eve of elections.

In order to conduct elections in accordance with the standards established by the Council of Europe, the electoral legislation needs to be amended to ensure the impartiality, professionalism, and transparency of electoral commissions.

- Under the previous (prior to the adoption of the May 19, 2005 Law on Amending the Electoral Code) procedure of electoral commission formation (Chapter 8 of the Electoral Code), the executive branch of government, led by its de-facto head, the President, continues to have a predominantly biased impact on the performance of electoral commissions. There are no guarantees for the activities of independent, impartial, and professional electoral commissions. During both presidential and parliamentary elections held in 2003, virtually all of the chairmen of electoral commissions were those members that had been appointed by the incumbent President or the parties, currently represented in the ruling coalition. Thus, the procedure of electoral commission formation should be modified fundamentally. Electoral commissions must be balanced, impartial, and professional. All of the political forces represented in the National Assembly should have their members in the electoral commissions; however, it must be ensured that no one has a predominant role, that the authorities and the political opposition are equally represented, and that non-parliamentary parties that are running in the elections also be represented in the electoral commissions by members that would have a consultative vote. In order to have balanced and impartial electoral commissions, nomination of electoral commission chairmen, deputy chairmen, and secretaries by lottery draw could be practiced (for both territorial and precinct commissions).

The Law on Amending the Electoral Code, adopted on May 19, 2005, not only failed in resolving the outstanding issues, but also some of its provisions contradicted the Constitution.

As a result of these Amendments, the following procedure for the formation of Electoral Commissions was prescribed:

The Central Electoral Commission (CEC) shall be formed in the following way:

- Each of the parties (alliances) that have factions in the National Assembly shall appoint one member of the CEC;

- The President of the Republic shall appoint one member;

- Each group of parliamentarians, which exists in the National Assembly, shall appoint one member of the CEC (however, starting from the next elections of the National Assembly, the Council of Court Chairmen shall make such appointment from among the judges of the universal courts of Armenia); and

- One member appointed by the Cassation Court from among the Cassation Court judges (Article 35).

The members of the Territorial Electoral Commissions shall be appointed by the CEC members. The CEC members appointed by the Cassation Court and the Council of Court Chairmen shall appoint the members of Territorial Electoral Commissions from among universal court judges.

The established procedure for commission formation, similar to the procedure that existed previously, does not ensure the balanced and impartial nature of electoral commissions; moreover, the inclusion of judges in the commissions directly contradicts Article 98 of the Republic of Armenia Constitution, which provides that “Judges and members of the Constitutional Court (...) may not hold an office in state and local self-government bodies (...) not connected with thier duties (...)” Surprisingly, such an amendment to the commission formation procedure was assessed by the Venice Commission and ODIHR experts as “an improvement, because it enhances political pluralism in the formation of the Central Electoral Commission and the Territorial Electoral Commissions” (Strasburg, Warsaw, 13.05.2005, Opinion N 310/2004 of the Venice Commission and ODIHR). The Venice Commission and ODIHR experts may, perhaps, have not noticed the conflict between the inclusion of judges in electoral commissions and the Republic of Armenia Constitution, but it is even more difficult to explain why the Venice Commission members would disregard the concerns expressed earlier by the Council of Europe and the very same Venice Commission about the dependent condition of the Armenian judiciary. In its Interim Opinion of December 6, 2004 concerning the constitutional amendments, the Venice Commission clearly states that “providing constitutional safeguards for the establishment and operation of an independent and impartial judiciary is recognized as a key issue of constitutional reforms in Armenia.” In other words, Armenia still does not have an independent and impartial judiciary. Therefore, the inclusion of a judiciary that is dependent upon the executive in the electoral commissions cannot be seen as “a positive step towards achieving a greater degree of political pluralism.”

- Under this procedure of electoral commission formation, the power play during the 2005 fall local government elections was in the better cases 3-6, and in the worse cases, 2-7 in favor of the authorities.

Even if one were to set aside the issues of anti-constitutional provisions and the power play within electoral commissions, the inclusion of judges

into electoral commission may have irreversible consequences. In accordance with the procedure, a total of 82 judges will be involved in the electoral commissions, which will make up about 50-60% of the total number of judges in universal courts and may disrupt the activities of the judiciary during elections.

The amendments provide a theoretical possibility for a situation in which all the members of the CEC would be Cassation Court judges, and the members of Territorial Electoral Commissions would be universal court judges. In such a case, even all the judges of Armenian universal courts would not be sufficient in number to fill all the positions in the Central and Territorial Electoral Commissions.

- The 2005 May 19 Law on Amending the Electoral Code has also amended Article 35(3) of the Electoral Code to provide that the composition of the CEC will be approved by a decree of the President of the Republic: it is not clear whether the President will have the right to refuse to approve any candidate nominated by any of the sides.

There is another unacceptable provision, which states that during the 20 days prior to the voting day in presidential elections, if the powers of a CEC member are terminated prematurely, and if the number of vacancies is greater than 1/3 of the total number of Commission members, then the vacancies will be filled by the President of the Republic, rather than the entity that appointed the member whose place is vacant (Article 38).

There has been no proof to the claim that the inclusion of judges in electoral commissions will enhance the professionalism of electoral commissions. The results of elections of the mayor in the Kanaker-Zeitun community of Yerevan were declared null and void by Territorial Electoral Commission number 2, and the results of elections of the community council members in the same district were partially annulled by the Territorial Electoral Commission: the results were appealed to and quashed by the court. The Territorial Electoral Commission had taken its decisions with the participation of the judge-member of the Commission, who had voted for the decisions and had not issued a separate opinion on the decisions.

- Voter lists have a crucial role in ensuring the exercise of voting rights. Similar to the past, the voter lists were far from perfect in the local government elections held in the fall of 2005, and thousands of people were actually deprived of the possibility to take part in the elections.

The 2005 May 19 Law on Amending the Electoral Code has defined a new procedure for the compilation of voter lists *(see the amended text of Chapters 9-14 of the Electoral Code)*. At first sight, this procedure may seem like it represents progress, but in practice, it causes a number of problems.

The procedure of compiling voter lists is problematic and still not very clear: if the voter lists are compiled at the regions and communities, then it is unclear how the lists will include names of individuals who have registered voting rights abroad (Article 9).

The transparency of the voting process is breached by the non-public and closed nature of the lists of servicemen and prisoners (Article 13). In essence, the voter lists compiled in military detachments fall outside of any control, and can at least undermine confidence in the process. It is unclear whether the voters included in these lists will be included in the National Register of Voters or not. If yes, then the provision on the non-public nature of such lists will be breached. If not, then it is unclear how the CEC will be able to publish the total number of voters on the day preceding the voting day: if the final number should include also servicemen and prisoners, then the difference between the voter number as per the register and the total number of voters published between the CEC will be the number of servicemen and prisoners, which means that the requirement to keep the lists closed will be respected only partially, and will therefore become meaningless. If the voter lists of military servicemen are closed, it will become almost impossible to conduct oversight of servicemen being included in several lists and voting several times.

- Though no restriction of the rights of proxies was permitted even before the adoption of the 2005 May 19 Law on Amending the Electoral Code, there were numerous cases of forcing proxies of opposition candidates out of the polling stations during the 2003 elections. In cases when the proxies were not forced out of the polling stations, their involvement in the work of commissions was minimized, and they were not allowed any access to voting documents, including voted ballots.

The 2005 May 19 Law on Amending the Electoral Code brought some clarity in the proxy-commission relations, and one may think that as a result of these amendments, the aforementioned problems will be precluded. Under Article 27 of the amended Electoral Code, proxies will have the right to be physically present next to the commission members registering voters and controlling the ballot box and to observe their work, without interfering with the work of commission members; when the voting results are finalized, proxies will have the right to look at the voted ballots and the marks on such ballots during the vote count in the presence of the electoral commission chairman, deputy chairman, secretary, or any member of the commission instructed by the commission chairman, and to be present in the ballot count and summarization.

As a safeguard of the rights of proxies, the Electoral Code now defines: “No restriction of the rights of proxies shall be permitted. No one, including the electoral commissions, shall have the right to take proxies out of the voting room or to preclude their presence in the activities of the commission in any other way, with the exception of cases of arresting or detaining them.”

- Lack of electoral commission members’ legal knowledge remains another cause of poor electoral administration in Armenia. Training is the key to both proper enforcement of the electoral legislation and the exercise of voting rights.

Having a certificate confirming that the person has adequate knowledge on voting rights must be a precondition for anyone to become a member of an electoral commission.

Under the 2005 May 19 Law on Amending the Electoral Code (Article 34), individuals who have attended professional training and hold qualification certificates in accordance with the procedure established by the CEC may become members of electoral commissions. Though progressive at first sight, this provision may, in the absence of any criteria in the Law regarding attendance of the training and the granting of qualification certificates, serve as a basis for precluding the most active representatives of opposition parties from becoming members of electoral commissions.

- A number of provisions of the 2005 May 19 Law on Amending the Electoral Code directly contradict other laws of the Republic of Armenia, in particular, the provision on appealing the various decisions of electoral commissions immediately to an appellate court (Article 40 Parts 3 and 10). This provision contradicts the Republic of Armenia Civil Procedure Code. In such cases, the National Assembly By-Laws (Article 47) require such amendments to be presented to the National Assembly in a package, which was not done. According to Article 24(3) of the Republic of Armenia Law on Legal Acts, “a new legal act adopted by the same body shall not contradict the earlier-adopted legal acts of equal legal force that are already in effect. In case of conflicts between legal acts of legal equal force adopted by the same body, the provisions of the legal act that entered into effect earlier shall prevail.” Therefore, it is clear that unless the aforementioned laws are amended, the provisions in question will not have any effect.

- The 2005 May 19 Law on Amending the Electoral Code has also amended the procedure of reviewing appeals against the decisions, actions, and inaction of electoral commissions. Prior to adopting this Law, the appeals had to be reviewed in a short (5-day) period in view of the peculiarities of electoral rights (especially the difficulties associated with restoring such rights); in some cases, the appeals had to be reviewed immediately. Under the amendments, appeals (complaints) and suggestions shall be reviewed by electoral commissions and responses shall be provided in the time period specified under the Republic of Armenia legislation, with the exception of cases prescribed by the Code. Under these provisions, a complaint regarding the failure to provide the protocol of voting results to a proxy within a Precinct Electoral Commission may be heard, for instance, after 29 days, when the electoral process is over.

- Article 30 of the 2005 May 19 Law on Amending the Electoral Code adds Article 40^1 to the Electoral Code to provide a procedure for reviewing appeals and suggestions (Article 40^1, para. 3), which does not create favorable conditions for the proper review of appeals and contradicts the principles of reviewing public disputes in a country ruled by law, including the principle of *ex officio* review and the principle of banning the abuse of formal requirements (Article 6 of the Republic of Armenia Law on

Foundations of Administration and Administrative Proceedings). The amendments provide that an electoral commission shall accept, admit, and review only appeals (complaints) and suggestions, addressed to that same electoral commission. The appeal must be signed by the appellant and contain his name, surname, residence address, and the date of submitting the appeal. An appellant must clearly define his demand, provide justification, and attach possible evidence to the appeal. Unless such information is included, appeals and/or appeals containing false information on the appellant shall be deemed anonymous and shall not be reviewed.

- The 2005 May 19 Law on Amending the Electoral Code adds a new Article 40^2 to the Electoral Code entitled "Procedure of Re-Counting Voting Results of the Precinct Electoral Commission at the Territorial Electoral Commission (although the title would make more sense if it were worded as follows: "Procedure of Re-Counting the Results of Voting in a Precinct at the Territorial Electoral Commission"), which provides that the re-count activity shall start in Territorial Electoral Commissions two days after the voting day, from 9am. When performing the re-count, a Territorial Electoral Commission shall work without days-off, from 9am to 6pm, unless a decision is taken by the Commission to extend the working hours. The re-count of voting results shall be performed in the same order, in which registered appeals are received and shall end at 2pm on the 5^{th} day following the voting day. This procedure does not provide favorable conditions for oversight of the work of Precinct Electoral Commissions. During the period currently defined by law, the Territorial Electoral Commission will hardly be able to go over results of 5-6 precincts. It would not take much of an effort to make sure the 5-6 reviewed precincts are actually the precincts in which there were no violations, whereas the others will not be reviewed, and so, no violation of law will be found.

- The procedure for determining errors defined in Article 62(1)(2) of the Electoral Code cannot be understood, especially the provision whereby "if the sum of valid and invalid ballots in the ballot box is smaller than or equal to the number of voters' signatures in the voter list, then the second error margin shall be equal to zero." This situation would indicate either that at some stage, ballots disappeared from the ballot box, or that additional signatures were added to the voter list: either case is a violation that influences the voting results, which should be recorded as an error.

- There still remain problems with the procedure of nominating and registering candidates for the parliamentary and presidential elections. Though the 2005 May 19 Law on Amending the Electoral Code (Article 59 amending Article 99(8) of the Code) defines the provision on party alliances nominating parliamentary candidates in the majority contest of National Assembly elections, there still remain problems. The absence of this provision in effect impeded the formation of electoral alliances and the possibilities for parties that are members of an alliance to act as one team in the majority contest.

The 2005 May 19 Law on Amending the Electoral Code has eliminated the requirement that signatures must be collected in order to support the nomination of candidates and candidate lists. The version adopted in first reading proposed replacing the signatures requirement with a requirement of high electoral deposits: for instance, it proposed raising the electoral deposit for presidential candidates to 10,000-fold the minimum salary, the electoral deposit for candidate lists in the proportional contest - to 5,000 fold the minimum salary, and the electoral deposit for a candidate in the majority contest - to 200-fold the minimum salary. However, subject to the pressure that such deposits are requirements on property, this provision was later removed from the draft, and the requirement on collecting signatures to defend nominations was not restored. Under this procedure of nomination, there may be an excessive number of candidates and an increase in cases of obstructing fair elections.

- During the 2003 presidential and parliamentary elections of 2003, especially, there were obvious violations of the principle of equality expressed in the form of using the state resources in favor of one candidate and several parties.

The 2005 May 19 Law on Amending the Electoral Code has somewhat clarified this issue. It is now defined that candidates that hold political and discretionary offices or are public servants shall conduct the campaign on general terms; however, they are subject to certain restrictions, for instance, they may not conduct the campaign during the performance of their official duties, and any abuse of official position to gain an advantage in elections shall be prohibited. Moreover, premises, vehicles, communication means, and material and human resources made available for the performance of official duties may not be used for the campaign, with the exception of measures performed in respect of senior officials subject to state protection under the Republic of Armenia Law on Ensuring the Security of Special Protected Dignitaries of the State; the activities of such candidates may not be broadcast over the mass media, with the exception of cases enshrined in the Constitution, official visits and receptions, and measures performed at times of disasters. However, the effectiveness of this provision will mostly depend on application.

- Conditional division of voters into two groups is only one example of how equality of voting rights was violated: one group-military servicemen and those who were abroad on voting day were deprived of the right to vote in elections to local self-governments bodies and in the single-mandate contest of parliamentary elections. As a consequence, some voters had only one vote during the voting, whereas others had two votes in the same voting in parliamentary elections.

- There still remain questions as to whether the electoral legislation of Armenia truly ensures universal suffrage. In the absence of any form of alternative voting, dozens of thousands of voters, who cannot show up to the polling station and vote on voting day, are practically deprived of possibilities to exercise their voting right.

The procedure of forming electoral territories should also be considered a breach of the principle of equality.

When electoral territories are formed under Article 17^1 of the Electoral Code, it is possible that difference between the number of voters in two territories be as great as 20% or, in some cases, even 30%.

This article does not in any way restrict the timeframe of formation of territories in future elections, but only defines the timeframe of electoral territory formation immediately after the amendments become effective. Therefore, if the number of voters in any territory changes, it will be impossible to change the boundaries of electoral territories without amending the Electoral Code for each such case. Under such conditions, it is possible in theory that the number of voters in any one territory be 100%, rather than 20% or 30% greater than the number of voters in another territory.

- During the 2003 elections, a large share of irregularities had to do with the unauthorized use of ballots. Several days before the voting, unlawfully-printed ballots were circulating. Ballots with special protective signs could be used to avoid this problem.

-In order to avoid such situations, it is possible to apply ballots with security features.

The 2005 May 19 Law on Amending the Electoral Code has made such an attempt, but it has not been completed. Article 49^1 of Electoral Code:
“The ballot must be perforated and contain the name of the printing house and notification of how to fill the ballot. The ballot shall be made of non-transparent paper. Above the cutting line of the ballot - on the edge, the number of the ballot shall be specified (...)” Considering that ballot edges shall be separated from the ballot before giving the ballot to the voter, the numbering of ballots does not serve any control purpose.

- The 2005 May 19 Law on Amending the Electoral Code has also amended the procedure of filling in the ballot and sealing it (Article 57). In the past, the ballot was sealed by a commission member before the voter’s entry into the voting booth, i.e. before the voting, but under the amended procedure, the ballot shall be sealed after it has been voted. During the local government elections in September and October 2005, a local organization called “The Choice is Yours” reported that this amendment was almost massively the reason for violating the secrecy of the vote, because the commission members sealing ballots also check how the ballot was voted when they seal the ballot.

- In order to prevent cases of multiple voting observed in the elections, it would be appropriate to mark the voters’ fingers with indelible ink, although this provision, which existed in the amendments that passed the first reading, was later removed from the final text.

- Especially during the 2003 elections, the decisive impact of finance became clearer than ever before, including the handing out of money in the form of electoral bribe. Commitment on the part of the authorities is necessary to punish the perpetrators. The existence of a body, independent from the electoral commissions, to monitor candidates' expenses would improve the situation, provided that proper arrangements are put in place.

● ● ●

In the Republic of Armenia, referendum and related matters are regulated by the Electoral Code and the Republic of Armenia Law on Referendum adopted on September 12, 2001. The most recent amendments to this Law were made on October 28, 2005.

All of the aforementioned circumstances regarding the decisive influence of the authorities over the electoral legislation and practices hold true in the case of the referendum, as well. After each election, the authorities scapegoat the electoral legislation and try to improve it with a view to somewhat mitigating dissatisfaction within society; the same would not hold true for the referendum legislation.

Unlike the electoral legislation of the Republic of Armenia, the Republic of Armenia Law on Referendum does not safeguard the right to free campaign time on the Public Television and the Public Radio. Proxies have a number of rights under the electoral legislation to exercise during elections (such as the right to stand by the side of and observing the work of commission members allocating ballots and watching the ballot box, the right to examine voted ballots, and the like), which observers (effectively, observers of the referendum are the equivalent of proxies in elections) do not enjoy during the referendum.

During the constitutional referendum of November 27, 2005, all of the negative phenomena (with the exception of distributing voter bribes, which were not necessary) found previously in any voting process or election were expressed rather acutely.

The Referendum was scheduled and held in a very tense political atmosphere. The political opposition had long ago declared its intent to turn the constitutional referendum into a "referendum of confidence." Consequently, the referendum became a matter of keeping (strengthening) the power or taking over the power for the political authorities and the opposition, respectively. During the campaign, professional campaign work was replaced with political judgment of the other side's actions.

Like in all previous elections, the authorities used all of the administrative tools available to them in order to obstruct the campaign against the Constitutional Amendments. The Public Television and other television stations, universities, and other institutions did not open their doors in front of opposition leaders campaigning the "No" vote, whereas the doors were

open and all the administrative capacity was used for the sake of the “Yes” campaign.

As for the campaign coverage over the mass media, there was express bias in the coverage, especially the television coverage.

The “No” campaign was mainly taking place in the regions and in Yerevan by means of meetings with the public, and such meetings were not incident-proof. The vehicles of the “No” campaigners were regularly towed to the Road Police sanctioning unit.

From the very beginning, opposition parties were advocating a “No” vote to the constitutional draft, based primarily on the argument of the authorities proposing the draft being illegitimate. However, a few days before the referendum, it became clear to the opposition that they would be unable to ensure the correct count of ballots in polling stations, and the opposition called for a boycott of the referendum. During the days immediately preceding the voting day, there was word in the air that the opposition-appointed members of local commissions had agreed on certain conditions to cooperate with the other commission members. This was followed by the decision of opposition parties to boycott the activities of commissions, as well.

The Prosecutor General of Armenia made a statement in which he stated that anyone boycotting the work of commissions would be punished, including by criminal means. Such a statement did not effectively make an impact. The absolute majority of precinct electoral commission members appointed by the opposition parties boycotted the work of commissions on the voting day.

Having boycotted the commission work, the opposition parties were unable to monitor and predict electoral fraud in the commissions. Moreover, considering that only 17 observers of European structures were carrying out a short-term observer mission during the Referendum (the Armenian authorities were unable to justify why the OSCE had not been invited to observe the Referendum), it becomes clear that fertile ground had been laid for violations. Observers appointed by opposition parties were the only ones able to observe what went on in the commissions.

The opposition set up a center that monitored the referendum: the center maintained contact with the local representatives in order to receive and publish information on the turnout. After the voting was over, the Center published information that stated that the turnout did not exceed 300-400 thousand. However, nothing was mentioned about the method by which such information had been collected.

The President of the Republic voted openly, which was a violation of the Electoral Code of Armenia and the international standards regarding voting rights.The referendum was experiencing an extremely low turnout. It did not require professionals to realize that there was mass indifference toward the referendum. The voters that did visit the polling stations said that the

voting was taking place in virtually empty polling stations. Meanwhile, the reported turnout figure had been inflated. The inflation trend was sustained until the end of the voting: the reported turnout of 1,514,307 was unprecedented (according to the CEC, there were 1,411,711 “Yes” and 82,018 “No” votes).

Clearly, such a turnout figure could not be credible, regardless of legal proof as to the contrary. In the public conscience, there is virtually no doubt that the voting and, consequently, the referendum results were rigged.

The period that followed the Referendum was extraordinary in the sense that a ruling coalition party was reluctant to call the voting “free and fair.” Chairman of the “Country of Laws” Party, Speaker of the National Assembly Arthur Baghdasaryan went so far as to speak of ballot stuffing and other irregularities in the voting.

The observers of the Council of Europe declared that there had been violations in the voting, including ballot stuffing.

The voting was followed by opposition demonstrations that continued until December 16, 2005. However, the demonstrations are attended by no more than 4,000-5,000 people. The opposition declared it would not follow the constitutional path and refused to challenge the outcome of the Referendum before the Constitutional Court (perhaps, because it did not have the one-fifth of the Members of Parliament necessary to file such an appeal).

3. JUDICIAL REFORM

The legal grounds for the formation of the Armenian judiciary were laid in the Constitution prior to amendment, which provided that the Republic of Armenia shall have a three-instance judiciary of universal jurisdiction, as well as a Constitutional Court. The Constitution promulgated the safeguards of judicial independence, providing, in particular, that "state power shall be exercised in accordance with the Constitution and laws on the basis of the principle of the separation of legislative, executive, and judicial powers" (Article 5); "in the Republic of Armenia, justice shall be administered only by courts, in accordance with the Constitution and laws" (Article 91); "judges and Constitutional Court members shall be irreplaceable," and "while executing justice, judges and Constitutional Court members shall be independent and shall abide only by the law" (Article 97).

However, the Constitution prior to amendment also enshrined that the Justice Council shall be headed by the President of Armenia, and that the Minister of Justice and the Prosecutor General shall be the deputy chairmen of the Justice Council. The Justice Council comprised 14 members appointed by the President of Armenia for a 5-year term (including 9 judges selected from among 27 candidates nominated by the General Assembly of Judges, plus 3 prosecutors, and 2 members of the legal academia). The Justice Council was given the power to make recommendations to the President of Armenia regarding judicial appointment and dismissal, and to order disciplinary sanctions against judges. As a consequence, judges are in reality not independent from the executive.[3]

To evaluate the general effectiveness of justice, numerous factors have to be taken into consideration.

In 2004, *the American Bar Association Central and Eastern Europe Legal Initiative* (ABA/CEELI) undertook a survey based on independent expert assessment of 30 factors, leading to the development of an assessment of the present situation of the Armenian judiciary. As a result of the assessment, 13 out of 30 factors were evaluated "negative," 15 were "neutral," and only 2 were "positive."[4] The negative factors included the Judicial Selection/Appointment Process, Objective Judicial Advancement Criteria, Judicial Decisions and Improper Influence, Case Assignment, and Adequacy of Judicial Salaries. For a number of factors (Judicial Review of

[3] Judicial Reform Index for Armenia. December 2004. ABA CEELI. Volume II, 2005, 30, 33 p.p. See also on the web http://www.abanet.org/ceeli/publications/jri/home.html

[4] Judicial Reform Index for Armenia. December 2004. ABA CEELI. Volume II, 2005, 7 p. See also on the web http://www.abanet.org/ceeli/publications/jri/home.html

Legislation, Judicial Oversight of Administrative Practice, and Judicial Immunity for Official Actions), the indices worsened in 2004 compared to 2002 (positive correlation became neutral, or neutral correlation became negative).

Upon accession to the Council of Europe on January 25, 2001, Armenia undertook "to fully implement the reform of the judicial system, in order to guarantee (...) the full independence of the judiciary (...)", "to reform the Justice Council in order to increase its independence within three years of accession (...)", and "to grant access to the Constitutional Court, within two years of accession, also to the government, the Prosecutor-General, courts of all levels, and - in specific cases - to individuals (...)"[5]

The Constitution needed to be amended in order to honor these commitments. The draft Constitutional Amendments were put to the Referendum in 2003, but did not receive sufficient votes in order to pass.

By the November 27, 2005 Referendum, the Constitution was amended. Some steps were taken towards more effective separation of powers and ensuring the independence of the judiciary from the executive.

In particular:

1. Article 94 of the Constitution was amended to provide that judicial independence is guaranteed by the Constitution and laws, rather than the President of the Republic; and

2. The composition and powers of the Justice Council - a body with an essential role in judicial appointment/dismissal - were changed.

As a result of the Constitutional Amendments, the Justice Council will no longer be headed by the President of the Republic. Sessions of the Justice Council shall be chaired by the Cassation Court Chairman, who shall not have the right to vote (Article 94.1). The Justice Council shall be composed of nine judges elected by the General Assembly of Judges in camera for a five-year term, and two members of the legal academia appointed by each of the President and the National Assembly of Armenia. In compliance with transitional provisions of the Amended Constitution, the incumbent judges and legal scholars of the Council of Justice shall continue to remain in office until the expiry of their term of office. The new members (2 members of the legal academia) will be appointed by the National Assembly prior to March 9, 2006.

The Justice Council shall, under Article 95 of the Constitution amended in the 2005 Referendum:

---

[5] PACE Opinion 221 (June 28, 2000) on Armenia's Application for Accession to the Council of Europe.

- Autonomously prepare and submit to the President for approval the judicial candidacy and advancement lists, on the basis of which appointments shall be made *(before the amendments, the lists were prepared upon recommendation by the Minister of Justice);*

- Issue an opinion on the nominated candidates for judge positions in the appellate, first instance, and specialized courts. *Prior to the amendments, it was provided that judge candidates would be nominated by the Minister of Justice. The amended text no longer specifies the entity that should make the nomination.*

However, the Amended Constitution has retained the provision ratified in 1995, whereby the President of the Republic has the power to terminate the powers of judges nominated by the Justice Council or to appoint nominated candidates as judges. In other words, the final decision-maker is the President, and there is no provision in the Constitution as to what the Justice Council can do if the President does not appoint a candidate nominated by the Council.

Though the aforementioned constitutional amendments are a positive step, they still cannot be considered sufficient to safeguard the institutional independence of the judiciary.

The effectiveness of justice is also influenced by the degree of access to justice.

In criminal and civil cases, citizens have a broad legal possibility to go to court. The Constitutional Amendments have abandoned the requirement whereby cassation appeals against final judgments could be lodged only through the Prosecutor General, his deputies, or advocates holding a special license.

In practice, however, judicial access problems arise due to the unfavorable economic status of the population.

The Armenian legislation currently provides two financial arrangements to support judicial access:

1. Some exemptions regarding judicial costs;[6] and
2. Citizens' right to free legal aid in certain cases.

Free legal aid is given mainly in criminal cases. In civil cases, free legal aid is given only for cases that relate to two articles of the Civil Code. Civil cases currently account for about 90% of all cases pending before courts. Due to economic difficulties, the majority of the public cannot afford to pay for legal services.

---

[6] Article 70 of the 1998 Civil Procedure Code of the Republic of Armenia and Articles 21 and 22 of the 1997 Law on Stamp Duties.

In Armenia, there used to be other problems connected with access to justice, as well. Citizens and the Human Rights Defender acquired the right to bring cases before the Constitutional Court only under the 2005 Constitutional Amendments.

As a result of the 2005 Constitutional Amendments (Article 101 of the Constitution), "the following shall have the right to appeal to the Constitutional Court in accordance with the procedure defined in the Constitution and the Law on the Constitutional Court:

… 6) Everyone - in a specific case, when there is a final court act, all judicial remedies have been exhausted, and the challenge concerns the constitutionality of the provision of the Law applied in respect of the person in the court act."

Citizens will be able to exercise the right to bring cases before the Constitutional Court from July 1, 2006 (Article 116 of the Constitution).

Courts, too, have been given the right to appeal to the Constitutional Court "regarding the constitutionality of provisions of legal acts related to specific cases pending before them."

4. DEMONSTRATIONS, MEETINGS, AND FREE MOVEMENT OF PERSONS

Article 29 of the Amended Constitution currently provides: “Everyone has a right to hold peaceful assemblies without arms”.

Prior to April 2004, no law had been adopted on rallies and processions. There were no procedures on conducting rallies, demonstrations, and processions, and the constitutional provision on freedom of assembly was in direct effect. However, based on the Presidential Decree on Public Administration in the City of Yerevan (1997), the Yerevan Mayor would authorize or prohibit demonstrations (though the Decree did not vest such authority in the Mayor).

In 2004, 5 of the 6 opposition-requested demonstrations were refused. In his letter (01/03-3331h) on refusal, for instance, the Mayor stated:

“(...) taking into consideration the Message of Yerevan’s “Center” District Community Council from its extraordinary session convened on 01.04.04 urging to refrain from demonstrations, rallies, and processions in the territory of the “Center” District to the extent possible, we find it inappropriate that a demonstration be conducted near the Matenadaran (Ancient Manuscript Museum) at 7pm on May 21 (...)”

The rallies and demonstrations conducted by the opposition during 2003 and 2004 were followed by mass arrests. Demonstration participants were arrested for participation in an unauthorized demonstration, rally, or procession, or for violating the established procedure; once arrested, they would be subjected to administrative sanctions in trials behind closed doors, without advocates and with procedural violations.

The Constitution prior to amendment guarantees the right to freedom of movement, as well. However, during the demonstrations, the roads between Yerevan and the regions were blocked, traffic was disarranged, and people could not get either home or to work. Drivers who transported citizens to the demonstration in Yerevan were terrorized.

In particular, Nver Barseghyan (from Vardenis) and Karen Bayburdyan (from Malatia-Sebastia District in Yerevan) were apprehended to the Police and their bus license plates taken off. Vazgen Abrahamyan (driver from Masis) was subjected to an administrative fine. The vehicle of a driver from

Nor Hachn was taken to the Police Fining Station, and he himself was subjected to an administrative fine.

When citizens tried to exercise their right to freedom of movement, disorder was provoked, entailing instigation of criminal cases against such citizens.

When the Armavir Highway was blocked, like usual, a criminal case with charges of public disorder was instigated against Karlos Harutyunyan, Vachagan Harutyunyan, Azat Grigoryan, and Nahapet Tamanyan (living in Ejmiatsin), and they were charged with the crime of causing public disorder (Article 206.3 of the Criminal Code).

There are numerous facts in this respect in the Armenian press and in the reports and statements of Armenian and international human rights organizations.[7]

In response to the allegation of the Constitutional Court [8] that the ordering of administrative detention against demonstration participants did not correspond to the standards of a legal state, the Council of Court Chairmen of Armenia issued a clarification on April 25, 2004,[9] where it asserted that the procedure of organizing and conducting demonstrations and rallies was defined by the USSR Law "On Organizing and Holding Meetings, Demonstrations, Rallies, and Street Processions" (October 28, 1988).

It must be mentioned that such a law does not exist altogether. On October 28, 1988, a Decree of the USSR Supreme Council Presidency on the Procedure of Organizing and Holding Meetings, Demonstrations, Rallies, and Street Protests was adopted.[10] On September 25, 1991, the Republic of Armenia Supreme Council adopted a special law on preserving the validity of certain legislative acts pending the adoption of the new code. The legal act discussed here was not included in the list. Moreover, under Article 11 of the CIS Founding Treaty (December 8, 1991), legal rules of third countries, including those of the USSR, shall not apply in the territory of the member-states.

In an extraordinary session, PACE discussed the political situation in Armenia and adopted Resolution 1374 on April 28, 2004 (Document 10163) that required Armenia to take all the possible legal and practical actions to ensure the exercise of the right to freedom of peaceful assembly and to avoid unjustified restrictions.[11]

On April 27, 2004, the Law on the Procedure of Conducting Gatherings,

---

7 PACE Resolution 1361(2004), ibid 14, January 27, 2004, Document 10027; PACE Resolution 1374(2004), April 28, 2004, Document 10163; Statement by US State Department Spokesperson R. Boucher (April 2004); "Ditord" magazine, 2003, No. 3-4; "Ditord" magazine, 2004, No. 1-2.

8 Decision of the Constitutional Court of the Republic of Armenia, CC Decision No. 412, April 16, 2003.

9 Decision No. 51 of the Council of Court Chairmen of Armenia.

10 "Âåäîìîñòè Âåðõîâíîãî Ñîâåòà ÑÑÑÐ" (USSR Supreme Council Gazette), 1989, No. 31, p. 504.

11 Paragraph 9/b, Document 10163.

Meetings, Rallies, and Demonstrations was adopted, and became effective on May 22. PACE described this Law as “highly restrictive.” Before the Law was adopted, the draft was characterized as “unacceptable and failing to comply with the European standards” by OSCE[12] and experts of the Venice Commission (CDL(2004)022); PACE called upon the authorities to harmonize it with CoE principles and standards (PACE Resolution 1361, ibid 15, January 27, 2004, Document 10027).

In a conceptual sense, the Law defines the powers of competent authorities, rather than the safeguards of the exercise of the right to freedom of assembly; in effect, the Law is restrictive of the organization and holding of public events, because:

1. Under Articles 2, 10, and 12 of the Law, mass events (defined as events with up to 100 participants) may only be held after giving at least 3 days’ advance written notice to the competent authorities. As a consequence, holding a protest with over 100 participants becomes impossible, even if there is an urgent and unexpected issue.

2. The respective international standards and Article 43 of the RA Constitution (Article 48 of the Constitution prior to amendment) provide an exhaustive list of the grounds upon which fundamental rights and freedoms may be restricted. However, this Law lays down additional wide grounds for prohibiting demonstrations. Under Article 13 of the Law, the bodies that review notification of a mass public event (i.e. the Mayor in Yerevan, and the community head in the regions) may prohibit the holding of a mass public event, if:

- “Some other mass event or other event that precludes convention of the first event takes place on the mentioned date, time and location (...)” In effect, the competent authorities have the discretion to determine whether events can be held concurrently, and the meaning of “precludes” has not been clarified.

- “There is reliable information that convention of the event poses a real threat to the life or well-being of persons (...)” The notions of “reliable information” and the degree of threat have not been clarified. According to the international standards, using assumptions is not acceptable. Causing inconvenience upon others should not be construed as a situation in which the demonstration stops to be peaceful.

It is prohibited to conduct public events:

- “In the territory or within 150 meters of national, special, and vital facilities, cultural and sports complexes (if other events are being held inside such complexes).” Under the respective decree of the Armenian

[12] OSCE/ODIHR Opinion on Republic Armenia Draft Law on the Procedure of Conducting Assemblies, Meetings, Rallies, and Demonstrations” (April 4, 2004) prepared by Birmingham University professor Jeremy McBride.

Government on “State Protection of Special, Vital, and Historic-Cultural Facilities,” the administrative buildings located in the center of Yerevan are considered such facilities, which renders it impossible to hold such events in the center of Yerevan.

- “If other events are being conducted in the territory or within 150 meters of cultural and sports complexes.” It is not clear how the body reviewing the notification would have advance knowledge of “other events,” because notification for such “other events” is not required. Why are events held in the territory and within 150 meters of cultural and sports complexes considered superior to the constitutional right to freedom of assembly?

- “If holding a rally will disrupt either the traffic within that settlement or the inter-state road traffic.” Under international standards, the mere fact that holding a demonstration or a rally may disrupt road traffic cannot serve as a justification for terminating or prohibiting such an event. The Police are directly responsible for addressing these concerns by means of performing efficiently. OSCE characterized the traffic disruption clause as “extremely vague,” and the means available for compulsory termination of an event- “unclear.” [13]

In its 60th Session (Venice, October 8-9, 2004), the Venice Commission issued the opinion (CDL-AD(2004)039), (CDL(2004)42) that the Republic of Armenia Law “On the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations” did not correspond to the general requirement that laws on the right to assembly should be limited to defining the legislative bases of permissible interference by state authorities. Rather, the Law lays down inappropriate “permissible grounds” for restricting events.

In Resolution 1405(2004) adopted in October 2004, the Parliamentary Assembly of the Council of Europe called upon the Armenian authorities “to amend, no later than March 2005, the law on demonstrations and public assemblies to bring it into full conformity with Council of Europe standards to ensure freedom of assembly in practice.”

The authorities have prepared a Draft Law on Amending the Republic of Armenia Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations. The Draft has been reviewed by experts of OSCE/ODIHR[14] and the Venice Commission.[15] Their opinions on the Draft coincide. Both of these institutions consider the proposed Draft amendments to the Republic of Armenia Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations to contemplate some

---

[13] OSCE/ODIHR Opinion on Republic Armenia Draft Law of the Republic of Armenia on the Procedure of Conducting Assemblies, Meetings, Rallies, and Demonstrations (April 4, 2004).

[14] OSCE/ODIHR Opinion on Draft Law on Amending the Republic Armenia Law on the Procedure of Conducting Assemblies, Meetings, Rallies, and Demonstrations, Warsaw, February 9, 2005. Opinion ASSEMBLY - ARM/001/2005 (IU).

[15] Opinion No. 290 / 2004 CDL(2005)018 adopted in Plenary Session of the Venice Commission, Strasbourg, February 8, 2005.

progress; however, they note that the restrictions remain excessively onerous, and recommend taking additional steps in this direction.

In its Opinion No.290/2004 CDL(2005)018) of February 8, 2005, the Venice Commission (Strasbourg) called to amend the unacceptably long list of restrictions that have been kept (Article 9 of the Law).

On October 3, 2005, the Republic of Armenia Law on the Procedure of Holding Meetings, Demonstrations, Rallies, and Protests was amended. Despite the amendments, however, the overall concept of the Law has not changed. It continues to remain a law that restricts, rather than safeguard the freedom to hold and conduct public events.

In particular, prior to amending the Law, public events were in all cases prohibited in some areas. However, under the amendments, the mandatory restriction applies also to public events to be held within 150 meters of military detachments, defense units, penitentiary institutions, and pre-trial detention facilities. In the other places mentioned in the Law, holding a public event "may be prohibited" by the authorized body, but it may also not.
Article 6 of the Law on amendments sets additional preconditions for holding public events on bridges, in tunnels, in under-ground places, in hazardous buildings, and at construction sites: public events in such places may be restricted, "if they endanger public security and the health of participants and others (...)"

The positive change is that if a non-mass event spontaneously turns into a mass event, it may then be carried out without prior notification.

The grounds for restricting mass public events, which were prescribed under the original Law have been retained: i.e. a mass public event may be prohibited if it is impossible to hold events concurrently, or if there is credible information that "holding the event poses an imminent threat to the life or health of persons."

Whereas previously, it was prohibited for mass public events to be held in the premises of or within 150 meters of central and local government bodies and special vital facilities designated as such by the Government, the amendments have introduced the notion of a list that may define places in which mass public events may not be conducted.[16] The only state body included in the list is the Office of the President of Armenia: the police may determine the distance from the Office of the President, within which a mass public event shall be prohibited on grounds of security.

Whereas prior to amending the Law, mass public events could not be held at the premises of or within 150 meters of cultural and athletic facilities (when other events were being conducted in such facilities), the holding of

[16] The Republic of Armenia Government Decree on Protection of Facilities of Special, Vital, and Historical-Cultural Significance defines administrative buildings located in downtown Yerevan as such "facilities" in the meaning of the Law.

such events may now only be limited to outside the territory of the cultural and athletic facilities. However, the term “limit” is not clarified in the Law, and the authorized agency has discretion to determine the form of limitation.

The following grounds for prohibiting a mass public event have been removed from the Law: previously, it was provided that a mass public event could not be held, “if the rally would dismantle the traffic in a settlement or the traffic along the inter-state road”, or “if another mass public event will be conducted by opponents of the organizer at the same and on the same date, within immediate proximity of a mass public event.”

On December 24, 2004, the Republic of Armenia Criminal Code and the Code of Administrative Infringements were amended. Then, on October 4, 2005, the Criminal Code was amended once again. The amendments *criminalized* the organizing or holding of unlawful public events or other public events and the calls urging to disobey the decision on terminating an unlawful public event.[17] Article 258 of the Criminal Code, which criminalized the organization of or active participation in group acts violating the public order, which “cause disturbance of the work of central or local government bodies, communication organizations, or transport, and are accompanied with explicit disobedience to the lawful demands of the representatives of the power, unless features of a more grave crime are present,” has been revoked.

These provisions, too, have been criticized by OSCE and the Venice Commission. The Venice Commission questioned the compatibility of these provisions with the principle of legality, which is a key principle of criminal law that prohibits arbitrary enforcement of laws. The Commission considers criminal sanctions feasible only in cases in which persons participating in the demonstration exert violence or inflict physical harm.

In Opinion CDL(2005)018, the Venice Commission concluded that the Draft Law on Amending the Republic of Armenia Law “On the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations” and the amendments to the Armenian Criminal Code and Code of Administrative Violations “would prohibit and make illegal and subject to criminal and administrative sanction the organization and holding of demonstrations which should, in fact, be permitted.”

Since the Law entered into legal force (May 22, 2004), the Yerevan Mayor may only acknowledge holding of a demonstration, or prohibit it based on the grounds defined in the Law. The Mayor’s Office has come up with an odd interpretation of this provision, as described below.

Here is the text of the Mayor’s Decision 05/1 dated June 1, 2004 “On Prohibiting the Holding of a Mass Public Event”: “Having examined the 31.05.2004 notification by citizens Koryun Arakelyan, Albert Bazeyan, Victor Dallakyan, and others, and taking into consideration that criminal

[17] RA Criminal Code, Article 225.

cases have been instigated in prosecutorial authorities of Armenia in relation to past demonstrations, and guided by Article 13(1)(3) of the Republic of Armenia Law "On the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations" and Yerevan Mayor's Decision No. 856-A of 17.05.2004, citizens Koryun Arakelyan, Albert Bazeyan, Victor Dallakyan, and others shall be prohibited from holding a demonstration in the area adjacent to the Matenadaran from 6pm to 9pm on June 4 of this year."

The June 16, 2004 demonstration was the only one that was not prohibited (during June 11-15, a co-rapporteur of the CoE Monitoring Committee was in Yerevan).

In 2005, unlike 2004, prior to the Constitutional Referendum, few demonstrations and rallies were held. However, the ones that were held were accompanied with arbitrary acts of authorities and prosecution by the police.

A number of non-governmental organizations had applied to the Mayor's Office to notify about holding a rally in support of the TV station "A1+." The Mayor's Office banned the rally. Nevertheless, the rally and demonstration commenced on the 2nd of April, 2005 during which the Road Police took the vehicle owned by "A1+", which contained banners, loudspeakers, and other equipment, to the Penal Facility.

On April 20, 2005, the meeting of the people of Sevan with Aram Karapetyan - the leader of the "New Times" ("Nor Jamanakner") party, ended with an incident. The meeting had been authorized by the local authorities, but 20 minutes prior to the event, the power was cut in the Cultural Center in which the meeting was going to take place. During the meeting, which had to be held near the Cultural Center, police officers and others dressed in civilian clothes provoked a brawl with the meeting participants. The clash lasted about 15-20 minutes, after which, according to eyewitnesses, one of the people disturbing the meeting fired shots in the direction of the attendees. Garegin Petrossyan, a Yerevan State University student, a member of the Youth Branch of the "New Times" party, was hospitalized with a shot wound on his leg.

During mass events related to local government elections (especially during the demonstration of October 9, 2005 held in front of the Administration Building in Hrazdan in connection with the elections of the Hrazdan Mayor), electrical shock was applied, and demonstration participants were battered.

The Republic Party was not given any buildings to hold its regional meetings prior to its nationwide meeting.

On November 2, 2005, a small hall was provided to Stepan Demirchyan (Chairman of the People's Party of Armenia) for his meeting with the population, the doors of which were later closed by the police, which claimed

that there were no more seats inside. The meeting was moved to outside the hall. The head of the regional police department, claiming that "there is no permission for holding the meeting outdoors," demanded to return indoors.

The Heritage Party notified the Yerevan Mayor's Office of its intention to hold a "Civic Assembly" at 3pm on November 25, 2005 in the Freedom Square (near the National Theatre of Opera and Ballet). The Mayor's Office prohibited the event, claiming that a pop concert was scheduled to begin in the same place at the same time.

On November 23, 2005 the Yerevan Mayor's Office acknowledged receipt of the notification of the Republic Party to hold demonstrations in the square adjacent to the Matenadaran (Ancient Manuscript Museum) on November 27, 28, and 29. Thereafter, late in the evening of November 28, the Yerevan Mayor's Office revoked its decision on "acknowledging receipt of the notification of the November 29 demonstration." Irina Grigoryan, Deputy Head of the Organizational Department at the Mayor's Office, informed that the revocation was due to the November 27 statement of the opposition, whereby the opposition declared its intention to start a lawful struggle against the authorities. In its decision, the Mayor's Office invoked Article 13 of the Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations, which in reality does not prescribe a procedure for revoking permission. Article 13 provides that as a result of reviewing the notification, a mass public event may be prohibited, if there is credible information that the conducting of the event will pose an imminent threat to the life or health of individuals.

Once again, police officers started to batter the participants of a protest against the November 27 Constitutional Referendum, to force them into cars and take them in an unknown direction, to move them police stations, to prohibit them meeting lawyers, and after holding them in police stations for several hours, the police officers filed protocols on "participation in an unauthorized rally" and let them free. Moreover, the police officers stopped cars taking part in an automobile protest held by the opposition, battered the drivers, and took the cars to penal stations.

The December 2, 2005 demonstration of the opposition was prohibited by the Mayor's Office on the ground that Prime Minister of the Russian Federation Mikhail Fradkov was visiting Yerevan on the same day.

During the opposition events, the citizens' right to freedom of movement was violated: on November 4, 2005, the local police was present in the crossroads of the Alapars, Solak, and Arzakan villages of the Kotayk Region, where they stopped and sent back cars moving towards the town of Charentzavan. On November 11, 2005 in the Zovuni Village, the police demanded people to leave the cars that were taking them to an opposition meeting from the nearby villages, and took the cars to the penal station. On November 1, 2005 the roads leading from villages to the town of Talin were blocked.

In order to ensure the exercise of the rights to freedom of assembly and freedom of movement, it is necessary:

1. To amend the Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations in line with international standards, in particular:

- To make conceptual changes in the Law to make it a law that contains safeguards of the right to freedom of assembly;

- To eliminate prohibitions on organizing and holding public events, and to allow such prohibitions only in special cases (state of emergency and state of war); and

- To rule out arbitrary interpretation of the Law by public agencies by means of prescribing all of the demonstration-related procedures by law.

2. Rule out administrative and criminal liability for organizers and participants of demonstrations.

3. Prohibit demonstrations and rallies only in premises of and within a certain distance from military significance and high danger (such as the Nuclear Plant). The list of such facilities should be prescribed by law.

4. Punish the police officers that obstructed the free movement of citizens.

5. TORTURE AND ILL-TREATMENT

Since declaring independence in 1991, the Republic of Armenia has taken the following steps in respect of preventing torture and other cruel, inhuman, or degrading treatment and punishment: Armenia has joined the UN's Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (in 1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (in 1993), the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 2002), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and its 1st and 2nd protocols (in 2002), thereby reiterating its commitment to rejecting torture and degrading treatment, and has undertaken to prevent, prohibit, and fight against torture and ill-treatment. Article 17 of the Amended Constitution (Article 19 of the Constitution prior to amendment) prohibits subjecting anyone to torture and cruel or degrading treatment and punishment, whereas Article 22 (Article 42 of the Constitution prior to amendment) prohibits "the use of evidence obtained in violation of law."

The timetable of commitments assumed by Armenia in respect of Council of Europe accession clearly provides: "(...) To institute, without delay (*i.e., immediately after January 25, 2001*), a follow-up procedure which conforms to Council of Europe standards to complaints received on alleged ill-treatment in police custody, pre-trial detention centers, prisons and the army, and to ensure that those found guilty of such acts are punished in accordance with the law." However, this commitment has still not been honored.

The transfer of the penitentiary system, including the pre-trial detention facilities, from the Ministry of Interior and of National Security system to the Ministry of Justice, which was among the commitments related to CoE accession, was completed in January 2003. Normative legal acts have been adopted to improve the penitentiary system, including the Republic of Armenia Law "On Holding Detainees and the Arrested" (February 6, 2002), the Republic of Armenia Law "On Penitentiary Service" (December 15, 2003), and the Penitentiary Code (December 24, 2004), which provides: "Anyone deprived of liberty on the basis of a court judgment shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. No circumstance may serve to justify torture or other cruel, inhuman or degrading treatment or punishment"(Article 6).

In 2004, the Council of Europe's Committee for the Prevention of Torture published the first report on Armenia, which was based on the findings of a visit to Armenia during 2002.

The Report notes that during their visit, CPT's representatives obtained an abundance of credible information on arrested persons allegedly being subjected to ill-treatment in pre-trial detention facilities. Beating and other torture by kicking, punching, and using hard objects were allegedly used during police interrogation (by operational officers of the police) to extort confession and other information. In a few cases, it was found, in the records of the medical examination of the persons concerned upon their arrival at pre-trial establishments, entries which mentioned injuries consistent with allegations made. The Report noted that information on torture had been obtained by the Human Rights Committee operating in attachment to the President (prior to 2004).

Article 47 of the Law on Holding Detainees and the Arrested provides the creation of a Group of Public Observers by the Ministry of Justice (MoJ). On May 14, 2004, the RoA MoJ Penitentiary Administration issued IDs to 11 members of the Group of Public Observers. The Group comprises a number of NGO representatives, including some from human rights NGOs, as well as a representative of the Armenian Apostolic Church. The Group was created by a decree of the Minister of Justice in accordance with the Law "On Holding Detainees and the Arrested" and the By-Laws "On Activities of the Public Observers' Group in the Penitentiary Institutions of the RoA Ministry of Justice." According to these By-Laws, the Group is defined as a monitoring body over respect for the rights and freedoms of those confined in detention institutions. According to the By-Laws, members of the Group may visit penitentiary institutions without any hindrance, have access to various documents (including, with the consent of the prisoner, his personal file and correspondence, with the exception of classified documents), and the conditions in the institution, and meet with detainees. The members of the Group are nominated for a 3-year period.

Both this Group and a number of non-governmental organizations have been monitoring penitentiary institutions. They have found that penitentiary institutions have been reformed and renovated with the support of various international organizations. In the "Prisoners' Hospital" Penitentiary Institution, a separate ward (building) for tuberculosis patients was built; the surgical and general practice wards were reconstructed in 2004. The "Vardashen" penitentiary institution has been reconstructed and upgraded to international standards. In the "Nubarashen" penitentiary institution, a number of cells have been renovated, and the former punishment cells, which used to be in the basements, are no longer being used. The Vanadzor pre-trial detention facility could be recalled as an example of inhuman conditions of detention; there, cell humidity is several-fold above the standard, and the walls have been depleted because of dampness. The Republic of Armenia Government had adopted a decision on moving the Vanadzor institution to another building, but according to the staff of this institution, this work is not done due to the shortage of funds. There are funds in the 2005 State Budget for constructing a new building to be used by the Vanadzor pre-trial detention institution (construction is currently underway).

Penitentiary institutions mainly lack medical service. The institutions do not have medical equipment and medication; prisoners often receive expired drugs. Medical screening and injury reporting are not properly done. The psychological service is inadequate. In the Goris penitentiary institution, there is no psychological service at all; in 2004 alone, two suicides were reported in this institution. Food provided to prisoners is insufficient: surveys suggest that those who afford use food brought by relatives. Prisoners are often deprived of meat courses. Surveys suggest that there is no longer any torture in pre-trial detention institutions, though about 60% of the detainees said they had been battered either during arrest or while in police custody. However, the pre-trial detention institutions' entrance registers either do not report injuries, or report injuries only superficially. Prisoners' access to information is limited; prisons do not receive newspapers and magazines, and the main source of information is television, though not all the cells have TV sets (the ones that do have TV sets got them from relatives). The prison libraries are scarce and outdated; new books have not been received for several years already.

In Armenia, torture is mainly used to extort self-incriminating confession, rather than to punish suspects or the accused. At later stages, courts mainly base their judgments on evidence produced by the charging authority, the bulk of which is self-incriminating testimony of the accused. Monitoring suggests that during trials, about 80 percent of the accused reject the testimony they gave during the pre-trial investigation claiming that they testified under the influence of torture and violence. However, their allegations do not lead to any consequences, and the perpetrators of torture and violence are not subjected to criminal liability. Even when violence exerted by pre-trial investigation authorities has led to death, a criminal case will not necessarily be instigated. Even if a case is instigated, the perpetrators are rarely convicted to a proportionate sentence. Some of these cases are dropped because of the lack of crime elements or because of the failure to reveal the perpetrators. In the better cases, the perpetrators are charged with abuse of power.

In 1999, 23-year old shepherd Armen Poghossyan from the Saratovka Village of the Lori Region was convicted to 15 years in prison on charges of murder; though he was later proven not to be involved, he served 5.5 years in prison instead of the actual murderer. In convicting him, the court had invoked his self-incriminating testimony as the only evidence, which had in fact been obtained through brutal torture. After some years, the real murderer was caught in a similar crime (rape and murder of a juvenile) and confessed also to the 1999 murder. Thereafter, the Republic of Armenia Cassation Court acquitted Armen Poghossyan on April 2, 2004. Prosecutor General Aghvan Hovsepyan received him (Aghvan Hovsepyan had incidentally been the Prosecutor General when Armen had been convicted) and released him after presenting him the Count of Monte Kristo book. Around the same time, they declared that a criminal case was instigated and that all the guilty ones would be found and punished. It has been almost two years since, but the guilty ones are yet to be punished.

At times of domestic political tension in Armenia, torture is also used as a punishment for one's political conviction. Here are some examples:

During the night of April 12 to 13, 2004, when the law-enforcement officials attacked the offices of the Armenian People's Party, the Republic Party, and the National Unity Party and arrested a large number of people, violence and degrading treatment was exerted against women, among others. Ani Kirakossyan, Varduhi Shahbazyan, and Gayane Ashughyan were battered in a particularly cruel way. Naira Aghababyan, Gohar Kurazyan, Ani Khachatryan, and others were subjected to degrading treatment.[18]

A 45-year old resident of Artashat, teacher-historian Grisha Virabyan, a member of the APP's Board, was apprehended by the Police to the Artashat Police Station on April 23, 2004 for taking part in the opposition meetings; after five hours of battering, he was thrown into an isolator. On April 24, an emergency vehicle took him to the hospital, where doctors operated him and removed his left testicle. However, a criminal case was not instigated against the police officers and investigators that had inflicted grave physical injuries upon him, though he had appealed to the Prime Minister, the Prosecutor General, the Police Chief for Armenia, and the Police Chief for the Ararat Region; rather, a criminal case was instigated against the victim himself for hitting a police officer in an act of self-defense (charged under Article 316(3) of the Criminal Code - "violence against a representative of the power", threatening 5-10 years in prison).[19]

On May 26, 2004 the First Instance Court of the Kentron and Nork-Marash Districts of Yerevan (judge Pargev Ohanyan) convicted 24-year old Edgar Arakelyan, a member of the Armenian People's Party, to 1.5 years of imprisonment for hitting a police officer in the head with an empty bottle of mineral water during the night of April 12 to 13 at the site of the demonstration on Baghramyan Avenue during a clash between law-enforcement officers and the demonstrators. The Court refused to take into consideration the statement by E. Arakelyan during the hearing that law-enforcement officers "were battering him to death till he fainted" during the pre-trial investigation in order to extort testimony. Moreover, the Court failed to take into consideration the fact that the traces of E. Arakelyan's physical injuries and the degrading treatment against him were seen and documented by representatives of the CoE and the Red Cross.

After the transfer of penitentiary institutions to the Ministry of Justice and the creation of the Group of Public Observers, there was an impression that the incidence of torture declined in penitentiary institutions. However, during May-August of 2005, the members of the Group of Public Observers visited the Nubarashen Penitentiary Institution and revealed cases of violating the rights of prisoners:

---

18 *"Women up Next"*, "Aravot" daily, April 22, 2004.

19 *"Real Perpetrators Go Unpunished"*, "Aravot" daily, April 18, 2004. *"The Battered is Also Sentenced"*, ibid, April 18.

On May 4, 2005, the Group of Public Observers of the Penitentiary Department of the Ministry of Justice received a warning that M.E., a life prisoner detained in the Nubarashen Penitentiary Institution, had been subjected to violence.

On the same day, members of the Group Michael Aramyan, Arman Danielyan, and Michael Baghdasaryan had a meeting with the Deputy Governor of the Nubarashen Penitentiary Institution responsible for security, the Head of the Social-Psychological Service, the Head of the Medical Service, and the prisoner in question. During the meeting, the governor of the prison confirmed that he had taken a decision ordering to use a rubber truncheon in respect of M.E., because the latter had resisted a prison staff member.

During the meeting with the prisoner, it was discovered that he had been wearing handcuffs when the physical force had been applied in respect of him.

From the meetings, it also became clear that before and after the incident, the social-psychological staff of the prison had not had any meetings with the prisoner and had not conducted any work with him.

According to the head of the medical unit, M.E. received medical assistance after the incident (pain relief medication), but no protocol was filed about the injuries sustained. According to him, they never file medical protocols regarding physical injuries discovered on the bodies of prisoners during their detention in the prison.

Based on these facts, the Group concluded that a prisoner who was handcuffed could not resist in such a way that it would be necessary to use the measure that caused the injuries in question.

The Group appealed to the Minister of Justice and the Prosecutor General urging to take appropriate measures in respect of the violence fact, including a motion to immediately order forensic examination.

The Ministry of Justice qualified the incident as proportionate use of force.

After this incident, on August 18, 2005 the Head of the Group Temik Khalapyan and a member of the Group Michael Aramyan, having received a report, visited the same Nubarashen prison, where they discovered another incident.

Prisoner A.A., who had been battered by the guards of the "Prisoners' Hospital" Penitentiary Institution, was being detained in the Nubarashen prison. The group members had a meeting with A.A. in Nubarashen, during which he insisted that the guards had battered him using a rubber truncheon and an iron bar. The observers saw signs of torture on the head and other parts of the body of the victim.

At that time, Michael Aramyan (a member of the Group) heard voices from a neighboring room and, having approached the door, saw how the prison staff were kicking and beating another prisoner. M. Aramyan tried to find out what was going on. V. Ohanyan - a senior security officer at the prison - was very unhappy about such attempts, and demanded not to interfere and to leave the institution. The prison governor - Aram Sargsyan, promised to carry out an internal investigation and to provide a written response, which still has not been done.

Prior to an August 19, 2005 meeting with prisoner R.S., who had been on a hunger strike, the Nubarashen prison governor Aram Sargsyan informed group members Michael Baghdasaryan and Arthur Sakuntz that he would not allow them to take photos. Moreover, after the end of the visit, the prison governor did not grant the observers access to the medical records of prisoners R.S., M.S., and A.Z., though the prisoners had provided their written consent to the prison governor.

Thus, it is too early to say that there is no torture in the penitentiary institutions. The scarcity of facts is due to the reluctance to report such cases, rather than the lack of any torture.

In 2004, the Council of Europe's Committee for Prevention of Torture urged Armenia to engage in intensive action to overcome the practices of torture.

In its response to the CoE's CPT, the Armenian Government stated that it was exerting efforts to improve police training, and that during 2001-2003, only 17 cases of procedure violations were reported in the penitentiary institutions (however, this number points to the inadequacy of complaint procedures, rather than to such cases being rare); the investigation of these 17 cases, according to the authorities, had resulted in 12 staff members undergoing disciplinary fines, and 5 being fired.

We believe intensive urgent action is required to rectify the situation, including, in particular, the following measures:

1. Changing the procedural practice, including:

- Applying the respective provisions of the criminal legislation, which provide that any time an accused alleges torture, the court must immediately demand an investigation;

- Abolishing the practice of admitting self-incriminating testimony as primary evidence;

2. In cases of torture, enforcing criminal sanctions against the police officers involved;

3. Making a statement in accordance with the procedure defined in Article 22 of the European Convention for the Prevention of Torture and Inhuman

or Degrading Treatment or Punishment, whereby Armenia will recognize the authority of the UN Committee against Torture to receive and investigate personal complaints of individuals who allege violation of the aforementioned Convention;

4. Improving the criminal legislation, including:

- Amending and supplementing the provisions of the Criminal Procedure Code on interrogation of suspects, the accused, and witnesses to define an exhaustive regulation on how the police should manage the interrogation;

5. Training police officers and requiring professionalism and knowledge of the international standards in respect of new appointees;

6. Enhancing the transparency of police stations for non-governmental organizations;

7. Ratifying the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment

8. Facilitating the institution of public monitoring over the conditions of convicted persons.

9. Expanding the powers of the Public Monitoring Group that already conducts monitoring in penitentiary institutions so that its mandate applies to police stations and temporary detention facilities, as well.

6. HUMAN RIGHTS DEFENDER INSTITUTION IN ARMENIA

The need for the Human Rights Defender institution had matured since the 1990s, but the Armenian authorities did not include a provision on the Human Rights Defender in the text of the Constitution prior to amendment. The lack of such a provision was later used by them to justify the reluctance and failure to adopt a law on the Human Rights Defender.

On January 25, 2001, Armenia became a fully-fledged member of the Council of Europe. By PACE Opinion 221 (June 28, 2000), Armenia undertook to adopt a law on the Ombudsman (Human Rights Defender) prior to July 25, 2001. According to the Principles on the Status of National Institutions, adopted by the UN General Assembly on December 20, 1993 ("Paris Principles"), the Human Rights Defender is an independent parliamentary institution. One of the independence safeguards is the appointment of the Defender by the Parliament and the provision of opportunities for the Defender to function independently.

In 2001, the Republic of Armenia Ministry of Justice drafted a Law on the Human Rights Defender (the Law on the Ombudsman), which, among other shortcomings, stipulated the appointment of the Human Rights Defender by the President of Armenia. The draft was criticized by a number of Armenian human rights NGOs. The Council of Europe agreed that the honoring of this commitment be postponed until the adoption of a new Constitution.

However, in late 2002, several deputies of the Republic of Armenia National Assembly circulated a new version of the draft Law on the Human Rights Defender, Article 27 of which provided that the Human Rights Defender would be appointed by the President of the Republic, pending amendment of the Constitution.

The draft constitutional amendments put to the Referendum on May 25, 2003 did not receive the necessary number of votes.

On September 2 and 3, 2003, a workshop on the draft Law on the Human Rights Defender was held at the National Assembly with the participation of the OSCE Yerevan Office, the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), and the Armenian NGO community. According to the presenters of the draft, Article 62 of the Armenian Constitution, by exhaustively defining the powers of the National Assembly, did not allow the National Assembly to appoint the Defender, which was the reason for vesting this power in the President of Armenia.

The Draft provided that after the Constitution was amended, the Defender's mandate would be terminated, and a new Defender would be elected by the National Assembly.

Some claimed that Article 62 of the Constitution exhaustively defined the powers of the National Assembly, but not its members, and therefore, they claimed it was possible to stipulate that a person approved by a vote of a certain number of MPs be appointed Defender by a presidential decree.

On September 3, 2003, the Monitoring Group of the Council of Europe Committee of Ministers (known as the "Ago Group") issued a report stating, among other things, that during the last 18 months, the honoring of commitments by Armenia was slowing down. The Monitoring Group differentiated the commitments that were linked with the constitutional reform and suggested to the Armenian authorities finding practical interim solutions.

The Ago Group, too, mentioned that the Constitution of Armenia does not exclude the possibility of the Ombudsman's appointment by the Parliament, and that it was possible for the National Assembly to reach consensus on the person of the Defender, and the President's signature in the appointment act being just a formality.

In September 2003, the National Assembly, without any regard for the recommendations of international and national experts, adopted the Law on the Human Rights Defender in second reading, claiming it had to do so in order to avoid criticism by the Council of Europe.

15 Armenian organizations made a statement in which they named this process of creating the Ombudsman's institution "an untimely measure."[20]

On October 21, 2003, the National Assembly finally adopted the Republic of Armenia Law on the Human Rights Defender, which was signed by the President on November 11, 2003 and became effective on January 1, 2004.

Under the Law, the Defender would, pending constitutional amendments, be appointed by the President of Armenia after consultation with the groups and factions of the National Assembly. However, the President appointed the Human Rights Defender on February 19, 2004 without any consultation with the National Assembly groups and factions.

Article 22 of the Law provides that the Deputy Defender shall be appointed upon *nomination by the Defender*, by the same body and in the same procedure as the Defender. The Defender, Larisa Alaverdian nominated a candidate to the President, but the President suggested nominating a candidate that was nominated by the President. After the Defender nominated the candidate suggested by the President, the President appointed him as the Deputy Defender.

[20] See "Aravot" daily, September 3, 2003.

The Law on the Human Rights Defender contains a number of provisions restricting the possibilities for the Defender's activities. For instance, Article 7.1 of the Law on the Human Rights Defender rules out any review by the Defender of appeals against judicial bodies and judges. In other words, the Defender is deprived of the possibility to help those that suffered a violation of their fair trial rights under Article 6 of the European Convention on Human Rights and Article 19 of the Armenian Constitution. The Defender will be unable to respond to issues of undue delays or denial of the right to have an advocate in judicial proceedings. The right to a fair trial is a fundamental right and a precondition to the exercise of all other rights and freedoms. Thus, the Defender cannot oversee one of the three branches of power.

According to the Law on the Human Rights Defender, "only proxies of such persons and family members and heirs of deceased persons may appeal to the Defender for the protection of the rights of another" (Article 8). This provision does not enable the Defender to protect human rights on the basis of a third party appeal (by, for instance, a human rights NGO).

The Armenian authorities tried to turn the Defender's staff into civil servants. The Defender was opposed to this move. Had this initiative been realized, the Defender would have become completely dependent upon and controlled by the executive. However, it is unclear what criteria and procedures were applied to select the Defender's Staff.

In its session of February 10, 2005, the Government reviewed draft amendments to the Law on the Human Rights Defender, which provided in particular eliminating the following paragraph after the words "The Defender may not interfere with judicial proceedings": "The Defender may demand information on any case pending before court and make suggestions to the court by safeguarding the exercise of citizens' right to a fair trial under the Armenian Constitution and principles of international law." The National Assembly rejected these amendments. In April, the President of Armenia went to the Constitutional Court challenging the constitutionality of Article 7.1 of the Law on the Human Rights Defender, claiming that the Defender's right to demand information from courts and make suggestions to courts is not driven by the need to execute independent and impartial justice, and represented interference with the functioning of the judiciary.

The Constitutional Court sustained the challenge and ruled that the aforementioned provision was not in conformity with the Constitution of Armenia. However, the Constitutional Court also mentioned in its ruling that the Defender had the right to receive information from courts, and that "the exercise of such right had to be facilitated, unless it concerned the administration of justice in a specific case or substantive and procedural matters of a case pending before court."

On May 26, 2005, the National Security Service (NSS) arrested Serob Antinyan (secretary of the Defender's Expert Council, staff member of the Research and Analysis Unit of the Defender's Office) on charges of fraud:

according to the NSS, Mr. Antinyan had taken a US $300 bribe from a restaurant owner whose restaurant was making noise disturbing the residents of the building in which the restaurant was located, in return for a promise to refrain from considering the complaint of the residents. On the same evening, the Public Television of Armenia broadcast a video record of the money being taken and the arrest as it had been shot by the NSS. On the night of the arrest, NSS staff, without notifying the Defender and without submitting the documents required by law, invaded into the Defender's office, and seized a computer that stored office information and confidential complaints of citizens.

Subsequently, the computer was returned.

Serob Antinyan was convicted to 1.5 years of imprisonment on charges of fraud and was released after serving 1/3 of the sentence.

According to Articles 19.1 and 27.1 of the Law on the Human Rights Defender, "the Defender shall enjoy immunity throughout the term of her office." Criminal prosecution of the Defender may not be instigated without the consent of the Republic of Armenia President *(see the transitional provisions of the Law)*. The Defender's immunity also applies to her correspondence, communication means used by the Defender, and documents that belong to the Defender.

On May 30, 2005 two officers of the NSS visited the "Right Legal Group" law firm and presented themselves as staff of the Defender, demanding information on complainants. In the opinion of the Defender, the NSS officers were interested in information regarding the cases of two citizens that had applied to the Defender. In a letter to the Defender, the NSS informed that a criminal case had been instigated against Vahe Grigoryan, the President of the "Right Legal Group" firm.

On June 3, 2005 the media (*Iravunk* newspaper of June 3, 2005) disseminated information whereby a source that stood close to the Defender's Office had allegedly sent a letter to the President stating that recently, NSS officers had started to wiretap office telephones and space and to conduct surveillance of the Defender's staff.

In April 2005, the Human Rights Defender published an Annual Report on the Activities of the Human Rights Defender during March-December 2004 and Violations of Human Rights and Fundamental Freedoms in the Country (as per Article 17 of the Law on the Human Rights Defender).

According to the Annual report, 1,294 written applications and complaints had been lodged with the Defender, of which 471 were found admissible.

Of the 471 complaints found admissible, the review of 245 had been completed with the following outcome:

1. Recommendation made on the basis of review - 93 cases;

2. Review terminated:

- In connection with the case being taken to court - 33 cases;

- Due to the absence of a human rights violation or lack of necessity - 110 cases;

- At the request of the complainant, due to a change in the circumstances invoked in the complaint - 9 cases;

85 cases had a positive outcome.

Of the numerous infringements upon human rights mentioned in the Report, two are worth mentioning here. The first case is related to police torture and other violations of the rights of the participants of demonstrations held in the spring of 2004 by the opposition demanding the resignation of President Kocharyan.

The Report notes that people's right to free movement and the right to assembly were violated. According to the Report, the demonstrators also suffered violations of their right to a fair trial while in court. Another alleged violation of the right for freedom to form or join an association was the fact that on the night of April 12-13, 2004, the police invaded into the offices of the Opposition Faction "Justice" and damaged its assets. The Report provides a detailed overview of Grisha Virabyan's story, who was subject to torture while in police custody *(see Chapter 5 of the Report, "Torture and Ill-Treatment")*.

The second case was related to the infringements of people's right to property during the development project of the Northern and Main Avenues of Yerevan. The Defender's office has been consistently defending the rights of those residing in the areas under development.

The Annual Report was criticized by the Minister of Justice, the Prosecutor General's Office, and the Cassation Court Chairman. They claimed that "several episodes specified in the Report were not justified; the reported facts were in some cases illusionary; the interpretation of laws was not precise; many of the issues raised already have exhaustive answers in the legislation." The criticism also contained insulting expressions.

Six months after the Annual Report, the Human Rights Defender published an Extraordinary Report, entitled "Report on Violation of Rights to Property, Fair Trial, and Judicial Protection". It continued to address the violations mentioned in the Annual Report, which had not been remedied. It was mentioned in this 24-page Report that the Report had been prepared in view of the fact that the violations of the right to property, the right to fair trial, and the right to judicial remedy had not been addressed and, in fact, were continuing, which had made it necessary to revisit the problem in a special report addressing the authorities and the public.

Based on the Universal Declaration of Human Rights, the RA Constitution, the Civil Code, the Land Code, the Housing Code, and the respective judg-

ment of the Constitutional Court, the Report presented in detail all the violations and infringements upon human rights, which had been found during the development projects in downtown Yerevan.

It was also mentioned in the Report that courts did not protect the citizens in the cases considered by the Defender, and did not remedy their rights, in turn violating citizens' right to a fair trial and judicial protection. In the conclusion of the Report, the Human Rights Defender mentioned that it was an attempt at once again drawing the attention of all layers of government to the need to respect human rights.

Under the Constitutional Amendments adopted on November 27, 2005, the term of office of the Human Rights Defender expires on January 5, 2006 (i.e. on the 30th day after the Constitutional Amendments enter into force). The Defender's power shall terminate on the day that follows the expiration of her term. New appointment must be made within one month of such termination. Thus in the legislation, ground is set for inevitability of a situation, when for a month (while in case of protracting the election of a new ombudsman, for even a longer term) the RA citizens will be deprived of the institution of the Defender of their rights, ensured by the Constitution.

Under Article 83.1 of the Amended Constitution, the National Assembly shall, by at least 3/5 majority of the votes of the total number of deputies, elect the Human Rights Defender for a 6-year term. Under the Law on the Human Rights Defender, "*the Human Rights Defender shall be appointed by the National Assembly by more than 3/5 majority of the votes of its members, from among candidates nominated by the President and at least 1/5 of the Members of the National Assembly.*"

The elected Human Rights Defender must be a person that enjoys a strong reputation and complies with the requirements concerning MPs. The Defender shall enjoy the immunity granted to MPs. Under Articles 100 and 101 of the Constitution, the Defender may bring a case to the Constitutional Court regarding the conformity of laws, National Assembly decisions, presidential decrees, and decrees of the government, prime minister, and local government bodies with Chapter 2 of the Constitution ("Fundamental Human and Civic Rights and Freedoms").

In order for the Human Rights Defender institution to become stronger in terms of independence and technical and financial conditions, it is necessary to amend the Law on the Human Rights Defender and the Law on the State Budget to provide, among other things, that the budget of the Defender's Office shall be a separate line of the State Budget in the amount proposed by the Defender (such a safeguard of independence currently exists for the Constitutional Court). The Law on the Human Rights Defender should enshrine the Defender's right to recruit the Defender's staff and Expert Council based on principles of publicity, professionalism, and competitiveness.

Under the Law on the Human Rights Defender, the right to nominate a candidate for the position of the Defender should belong only to 1/5 of the Members of Parliament.

7. FREEDOM OF CONSCIENCE AND RELIGIOUS ORGANIZATIONS

Another obligation assumed by Armenia upon joining the Council of Europe was to ensure non-discriminated activities of all faiths and religious communities, especially those that are considered non-traditional.

The Republic of Armenia Law “On Freedom of Conscience and Religious Organizations” was passed on June 17, 1991 on the basis of the 1990 USSR law of the same name. The Law was amended twice since its passage - in 1997 and 2001.

Paragraph 3, added to Article 17 of the Soviet law proclaims that “the government shall not hinder the carrying out of the following missions considered the privilege of the national church (Armenian Apostolic Church - Ed.)” (i.e. others are forbidden to carry out those missions), and then it defines privileges, which contradicts, one way or another, international documents on human rights and fundamental liberties ratified by the Republic of Armenia, Articles 8.1, 26, and 27 of the Amended Constitution of the Republic of Armenia, other provisions of the same law, a number of other laws and legal acts of the Republic of Armenia. However, despite the inconsistencies, these provisions often serve as a ground for limiting the activities of some religious organizations registered by the Ministry of Justice. In particular, obstacles are posed to the rental of space for religious practice. There have been cases in which the administration of halls would refuse to provide their premises claiming that the law-enforcement bodies might give them trouble later on. Some heads of urban and rural communities have asked the leaders of religious communities to terminate their activities, explaining that they received proper instructions from security agencies.

It is considered to be the prerogative of the national church “to build new churches, reopen historical monuments-churches in its possession (both at the request of the congregation and at its own initiative) and engage in benevolent and charity activities,” which contradicts Article 7(10) of the same law, which clearly indicates that religious organizations have the right to “engage in charity work and proselytize publicly, also through the media.”

On September 10, 1997, the RoA National Assembly passed the Law on Amending the RoA Law on Freedom of Conscience and Religious Organizations, which increased the minimum number of followers necessary to register a religious organization from 50 to 200. This provision is stricter than the one in force in the Soviet times that required 10 followers.

On April 3, 2001, the RoA National Assembly passed another Law on Amending the RoA Laws “On Freedom of Conscience and Religious Organizations” and “On Press and Other Media Outlets,” whose Article 1 replaced Article 14 of the 1991 law. It stipulated that, from now on, “a religious community or organization is considered a legal entity from the moment of state registration by a central government registry agency in accordance with procedures set in the law.” To be registered, a religious organization is required to submit an expert conclusion to the authorized government agency in charge of religious affairs.

Until 2004, Jehovah’s Witnesses used to be denied state registration mostly on the grounds of their members’ refusal to serve in the army. The Law “On Alternative Service” was passed on December 17, 2003. Jehovah’s Witnesses were officially registered by the Ministry of Justice in the fall of 2004, after a second attempt, in accordance with new registration procedures.

The Amended Constitution (Article 8.1) enshrines the following added provision: “The Republic of Armenia recognizes the extraordinary mission of the Armenian Apostolic Church - as the national church - in the spiritual life of the Armenian people, the developments of its national culture, and the preservation of its national identity.”

This new provision could be abused to restrain the activities of other religions. Moreover, the restrictions based on the “extraordinary mission” of the Armenian Apostolic Church may be elaborated in a future law on religious organizations.

A few days after the Constitutional Referendum, the Public Television of Armenia went on air to demand restricting the activities of religious organizations that “fracture our nation”: such demands were based on the aforementioned provision of the Amended Constitution.

During its December 28, 2004 session (attended by the Prime Minister) the RoA Prime Minister’s Council on Religious Affairs approved the principles of a new draft law on freedom of conscience and religious organizations, which should serve as guidelines for the RoA Government’s Department on National Minorities and Religious Affairs for developing the new draft law. These “principles” will in many cases limit the activities of religious organizations even more, make registration criteria even stricter, and generally serve as a cause for gravely violating fundamental human rights. However, the situation changed recently. These principles have in effect been set aside, and the Government’s Department for National Minorities and Religious Affairs, which is responsible for developing the new draft law, has started to operate in an open and transparent manner. The Head of this Department, Hranush Kharatyan has taken the initiative to create a Task Force made up of various stakeholders, including registered religious organizations and NGO representatives. However, the religious organizations have adopted a very passive stance.

The “Center of Collaboration for Democracy” NGO has organized open discussions of some crucial parts of the draft law with the involvement of the Head of the Government’s Department for National Minorities and Religious Affairs - Hranush Kharatyan. The discussions were attended by representatives of various religious organizations and other stakeholders. The Second Television of Armenia held a series of round tables on this topic, which were attended by the leaders of a number of religious communities present in Armenia, as well as senior clergy of the Armenian Apostolic Church, independent experts, and public officials.

In 1992-1995, there were attacks in Armenia on offices of religious organizations, and members of various communities were physically hurt. There have been no more attacks since 1995. However, there are many cases of members and leaders of various religious organizations reporting harassment on the part of government agencies. Here is one of the typical examples: in January 2005, the mayor of the Tumanian village in Lori marz told local Evangelists that he had received orders from Marzpet’s Office telling him to ***ban*** the activities of the Evangelical community. He said same orders had come from national security officers in Lori, as well. It is worth mentioning that the Armenian Evangelical Church closely cooperates with the Armenian Apostolic Church. The representatives of other registered churches will also be able to recall numerous similar instances.

The official and pro-governmental media, including television stations of Armenia, regularly show appeals for intolerance or, even, violence against other religious communities. In August, 2005 the Public Television of Armenia was hosting a talk show, during which both parties to the “debate” stood in effect for the same position, claiming that all religious organizations, other than the Armenian Apostolic Church, fracture national cohesion and may undermine the future of Armenia. No other opinions have been broadcast by the Public Television of Armenia. So far, none of the authors of these calls for intolerance and violence have been prosecuted, even though such things are against RoA legislation and international conventions. Statements containing religious intolerance can often be heard from government officials.

8. NATIONAL AND ETHNIC MINORITY RIGHTS

There are no specific obligations regarding national and ethnic minority rights in the Council of Europe membership application of Armenia and Opinion No. 221 on the application, which was issued by the Parliamentary Assembly of the Council of Europe (June 28, 2000).

Armenia has ratified the Framework Convention on Protection of National Minorities (1998) and the European Charter for Regional or Minority Languages (2002). In June 1993, Armenia ratified the Convention against Racial Discrimination. The RoA Constitution and laws guarantee equal treatment to all citizens regardless of their racial, ethnic, cultural, and religious affiliation. In particular, Article 14.1 of the Amended Constitution provides: ***"Discrimination on the ground of sex, race, skin color, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited."*** Article 47 provides: ***"It shall be prohibited to use rights and freedoms for the forceful overthrowing of constitutional order or instilling national, racial, or religious hatred, or advocating violence or war."***

The RoA Criminal Code contains Chapter 19 entitled "Crimes against People's Constitutional Rights and Liberties." Article 143 provides for criminal prosecution for violating anyone's rights, in particular, due to his/her national, racial, religious, and social affiliation, sex, and political views.
There are also separate provisions in the Law on Language (Article 3) and two articles in the Law on Television and the Radio, which refer to national minority rights. For example, Article 1 of the Law on Language encourages the use of national minority languages in the Republic of Armenia and guarantees everyone's right to receive education in his/her mother tongue. According to Article 4, national minorities may use their mother tongue together with the Armenian language in official documents and seals. Article 8 of the Law "supports and promotes conditions necessary for preserving the cultural identity of different national minorities." Article 9 of the Criminal Code guarantees free interpretation during trials for both citizens and non-citizens.

There is still no law on national and ethnic minorities, even though various non-governmental organizations and parties have been calling for such a law since 2003. Thus, 2 deputies representing the Republican Party and "Dashnaktsutyun" (ARF) party factions have stated that their parties are

working on development of a new draft law on national minorities. These statements were made at a seminar on "National Minority Rights in Armenia: Armenia's Prospects after Becoming a Member of the Council of Europe" organized by the Center for National and Strategic Studies on July 17, 2003. It is known that the Department for Migration and Refugee Affairs has developed two draft laws on the subject. One of the drafts was rejected by minorities, while the second one was withdrawn without discussion.[21] Another draft has been developed and starting from October 2004, it is being discussed with the participation of national minorities. The RoA Government's Department on National and Religious Minorities has organized a number of roundtable discussions of that draft law.

According to the 2001 census data, ethnic minorities make up 2.2% of Armenia's total population. This number includes 11 ethnic communities - Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian, and German. The most populous communities are those of Yezidis (40,620 people), Kurds (1,519 people), Russians (14,660) and Assyrians (3,409).[22] Most of these communities appeared in Armenia in the beginning of the 19th century, when certain migrations took place after Eastern Armenia became a part of Russia.[23] All ethnic groups are scattered around the country and the capital. There are no marzes or administrative units in the country that are populated completely by a minority group. In various villages and towns, ethnic minority groups are either a small part or the majority of the population.

National minorities do not have their own political parties and are not represented in the National Assembly. However, national minorities are represented in local self-government bodies as village mayors (for example, the mayor of Verin Dvin is an Assyrian, the mayor of Arme Taza is a Yezidi, etc.). In April 2004, the RoA Government allocated a building to national minorities for cultural events. In addition, the RoA Government allocated certain funds (the dram equivalent of more than $100,000) in the 2005 state budget for renovating Armenia's National and Ethnic Minority Center.[24] Government sources say that some 10 million drams (about $19,880) are given annually to national minority non-governmental organizations for various programs.[25] National minorities experience no resistance to the exercise of their right to study their native language. Ethnic minorities can study their mother tongue and receive education in their language in secondary schools in the Republic of Armenia. For example, the Assyrian language is taught in three villages - Dvin, Dimitrov, and Arzni. However, almost all national minorities experience problems with special-

21 This information was obtained from Hranush Kharatian, Head of the RA Government's Department of National and Religious Minority Affairs.

22 Table 3. De Jure Population (Urban, Rural) by Ethnicity, Sex and Educational Attainment in *The Results of the Census of the Republic of Armenia* (Yerevan 2001) p. 360-363.

23 G. Asatryan, V. Arakelova *The Ethnic Minorities of Armenia* (Caucasian Center for Iranian Studies, Yerevan 2002) p. 5-17.

24 This information has been obtained from the Department of National and Religious Minority Affairs.

25 Document called "Grounds" that accompanies the draft Law on National Minorities developed by the RA Government's Department of National and Religious Minority Affairs.

ists and curriculum development. The Russian community is in the best position, since they get all their educational materials from Russia, where teachers are trained, as well.[26]

There are some media outlets that give ethnic communities an opportunity to exercise their right to freedom of information. The Yezidis, Kurds, Ukrainian, Russians, and Greeks have newspapers in their own languages.[27] On November 7, 2005 the National Commission on Television and Radio granted the "AR Radio Inter-Continental" radio company a license for broadcasting on FM 106.0 MHz in the City of Tsaghkahovit. As there are also national minorities living in Tsaghkahovit and the adjacent settlements, in its competition bid "AR Radio Inter-Continental" proposed that it would produce and broadcast content for and about national minorities, among others.

Two groups of major issues related to Armenia's ethnic minorities have been noticed during 2004. There is some tension regarding recognition of a Yezidi ethno-confessional group, whose members speak the same language as the Kurds, but make up a separate ethnic group. Some heated discussions on the subject have taken place among the Kurds and the Yezidis throughout 2004 and in the previous years. However, the RoA Government has adopted a neutral stance on this issue, hoping that these groups make a decision in a climate of tolerance and mutual understanding.[28]

In 2004, representatives of two ethnic communities alleged discrimination against them. Thus, on September 24, 2004, local authorities refused to provide assistance to the village of Dmitrovo with a significant Assyrian population. According to Irina Gasparian, Head of "Ashur" Assyrian Youth Center, member of Coordination Council on the Issues of National Minorities of RA President's Office, discrimination occurred in that village during appointments to administrative posts.[29] However, local authorities were accused of similar discrimination against the entire population of the country in general, regardless of ethnicity. The second case concerns representatives of the Jewish community, who accused ALM TV station and the Armenian Aryan Union, particularly its Head Armen Avetisian, of igniting anti-Jewish sentiment.[30] The State Department Report on Global Anti-Semitism, released in January, 2005, mentions the existence of anti-Semitic sentiment in Armenia as well, making a reference to ALM TV station and the Armenian Aryan Union.[31] However, even if there have been some statements by the aforementioned organizations, and especially by the Armenian Aryan Union[32], namely, by its head Armen Avetissian, there

---

26 Ibid.

27 Government partially finances the Yezidi "Lalish" newspaper (in Armenian), Kurdish "Ria Taza" newspaper (in Kurdish), Ukrainian "Dnipro" and a number of other newspapers.

28 Also see: Sh. Khachatrian, *The Identity of Armenia's Yezidis*, ("Ditord" magazine, Issue No. 8, 2005, p. 7-14).

29 *Assyrians in Armenia Allege Discrimination* on Radio Free Europe/ Radio Liberty http://www.rferl.org/newsline/2004/09/_2-tca/tca-270904.asp 2004-09-27

30 "*New Armenian-Jewish Scandal"*, "Haikakan Zhamanak" daily, November 2004, Issue No. 13.

31 "*We had sang all the songs"* ,"Haikakan Zhamanak" daily, January 13, 2005.

32 "*If a country has a Jewish community, then that country's stability is jeopardized"*, "Iravunk" newspaper, November 27, 2004.

seems to be no anti-Semitism in society at large so far. The Union's influence is insignificant, and its opinion certainly does not reflect the wide spectrum of public opinion. This problem can become acute if similar speeches or statements about the existence of such sentiment play the role of actually encouraging anti-Semitism. It is necessary to take this issue very seriously and react immediately to all speeches against any ethnic minority group in Armenia. It is noteworthy that criminal charges against Armen Avetissian for public incitement of national, racial and religious hatred with threats of violence (Article 226, part 3, of the RoA Criminal Code) were brought not after he had made his statements, but after the State Department report was released. A. Avetissian was arrested by the Yerevan City Prosecutor's Office on January 24, 2005, and the Yerevan Kentron and Nork-Marash community court of the first instance issued an arrest warrant for him on the same day. The legal proceedings against Armen Avetissian were initiated in March 2005. He was sentensed to three years of probation and was released right from the court room.

In the fall of 2005, the commencement of the second stage of drafting legislation on national minority rights has been an important step towards improving respect for such rights. The draft law was discussed with the stakeholder ministries and agencies and was reviewed by experts of international organizations. A broadly positive opinion was issued by the European Center for National Minorities, and the draft was highly appreciated by the Swedish Helsinki Committee. The expert of the Swedish Helsinki Committee states in his opinion that the draft law "is quite detailed and does not contain any unclear provisions."

The draft Law on National Minorities is an important document that, once adopted, will ensure the protection and development of the identity of national minorities living in Armenia fully in line with the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

9. ALTERNATIVE SERVICE

Serious discussions on alternative service started in Armenia after the country joined the Council of Europe (2001)[33]; one of the commitments assumed upon entry was to pass a law on alternative service within three years and to release all persons sentenced to imprisonment for avoiding military service on the grounds of conscience and convictions. However, *in those three years, until 2004, there were about 100-150 people that refused military service on the basis of their convictions (all members of Jehovah's Witnesses religious community), and most of them were sentenced to imprisonment. According to August 2003 data, 33 Jehovah's Witnesses that refused military service for religious reasons had already been detained, and another 25 (out of 40,000 conscripts) had been arrested.*

After two years of delays, a Draft Law on Alternative Service was developed, which provided for alternative military service only for members of religious organizations officially registered in the Republic of Armenia; moreover, such service was for a longer period of time, which the Council of Europe considered punitive in nature. That draft failed to address the problem of the main group avoiding military service for religious reasons, namely the Jehovah's Witnesses religious community. This approach was criticized by NGOs and the Council of Europe.[34] After some amendments, the Law on Alternative Service was adopted on December 17, 2003. While the Law allowed members of non-registered religious organizations also to opt for alternative service, and the term of the service was somewhat reduced, a number of problematic provisions in the Law remained in place: the Law still did not provide for "alternative civil service." In particular, the Law provides for two types of alternative service, i.e. service in the RoA Armed Forces and alternative labor service outside the RoA Armed Forces. The terms are 36 months for alternative military service and 42 months for alternative labor service, whereas regular compulsory military service is 24 months. The Law also retained some provisions that go against international standards, such as provisions that the conscription for alternative service shall be carried out and controlled by the same organizations that are responsible for drafting conscripts for regular compulsory military service. In addition, all persons in alternative service must wear a uniform as defined by the RoA Government. Those who have completed alternative service may not work in any areas related to the right to carry, possess, and use weapons.

---

33 For details, see "Ditord" magazine, Issue No. 3, 2002, p. 10.

34 *"Our Alternative Not Accepted by the Council of Europe"*, "Aravot" daily, October 29, 2003; Ibid., October 30; *"New Test for National Security"*, "Azg" daily, October 30, 2003.

The Law on Alternative Service went into force since July 1, 2004. According to the Law, a person subject to military draft must submit an application to the military commissariat in his place of residence by March 1 or September 1 proceeding to the draft, specifying the type of alternative service he wishes to choose and justifying his decision.

In compliance with Part 2, Article 14 and Part 3, Article 16 of the Law "On Alternative Service", on June 25, 2004, the Government passed a decree No. 940-N "On Approving the List of Locations for Alternative Service, Uniforms for Alternative Servicemen and Procedures for Wearing the Uniforms." According to this decree, persons in alternative military service shall serve as soldiers in **separate units** of military divisions of the RoA Armed Forces (in Syunik, Gegharkunik and Tavush); persons in alternative labor service shall serve as medical orderlies in various institutions belonging to the RoA Ministry of Healthcare and Ministry of Labor and Social Affairs (psychiatric clinics, nursing homes for the disabled, institutions for the elderly, psychiatric and neuro-psychiatric clinics, and the "Nork" infectious disease hospital).

During the 2004 fall draft, not only did military commissariats fail to provide information about alternative service opportunities to citizens that are subject to military draft and would like to apply for alternative service, but also, military commissariat's officials themselves often were not sufficiently informed about what alternative service was, and how and where persons drafted for alternative service would carry out their duties.[35]

The examination of court rulings on avoiding military service reveals that prosecutors and courts continued to detain potential alternative service candidates and to sentence them to prison terms after the passage of the Law on December 17, 2003, when necessary legal changes were being made necessary for the Law to go into force.

In judgment No. 48203003 of January 26, 2004 on the Artak Saiyan case, the Armavir marz court of first instance ruled that using religious beliefs for justifying the refusal to perform military service is ungrounded, and that, in doing so, the defendant is trying to avoid criminal prosecution.

As of September 20, 2004, eight members of the Jehovah's Witnesses community had been handed down prison sentences and were serving their sentences in Kosh and Nubarashen penitentiary institutions.[36] These eight people should have been released in accordance with Armenia's commitments before the Council of Europe, and they should have been given information on alternative service and an opportunity to choose such service.

Under Article 327(1) of the new Criminal Code, avoiding a regular draft for compulsory military service is punishable by a fine in the amount of 300-

---

[35] For details, see "Ditord" magazine, Issue No. 4, 2004, p. 14.

[36] This includes Aram Manukian, who was sentenced to two years in prison for refusing military service on religious grounds at the time when the Law on Alternative Service was already in effect.

500 times the minimum wage, or detention for a period of up to two months, or imprisonment for a period of up to two years, as opposed to three years under the old Criminal Code. In the past, courts never used the ***maximum punishment****, but since the new Criminal Code was adopted, they have been using mostly the maximum punishment (two years in prison). Even if a court of the first instance hands down a more lenient sentence, the court of appeals overturns the verdict and extends the terms of imprisonment, saying that "the punishment does not correspond to the seriousness of the crime" and "a more lenient sentence cannot serve the purposes of the punishment."* [37] *Four of the eight Jehovah's Witnesses have been sentenced to two years, three of them have been sentenced to 1.5 years, and one has been sentenced to one year in prison. Only one of them, Stepan Yeremyan, has been punished by a 300,000 dram fine for avoiding military service (Article 327(1) of the RoA Criminal Code).*

After having served the sentence, many are drafted again; if they refuse military service again, they are handed down prison sentences for the second time. This violates the well-known principle of criminal law that forbids ***punishing twice*** *for the same offense, as well as Article 10 of the RoA Criminal Code.*[38]

The National Assembly was supposed to amend the Law in accordance with the Council of Europe resolutions to remove any non-compliance with international standards and to define that alternative labor service should be controlled by a civil body. This civil body is to ensure medical service for these persons.

Amendments to the RoA Law on Alternative Service were made on November 22, 2004. However, problems with the duration, procedures, and locations for alternative service, as well as with agencies responsible for organizing and controlling the service, were not resolved. Moreover, while the December 17, 2003 Law allowed persons in alternative service to switch to compulsory military service at any time, but had no provisions about switching from compulsory military service to alternative service, the amended Law simply banned the switch from compulsory military service to alternative service.

Article 24 of the Law required passing laws regulating social security of persons in alternative labor service and members of their families and liability of persons in alternative labor service before the Law went into force on July 1, 2004. However, those laws were never adopted. The November 22, 2004 amendments to the Law on Alternative Service stipulated (Articles 21 and 22) that alternative servants' social security and liability issues (including the cases of disability or death caused by work trauma or professional illness) shall be regulated by the procedure laid down in the Republic of Armenia Law on State Pensions.

---

[37] Court of Appeals on Criminal and Military Cases verdict N Z-94/04 of January 26, 2004 in the A.M. case, the Armavir court of the first instance verdict N 48203003 of 2004 on Artak Saiyan's case, etc.

[38] See details in "Ditord" magazine, 2004, #4, p. 16.

Alternative military servants' crimes are punished in the same way as regular military servants, under the procedure defined by law, while labor servants are sanctioned in accordance with the general procedure provided by the legislation.

During the 2004 fall draft, 22 members of the Jehovah's Witnesses organization and one Molokan were sent to serve in the aforementioned institutions as part of their alternative service. According to the RoA Ministry of Defense, only one of the applicants for alternative service chose alternative military service, while the remaining persons applied for alternative labor service. According to a Government decree, 349 slots were allocated for alternative service during the 2004 fall draft. 300 of them could have served in alternative military service, while 49 - in alternative labor service. According to a Government decree, control of the latter was assigned to the heads of the institutions where they would serve. In other words, one could say that the course of the service is largely determined by the institution director's attitude towards persons opting for alternative service.

The Armenian Helsinki Committee carried out monitoring in places of alternative labor service. Four out of nine institutions where alternative service takes place were selected for the monitoring, including the psychiatric clinics in Vardenis and Gyumri, the Nork hospital for infectious diseases, and the Nork nursing home. Thus, 13 out of 22 alternative servicemen participated in the survey. Detailed individual interviews with representatives of respective institutions and alternative servicemen were conducted. The monitoring gave the impression that the Government had selected the locations for alternative service in haste and without appropriate examination. They had not taken into consideration whether or not alternative service in these institutions would be appropriate.

In the case of 11 out of the 13 alternative servicemen, the first and the biggest problem had to do with performing the duties of medical orderlies. There was no such problem in the Nork hospital for infectious diseases, where the two alternative servicemen were happy with their work. They simply did not perform the duties of medical orderlies. The hospital's Chief Doctor, Ara Asoyan said that the servicemen are engaged in various activities - construction, receiving medications from warehouses, cleaning away the snow, moving patients around the hospital, etc., but they are not asked to clean the toilets and clean after patients. The two servicemen working in the hospital confirmed the Chief Doctor's words. Their only complaint had to do with the length of the service and the fact that they could not participate in the meetings of their religious community.

One of the servicemen in Vardenis honestly admitted that, because of the conditions, he had once regretted choosing alternative service and had decided to quit. However, he continued his service. Only one of the 13 servicemen that participated in the survey knew in advance he was going to work as a medical orderly. The other 12 said they had been told in advance that they were going to work in those institutions, but they hadn't been told about their duties.

Eight persons performing their alternative labor service in the Vardenis psychiatric hospital said during their interviews that, at first, they were told in military commissariats that they were not going to be assigned any undignified work, but two days after they had arrived in Vardenis, the military commissar visited them and informed them of the Government's decision, according to which they were supposed to work as medical orderlies, with duties including cleaning toilets and dressing cadavers. The servicemen refused to do such work. The management called in representatives of the military police and military prosecutor's office, who constantly monitored them and said: "If you refuse this work, you will be prosecuted under Article 364 of the Law on Military Service." It has become clear from the February-March 2005 visits of the Helsinki Committee Monitoring Task Force that the servicemen performing alternative service in the Vardenis Psychiatric Hospital are responsible for maintaining the hospital's sanitary condition, making beds for patients, and washing the floors. However, they haven't cleaned toilets or dressed any cadavers yet. The servicemen complained about organizations in charge of their control. In addition to being controlled by the hospital's management, they have been constantly controlled by a number of RoA Ministry of Defense structures, such as the regional military police, the prosecutor's office, and the military commissariat.

The interviewees mainly do not use any means of communications: in one case, calling is expensive, in another case - there is no telephone, in other cases no calls are allowed. They do not get any newspapers. Most of them do not have television sets, either. In Vardenis, the servicemen were banned from reading their religious literature, and even their Bible was taken away.

According to the survey, their sanitary-hygienic conditions (bathing, washing their bed linen, and changing clothes) are not good, either. The servicemen wash their bed linen themselves. Servicemen eat in cafeterias in their respective institutions, with the menu designed for the sick and the elderly.

In May 2005, during the fifth month of their service, all the citizens performing alternative service refused to continue their service. They claim the service is not fully in line with the principles of alternative service and is supervised by the Ministry of Defense. Criminal cases have now been instigated against these individuals.

13 Jehovah's witnesses and a Molokan have already been convicted to imprisonment sentences of differing lengths (between 2 and 3.6 years) on charges of deserting the service venue or military detachment arbitrarily. Hovhannes Aslanyan, one of them, died in a car crash on the way to his trial. Eight of them were initially accused of organized desertion, which could be punished with 4-10 years of imprisonment. The case was initially handled by the Military Prosecutor, but was later transferred to a civil one. 4 of them have already been convicted to 3 years of imprisonment on charges of arbitrarily deserting the service venue.

Another 19 Jehovah's Witnesses from Armenia and 1 from Karabagh have been convicted to imprisonment for avoiding the regular military draft (sentences varying between 1 and 4 years). Hovhannes Khachatryan is still in pre-trial detention facilities, as his trial is still pending.

During the 2005 spring draft, no one applied for alternative service.

In order to ensure that the RoA Law on Alternative Service, passed in connection with the requirements of the Council of Europe, be applied in our country in accordance with the principles of humanitarianism and tolerance, serve its purpose, and be acceptable for the authorities and the public, it is necessary to amend the Law on Alternative Service and Government Decree 940-N on Approving the List of Alternative Service Institutions, the Form of Alternative Service Uniforms, and the Procedure of Wearing Such Uniforms. In particular:

1. Alternative service should be converted to real civil service and provide the power to supervise alternative service to non-military agencies;

2. A shorter period of alternative service should be defined;

3. Alternative servants should be treated by regular civic medical institutions;

4. Alternative servants should not be required to wear military uniforms; and

5. When defining the list of alternative service places, the professional skills of the alternative servants and the needs and peculiarities of the institutions should be taken into consideration.

10. LEGISLATION ON PERSONAL DATA PROTECTION

Privacy is widely recognized as a human right. Individuals should be confident that information about them will be handled fairly. This includes personally-identifiable information in the hands of government agencies. Government's practices in collecting, retaining and managing personal data about its citizens raise a wide range of privacy concerns.

Taking into account the growing public concern about the protection of personal data stored by both governments and businesses, the Council of Europe has developed Convention No. 108 (1981) "For the Protection of Individuals with Regard to Automatic Processing of Personal Data." The Convention outlines basic principles that member states shall adopt in the area of automatic processing of personal data stored in public and private databases. Important elements of the Convention are obligation of the Parties to ensure relevant measures of personal data protection and appropriate sanctions and remedies for violations of provisions of domestic law, giving effect to the basic principles of the Convention. Taking into account the importance of the issues related to establishment of relevant supervisory authority in the signatory-countries, an Additional Protocol to the Convention was developed by the Council of Europe and ratified by most of the Convention Parties. The Protocol also addresses the issues related to the trans-border flow of personal data. Armenia is not a signatory of this important international document, which was signed and ratified by the majority of European countries.

In spite of the fact that Council of Europe Convention 108 has not been ratified by the Republic of Armenia, in 2003 the National Assembly of the Republic of Armenia adopted the Law of the Republic of Armenia "On Personal Data." In general, the Law complies with the principles outlined in the Council of Europe Convention 108. However, there are some gaps in the Armenian legislation related to specific provisions of the Convention, which do not provide adequate protection of personal data stored in public and private databases. One of such gaps is the absence of *"appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection"* as required under Article 10 of the Convention. Though the Law of the Republic of Armenia "On Personal Data" officially declares that person's violation of the Law shall result in liability for its violation, no criminal sanctions for the violation of data protection law are foreseen so far. It can be assumed that in cases of violation of the provisions of this Law by state servants, disciplinary measures will be taken; however, no adequate measures of responsibility are provided for its violation by personnel of the commercial and public organ-

izations, as well as by natural persons. Obviously, disciplinary sanctions could not be considered an adequate measure for the protection of citizens' privacy.

Two major issues, such as the establishment of a supervisory authority and the trans-border flow of personal data, are not properly addressed under the Armenian legislation. Though the Law stipulates the establishment of a personal data protection body, it does not empower it with the supervisory functions and responsibility of inspecting the use of personal data by either public or private organizations. The Law of the Republic of Armenia "On Personal Data" does not stipulate a separate section on limitation of forwarding of personal data abroad. According to the Law, the procedure of transferring personal data abroad shall be considered either in the international treaties or pursuant to Article 6 of the Law, that is, forwarding of data abroad may be realized with the consent of the subject providing the personal data. The Law lacks a detailed stipulation of conditions and procedures for the permission to forward personal data to the subjects of the third countries and responsibility of a supervisory body to inspect and grant such permission. This should be also considered as an inconsistency with European standards and a sign of the lack of adequate protection of citizens' privacy within the context of the aforementioned Council of Europe Convention.

11. FREEDOM OF EXPRESSION AND INFORMATION

Having become a member of the Council of Europe on January 25, 2001, Armenia undertook two major commitments with regard to freedom of information and expression:

a) To adopt a new law on mass media within a year;
b) To transform the national television into a public service broadcaster, governed by an independent board.

Though the Republic of Armenia Law on Television and the Radio (adopted on October 9, 2000) provided for the creation of the Public Television and Radio Company of Armenia, the second part of the commitment, i.e. the management of the Company by an independent administrative body, apparently has not been honored *(see details in the section on the Republic of Armenia Law on Television and the Radio and its implementation practice)*, because the Public Television and Radio Company Board is formed by the President of the Republic. The authorities always claimed that under the Constitution, no other body had the power to form the Board. The same explanation was given to the formation of the National Television and Radio Commission by the President, claiming that the constitutional amendments would resolve this issue.

In 2005, the draft amendments to the Constitution of Armenia were circulated: the draft adopted by the National Assembly in first reading provided that the members of the broadcast regulatory body would be appointed by the National Assembly upon nomination by the President of the Republic. This provision was, however, concerned with only one body. Later, after the complaints of journalistic organizations and discussions with the Venice Commission, the respective article (83.2) of the constitutional draft (and later, the constitutional amendments adopted in the Referendum) read as follows:

"With a view to ensuring the independence, freedom, and pluralism of the broadcast media, an independent regulatory body shall be created by law, half of the members of which shall be elected by the National Assembly for a six-year term, whereas the other half shall be appointed by the President of the republic for a six-year term. The National Assembly shall elect the members of this body by majority vote of the total number of parliamentarians."

The Yerevan Press Club experts challenge the following aspects of the definition:

A) The goal for which the body is created (***"With a view to ensuring the independence, freedom, and pluralism of the broadcast media"***): primarily, it is not the body that is created for this purpose; rather, its appointment procedure should be defined in such a way as to ensure the independence and freedom of the regulatory body.

B) This article refers to only one body, while the Council of Europe Parliamentary Assembly resolutions always referred to regulatory bodies, having in mind also the RA Council of Public TV and Radio Company. Though journalistic organizations mentioned in numerous discussions that the relevant procedure enshrined in the Constitution should apply to both regulatory bodies, the authors of the amendments were not affected by these arguments.

C) The procedure for the formation of the broadcast regulatory body, which is defined in the Constitution, restricts any possible future changes to the Law on Television and the Radio, and will not ensure the independence of this body.

D) Despite Resolution 1405(2004) of the Parliamentary Assembly of the Council of Europe, which provides that after the Law on Television and the Radio is amended, the composition of the National Television and Radio Commission should be changed, the transitional provisions of the Amended Constitution (Article 117(11)) provide that ***"the members of the independent body specified in Article 83.2 shall stay in office until the end of their term prescribed in the Law on Television and the Radio. In the event the term of their office ends or their office is terminated before the end of its term, vacancies shall be filled consecutively by the National Assembly and the President of the Republic."***

Article 27 of the Constitutional Amendments is also concerned with the freedom of expression and information. This article provides:

"Article 27. Everyone shall have the right to freely express his opinion. It shall be prohibited to force a person to renounce or change his opinion.

Everyone shall have the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas by any medium of information, regardless of state frontiers.

The freedom of mass media and other media of information shall be guaranteed.

The state shall guarantee the existence and activities of independent public radio and television offering pluralistic information, educational, cultural, and entertainment content."

Under the Amended Constitution, this right, alongside with some other rights and freedoms, could be restricted ***"only by law, if it is necessary***

in a democratic society for reasons of national security, the protection of the public order, the prevention of crime, and the protection of public health and morals, as well as the constitutional rights and freedoms, and honor and reputation of others" (Article 43). These rights and freedoms may also ***"be temporarily restricted in the procedure defined by law at times of military state or state of emergency, in the frameworks of international commitments regarding derogation from obligations in emergency situations"*** (Article 44).

Seven of the journalistic organizations of Armenia proposed a number of amendments to the draft after its adoption by RA National Assembly in the first reading. For instance, they suggested prohibiting any form of censorship in the Constitution. The reason for this suggestion was that countries like Armenia, which had censorship bodies in the recent past, still face the threat that latent censorship may be practiced. A constitutional provision prohibiting any form of censorship would guarantee its prohibition under various laws. However, such a provision was not included in the Amended Constitution.

Thus, the Amended Constitution does not resolve the two most essential issues concerning the field of media activities: the Constitution does not prohibit censorship and does not effectively safeguard the independence of the two media regulatory bodies.

Since the constitutional amendments are directly related to the electoral legislation, we intend here to analyze also the amendments in these areas.

FREEDOM OF EXPRESSION AND INFORMATION DURING ELECTIONS AND REFERENDA

The Republic of Armenia Law on Television and the Radio, the Electoral Code, and the Law on Referendum all contain provisions on the freedom of information during elections and referenda. For instance, Article 11 of the Law on Television and the Radio provides: ***"Before and during referenda and electoral campaigns, television and radio programs shall be broadcast in accordance with the legislation on referenda and elections.***

During this period, it shall be prohibited for television and radio companies to broadcast political or other campaign content in the form of informational, editorial, documentary, creative, or other shows. The broadcasting of such content over television must be accompanied with a mandatory full-time note on the screen reading "political advertisement" or "campaign show" or, in the case of radio broadcasting, there shall be at least three reminders during each show of its being campaign content.

During referendum and election campaigns, television and radio companies shall publicly announce the cost of their air time for paid polit-

ical advertisement and other campaign content. Those who wish shall use air time on the basis of a contract, on equal grounds."

The Law on Amending the Electoral Code (adopted on May 19, 2005) has almost fully changed Article 20 of the Electoral Code on campaigning ("Article 20. Election Campaigning over the Mass Media"). Prior to the amendments, Article 20 of the Electoral Code simply defined that ***"the Central Electoral Commission shall define the procedure of granting free air time to presidential candidates and parliamentary majority contest candidate parties on the Public Radio and the Public Television."*** This provision was later amended as follows:

"For each general election, the Central Electoral Commission shall, within a three-day period after the end of the term for registration of candidates, define the procedure and timetable of granting free air time to presidential candidates and parliamentary majority contest candidate parties/party alliances on the Public Radio and the Public Television." A new provision has been added as follows: ***"The Public Television Company and the Public Radio are obliged to ensure equal conditions to all candidates and parties (party alliances) taking part in elections. The media content broadcast by the Public Television Company and the Public Radio regarding the campaign of candidates, parties, or party alliances shall be presented impartially and shall contain information that is free from judgment, ensuring respect for fair and equal conditions.***

The failure by a candidate, party, or party alliance running in elections to organize any events, or the lack of information on organized events may not serve as a ground for refusing to broadcast appropriate information on the campaign of other candidates in the mass media." This provision and Paragraph 4 of the same article, which requires that ***"the price per minute of paid air time over the Public Radio and the Public Television Company shall be publicized within no more than 10 days after general elections are scheduled, and such price may not be changed during the campaign stage"*** applies also to television and radio companies (regardless of ownership form) by virtue of Paragraph 5 of the same article. Another paragraph has been added, which provides: ***"Newspapers and magazines, regardless of who their founders are, with the exception of newspapers and magazines founded by parties, shall be obliged to ensure equal conditions when they publish election campaign materials."***

The YPC experts consider these amendments a step forward in the right direction. However, so long as general elections have not been held since the amendments were made, it is difficult to measure their effective application in practice. The monitoring conducted by the Yerevan Press Club during the presidential and parliamentary elections in 2003 showed that the adaquacy of the coverage was not respected. Television news, in particular, allocated a lot more air time to covering the campaign of the incumbent

president (in the 2003 presidential elections) and the incumbent ruling parties.

During the 2003 elections (as well as in virtually all the elections that preceded), coverage of the official activities of candidates (both the president and parliamentarians) continued to raise issues. Such media coverage was considered a form of indirect campaigning. The May 19, 2005 Law added a new Article 22^1 to the Electoral Code. This article is concerned with the restrictions on campaigning by candidates that hold political or discretionary positions, or are state, civil, and local government servants (Paragraph 3 of this Article is concerned with the specific issue outlined above). Paragraph 3 of Article 22^1 to the Electoral Code provides:

"It shall be prohibited to cover the activities of such candidates (i.e. candidates that hold political or discretionary positions, or are state, civil, and local government servants - Ed.) ***in the mass media, with the exception of cases provided by the Constitution, as well as official visits and receptions and measures implemented by them in the course of natural disasters."***

Let us now address the freedom of expression during referenda. Article 20 of the Republic of Armenia Law on Referendum (adopted on September 12, 2001, and amended on March 31, 2003 and September 28, 2005) is concerned with referendum campaigning. This article provides that the campaign shall begin ***"on the day when the Presidential Decree on holding a referendum is officially publicized, and shall end one day prior to the voting,"*** and ***"may be carried out over the mass media, public campaign events (meetings, gatherings, public discussions, debates, demonstrations, rallies, and processions), publicizing printed materials, and disseminating audio and video records."***

The Republic of Armenia Law on Referendum also specifies the individuals that may not engage in campaigning: however, the Law adopted on September 28, 2005 has introduced major amendments to this provision. Prior to the adoption of the September 2005 Law, ***"state and local government bodies, and their staff - during the performance of their work duties"*** were not allowed to campaign, but after the amendments, ***"campaigning may not be carried out by state and local government bodies and their staff, with the exception of staff holding political and discretionary positions, during the performance of their work duties."***

However, the Law does not address the issue of equal mass media access for those that are for or against the referendum matter, unlike the Electoral Code. There is only one provision that provides: ***"The state shall guarantee the free implementation of the campaign on the referendum matter."***

From November 5 to 25, 2005, Yerevan Press Club conducted monitoring of Armenian media coverage of the referendum on draft amendments to RA Constitution on November 27.

The monitoring showed that Armenian television companies failed to honor the requirement of Article 11 of the Republic of Armenia Law on Television and the Radio, because they did not publicize the price of their paid air time for campaigning on the referendum matter and did not make any paid air time available. Although the studied newspapers and TV companies allotted enough attention to the referendum in quantitative terms, the overwhelming majority of them ignored the principles of impartiality and pluralism in the campaign coverage and did not ensure reliable and competent public awareness on the content of the constitutional reform *(see Appendix 7 on the results of the monitoring).*

RA LAW "ON FREEDOM OF INFORMATION"

The RoA Law on Freedom of Information was passed on September 23, 2003, and became effective on November 14 of the same year.

The Law is made up of 15 articles, referring to the main principles of guaranteeing freedom of information, recording, classifying and maintaining data, access to information and guarantees of transparency, restrictions on the freedom of information, the procedures for making and discussing inquiries, the terms of providing information, the grounds for refusal to provide information, responsibility for violating freedom of information, etc.

This Law was the first in Armenia to provide for the constitutional human right to seek and receive information in a way that would be close to international standards. One of the advantages of the Law is also that it had defined the structures to which the obligations under this Law apply. These are ***"state bodies, local self-government bodies, state offices, state-subsidized organizations as well as organizations of public importance and their officials that hold information" (Article 3)***. Thus, for the first time in the Armenian legislation, the notion of ***"organization of public importance"*** was introduced, defined by the same Article of the Law as "***non-state organizations that have monopoly or a dominant position in the commodity market, as well as those providing services to public in the sphere of health, sport, education, culture, social security, transport, communication and utility services".***

Article 7 of the Law, which we view as one of the most important ones, is entitled "Ensuring Access to Information and Publicity." The Article stipulates, first of all**,** that ***"Information holder works out and publicizes the procedures according to which information is provided on its part, as defined by legislation, which he places in his office space, conspicuous for everyone."*** The second clause of the Article requires that the information holder urgently publicize or via other accessible means inform the public about the information at its disposal, the publication of which can prevent dangers to the state and public security, public order, public health and morals, others' rights and freedoms, environment, person's property.

Clause 3 of this Article lists the information types and the changes to information, which the information holder is required to publish at least once a year (this list includes 13 types).

The Law itself defines the procedure for submitting the inquiry and its review, by Article 9, not leaving the development of the procedure to the discretion of the specific agency or to the government. The Article has an important provision eliminating one of the previously existing obstacles to access to information. This provision runs as follows: ***"The applicant does not have to justify the inquiry"*** (Article 9, clause 4), which complies with the Recommendation (2002) 2 of the CoE Committee of Ministers to Member States on Access to Official Documents. Section 5 of this Recommendation says: ***"An applicant for an official document should not be obliged to give reasons for having access to the official document."***

Article 10 of the Law refers to the terms of providing information, noted that no fees are charged for the publication of the information in case of a response to an oral inquiry, in case of typewritten or copied information of up to 10 pages, provision of information by e-mail, etc. The Article also stipulates that, should a fee be charged for the provision of information, such fee cannot exceed the cost incurred to provide the information.

Finally, Article 8 of the Law refers to restriction on freedom of information, which corresponds to international standards, including the requirements of the CoE Committee of Ministers Rec (2002)2.

To date, the Government has not complied with the requirements of Article 5 and 10 of the Law, and has not adopted procedures for registering, classifying and maintaining information developed by the information holder or directed to it, as well as for providing information or its copy by state or local government bodies, state institutions and organizations. The Freedom of Information Center NGO developed its drafts and sent them to all interested organizations and the government.

The Law had just been enacted, when in 2004, the situation with the Law became alarming for the civil society. The Government had developed draft amendments to the Law, which, if adopted, would significantly damage the Law. Fortunately, the process of adopting such amendments was halted.

However, short as the existence of this Law has been, cases of its infringement have already been reported.

Thus, "Investigative Journalists" NGO addressed the Yerevan municipality, demanding the copies of the municipal resolutions on the construction made in the park around the National Theater of Opera and Ballet in 1997-2003. These documents were necessary for journalistic investigation. After numerous refusals, the organization started litigation against the city authorities. After the courts of first and second instance refused securing

the suit, "Investigative Journalists" challenged the ruling with the Court of Cassation, which overruled the judgment of the court of second instance and redirected the case back to additional review of the Court of Appeals (in a new chamber). The latter ruled to oblige the municipality to provide the information requested by the journalists. The municipality, on its behalf, challenged the case with the Court of Cassation; however, the court upheld the judgment by its decision of February 10, 2005. It appears that to fulfill the simplest stipulation of the Law on Freedom of Information, one has to pass through a year-long litigation process and exhaust all judicial instances. Even after the judgment was reached, the Yerevan Municipality protracted the provision of data till the NGO applied to the Judicial Enforcement Department, after which the Yerevan Municipality expressed readiness to provide the information. However, such was not provided as of late December 2005.

A similar incident occurred in Vanadzor, where the municipality refused to provide the resolutions of the municipality and the Community Council of 2002-2003 to the Vanadzor Branch of the Helsinki Citizens Assembly.

(Please see the Annual Reports of the Yerevan Press Club and the Committee to Protect Freedom of Expression for more details on the two cases: http://www.ypc.am, as well as the YPC Weekly Electronic Newsletter).

● ● ●

The legal and regulatory framework on official publications and official communication is a part of a wider area of legislation ensuring citizens' right[39] to search, receive, and communicate information, as proclaimed by the International Covenant on Civil and Political Rights (Art. 19) and the European Convention on Human Rights and Freedoms (Art. 10).

Taking into account the importance of realizing citizens' rights to search, receive, and disseminate information, and considering the information technologies as an effective tool that governments could use, the Committee of Ministers of the Council of Europe has adopted Recommendation Rec (2002)2 to Member-States "on access to official documents". Recommendation Rec (2002)2 outlines the main principles of the implementation of information rights of citizens and provides the general methodology for the relevant parts of national legislations. The important parts of Recommendation Rec (2002)2 are the paragraphs describing the recommended procedures for requesting and processing requests of official documents.

The RoA Law "On Freedom of Information" does not contain special provisions related to the use of information technologies for the delivery of services related to the access/request of official information, with the exception

[39] In this text the universal human rights to search, receive and disseminate information will also refer to as information rights.

of Article 7(5) of the Law, which provides: “(...) information shall be published in a way that it is accessible to the public and, if the holder of information has a web site, then also by means of such a web site.” In fact, the use of information technologies is limited to the publication of some official information on ministries’ web sites. Official web sites of ministries do not always contain all the information that is subject to mandatory publication under the RoA Law “On Freedom of Information.”

There are no specific international obligations of the Republic of Armenia with respect to the use of information technologies in public administration; Armenia’s information society policy cannot be praised for its compliance with the practice widely used in European countries. Unlike many European countries, Armenia still does not have an information society development strategy and an e-governance development action plan. At the same time, there are several positive examples of the use of information technologies in the area of public administration in Armenia which, however, are exceptions, rather than the rule. Such instruments of official public communication are usually the result of the efforts of foreign and international organizations, donors, and civil society organizations. Similar to the situation with access to information, there are no formal obligations of the Republic of Armenia in the area of developing information society and implementing e-government. However, the promotion of the use of information technologies in the area of public administration is an important element of the European political culture, and countries that seek integration with European society ought to comply with the European public administration standards.

THE RA LAW “ON MASS COMMUNICATION”

As it has been noted above, upon accession to the Council of Europe, Armenia undertook to adopt a new law on media within a year. The first RoA Law on Press and Other Media Outlets had been adopted in 1991.

The new law, the draft of which was put into circulation in January 2002, initially was much more regressive than the law then in force. Journalists and public organizations rejected the first version of the draft, pointing out justly that the adoption of the draft could result in the re-introduction of censorship and suppression of free expression. That version of the draft never reached the Parliament. The Government had several times reviewed the draft, retaining every time the main provisions, which were deemed unacceptable by the journalistic community. However, the stance on the draft seemed to change after the elections to the National Assembly: the authors and the specialized committee of the Parliament expressed their readiness to hear and take into account all the proposals that would aim to improve the draft and raise it to international standards.

As a result of cooperation between the Yerevan Press Club, the Committee to Protect Freedom of Expression, Internews Armenia, Journalists Union of Armenia, the authors of the draft, and the Parliamentary Committee, the

draft, though still in need of further improvement, became acceptable to the parties concerned.

RA Law “On Mass Communication” was adopted on December 13, 2003. Herein, the main provisions of the Law will be considered.

Firstly, the Law defines the notions of “mass communication” and “mass communication medium” (it is only the definition of mass communication media that remains disputable to this day) and further, by Article 4, spells out the guarantees for freedom of expression in communications:

1. “Entities engaged in communications activity and journalists shall operate freely in compliance with the principles of equality, legitimacy, freedom of speech (expression), and pluralism.

While conducting his/her legitimate professional activities, a journalist, as a person performing a social duty, shall be protected by the RoA legislation.

2. Media products are produced and disseminated without prior or current state registration, licensing, declaration, or notice to any state body.

The licensing of TV and radio broadcasting is conducted according to the RoA legislation on television and radio.

3. The following is prohibited:

1. ***Censorship;***
2. ***To compel the entity engaged in communication activity or a journalist to disseminate or refrain from the dissemination of information;***
3. ***Interfering with the legitimate professional activities of a journalist;***
4. ***Discrimination in public circulation of appliances and materials necessary for the dissemination of information;***
5. ***Restriction of a person’s right to exploit media products of his/her choice, including those issued and disseminated in other countries.”***

There are two clauses deserving particular attention in this Article: a***) While conducting his/her legitimate professional activities, a journalist, as a person performing a social duty, shall be protected by the RoA legislation,*** and b) ***it is prohibited (...) to interfere with the legitimate professional activities of a journalist.*** It should be added here that the RoA Criminal Code criminalizes the act of obstructing the legitimate professional activities of a journalist *(see below).*

Article 164. Hindrance to the legal professional activities of a journalist

1. Hindrance to the legal professional activities of a journalist, or forcing the journalist to disseminate information or not to disseminate information, is punished with a fine in the amount of 50-150 minimal salaries, or correctional labor for up to 1 year.

2. The same actions committed by an official abusing one's official position, is punished with correctional labor for up to 2 years, or imprisonment for the term of up to 3 years, by deprivation of the right to hold certain posts or practice certain activities for up to 3 years, or without that.

The reason we address the issue here is that after the adoption of the new law, in 2004, several outrageous examples of hindering the legal professional activities of journalists were reported.

Thus, on April 5, 2004, in the city of Ashtarak, the police hindered the work of the correspondent of "Haikakan Zhamanak" newspaper Haik Gevorgian, later taking him to the police station, as he was taking pictures of the Ashtarak-Yerevan highway blocked by the police. (Note: the highway was blocked to prevent the inflow of participants to the opposition rally in Yerevan). According to Haik Gevorgian, he had been "lectured on how to behave" for an hour at the police station.

On the same day - April 5, unprecedented violence was committed against journalists during the opposition rally in Yerevan. The attacks on journalists, damaging their cameras, evolved in front of the policemen, none of whom interfered. During the incident, cameras of the private "Kentron" and "Hay TV" companies, as well of Public Television of Armenia were broken, the tape of "Shant" private TV was snatched away, the photo cameras of correspondents Onik Grigorian ("Hetq" online newspaper), Anna Israelian ("Aravot" daily), Haik Gevorgian ("Haikakan Zhamanak") were destroyed. The journalists were also subjected to physical violence. Only after an active social protest wave were criminal proceedings instituted on this fact, and only against two people. These two were found guilty and sentenced to a penalty of 100, 000 AMD. Surprisingly, the proceedings were instituted not under Article 164 of the RoA Criminal Code ("Hindrance to the legal professional activities of a journalist"), but under Article 185 ("Willful destruction or spoilage of property"), with the mildest punishment chosen out of all, stipulated by the Article.

Even more outrageous were the events on the night of April 12 and morning of April 13, 2004, when the journalists reporting on the opposition rally were attacked by the policemen themselves. On that night, correspondents of "Haikakan Zhamanak" daily Haik Gevorgian and Avetis Babajanian, the cameraman of the Russian ORT TV company Levon Grigorian, and journalist of "Chorrord Ishkhanutiun" newspaper Mher Galechian were beaten.

According to Haik Gevorgian, his camera was snatched out by the Deputy Head of the RoA Police Hovhannes Varian in person, and the violence was exercised by the policemen in his very presence. Even more horrifying is the narration of the cameraman of the Russian ORT TV Company Levon Grigorian, published in the Yerevan Press Club Weekly Newsletter (see YPC Weekly Newsletter, November 12-18, 2004). Despite the public attention that the case got, the numerous protests made by local and international public organizations, no criminal proceedings were instituted on the case, not even an administrative investigation was conducted.

The next case of hindrance to the professional activities of journalists occurred on August 24, 2004. On that day, the correspondent of "Aravot" newspaper Anna Israelian and the photo journalist of "Photolure" photo news agency Mkhitar Khachatrian were attacked by some Gagik Stepanian, as they were gathering information on the summer houses being built in Tsaghkadzor (see the Annual Report of the Yerevan Press Club and Committee to Protect Freedom of Expression in 2004 for more detail on YPC web site: www.ypc.am). On this fact, for the first time in the history of independent Armenia, criminal proceedings were instituted under Article 164 ("Hindrance to the legal professional activities of a journalist",) and on November 11, the court ruled to sentence the defendant to six months' imprisonment. By the assessment of Yerevan Press Club, the punishment is too mild, particularly since the law allowed for an early release. These expectations came true, as the people guilty of violence against journalists were released already on October 26.

Article 164 of the Criminal Code was also applied to Armen Vardanian, who committed violence against correspondent of "Haikakan Zhamanak" daily Arman Galoyan on September 23, 2004, in the vicinity of one of the Yerevan markets. He was sentenced to a year's reformatory labor with 20% allocation of his monthly salary to the state budget.

The RoA Law "On Mass Communication" strengthens the provision on the protection of information sources (Article 5). It is stipulated that the identification of sources can only be imposed on the journalist and the medium by court, and only as necessary for the disclosure of grave and very grave crimes. It also specifies the cases when identification of sources may be demanded ***("if social interest in law enforcement overweighs the social interest in protecting the sources of information, and all other means to protect the social interest are exhausted***"). This clause was expanded at the insistence of the journalistic associations, stipulating that in this case, the journalist can demand a court hearing in camera. Therefore, the Article should either be brought into compliance with Recommendation No. R (2000) 7 of the CoE Committee of Ministers to Member States on the Right of Journalists not to Disclose Their Sources of Information, or else, amendments should be introduced in other laws in the spirit of this Recommendation. This is particularly important, since, as the practice shows, this provision contradicts Article 86 of the RoA Criminal Procedural Code, which provides that journalists are not included into the

list of those who shall not be involved in criminal proceedings and interrogated as witnesses. This issue first came up when the Chairman of "Investigative Journalists" NGO Edik Baghdasarian was summoned to the police station of Kentron community of Yerevan, where he was demanded to disclose the sources of information published in one of his articles. YPC believes that the problem is to be solved by amending Article 86 of the RoA Criminal Procedural Code, to include journalists into the list of individuals that cannot be involved in the case and interrogated as witnesses, in order to protect the information sources.

Article 6 of the Law on Mass Communication refers to the accreditation of journalists, and Article 7 is related to the restrictions of the freedom of expression in the field of media activities. Point 1 of that Article provides: ***"It is prohibited to disseminate information defined by law as secret, or information advocating criminally punishable acts, as well as information violating the right to privacy of ones' personal or family life.***

In Point 1 of the Article above, the phrasing **"*information defined by law as secret"*** is unclear. The journalistic associations have repeatedly stressed that responsibility for the information defined as secret lies with the information holder. Should it become known to the journalist, the decision of whether to publish it or not rests with the journalist and his/her medium, as an ethical matter. Also, Article 9 of the Law, entitled "Responsibility of the Entity Engaged in Communication Activity," provides certain protection in case of publishing secret information: ***"The entity engaged in communication activity is not liable for dissemination of secret information as stipulated by law, provided the information in question was obtained lawfully, or it was not apparent that the information was secret under the Law.***

If the entity engaged in communication activity has disseminated information the secret nature of which has been evident, it will be exempt from liability, if dissemination of information was done for the sake of protecting public interest."

The right to response and refutation is stipulated in Article 8, specifying that the response and refutation can be demanded within one month since the publication of the information, and is to be published within a week since the submission. It is also noted that the refutation must refer to only factual mistakes. The Law also lists the cases when the refusal to publish a response or a refutation is permitted.

RA LAW "ON TELEVISION AND RADIO" AND ITS IMPLEMENTATION

As it has been noted above, the commitments and obligations of Armenia also called for transformation of the state broadcaster into a public service one. The RoA Law "On Television and Radio" was adopted on October 9, 2000, that is, after the Opinion 221 of the PACE (June 28, 2000) on Armenia's application for membership in the Council of Europe and before Armenia became a full-fledged member of the Council of Europe.

The Law regulates the work of both private and public service broadcasters. The main point of debate remains the formation and the authority of the regulatory bodies - the National Commission on Television and Radio (regulating the private broadcasting) and the Council of Public Television and Radio Company. According to the Law, both the National Commission on Television and Radio and the Council of Public TV and Radio Company are formed by the RoA President. Their independence is supposedly guaranteed by their terms of service, during which the authority of their members cannot be terminated but for several cases - the decease of a member, voluntary resignation, etc. Yet, is this sufficient to ensure the independence of the regulatory bodies? In the opinion of the journalistic community, it is not. Thus, the TV and radio broadcast licensing competitions in 2002-2005 showed that the concern is valid: "A1+" TV Company participated in 9 TV broadcast licensing and two radio broadcast licensing competitions, and each time the National Commission on Television and Radio announced it a loser. Unsuccessfully, "A1+" challenged practically all the decisions of the NCTR at every judicial instance of RA, and the case is currently pending before the European Court of Human Rights.

The independence of the broadcast regulating bodies is a problem that has been particularly emphasized by the Council of Europe, its Committee of Ministers adopting a Recommendation on this: Recommendation (2000)23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector of December 20, 2000. This issue was also addressed by PACE in its three resolutions on the fulfillment of commitments and obligations by Armenia, issued in 2004. Thus, PACE Resolution 1361 (January 27, 2004) says:

"The Assembly notes that a number of legislative commitments - increased local self-government, introduction of an independent ombudsman, *establishment of independent regulatory authorities for broadcasting* (highlighted by YPC), modification of the powers of and access to the Constitutional Court, reform of the Judicial Council, etc. - are still subject to a revision of the Armenian Constitution".

The same Resolution further provides:

"As regards freedom of expression and media pluralism, the Assembly is concerned at developments in the audiovisual media in Armenia and expresses serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licenses, in particular as regards the television channel A1+. However, it notes the adoption in December 2003 of the Law on the Mass Media and a law amending the Law on Radio and Television Broadcasting."
On December 3, 2003, the RoA National Assembly adopted the RoA Law on Amending the RoA Law on Television and the Radio." This followed another expert assessment of the existing Law by the Council of Europe.

The NA deputies that initiated the amendments assured that the changes were developed on the basis of the CoE expert assessment dated July 26, 2002. However, YPC analysis reveals that the main objections of the expert were not taken into account. Firstly, the reviewing expert placed a particular emphasis on the procedure of forming the regulatory bodies - the Council of the Public TV and Radio Company and the National Commission on Television and Radio. In particular, the expert pointed out that the member appointment policy for both the NCTR and the Council of PTRC should be aimed at ensuring appointment transparency and the independence of the bodies from political influences. Experts also note that for the members of National Commission on Television and Radio, this should be their principal employment.

This point in the expert review was not taken into account by the authors of amendments to the RoA Law on Television and the Radio." To fill in the vacancies in the Council of Public TV and Radio Company, the following procedure was stipulated:

"The Chair of the Board shall inform in writing the President of the Republic of Armenia whenever a vacancy opens in the Board. The President announces a competition for the opening in the mass media within a one-week period.

Anybody can be nominated for the vacancy of a Board member, according to the requirements of this law.

At least a 10-day term is stipulated for nominating the candidates.

The data about the candidates are published in the mass media.

The RoA President, based on the competition procedure confirmed by him, appoints one of the winners of the competition as a Board member. The information about that is published in the mass media - with the necessary substantiation."

In January 2005, a competition was announced to fill the vacancies at the Council of Public TV and Radio Company. The competition jury was headed by the Chairman of the Council of the Public TV and Radio Company Alexan Harutyunyan. Yerevan Press Club, Journalists Union of Armenia, Internews Armenia, and the Committee to Protect Journalists qualified this competition as imitation of democracy. The winners of the competition became members of the Council. These were Stepan Poghosian and Henrik Hovhannisian, previously holding the same positions.

The same procedure applies to the National Commission:

"The Chairman of the National Commission shall inform in writing the President of the Republic of Armenia whenever a vacancy opens in the National Commission. The President announces a competition for the opening in the mass media within a one-week period.

Anybody can be nominated for the vacancy of a member of the National Commission, according to the requirements of this law. At least a 10-day term is stipulated for nominating the candidates.

The data about the candidates are published in the mass media.

The RoA President, based on the competition procedure confirmed by him, appoints one of the winners of the competition as a National Commission member. The information about that is published in the mass media - with the necessary substantiation."

These amendments yield no result whatsoever and do not adhere to the requirements of Recommendation (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting and Recommendation Rec(2000)23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, because the determination of competition winners remains a subjective decision to be made by the President or the Commission appointed by him.

The issue of independence of broadcast regulatory bodies was also addressed in PACE Resolution 1374 (April 28, 2004):

"Create fair conditions for the normal functioning of the media, for example, as regards the issuing of broadcasting licenses to television companies, in particular, to television channel A1+."

The tenders for television and radio broadcast licenses conducted by the National Television and Radio Commission have also been analyzed by the Armenian "Internews" NGO in the framework of its "Television Regulation in Armenia" project. A section of the analysis, which is related to the topic in question, is presented below in full:

"After the most recent amendments of December 29, 2003, a third paragraph was added to Article 50 of the Law on Television and the Radio, which provides: "The National commission must duly justify its decisions on selecting the licensee, refusing to grant a license, or revoking a license." In order to clearly understand how well the Commission respects this provision of the Law, decisions taken by the Commission before and after the amendment have been reviewed.

Decisions on selecting the licensee, which have been taken after the amendments (hereinafter, "decisions taken later"), are not considerably different from the decisions taken before January 2004 (hereinafter, "decisions taken earlier"). In the decisions taken earlier, it is directly mentioned that "*on the basis of the tender results, the company is hereby recognized as the winner of the licensing tender,"* whereas the decisions taken later contain more extensive wording: *"taking into consideration that the bid submitted by limited liability company _____ taking part in*

the license for broadcasting television content on band _____ in the city of _____ is in conformity with the requirements of the Republic of Armenia legislation on television and the radio and the tender conditions established by decision _____ of the National Television and Radio Commission dated _____, the National Television and Radio Commission hereby decides to recognize the _____ company as the winner of the tender."

We believe such wording of decisions by the Commission fails to comply with the requirements of Article 50 of the Republic of Armenia Law on Television and the Radio, because in order to be awarded a license in the tender, it is insufficient for the bid to be in conformity with the Armenian legislation on television and the radio. The Armenian legislation on television and the radio clearly provides that in order to issue a broadcast license, the winning bidder is selected on the basis of:

a) The predominance of own content;

b) The predominance of domestically-produced content;

c) The technical and financial capabilities; and

d) The competence of the staff.

We believe the Commission should select the winning bidder on the basis of the requirements of law and, therefore, determination of who performs better (...) Considering that the Law and the tender procedures define four criteria, the Commission needs to justify its decisions by evaluating each of the four criteria: otherwise, the decisions of the Commission cannot be considered justified."[40]

The same study of Internews Armenia public organization also refers to the compliance of 19 TV companies with the RA Law "On Advertising". A one-week monitoring registered violations of the requirement of the Law for allowed advertising volume in each hour of airtime, also the ban on advertising strong alcoholic beverages and tobacco. However, the National Commission on Television and Radio either applies no punishment for such violations or does it selectively.

● ● ●

Among the problems faced by the post-Soviet Armenian media are their financial dependence on political and economic patronage, resulting in political bias, absence of due attention to the issues of public concern. The honoring of commitments to the Council of Europe was to bring about greater freedom of journalistic profession, installment of certain legal mechanisms that would ensure objective reporting, proceeding from public inter-

[40] Quote from analysis provided to us by Internews.

ests. This applies primarily to the broadcast media, which are the main source of information for the population. Therefore, along with the assessment of the direct fulfillment of commitments with regard to legislation and the functioning of the reformed legal mechanisms, the present research also aimed at determining how much the reforms have affected media content, first of all focusing on the broadcasters. To this effect monitoring of the mainstream TV channels was administered. The necessity of this study was further confirmed by the fact that the broadcasting landscape of the country was formed after Armenia became a member of the Council of Europe and the adoption of the Law on Television and the Radio as part of the commitments to the CoE, and was particularly affected by its practical implementation (replacement of state broadcasting with public service broadcasting and conductance of broadcast licensing competitions).

The monitoring was implemented by Yerevan Press Club in February 2005 *(see Appendix for the findings of the study in detail)*. The study focused on two tasks: to reveal whether and to what extent the major broadcasters meet the information demands of the society and the representation of diverse opinion on major events of public importance on TV air.

The following conclusions can be drawn from the monitoring findings: 1) the major Armenian TV channels, deemed to be the main information sources for the population of the country by surveys and other tools for studying public opinion, do not cover a significant part of topical issues, thus restricting the right of the audience to be informed, and neglecting its demands and needs; 2) unlike the periods that are decisive for the political future of the country (elections of various levels, referenda), when, according to the previous studies, the main TV channels displayed an obvious slant in favor of the incumbent authorities, this study did not record any prevalence of any political stance on TV air; 3) at the same time, a somewhat passive behavior of the TV companies in terms of presenting the opinions of political and public figures on a whole range of issues was noted. Thus, the contribution of media in shaping the public policy culture in the country is unsatisfactory; 4) The analytical programs of most TV channels studied are not sufficiently contributing to the audience finding its way through the information flow; 5) in particular, the international and social problems, which, according to all public opinion polls of the past years, are of utmost interest to the audience, are not a priority in the programming policy of the media studied; 6) at the same time, the TV channels pay much attention to the routine, day-to-day activities of state structures, the leadership of the country, the political figures and businessmen who have certain levers of affecting the given TV company; 7) as another monitoring, administered during the same period jointly by the London-based Media Diversity Institute and Yerevan Press Club, shows, the broadcasters very rarely addressed the issues of socially vulnerable groups of the Armenian society. These subjects are covered only in the case of a news pretext and mostly address the official stance on the groups, as voiced by state and international structures.

Thus, it can be stated that during the period when commitments to the CoE were being fulfilled, the Armenian broadcast media market (even though their number is quite large for a country with a small area and a population of 3 million) is not adequately responding to the needs of society and the problems of social development in the country.

DECRIMINALIZATION OF LIBEL AND INSULT

In 2003, during the discussions of the draft new Criminal Code of the Republic of Armenia, numerous public and international organizations were firm in their stance on the document, insisting that the libel and insult must be decriminalized. However, the authors of the draft Code refused to compromise. On June 17, 2003, heads of six diplomatic missions active in Armenia, as well as representatives of 11 international and local NGOs addressed an open letter to the Speaker of the RoA National Assembly Artur Baghdasaryan (copies were sent to the RoA President Robert Kocharyan, Prime Minister Andranik Margaryan, Justice Minister David Harutyunyan, senior officials of law enforcement bodies and judicial power, NA deputies, and the mass media). The letter called to decriminalize libel and insult and to transfer the regulation of these offenses into the framework of civil legislation.

The necessity to amend Article 135 (***"Libel"***), 136 (***"Insult"***) and 318 (***"Insulting a representative of authorities"***) was addressed by item 16ii of PACE Resolution 1361 (January 27, 2004):

"***(The Assembly) asks the Armenian authorities to start work on revision of Articles 135, 136 and 318 of the Criminal Code by March 2004, in co-operation with Council of Europe experts, to remove any possibility of making insult and defamation subject to a prison sentence."***

On June 9, 2004, the RoA National Assembly adopted the RoA Law on Amending the RoA Criminal Code, by which amendments were introduced also in the three Articles mentioned above. According to the RoA Minister of Justice David Harutyunyan, the amendments were a compromise with the demands to decriminalize libel and insult. Currently, these Articles are worded as follows:

Article 135. Libel.

1. Libel - the dissemination of obviously false information humiliating the person's good reputation, dignity and honor - is punished with a fine in the amount of 100 to 500 minimal salaries.

2. Action envisaged in part 1 of the Article, if repeated, is punished with a fine in the amount of 300 to 1000 minimal salaries, or with imprisonment for up to 1 year.

Article 136. Insult.

1. Insult, the improper humiliation of other person's honor and dignity, is punished with a fine in the amount of 100 to 400 minimal salaries.

2. Action envisaged in part 1 of the Article, if repeated, is punished with a fine in the amount of 200 to 800 minimal salaries.

Article 318. Insulting a representative of authorities.

1. Publicly insulting a representative of authorities, in relation to the duties carried out by him, is punished with a fine in the amount of 100 to 500 minimal salaries.

2. Action envisaged in part 1 of the Article, if repeated, is punished with a fine in the amount of 300 to 1000 minimal salaries, or with imprisonment for up to 1 year.

Thus, as a result of amendments to Articles 135 and 136, their second parts were removed, that is, the punishment stipulated for libel and insult contained in "public statements, publicly demonstrated works, or media." The amounts of the penalties were also changed - that for libel increased from the former 50-150 minimal salaries increased in the new edition of the Criminal Code to 100-500 and that for insult increased from former 100 minimal salaries to 100-400 minimal salaries. Besides, from both articles sanctions of reformatory labor for up to a year (for libel) and up to six months (for insult) were excluded. From Article 318, part 2 was removed, too (insult of a representative of power, made in public statements, publicly demonstrated works or media). From part 1, "punishment of reformatory labor for six month up to one year" was excluded, while the fine amount was increased to 100-500 minimal salaries (previously at 100-200).

Besides, as a result of the amendments introduced, Articles 135, 136 and 318 were replenished by a provision stipulating punishment in case of a repeated action. In this case, not only the fine amounts increase, but also, in the case of repeated libel (Article 135) and insult of a representative of power (Article 318), a prison sentence for up to one year is introduced.

In the opinion of experts, these amendments do not fully solve the problem, since the Articles remain in the Criminal Code, thus allowing the media and journalists to be subjected to criminal charges. Moreover, a demand made in the PACE Resolution ***"to remove any possibility of making insult and defamation subject to a prison sentence"*** is not actually accomplished, since, as noted above, imprisonment is stipulated in Articles 135 and 318. While PACE Resolution 1405 of October 7, 2004 has taken note of these amendments, the removal of the Articles from the Criminal Code is still important, since they have nothing in common with the freedom of expression and cannot be justified by Part 2 of Article 10 of the European

Convention of Human Rights. Here, the Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur of Organization of American States in December, 2002 should be recalled, according to which: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws”.

● ● ●

On March 22, 2005, the National Assembly of the Republic of Armenia adopted the Law on Combating Terrorism. Article 14 of the Law is entitled “Restrictions on Information Regarding Anti-Terrorist Activities.” Article 14 provides:

“It shall be prohibited to provide such information on anti-terrorist activities, which:

1) Reveals the special technical means and mode of implement ing the anti-terrorist activity;

2) May hinder the implementation of an anti-terrorist activity and create danger for the life and health of citizens;

3) Is aimed at advocating or justifying the terrorism; and

4) Contains data on state bodies, special services, anti-terrorism units, and their staff taking part in the anti-terrorist activity, as well as the persons that have supported the implementation of such activity.”

The experts of YPC believe that such wording creates room for wide interpretation and may become another obstacle for freedom of expression and access to information.

The Law on Postal Communication and the related amendments to the Republic of Armenia Law “On Licensing” have become obstacles to the free dissemination of information since late 2005. These laws provide that the activity of private organizations in subscription and distribution of print publications must be licensed. Tax bodies, based on their own arbitrary interpretation of the provisions of these laws, started to visit these organizations and demand that they receive relevant license for their activities (the licensing fee is 5 million drams) and pay fines for operating without licenses.

APPENDICES

APPENDIX 1[1]

PACE Opinion No. 221 (2000)[2] Armenia's application for membership of the Council of Europe

1. The Republic of Armenia applied to join the Council of Europe on 7 March 1996. In Resolution (96) 21 of 15 May 1996 the Committee of Ministers invited the Parliamentary Assembly to give an opinion on this request in accordance with Statutory Resolution 51 (30A).

2. The Armenian Parliament obtained Special Guest status with the Parliamentary Assembly of the Council of Europe on 26 January 1996. This application was considered in the light of the adoption of Recommendation 1247 (1994) on the enlargement of the Council of Europe, in which the Assembly stated that "in view of their cultural links with Europe, Armenia, Azerbaijan and Georgia would have the possibility of applying for membership provided they clearly indicate their will to be considered as part of Europe".

3. Delegations from the Assembly observed the presidential election in March 1998 and the general elections in July 1995 and May 1999.

4. Since 1996 Armenia has been taking part in various activities of the Council of Europe through the intergovernmental co-operation and assistance programs, and in the work of the Assembly and its committees through its special guest delegation.

5. Armenia is a party to the European Cultural Convention and the Council of Europe's Framework Convention for the Protection of National Minorities, a member of the Open Partial Agreement on the Prevention of Protection against and Organization of Relief in Major Natural and Technological Disasters, and an associate member of the Venice Commission, with which it has developed close co-operation. The Assembly also takes note of the fact that Armenia has requested accession to the European Convention on Extradition and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and that it has recently signed six other Council of Europe conventions.

6. The Assembly considers that Armenia is moving towards a democratic, pluralist society, in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to pursue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.

---

1 Herein and afterwards, the CoE documents are provided by the Council of Europe Information Office in Armenia.

2 *Assembly debate* on 28 June 2000 (21st Sitting) (see Doc. 8747, report of the Political Affairs Committee, rapporteur: Mr Volcic, and Doc. 8756, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Spindelegger). *Text adopted by the Assembly* on 28 June 2000 (21st Sitting).

7. In asking the Assembly for an opinion on the membership application, the Committee of Ministers reiterated that a closer relationship between the Caucasian countries and the Council of Europe would demand not only the implementation of substantial democratic reforms, but also their commitment to resolve conflicts by peaceful means.

8. The Parliamentary Assembly believes that the accession of both Armenia and Azerbaijan could help to establish the climate of trust necessary for a solution to the conflict in Nagorno-Karabakh.

9. The Assembly considers that the OSCE's Minsk group is the optimum framework for the negotiation of a peaceful settlement to the conflict.

10. The Assembly takes note of the letter from the President of Armenia in which he undertakes to respect the cease-fire agreement until a final solution is found to the conflict and to continue the efforts to reach a peaceful negotiated settlement on the basis of compromises acceptable to all parties concerned.

11. The frequency of meetings between the presidents of the two countries has been stepped up. The speakers of the parliaments of Armenia, Azerbaijan and Georgia have decided to institute regional parliamentary co-operation, consisting in particular of meetings of the speakers of the parliaments and parliamentary seminars to be held in the capitals of the three countries and in Strasbourg. The first meeting in the region, which was held in Tbilissi in September 1999, made it possible to establish an atmosphere of trust and *détente* between the parliamentary delegations of Armenia and Azerbaijan.

12. The Assembly calls on the Armenian and Azerbaijani authorities to pursue their dialogue with a view to achieving a peaceful settlement of the conflict in Nagorno-Karabakh and giving new impetus to regional co-operation.

13. The Parliamentary Assembly takes note of the letters from the President of Armenia, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in the parliament, and notes that Armenia undertakes to honour the following commitments:

i. conventions:

a. to sign, at the time of its accession, the European Convention on Human Rights (ECHR), as amended by Protocols Nos. 2 and 11 thereto, and Protocols Nos. 1, 4, 6 and 7;

b. to ratify the ECHR and Protocols Nos. 1, 4, 6 and 7 thereto during the year following its accession;

c. to sign and ratify, within one year of its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols;

d. to sign and ratify, within one year of its accession, the European Charter for Regional or Minority Languages;

e. to sign and ratify, within one year of its accession, the European Charter of Local Self-Government;

f. to sign and ratify, within two years of its accession, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols, and the Council of Europe conventions on extradition, on mutual assistance in criminal matters, on laundering, search, seizure and confiscation of the proceeds from crime, and on the transfer of sentenced persons, and in the meantime to apply the fundamental principles contained therein;

g. to sign the European Social Charter within two years of its accession and ratify it within three years of accession, and to strive forthwith to implement a policy consistent with the principles of the Charter;

h. to sign the General Agreement on Privileges and Immunities of the Council of Europe and the protocols thereto at the time of its accession, and to ratify these within one year of its accession;

ii. the conflict in Nagorno-Karabakh:

a. to pursue efforts to settle this conflict by peaceful means only;

b. to use its considerable influence over the Armenians in Nagorno-Karabakh to foster a solution to the conflict;

c. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member states), resolutely rejecting any threatened use of force against its neighbours;

iii. domestic law:

a. to adopt, within one year of its accession, the second (specific) part of the Criminal Code, thus abolishing *de jure* the death penalty and decriminalising consensual homosexual relationships between adults;

b. to adopt, within six months of its accession, the law on the ombudsman;

c. to adopt, within one year of its accession, a new law on the media;

d. to adopt, within one year of its accession, a new law on political parties;

e. to adopt, within one year of its accession, a new law on non-governmental organisations;

f. to adopt, within six months of its accession, the law on the transfer of responsibility for the prison system, including pre-trial detention centres and work colonies, from the Ministry of the Interior and the Ministry for National Security to the Ministry of Justice thus ensuring

the thorough reform and demilitarisation of the system, and to ensure the effective implementation of this law within six months after it has been adopted, except as regards the effective transfer of the pre-trial detention centres and work colonies, which must be implemented within one year after the law has been adopted;

g. to adopt, within one year of its accession, the law on the civil service;

h. to amend, before the next local elections, the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress for Local and Regional Authorities of Europe (CLRAE);

i. to remedy the deficiencies of the new electoral law before the next elections, in particular as regards the procedural aspects of the work of the electoral committees and the authorities responsible for drawing up electoral registers;

iv. human rights:

a. to fully implement the reform of the judicial system, in order to guarantee, *inter alia:*

- the full independence of the judiciary;

- full and immediate access to a defence lawyer in criminal cases (compulsory for minors); if necessary, the costs should be borne by the state;

b. to ensure that all churches or religious communities, in particular those referred to as “non-traditional”, may practise their religion without discrimination;

c. to co-operate fully with NGOs in ensuring that the rights of prisoners and conscripts are respected;

d. to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service;

e. to turn the national television channel into a public channel managed by an independent administrative board;

v. monitoring of commitments:

a. to co-operate fully in the implementation of Assembly Resolution 1115 (1997) on the settingup of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee); and

b. to co-operate fully in the monitoring process established pursuant to the declaration adopted by the Committee of Ministers on 10 November 1994 (95th session).

14. The Parliamentary Assembly notes that Armenia shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 13, and intends:

i. to ensure that parliament is kept fully informed about the investigation into the events of 27 October 1999, in conformity with the existing legislation;

ii. to grant access to the Constitutional Court, within two years of accession, also to the government, the Prosecutor-General, courts of all levels, and – in specific cases – to individuals;

iii. to reform the Judicial Council in order to increase its independence within three years of accession;

iv. to institute, without delay, a follow-up procedure which conforms to Council of Europe standards to complaints received on alleged ill-treatment in police custody, pre-trial detention centres, prisons and the army, and to ensure that those found guilty of such acts are punished in accordance with the law;

v. to consider, at least partially, time served in a disciplinary battalion as compulsory military service, and to ensure that the sentence of time to be served in such a battalion can be shortened if the soldier conducts himself well;

vi. to pay special attention to the fate of homeless children and those in conflict with the law.

15. On the basis of these commitments, the Assembly is of the opinion that, in accordance with Article 4 of the Statute of the Council of Europe, Armenia is able and willing to fulfil the provisions of Article 3 of the Statute, setting forth the conditions for membership of the Council of Europe: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council (of Europe).”

16. With a view to ensuring compliance with these commitments, the Assembly decides to monitor the situation in Armenia closely, with immediate effect from the date of accession, pursuant to its Resolution 1115 (1997).

17. On the understanding that the commitments set out above are firm and will be fulfilled within the stipulated time limits, the Assembly recommends that the Committee of Ministers:

i. invite Armenia to become a member of the Council of Europe;

ii. allocate four seats to Armenia in the Parliamentary Assembly;

and requests that the necessary additional resources be made available.

18. Furthermore, in order to enable Armenia to honour its commitments and obligations as a member state, the Assembly also recommends that the Committee of Ministers develop its assistance to the Armenian authorities in the framework of the activities for the development and consolidation of democratic stability (Adacs). In addition, the Assembly recommends that the Council of Europe Development Bank provide assistance where appropriate.

APPENDIX 2

PACE Resolution 1361 (2004)[1] Honouring of obligations and commitments by Armenia

1. Armenia has been a member of the Council of Europe for three years. On 26 September 2002, the Parliamentary Assembly considered its first report on Armenia's progress in honouring its obligations and commitments. It concluded in its Resolution 1304 (2002) that "since its accession to the Council of Europe, Armenia has made substantial progress", while regretting that it had not honored some fundamental commitments within the time-limits previously agreed upon.

2. The year 2003 was a busy electoral year for Armenia, and as a result no further progress has been made in the current reforms. Nevertheless, since September 2003, Armenia's undeniable efforts show that it is once more committed to making progress towards honouring its obligations and commitments.

3. The Assembly notes that Armenia has honored all of its commitments with regard to conventions, and welcomes the fact that it has ratified Protocol No. 6 to the European Convention on Human Rights, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Revised European Social Charter.

4. It considers that the ratification of the Revised European Social Charter will permit positive social progress in Armenia and asks the Armenian authorities to launch a comprehensive debate on how social rights should be effectively promoted in the country.

5. The abolition of the death penalty as a result of the ratification of Protocol No. 6 to the European Convention on Human Rights in September 2003 constitutes essential progress in the honouring of commitments and is a positive, strong and symbolic signal.

6. In this connection, the Assembly welcomes the adoption, in April 2003, of a new Criminal Code that no longer includes the death penalty; it takes note of the Armenian authorities' assurances that the law concerning the implementation of the Criminal Code, which was adopted at the same time and maintained the death penalty for a number of serious crimes, has become obsolete following the entry into force of Protocol No. 6.

---

[1] *Assembly debate* on 27 January 2004 (3rd Sitting) (see Doc.10027, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr André and Mr Jaskiernia). *Text adopted by the Assembly* on 27 January 2004 (3rd Sitting).

7. It notes that the presidential decree of 1 August 2003 commuting the death sentences of forty-two persons to life sentences has raised strong protests from some of them. It believes that this issue should be dealt with on a case-by-case basis and urges the authorities concerned to re-examine as soon as possible the cases of those who have asked for a change of sentence or a retrial.

8. As regards domestic legislation, the Assembly acknowledges the significant law-making activity achieved since September 2003. It particularly welcomes the adoption of a new Criminal Code, the Law on the Ombudsman, the Law on Alternative Service, the Law on the Media and the Law on Radio and Television Broadcasting.

9. The Assembly notes that a number of legislative commitments – increased local self-government, introduction of an independent ombudsman, establishment of independent regulatory authorities for broadcasting, modification of the powers of and access to the Constitutional Court, reform of the Judicial Council, etc. – are still subject to a revision of the Armenian Constitution. The rejection of constitutional reform in the referendum held in May 2003 has caused a delay in the entry into force of these fundamental reforms, most of which were to be completed by specific deadlines, stipulated in the Assembly's Opinion No. 221 (2000) on Armenia's application for membership of the Council of Europe; these deadlines have now expired.

10. The Assembly considers that these commitments must not be deferred any longer and invites the Armenian authorities to speed up the revision of the Constitution. It takes note of the authorities' resolve to genuinely involve the opposition parties and civil society in discussions about the future of the country's institutions. Nevertheless, it expects the Armenian authorities to establish and keep to a detailed timetable and to rapidly prepare draft amendments to the constitution and to present them to the Council of Europe for expertise by the end of April 2004, so that a referendum can be held as soon as possible, and in any case not later than June 2005.

11. The Assembly notes that the Law on the Ombudsman, adopted in October 2003, stipulates that, pending the revision of the constitution, the ombudsman shall be appointed by the President of the Republic. It expressly recalls its Recommendation 1615 (2003) on the institution of ombudsman, and believes that the planned method of appointment does not provide sufficient guarantees of the independence of the ombudsman, who must have citizens' full confidence. It urges the Armenian authorities to set up a transparent and credible interim procedure enabling the Armenian National Assembly, including the opposition parties, to examine and give their opinion on candidatures, while officially preserving the President's right to nominate the successful candidate.

12. With regard to the right to free and fair elections, the Assembly cannot but express its profound disappointment at the conduct of the elections – the presidential election in February and March 2003 and the parliamentary elections in May 2003 – which gave rise to serious irregularities and massive fraud, and led the international observers to conclude that the electoral

process as a whole had not complied with international standards. It invites the Armenian authorities:

i. to revise the Electoral Code in close co-operation with the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), especially the provisions concerning the composition of electoral commissions, the role and status of observers, and the transparency of vote counting and the totalling of the results;

ii. to conduct a thorough investigation into the electoral fraud and put an end to the judicial impunity of those responsible for it by the end of 2004.

13. The Assembly is alarmed that the fundamental reforms concerning the judicial system and the independence of the judiciary have still not been completed. It urges the Armenian authorities to:

i. present by April 2004 a precise timetable for the effective implementation of these reforms;

ii. adopt the law on the status of judges, the law on the Judicial Council and the law on the judiciary by the end of 2004, taking account of the Council of Europe's recommendations and expert opinions.

14. The Assembly is shocked by the scandalous use that continues to be made of the arbitrary procedures concerning administrative detention provided for in the Administrative Code, which is totally incompatible with its strongly-worded statement in Resolution 1304 of September 2002 that the Armenian authorities should no longer make use of these procedures. It firmly condemns the arrest and conviction of over 270 people – members of the opposition parties, sympathisers and office-holders – between the two rounds of the presidential election and at the end of the second round. It expects the Armenian authorities to discuss by February 2004 the issue of administrative detention provided for in the Administrative Code in co-operation with Council of Europe experts and to send the draft amendments for the Council of Europe's expertise by April 2004.

15. The Assembly asks the Armenian authorities to immediately begin examining, in co-operation with the Council of Europe, the question of the balance to be struck between freedom of assembly and demonstration and respect for public order, and to adopt a law on demonstrations and public meetings in full compliance with Council of Europe principles and standards.

16. As regards criminal legislation, the Assembly:

i. is alarmed at the fact that on 5 November 2003 the Armenian National Assembly adopted amendments to the Criminal Code excluding persons serving life sentences from amnesty or conditional release and observes that these provisions are entirely contrary to

Committee of Ministers Recommendation Rec(2003)22 on conditional release (parole). It urges the Armenian authorities to repeal them without delay;

ii. asks the Armenian authorities to start work on revision of Articles 135, 136 and 318 of the Criminal Code by March 2004, in co-operation with Council of Europe experts, to remove any possibility of making insult and defamation subject to a prison sentence;

iii. urges Armenia to undertake the revision of the Code of Criminal Procedure without delay, in co-operation with the Council of Europe experts and with due regard for the recommendations already made and those yet to be made.

17. The Assembly expects the Armenian authorities to make further efforts to improve conditions of detention, which includes speedily implementing the recommendations of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

18. It also asks the authorities to take resolute and more active steps to remedy misconduct by law enforcement officials, especially acts of violence, ill-treatment, corruption and bribery, which remain commonplace. It expects the authorities to revise the Law on the Police by March 2004 in compliance with the Council of Europe's recommendations.

19. As regards freedom of expression and media pluralism, the Assembly is concerned at developments in the audiovisual media in Armenia and expresses serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licences, in particular as regards the television channel A1+. However, it notes the adoption in December 2003 of the Law on the Mass Media and a law amending the Law on Radio and Television Broadcasting.

20. As regards local self-government, the Assembly:

i. takes note of Recommendation 140 (2003) of the Congress of Local and Regional Authorities of Europe on local democracy in Armenia;

ii. expects the Armenian authorities to draw up by April 2004, and adopt by the end of the second quarter of 2004, in full co-operation with the Congress and Council of Europe experts, a law on the status of Yerevan, a law on the territorial administration of the state, a law on municipal staff and a law amending the Law on Local Self-Government;

iii. asks the Armenian authorities to submit by April 2004 a specific and definitive timetable for the implementation of these reforms.

21. The Assembly is concerned at the scale of corruption in Armenia, which has reached intolerable proportions. It expects the Armenian authorities to

undertake a genuine change of attitude and express a real political will to take effective action against corruption. The Assembly:

i. welcomes Armenia's membership of the Council of Europe's Group of States against Corruption (GRECO);

ii. welcomes the Armenian Government's adoption of the national anti-corruption strategy and the action plan for its implementation, and its transmission to the Council of Europe for opinion;

iii. asks the Armenian authorities to co-operate closely with the Council of Europe's experts;

iv. expects the Armenian authorities to speedily draw up a modern and comprehensive law on the fight against corruption;

v. expects the Armenian authorities to ratify the Criminal Law Convention on Corruption and to sign and ratify the Civil Law Convention on Corruption as soon as possible.

22. The Assembly welcomes the adoption of the law introducing an alternative military and civilian service broadly consistent with Parliamentary Assembly Recommendation 1518 (2001) on exercise of the right of conscientious objection to military service in Council of Europe member states. However, it considers the length of the alternative civilian service, set at forty-two months, unacceptable and excessive and asks that the law be amended on this point, reducing the length of service to thirty-six months before it comes into force on 1 July 2004.

23. It points out that Armenia undertook on joining the Council of Europe to pardon conscientious objectors serving prison terms. It expresses its indignation at the fact that twenty or so young people who refuse to perform military service are still in prison. It therefore demands that they be released immediately by presidential pardon pending the entry into force on 1 July 2004 of the law on alternative civilian service.

24. As regards freedom of religion, the Assembly:

i. notes that, despite the commitment made and the Assembly's repeated appeals, Jehovah's Witnesses are still not registered as a religious organization. It asks that this registration be done without delay, after their statute has been brought into conformity with the legislation in force;

ii. takes note of the assurances given by the Armenian authorities that Order No. 551-A issued by the Minister of the Interior, which leads to serious discrimination and infringement of freedom of conscience and religion, has indeed been repealed;

iii. asks the Armenian authorities to set up a truly independent body representing all Armenia's religious organisations and communities.

25. The Assembly also calls on the Armenian authorities to take effective steps, in co-operation with the international organisations concerned, to prevent and combat trafficking in women and minors for prostitution purposes.

26. As regards the settlement of the conflict in Nagorno-Karabakh, the Assembly:

i. notes that there has been no progress in the negotiations on a settlement of the conflict over Nagorno-Karabakh and the occupied territories of Azerbaijan;

ii. calls on the Armenian and Azerbaijani authorities to intensify top-level contacts in order to reach a peaceful settlement of this issue as soon as possible;

iii. is disturbed at the serious incidents that took place in the north-east border area in July and August 2003, which are reported to have caused fifteen deaths.

27. Recalling that in its Opinion 221 (2000) the Assembly considered that the simultaneous accession of Armenia and Azerbaijan could help to establish the climate of trust and *détente* needed for a peaceful solution to the Nagorno-Karabakh conflict, and noting its call on the Armenian and Azerbaijani authorities to continue their dialogue to give new impetus to regional co-operation which could contribute to this climate; the Assembly calls on the Bureau of the Assembly to consider how regional parliamentary dialogue and co-operation involving the speakers of parliaments, that had been established, can be restored and progress as soon as possible.

28. The Assembly expresses satisfaction at its excellent co-operation with the Armenian authorities, their open-minded attitude and the quality of the ongoing dialogue on compliance with obligations and commitments.

29. The Assembly recognises that Armenia has recently made considerable efforts to honour the obligations and commitments entered into. However, given the obligations and commitments that remain to be honored, particularly those concerning pluralist democracy, the Assembly decides not to end the current monitoring procedure until Armenia has made further substantial progress on its outstanding commitments, and notably has proved that it is able to organise the next presidential and parliamentary elections in compliance with international democratic standards.

APPENDIX 3

PACE Resolution 1374 (2004)[1] Honouring of obligations and commitments by Armenia

1. Since the end of March 2004, a series of protests have been organised by the opposition forces in Armenia, calling for a "referendum of confidence" in President Kocharian. The possibility of such a referendum was first mentioned by the Armenian Constitutional Court following the presidential elections in February and March 2003. The Constitutional Court later clarified its proposal and the authorities are calling the opposition demands and protests an attempt to seize power by force.

2. The demonstrations, although announced, were not authorised by the authorities, who have threatened the organisers with criminal prosecution. Following the demonstrations on 5 April, the General Prosecutor opened criminal investigations against several members of the opposition and arrested many more, in connection with the opposition parties' rally. On the same occasion, several journalists and politicians were beaten up by unknown persons while the police stood by and took no action.

3. New demonstrations took place on 9, 10 and 12 April in Yerevan. In the early morning of 13 April, the security forces violently dispersed some 2 000 to 3 000 protesters who were attempting to march towards the presidential palace, calling for President Kocharian's resignation. The police reportedly used truncheons, water cannons and tear gas, causing dozens of injuries. A number of protesters were arrested, including members of parliament, some of whom are members of the Assembly, and some were allegedly mistreated by the police while in custody. The security forces also assaulted and arrested several journalists who were covering the opposition rally.

4. Tensions in Armenia continue to run high; new protests are planned for the week of 26 April. For the time being, there seems to be little room for dialogue between the authorities and the opposition, even if some offers have been made and some members of the ruling majority – for example, the Speaker of the Armenian Parliament – have begun criticising the heavy-handed crackdown on demonstrations.

5. With regard to the conduct of the authorities, the Parliamentary Assembly recalls that its actions are contrary to the spirit and to the letter

[1] *Assembly debate* on 28 April 2004 (13th Sitting) (see Doc. 10163, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr André and Mr Jaskiernia). *Text adopted by the Assembly* on 28 April 2004 (13th Sitting).

of the recommendations formulated in its Resolution 1361 (2004) on the honouring of obligations and commitments by Armenia, adopted in January 2004. It is particularly concerned with the fact that:

i. arrests, including those carried out on the basis of the Administrative Code, ignored the demand to immediately end the practice of administrative detention and to change the Administrative Code used as a legal basis for this practice;

ii. the authorities refused to authorise opposition rallies for reasons not permitted under the European Convention on Human Rights. Moreover, the new draft law on the procedure for conducting gatherings, meetings, rallies and demonstrations, currently undergoing parliamentary procedure, was evaluated as excessively restrictive by experts of the Venice Commission;

iii. persons detained during the recent events were reportedly subjected to brutality and ill-treatment by police and security forces while in custody, in spite of the Assembly's demands that resolute and more active steps be taken to remedy misconduct by law enforcement officials;

iv. freedom of expression continues to be seriously curtailed and several acts of violence against journalists, which took place during the recent events, were carried out, or were allowed to happen, by the police and security forces.

6. With regard to the conduct of the opposition, the Assembly stresses that they should do their utmost to avoid any future violence.

7. As to their demands for a "referendum of confidence" and for the resignation of President Kocharian, the Assembly stresses that:

i. both the presidential elections, and the parliamentary elections which followed in May 2003, were severely criticised by the international community, including by the Assembly delegations. The electoral process as a whole did not comply with international standards and the irregularities observed included, amongst others, biased media coverage, detention of opposition members and campaign staff, falsification of results, intimidation of observers, as well as a generally inadequate performance by the elections administration;

ii. although this fraud did not decisively change the outcome of the elections nor invalidate their final results, in spite of its magnitude, in its Resolution 1361 (2004), the Assembly expressed profound disappointment at the conduct of the elections and called for a thorough investigation into electoral fraud and for an end to the judicial impunity of those responsible for it.

8. While insisting that the Armenian authorities must fully comply with its recommendations concerning 2003's flawed elections, the Assembly considers that the opposition, while fully entitled to enjoy its constitutional right to peaceful assembly, should strive to achieve its goals within the constitutional framework.

9. The Assembly calls upon the Armenian authorities to:

i. allow peaceful demonstrations and refrain from any further action which would legally, or in practice, lead to unjustified restrictions to the freedom of assembly guaranteed by the European Convention on Human Rights;

ii. guarantee freedom of movement within Armenia;

iii. immediately investigate – in a transparent and credible manner – the incidents and human rights abuses reported during the recent events, including assaults on journalists and human rights activists, and inform the Assembly of their findings and of any legal action taken against persons responsible;

iv. immediately release the persons detained for their participation in the demonstrations, immediately end the practice of administrative detention and amend the Administrative Code to this effect;

v. take note of the fact that the immunities of members of the Parliamentary Assembly of the Council of Europe are valid for the whole year (Resolution 1325 (2003) and Recommendation 1602 (2003)); accordingly it invites the competent Armenian authorities to henceforth inform the President of the Assembly as soon as possible when Armenian members of that Assembly are prosecuted or detained;

vi. create fair conditions for the normal functioning of the media, for example, as regards the issuing of broadcasting licences to television companies, in particular, to television channel A1+;

vii. send a written report to the Assembly, before the opening of the June 2004 part-session, on the steps it has taken with regard to sub-paragraphs 9.i to 9.vi above.

10. The Assembly calls upon the authorities and the opposition to refrain from any action which may lead to further violence, and to engage in a dialogue without preconditions, with a view to resolving the present conflict in accordance with Council of Europe standards and European democratic practice.

11. The Assembly believes that the recent events have added a measure of urgency to its demands for Armenia's full and unconditional compliance with their obligations and commitments. It resolves to instruct the Monitoring Committee to send its rapporteurs to Armenia to present a report on the situation, particularly on the follow-up of the recommendations set out in sub-paragraphs 9.i to 9.vi above, as soon as appropriate, and well before the opening of the October 2004 part-session. If no progress with regard to sub-paragraphs 9.i to 9.vi is made by the opening of that part-session, it resolves to reconsider the credentials of the Armenian delegation in accordance with Rule 9 of the Rules of Procedure.

PACE Resolution 1405 (2004)[1] Implementation of Resolutions 1361 (2004) and 1374 (2004) on the honouring of obligations and commitments by Armenia

1. Armenia was the subject of Assembly debates on its democratic future on 27 January 2004 and 28 April 2004 respectively and the country embarked upon further reforms following Resolutions 1361 (2004) and 1374 (2004).

2. The Parliamentary Assembly expresses satisfaction at its excellent co-operation with the Armenian authorities, their open-minded attitude and the quality of the ongoing dialogue on compliance with obligations and commitments.

3. The Assembly is pleased to note that Armenia has complied with the request to submit a report on paragraphs 9.i to 9.vi of Resolution 1374 (2004) and takes note that:

i. authorities have refrained from interfering with the conduct of assemblies and, after the law "On gatherings, assemblies, rallies and demonstrations" entered into force, a legal basis has been established for holding them only by notification;

ii. the Constitution guarantees freedom of movement and laws provide for maintenance of public order;

iii. the investigations on the incidents and human rights abuses reported during the recent events, including assaults on journalists and human rights activists, were led and information was provided to the Assembly on a case of legal action against persons responsible for assaults against journalists;

iv. the persons detained for their participation in the demonstrations were released and an end to the practice of administrative detention is expected as the Administrative Code is in the process of being amended;

v. in this period one frequency has been freed, without contest, on the basis of an intergovernmental agreement and within the framework of

[1] *Assembly debate* on 7 October 2004 (31st Sitting) (see Doc. 10286, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Euruope (Monitoring Committee), co-rapporteurs: Mr André and Mr Jaskiernia). *Text adopted by the Assembly* on 7 October 2004 (31st Sitting).

the law “On Television and Radio”, a frequency which was given to the Russian “Kultura” TV Channel for rebroadcasting;

vi. the authorities have taken note of the fact that the immunities of members of the Parliamentary Assembly of the Council of Europe are valid for the whole year (Resolution 1325 (2003) and Recommendation 1602 (2003)).

4. Despite Armenia’s declared wish to reach a peaceful solution with Azerbaijan to the Nagorno-Karabakh situation, the Assembly is forced to conclude that no tangible progress has been achieved for the past year, whether at the level of the direct talks between the presidents of the two countries, which are continuing, or at the level of the Minsk Group.

5. The Assembly recalls that it had asked for a thorough investigation into electoral fraud in the 2003 elections and for an end to the judicial impunity of those responsible. In this connection, the Assembly considers that it has not received a convincing reply from the authorities. It is confident, however, that the process of revising the Electoral Code will soon be completed, in keeping with the recommendations of the Venice Commission.

6. It notes that legislative measures have been taken in order to introduce into the Criminal Code a provision on conditional release for all persons convicted of serious offenses, including persons with life sentences.

7. It notes that the constitutional revision needed to ensure that certain commitments are fully honored is making good progress. It asks that the authorities should rapidly prepare draft amendments to the Constitution, present them to the Council of Europe in 2004 for expert appraisal and organise a referendum as soon as possible and in any event by June 2005 at the latest.

8. The Assembly takes note of the timetable for effective implementation of the basic reforms concerning the judicial system and the independence of the judiciary and of the intention to adopt the law on the status of judges, the law on the judicial council and the law on the judiciary before the end of 2004.

9. The Assembly notes that the last amendments to the Law on Radio and Television request that the National Broadcasting Commission should add arguments when awarding broadcasting licenses, thus preventing the adoption of arbitrary decisions.

10. With regard to its other requests, the Assembly notes the steps taken to:

i. continue discussion of the question of administrative detention in the Administrative Code in co-operation with the Council of Europe’s experts in order to end administrative detention;

ii. adopt a law on demonstrations and public assemblies in co-operation with the experts of the Council of Europe and the Venice Commission;

iii. amend the Criminal Code in order to introduce the possibility of conditional release for prisoners serving life sentences;

iv. revise, in co-operation with the Council of Europe's experts and with due regard to the recommendations already made and those yet to be made, Articles 135, 136 and 318 of the Criminal Code in order to remove any possibility of making insult and defamation subject to a prison sentence ;

v. revise the law on the police in co-operation with the Council of Europe's experts;

vi. adopt a law on the status of Yerevan, a law on territorial autonomy, a law on local government staff and a law on local self-government;

vii. combat corruption and sign the Civil Law Convention on Corruption; it asks that this Convention be ratified within the shortest possible time;

viii. grant an amnesty to conscientious objectors who are serving prison sentences and release those who refused to perform military service.

11. Furthermore, the Assembly is expecting rapid progress concerning:

i. the revision of the Code of Criminal Procedure, in accordance with the standards of the Council of Europe;

ii. improvements to conditions of detention and, in that connection, the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

iii. the developments in the media sector in Armenia: it expects that, on the basis of the recent amendments to the Law on radio and television, the composition of the National Broadcasting Commission will be renewed as soon as possible and that fair conditions for awarding broadcasting licenses to televisions, in particular to A1+ television channel, will be created;

iv. the excessive length of the period of alternative civilian service, which has been set at 42 months;

v. the registration of the association of Jehovah's Witnesses;

vi. the creation of an independent body representing all Armenia's religious organisations and communities;

vii. in accordance with Resolution 1374 (2004), paragraph 9.iv, the end to the practice of administrative detention until the Administrative Code is amended;

viii. the amendment, no later than March 2005, of the law on demonstrations and public assemblies to bring it into full conformity with Council of Europe standards to ensure freedom of assembly in practice.

12. In the light of the foregoing, the Assembly calls on the Armenian authorities to continue to take appropriate measures to honour the remaining obligations and commitments set out in Resolutions 1361 (2004) and 1374 (2004).

REPORT ON TV CHANNEL MONITORING IN ARMENIA

I. GENERAL INFORMATION

The TV channel monitoring in Armenia was administered in the course of one month, February 1-28, 2005, under the Yerevan Press Club project "Monitoring of Democratic Reforms in Armenia", supported by the Open Society Institute Human Rights and Governance Grants Program.

Monitoring Group: coordinator - Elina Poghosbekian; monitors - Armineh Sukiassian, Seda Shiganian, Gohar Hovsepian, Ruben Shkhikian, Alexander Iloyan.

***The purpose of the monitoring was* to** determine, by gaining and analyzing quantitative data:

- the attention of the leading TV companies of Armenia to the most significant public and political events in the country and world;
- the correspondence of TV coverage and reporting on the issues to their true relevance and the demand of the audience;
- the degree to which broadcast media perform their mission to meet the need of the society to know;
- the degree to which various viewpoints on the most important public and political problems is presented on TV air.

The monitoring objects were the main newscasts, news/analysis programs and current affairs programs of 5 broadcast media of Armenia: *4 national TV companies* - Public Television of Armenia (PTA); "ALM"; "Armenia"; Second Armenian TV Channel (Second Channel) and *1 local TV company* - "Shant", broadcasting in Yerevan and Gyumri (the monitoring object was the Yerevan program). The main criterion for the TV channel selection was the coverage area of the channel (*see below the list and brief profile of the TV channels and programs studied*).

II. MONITORING METHODOLOGY

Monitoring methodology differed depending on the type of the programs/shows studied.

A. NEWS AND NEWS/ANALYSIS PROGRAMS

Methodology of monitoring newscasts and news/analysis programs included:

- count of the total number of TV pieces (in absolute values) in each main newscast, each issue of news/analysis program of the TV company, except the weather forecast, commercial advertising, including announcements and TV schedule presentations, etc.;

- count of the total duration of the TV pieces (in seconds) of each main newscast, issue of news/analysis program, except the weather forecast, commercial advertising, including announcements and TV schedule presentations, etc.;

- recording the sequence of the TV pieces in the program;

- recording the subject matter of each TV piece;

- recording the duration of each TV piece (in seconds);

- development of unified wording for pieces on general issues (in certain cases the events close by content and significance were grouped together);

- unification of events, having current, chronicle nature and not called by experts as urgent, in common thematic groups (issues of RA economy and finance, current activities of the RA President and his administration; events in RA culture and science, etc.)

The following was understood to be a TV piece:

The airtime unit, distinct in its theme, composition and design, i.e.:
a. a separate story in the newscast;
b. a separate communication, presented by the program host;
c. a thematically distinct part (section, story) of the program, touching on different issues/problems;
d. a thematically distinct question and answer to it in a TV interview, touching various issues/problems;
e. a program or an interview on one issue/problem was not subdivided and was viewed as a single piece;
f. introductory announcements of the TV pieces were viewed as a part of the story they referred to;
g. the headline/subheadline, the lead, the text of the host introducing the TV piece (report, etc.), were viewed as a part of this piece (report, etc.)

B. CURRENT AFFAIRS PROGRAMS

Methodology for monitoring current affairs programs included:

- recording the main program participants, specifying the first and last names, the position/occupation of each of the participants;

- recording the sequence of the issues, discussed in the program;

- recording the subject/s of the program.

III. THE LIST AND BRIEF PROFILE OF THE TV CHANNELS AND PROGRAMS STUDIED

PUBLIC TELEVISION OF ARMENIA (PTA) - public TV and radio company, founded in 2001. The governing body is the Council of Public TV and Radio Company. Airtime periodicity is 19 hours per day.

The study objects on PTA were: the main newscast **"Haylur"** and the Sunday news/analysis program **"360 degrees"**; **"5th wheel"** current affairs program.

"Haylur" newscast was aired 7 days a week: on Monday-Friday – 8 times a day, on Saturday – 3 times a day, on Sundays – 1 time a day. The monitoring object was the main "Haylur" issue at 21.00, totaling at 24 during the study period. Throughout the monitoring a total of 592 pieces was studied, their overall duration amounting to 58,716 seconds.

"360 degrees" news/analysis program was aired once a week on Sundays, at 20.00. During the study period there were 4 issues of "360 degrees". Throughout the monitoring a total of 26 pieces was studied, their overall duration amounting to 10,825 seconds.

"5th wheel" ("guest-in-studio" genre) was aired once a week on Mondays, at 22.00. During the study period there were 4 issues of "5th wheel".

"ALM" – private TV company, founded in 2000 by the President of "ALM-Holding" Tigran Karapetian. Airtime periodicity is 20 hours per day.

The study objects on "ALM" were: **"Day by Day"** main newscast and its Sunday news/analysis issue; **"Position"** and **"Price of the Question"** current affairs program.

"Day by Day" newscast was aired 6 days a week (Monday-Saturday), four times a day. The monitoring object was the main issue of "Day by Day" at 20.00. During the study period these were 24. Throughout the monitoring a total of 309 pieces was studied, their total duration amounting to 34,068 seconds.
Sunday news/analysis issue of "Day by Day" was aired once a week at 17.00. During the study period there were 4 issues of "Day by Day". Throughout the monitoring a total of 41 pieces was studied, with a total duration of 6,325 seconds.

"Price of the Question" current affairs program ("guest-in-studio" genre) was aired twice a week (on Tuesdays and Saturdays) at 21.30. During the study period there were 8 issues of "Price of the Question".

"Position" current affairs program ("guest-in-studio" genre) was aired once a week (on Thursdays) once a day at 21.30. During the study period there were 4 issues of "Position".

"ARMENIA" – private TV company, founded in 1998. The founders are the Cafesjian Family Fund and "Sargsian Family" Fund. Airtime periodicity is 24 hours per day.

The research object on "Armenia" TV channel were: **"Zham"** main newscast and **"Express"** news/analysis program; **"Indeed"** current affairs program.

"Zham" newscast was aired 7 times a week: six times a day on Monday-Saturday, once a day on Sunday. The monitoring object was the main "Zham" issues at 20.30. During the study period these issues were 28. Throughout the monitoring a total of 267 pieces was studied, their overall duration amounting to 37,909 seconds.

"Express" news/analysis program was aired 5 times a week (Monday-Friday) once a day at 22.40. During the study period there were 20 issues of the program. Throughout the monitoring a total of 388 pieces was studied, their overall duration amounting to 29,597 seconds.

"Indeed" current affairs program ("guest-in-studio" genre) was aired 5 times a week (Monday-Thursday, Saturday) once a day at 19.30. During the study period there were 20 issues of "Indeed".

SECOND ARMENIAN TV CHANNEL (SECOND CHANNEL) – private TV company, founded in 1998 by private persons. Airtime periodicity is 18 hours per day.

The study object on the Second Channel were: **"Lraber"** main newscast and **"Sunday Lraber"** and **"Saturday Report"** news/analysis programs; **"Right to Tell"** and **"Ojakh"** current affairs programs, as well **"Fourth Studio"** current affairs section.

"Lraber" newscast was aired 6 days a week: on Mondays – 3 times a day, on Tuesday-Saturday – 5 times a day. The monitoring object were the "Lraber" issues at 23.00. During the study period these were 24. Throughout the monitoring a total of 434 pieces was studied, their overall duration amounting to 45,403 seconds.

"Sunday Lraber" news/analysis program was aired once a week on Sundays at 21.00. During the study period there were 4 issues of "Sunday Lraber". Throughout the monitoring a total of 24 pieces was studied, their overall duration making 5,713 seconds.

"Saturday Report" news/analysis program was aired once a week on Saturdays at 20.40. During the study period there were 4 issues of "Saturday Report", their overall duration amounting to 3,660 seconds.

"Right to Tell" current affairs program ("guest-in-studio" genre)was aired once a week on Saturdays at 21.30. During the study period there were 2 issues of the "Right to Tell".

“Ojakh” current affairs program (“talk-show” genre) was aired once a day at 21.00. During the study period there were 4 issues of “Ojakh”.

“Fourth Studio” current affairs section (“guest-in-studio” genre) went on air within “Lraber” and “Sunday Lraber” news programs. During the study period there were 4 issues of “Fourth Studio”.

“SHANT” – private TV company, founded in 1994 by Artur Yezekian. The airtime periodicity is 19 hours daily.

The study object on “Shant” were: **“Horizon”** main newscast; **“Perspective”** and **“Second Glance”** current affairs programs.

“Horizon” newscast was aired 6 days a week (Monday-Saturday) 8 times a day. The monitoring object were the main issues of “Horizon” at 22.00. During the study period there were 24 issues. Throughout the monitoring a total of 325 pieces was studied, their overall duration amounting to 47,892 seconds.

“Perspective” current affairs program (“guest-in-studio” genre) went on air 5 days a week (Monday-Friday) once a day at 22.45. During the study period there were 20 issues of “Perspective”.

“Second Glance” current affairs program (“talk show” genre) went on air once a week on Sunday at 23.00. During the study period there were 4 issues of “Second Glance”.

IV. EXPERT SURVEY

To determine the extent to which in information demands of the society are met by the leading broadcast media, along with the TV channel monitoring, on February 1-28 expert survey among representatives of various areas was administered.

The survey covered 10 people:

Levon Barseghian, chairman of the Board of “Asparez” Journalist’s Club;

Karen Bekarian, head of “European Integration” NGO;

Marina Grigorian, head of Information and Public Relations Department of the RA Human Rights Defender’s Office;

Stepan Grigorian, head of Analytical Center for Globalization and Regional Cooperation;

Nina Kevorkova, dean of Social and Cultural Service and Tourism Department of the Russian-Armenian (Slavic) State University;

Karineh Khodikian, playwright, publicist, RA deputy minister of Culture and Youth Issues;

Ida Martirosian, director of “Political Modeling”, vice-chairman of the Christian-Democratic Union of Armenia;

Ashot Melikian, chairman of the Committee to Protect Freedom of Expression;

Artur Sakunts, head of the Vanadzor Branch of Helsinki Citizens Assembly, editor of “Civil Initiative” newspaper;

Isabella Sargsian, co-chair of “Youth for Democracy” NGO.

The selection of people, conventionally classed as “experts”, was made out of those who closely follow the media due to their professional activities and represents mostly the humanitarian and social sphere. These are the representatives of both non-governmental and state sector, who do not have direct relations with the main political players of the country. To a certain extent the gender (5 male and 5 female respondents), age (from 21 to 50) and geographic (cities of Yerevan, Gyumri, Vanadzor) balance was taken into account.

The experts traced the current affairs in the world and in Armenia and on weekly basis answered the question: ***“Which three events of the last week do you see as the most important?”***

Event (theme) priority was defined by each expert by assigning a score of 3 to 1. The cumulative data for each of the themes, distinguished by the experts, was the basis for comparing with the event coverage by the TV channels.

To ensure comparability of findings, the definitions of the events/themes, noted by experts as most urgent, were phrased in accordance with the definitions of events/themes, recorded during the TV channel monitoring (in certain cases events, close in content and significance, were grouped into one theme).

V. TECHNIQUE FOR TV CHANNEL MONITORING AND EXPERT SURVEY

In order to obtain comparable data, the findings of the expert survey and the findings of the monitoring of news, news/analysis and current affairs programs of each TV channel were analyzed on weekly basis.

VI. WEEKLY FINDINGS OF TV CHANNEL MONITORING AND THE EXPERT SURVEY

Herein the comparative analysis of the expert survey and each TV channel on weekly basis is presented.

FEBRUARY 1-6, 2005

EXPERT SURVEY

On February 1-6 the experts noted a total of 17 events, of which the following were the leading five:

1. Decease of Georgian Prime Minister Zurab Zhvania and the subsequent events (25 points).
2. OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh (7 points).
3. Parliamentary elections in Iraq and the post-election situation (5 points).
4. Report on Mountainous Karabagh by PACE Rapporteur David Atkinson and the response to it (3 points).
5. Statement of the US Secretary of State Condoleezza Rice that the US does not intend to attack Iran (3 points).

Other events mentioned by experts as priority scored from 2 to 1 points.

PUBLIC TELEVISION OF ARMENIA

In the main issues of “Haylur” newscast and “360 degrees” news/analysis program on February 1-6 the greatest attention was paid to the subject, named as priority by the experts – “Decease of Georgian Prime Minister Zurab Zhvania and the subsequent events”.

The themes of the week rated as second and third by the experts - “OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh” and “Parliamentary elections in Iraq and the post-election situation” - on the news air of PTA studied were 17th (258 sec.) and the 50th (28 sec.), respectively. In other words, the elections in Iraq received less than half a minute of coverage, which is obviously insufficient to inform the audience. While the reporting on other events in Iraq received 132 seconds, these were short reports on terrorist attacks in the country, out of the post-election context, most probably resulting in complicating the viewers’ perception of the situation in Iraq.

“Report on Mountainous Karabagh by PACE Rapporteur David Atkinson and the response to it”, scoring the 4th and 5th rates in the expert survey, was the 7th on the news air of PTA (634 seconds). Besides, other pieces on Karabagh conflict resolution received 439 seconds of coverage.
“Statement of the US Secretary of State Condoleezza Rice that the US

does not intend to attack Iran" – the subject that shared the 4th-5th places with the one above – was not stressed in the PTA news programs. The same is true for other international news that attracted the attention of experts, in particular, "Shamil Basaev's interview to British Channel 4" and "Early payment of most of the Russian debt to Paris Club".

The theme of "Return of opposition parliament factions to the RA National Assembly", singled out by one expert as being the second important, was in the 10 most covered subjects of the week, being the 6th (779 seconds).

"Proposal of the Speaker of the National Assembly of France Jean-Louis Debre on the researching into the Armenian Genocide problem by the experts of UN, NATO, Council of Europe and independent Swiss experts, made during his visit to Turkey" was covered by the PTA, although it was defined by the experts to be a priority the next week (February 7-13). In other words, the referral of the PTA to this event to a certain extent fore-stalled the public interest to it.

In general, the news coverage on PTA is characterized by particular attention to the official communications, the event chronicles in Armenia and the world with a small emphasis on the subjects of primary interest.

The absence of a such accent on the key issues in the main newscasts is particularly felt as the urgent issues of the week, the month are seldom a subject for discussion in the commenting programs. The latter ones, in particular, the weekly "5th Wheel" current affairs program, in accordance with its specialization, addresses mostly general issues, with no linkage to the hot events.

"ALM"

The greatest attention in "Day by Day" newscast and its Sunday news/analysis issue on February 1-6 was paid to the trips of the TV company owner Tigran Karapetian in the regions of Armenia (1,142 sec.)

The next two places were taken by subjects, reflecting current affairs: issues of RA economy and finance (1,093 sec.); chronicle, the situation in Armenian regions (697 seconds).

The subjects, defined by experts to be most significant for the given period - "Decease of Georgian Prime Minister Zurab Zhvania and the subsequent events"; "OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh" – were on the 10th (348 seconds) and 19th (135 seconds) places, respectively.

"Report on Mountainous Karabagh by PACE Rapporteur David Atkinson and the response to it", named the fourth by the experts, was rated the 4th in the news coverage of "ALM" (646 sec.). The pieces on the Karabagh conflict resolution were on the 8th place (423 sec.)
The situation with the parliamentary elections in Iraq and the statement of

the US Secretary of State on Iran were completely out of the “Day by Day” issues during the first week of February. The same is true for another event, pointed out by experts – “Ailing of Pope John Paul II”.

Of other themes, singled out by experts, “Return of opposition parliament factions to the RA National Assembly” was the fifth of the subjects covered, receiving 612 sec.

Herein it should be noted that the international affairs are mostly covered by “Planet Pulse” program, aired after “Day by Day” issues and was not monitored. This probably accounts for the lack of attention of “Day by Day” to events abroad.

The current affairs programs of “ALM”, “Price of the Question” and “Position” have a wide variety of issues discussed, including some subjects named by the experts. Yet, this failed to compensate significantly for the lack of attention to these issues in the newscasts.

“ARMENIA”

In the main issues of “Zham” newscast on February 1-6 of the subjects, classed by experts in the first five, only two gained the top lines in the news coverage: “Decease of Georgian Prime Minister Zurab Zhvania and the subsequent events” - 4th place (473 seconds) and “Report on Mountainous Karabagh by PACE Rapporteur David Atkinson and the response to it” - 7th place (435 seconds). “OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh” was 26th (108 sec), followed by “Parliamentary elections in Iraq and the post-election situation”, the 27th (107 sec.)

Ahead of all these subjects mentioned was “Return of opposition parliament factions to the RA National Assembly”, also distinguished by the expert survey and taking the 3rd place on the air of “Zham” (493 sec). The greatest coverage was given to the subjects, reflecting current events: the issues of RA economy and finance (763 sec.), and the chronicle of the life of the capital (591 seconds).

Of the subjects, named important by experts, “Zham”, similarly to other news programs studied, did not pay attention to the statement of the US Secretary of State on Iran, Shamil Basaev’s interview to British Channel 4 and the payment of the Russian debt. Similarly, to “ALM”, in the main newscast of “Armenia”, there were no pieces on the ailing of Pope John Paul II, - subject, named by the experts. Thus, it cannot be inferred that the TV program gave sufficient information to the viewed on the most urgent events. At the same time, the little difference in the airtime amount allocated by “Zham” to various subjects is noteworthy.

To a certain, yet insufficient extent, the absence of due attention to the urgent themes by “Zham” program was compensated by another program of the TV channel, “Express”, which combines news and comment. During

the period of February 1-6 it, particular, covered the interview of Shamil Basaev to British Channel 4, the early payment of most of the Russian debt to Paris Club, the ailing of Pope John Paul II, the process of resolving the Israel-Palestine conflict, i.e., the subjects noted by experts as important and omitted from the direct coverage by “Zham”.

“Indeed” current affairs program, as a rule, addresses the issues of public importance, but not always related to the hot events.

SECOND ARMENIAN TV CHANNEL

The subject of “Decease of Georgian Prime Minister Zurab Zhvania and the subsequent events”, leading in the expert survey with huge distance, was the 8th in the issues of “Lraber” newscast and “Sunday Lraber” news/analysis program on February 1-6 (307 sec). And the second significant subject, singled out by experts, “OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh”, was the 7th in the news programs mentioned (318 sec). Another subject, “Report on Mountainous Karabagh by PACE Rapporteur David Atkinson and the response to it”, rated the 4th by experts, received 244 seconds of airtime, being on the 10th place.

The situation on parliamentary elections in Iraq, rated the third by experts, was in no way emphasized on the news air of the Second Armenian TV Channel studied. Neither were some other subjects noted by experts as priority. At the same time, similarly to PTA, the Second Channel informed about the proposal by the Speaker of the NA of France Jean-Louis Debre to research the Armenian genocide by international specialists, thus, “jumping ahead” of experts, who specified the theme in the next week survey. And vice versa, the statement of the US secretary of State Condoleezza Rice that US do not intend to strike Iran, was directly covered by the Second Channel only during the second week of the research.

Of the first six subjects in “Lraber” and “Sunday Lraber” programs the greatest advantage was given to the issues of RA economy and finance (710 sec.), current activities of the RA National Assembly (509 sec), international programs and activities of international organizations in RA (506 sec), chronicle of events in the regions of Armenia (465 sec.), current affairs of the RA President and its administration (389 sec). In other words, the focus of attention was on events of current, chronicle nature. The news programs did not accentuate any specific event, separate from those singled out by experts. Rather, in case of rather a broad coverage of events there is no focus on the subjects of greatest current interest.

The commenting programs of the Second Channel, while touching mainly issues of public interest, insufficiently contribute to the adequate perception of the main up-to-date events by the audience.

“SHANT”

On February 1-6 in “Horizon” program the first place in terms of attention (874 sec.) was taken by the subject, rated the most important by the experts – “Decease of Georgian Prime Minister Zurab Zhvania and the subsequent events”.

The second subject rated as the most important by experts, “OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh”, came at the end of the ten the most actively covered (335 seconds). other pieces on Karabagh resolution, as well as the report by the PACE Rapporteur David Atkinson on Mountainous Karabagh and the response to it (also named by experts as one of the most important ones) were the 3rd (482 sec.) and 8th (373 sec.) All this is sign of adequate attention of the news program to this given subject matter.

Two other subjects, specified by experts – “Parliamentary elections in Iraq and the post-election situation” and “Statement of the US Secretary of State Condoleezza Rice that the US does not intend to attack Iran” – also found reflection in “Horizon” issues. Yet, if the first subject mentioned got sufficient attention (6th place - 417 sec.), the second was addressed by the program only once throughout the week, receiving 105 seconds (32nd place).

Of the other subjects, noted by experts as priorities, “Horizon” did not pay attention, in particular, to the early payment of most of the Russian debt to Paris Club, cases of bribery at the US Consulate in RA. The latter got direct coverage on the news air of all the TV channels studied, but for “Shant”. The subject of “Shamil Basaev’s interview to British Channel 4” got direct coverage in “Horizon” only during the next studied period (February 7-13).

Finally, “Shant” was another TV company (along with PTA and the Second Channel), the news air of which gave floor to the proposal of the Speaker of the NA of France Jean-Louis Debre on the research of Armenian Genocide – the subject noted by experts in the survey for the subsequent period.

The commenting current affairs programs of “Shant”, “Perspective” and “Second Glance”, during the study period paid most of the attention to David Atkinson and PACE resolution on Mountainous Karabagh. Another subject of “Perspective” issue was the return of opposition parliamentary factions to the RA National Assembly, seen by experts as urgent.

FEBRUARY 7-13, 2005

EXPERT SURVEY

During the period of February 7-13 experts were not so distinct in selecting the main themes. Out of the 21 events mentioned the following three subjects were most frequently mentioned:

1. Nuclear weapons development in North Korea and Iran (12 points).
2. Israel-Palestine conflict resolution process (8 points).
3. Bloodful fire exchange in the vicinity of Yerevan Thermal Power Plant (5 points).

The remaining themes scored from 3 to 1 points.

It should be noted here that the “Israel-Palestine conflict resolution process” rated as second was already mentioned by experts among the priority themes during the first week of study. Another subject – “OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh” also “recurred” in the expert survey. Another subject that can be classed as “continuing to raise attention” was “Visit of Condoleezza Rice to the countries of Europe and Middle East”. Besides, if on February 1-6 the “Bloodful fire exchange in the vicinity of Yerevan Thermal Power Plant” was mentioned by only one expert, on February 7-13 it was among the leading three. Among the “adjacent” themes the experts mentioned also “Assassination of the President of “Armenia-Lada” Company Rafael Shakhmuradian in Toliatti” and “Intensification of criminal situation in Armenia”, by which primarily the crimes above were meant.
As to the top themes of early February, the decease of Georgian Prime Minister Zurab Zhvania and subsequent events, while not being mentioned by experts for the week, all the TV companies studied continued referring to it, although less actively. This is particularly true for “Shant”, in the news coverage of which this subject was among the top ones (the 3rd most actively covered).

PUBLIC TELEVISION OF ARMENIA

“Haylur” newscast and “360 Degrees” news/analysis program also focused on February 7-13 on current events, chronicles of various spheres: mostly on the events in culture and science (2,272 sec.) and RA NA activities (1,658 sec.)

Of the subjects named by the experts the greatest coverage was provided by the PTA newscasts to “70th anniversary of writer Hrant Matevosian and the events on the date” (622 sec.), “OSCE fact finding mission at the occupied territories of Azerbaijan, surrounding Mountainous Karabagh” (390 sec.) and “Israel-Palestine conflict resolution process” (378 sec.)

Overall, of the 21 themes, noted by experts, 10 received direct coverage on the news air of PTA, including all the three subjects leading in the expert survey for the period: Arab-Israeli conflict as mentioned above, as well as “Nuclear weapons development in North Korea and Iran” (264 sec.) and “Bloodful fire exchange in the vicinity of Yerevan Thermal Power Plant “ (106 sec.)

At the same time “Haylur” covered the litigation against writer Orhan Pamuk in Turkey (362 sec.), the destruction of Armenian tombstones at Our Lady Church in Tbilisi (37 sec.) and addressed the referendum in Spain on adop-

tion of the Constitution of European Union (35 sec.). Thus, the TV company raised the subjects, mentioned by experts in the survey for the next period, February 14-20, forestalling the public attention towards them.

“ALM”

The greatest attention in the main issues of “Day by Day” newscast and its Sunday news and analysis issue on February 7-13 was placed on the current events. In particular, the current activities of the RA NA received 1,679 sec., news from Armenian regions - 1,019 sec. and the chronicle of inner political life - 973 sec.

Of the subjects, mentioned by experts as most urgent for the week, the greatest direct coverage was given to “Failure to start the spring session of RA NA” (557 sec.), “70th anniversary of writer Hrant Matevosian and the events on the date” (307 sec.), “Intensification of criminal situation in Armenia” (186 sec.) and “Assassination of the President of “Armenia-Lada” Company Rafael Shakhmuradian in Toliatti” (147 sec.)

Of the 21 subject, mentioned by experts, “Day by Day” only covered 6, and of the three subjects deemed as priority for the period by the experts (development of nuclear technologies in Iran and North Korea, process of Arab-Israeli conflict resolution and the course of investigation of the fire exchange in the vicinity of Yerevan TPP), none got direct coverage.

At the same time, “Day by Day” addressed the issue of destruction of Armenian tombstones at Our Lady Church in Tbilisi (43 sec.) and the upcoming visit of the RF Foreign Minister Sergey Lavrov to Armenia (92 sec.) – subjects, covered by experts as priorities in the next study period.

The commenting programs of “ALM” studied on February 7-13 did not directly address the subjects, mentioned by experts, either.

“ARMENIA”

“Zham” program was the only of the news programs studied, where the biggest attention of February 7-13 was paid not to current news, but to a specific subject – “Failure to start the spring session of RA NA” (913 sec.), also mentioned in the expert survey for the period. The current activities of the Parliament were not omitted from “Zham” camera, either, taking the second place (805 sec.) besides, the news program continued addressing the “Return of opposition parliament factions to the RA National Assembly” (238 sec.)

Of the three themes, taking the first lines in the expert survey, direct coverage was only given to the investigation of the fire exchange in the vicinity of Yerevan TPP (55 sec., rated 33rd). Much more attention was paid to the murder of the President of “Armenia-Lada” company Rafael Shakhmuradian in Toliatti (254 sec., rated 13th).

Only two subjects of the 21, named by experts, got direct coverage in "Zham": "70th anniversary of writer Hrant Matevosian and the events on the date" (235 sec.) and "Visit of Condoleezza Rice to the countries of Europe and Middle East" (35 sec.)

The last subject was three times addressed by "Express" commenting program. Three times a reference to resolution of Arab-Israeli conflict was made and once – to the nuclear weapon development in North Korea and Iran. Thus, "Express" to a certain extent compensated for the lack of attention of "Zham" newscast to the urgent issues of the period. The other commenting program of "Armenia TV channel, "Indeed" also touched upon a number of urgent themes, yet failing to address any of those, omitted by "Zham".

SECOND ARMENIAN TV CHANNEL

In "Lraber" and "Sunday Lraber" news programs on February 7-13, similarly to the previous period, the current events and chronicles of various areas of public life were predominant. The most active coverage was given to the events of culture and science (1,940 sec.), social issues (1,198 sec.), issues of economy and finance (1,074 sec.) and news from regions of Armenia (1,012 sec.)

Out of the 21 subjects, mentioned by experts throughout the period, direct coverage on the news air of the Second Channel was given to 9, also two of the three leading in the expert surveys. These are the resolution of Arab-Israeli conflict (319 sec.) and the problem of nuclear technologies development in Iran and North Korea (211 sec.)

Greatest attention of all the subjects singled out by experts was paid to the "Forecast of the McKinsey international consulting company on the prospects of tourism development in Armenia" (439 sec.) and "70th anniversary of writer Hrant Matevosian and the events on the date" (349 sec.)

Besides, the Second Channel continued addressing the "Return of opposition parliament factions to the RA National Assembly", that was the 7th (699 sec.) most actively covered news themes of the TV company.

"Lraber" covered the destruction of Armenian tombstones in the Our Lady Church in Tbilisi (35 sec.) and the upcoming visit of RF Foreign Minister Sergey Lavrov to Armenia (33 sec.) – subjects, mentioned by experts as priorities in the subsequent period of study.

The commenting programs of the Second Channel studied did not address any of the themes, noted by experts, thus failing to compensate the lack of attention of the news programs to the most urgent issues of the period.

“SHANT”

The absence of dominating public interest on February 7-13 towards certain events, as noted above, affected the news coverage of “Shant” too. While its priorities on February 1-6 mainly coincided with expert assessments, this time the TV company concentrated on current events and chronicles in different spheres. In particular, the greatest attention in “Horizon” news program was paid to social (1,093 sec.) and inner political (849 sec.) questions,

Of the 21 themes, mentioned in the survey by experts, nine were directly covered in “Horizon” airtime. All three main subjects, defined by experts, were reflected in “Horizon” issues: the resolution of Israel-Palestine conflict (498 sec.), the problem of nuclear technology development in Iran and North Korea (288 sec.) and the course of investigation of the fire exchange in the vicinity of Yerevan TPP (188 sec.)
The greatest interest of the themes mentioned by expert was paid by “Horizon” to the failed start of the spring session at the Parliament (614 sec.)

The somewhat late reference of “Horizon to the subject mentioned by experts in early February, “Shamil Basaev’s interview to British Channel 4” (278 sec.), is smoothed out by the fact that Armenian media in general paid little attention to it. Besides, “Horizon” was the only news program who informed about the Grammy Award Ceremony to be held on February 13 (287 sec.)This subject was named by one of the experts during the period and was covered during the subsequent week, yet only by the news programs of two TV companies, “Shant” and “PTA”.

“Second Glance” weekly current affairs program referred this week to the intensification of the criminal situation in Armenia, which was justified by the public interest. At the same time, the other commenting program, “Perspective”, in its five issues, except for this subject and the failure of the start of the spring session of the Parliament, did not refer to any of the 21 events, mentioned by experts.

FEBRUARY 14-20, 2005

EXPERT SURVEY

On February 14-20 the experts noted 15 events overall, of which the following were rated as the leading five:

1. Assassination of former Prime Minister of Lebanon Rafik Hariri (18 points)
2. Enforcement of Kyoto Protocol (7 points)
3. Referendum on the Constitution of European Union in Spain (6 points)
4. Visit of Russian Foreign Minister Sergey Lavrov to Armenia (6 points)
5. Visit of RF Foreign Minister Sergey Lavrov to the countries of South Caucasus (4 points)

The remaining subjects mentioned by experts scored from 3 to 1. Among them the results of elections in Iraq and the visit of US State Secretary Condoleezza Rice were named as priorities again.

PUBLIC TELEVISION OF ARMENIA

Of the 15 themes, named by experts as most important for the period of February 14-20, 8 were reflected in the main issues of “Haylur” newscast and “360 Degrees” news/analysis program. In this, the significant part of other events covered by these programs was named in the previous expert surveys that can be considered a good indicator under this study.

At the same time, the PTA news programs, similarly to the previous period, focused on current events and chronicle of various spheres of public life. The first five places among themes that received the greatest attention is given to the chronicle and events, with the following subjects leading: sport (1,564 sec.); international programs and the activities of international organizations in RA (1,256 sec.); issues of RA economy and finance (998 sec.); current activities of the RA Government (996 sec.); current activities of the RA President and his administration (971 sec.)
The broadest coverage of the themes defined by the experts on the PTA news air was given to the main, in the opinion of experts, event of the period – the assassination of Lebanon former Prime Minister Rafik Hariri and the subsequent political developments in the country (629 sec.) The enforcement of Kyoto Protocol (rated as the second most important event by the experts) received 157 sec. Much more attention was paid to the two subjects at the bottom of the experts’ leading five: the visits of the Russian Foreign Minister Sergey Lavrov to Armenia (444 sec.) and to the countries of South Caucasus (84 sec.)

Besides, similarly to the previous period, on PTA news air, subjects, singled out by experts the next week (February 21-28), were raised. These were: “Agreement between Russia and Iran on exporting nuclear waste” and “Statements of the US Ambassador in Armenia John Evans during the meetings with Armenian Diaspora in California”.

“ALM”

Along with the current activities of the RA President and his administration (673 sec.) and the issues of RA economy and finance (636 sec.), one of three subjects, most extensively covered by “Day by Day” newscast and its Sunday news/analysis issue on February 14-20 was the visit of RF Foreign Minister Sergey Lavrov to Armenia (619 sec.), named by the experts to be one of the most important events.

Of the two events, viewed by the experts to be of utmost interest (assassination of Lebanon former Prime Minister Rafik Hariri and the political developments in the country, the enforcement of Kyoto Protocol), the former received 46 seconds of coverage and the other was completely out of

attention focus. Besides these two themes, only two of those named by the experts were reflected on the air of “Day by Day” program: the refusal of a broadcast license to “MS Explorer” radio company, one of the founder of which is “A1+” TV company (185 sec.) and the presentation of encyclopedia “Karabagh Liberation War. 1988-94” in Yerevan (131 sec.) Along with this, on the news air of the TV company continued coverage was given to certain subjects, singled out by experts during the previous surveys.

The commenting programs of “ALM” did not add anything substantial to the coverage of current and urgent events.

“ARMENIA”

The “airtime leaders” in the main newscasts of “Zham” during the period of February 14-20 were two subjects reflecting current events and chronicle (the current activities of the RA President and his administration - 889 sec., and RA economy and finance issues - 779 sec.), as well as the anniversary of the murder of Armenian officer Gurgen Margarian in Budapest by Azerbaijani officer Ramil Safarov and the litigation on the case (816 sec.)

Only after these does one of the subjects mentioned by experts as to be important for the period come: the visit to the RF Foreign Minister Sergey Lavrov to Armenia (783 sec.) The visit of the head of the Russian foreign office to the countries of South Caucasus was given 211 seconds of news coverage.

Overall, of the 15 issues mentioned by experts, 6 found their place on the air of “Zham”. The hottest theme of the week, as seen by experts (assassination of former Prime Minister of Lebanon Rafik Hariri and the subsequent political developments in the country) was the 12th in the main issues of “Zham” newscast (292 sec.). The themes rated as 2nd and 3rd most important ones by experts – the enforcement of Kyoto Protocol and the referendum in Spain on EU Constitution were not reflected in the program at all.

The two of the last three themes mentioned were compensated for the lack of attention in the news program by the active coverage of “Express” commenting program.

SECOND ARMENIAN TV CHANNEL

10 of 15 themes, (including 4 priority ones), mentioned by experts to be most important fore February 14-20, were reflected in the main issues of “Lraber” news program and “Sunday Lraber” news/analysis program. The visit of RF Foreign Minister Sergey Lavrov to Armenia was the 4th most actively covered event (855 sec.) The three leaders of the news air are the subjects, uniting current events and chronicle of various public life spheres: RA economy and finance (1,893 sec.); current activities of the RA president and his administration (968 sec.); current activities of the RA Government (932 sec.)

Besides, the news programs of the TV company continued to cover a number of themes, defined by experts in the previous surveys. Also, forestalling the public interest, there was information on the visit of US President George Bush to Europe and on Russian-Iranian nuclear cooperation. These subjects were mentioned by experts as urgent during the subsequent period (February 21-28).

The commenting programs of the Second Channel did not add anything substantial to the coverage of current and urgent events.

“SHANT”

During the period of February 14-20 the greatest coverage in “Horizon” newscast was given to the visit of RF Foreign Minister Sergey Lavrov to Georgia (863 sec.), that occurred during his visit to the countries of South Caucasus (an event, rated the 5th by the experts). The third most covered subject on the air of “Horizon” was Lavrov’s official visit to Armenia (742 sec.)

Two more themes, named by experts as being most urgent during the period, were among the seven leaders of the news air of “Shant”. The event, rated by experts as the top news, the assassination for former Prime Minister of Lebanon Rafik Hariri and the subsequent political developments in the country, was the fifth in “Horizon” (622 sec.) The post-election situation in Iraq, that shared the 6th-8th places with the experts, was the 7th (436 sec.)

Besides, the main newscasts of the TV channel continued the coverage of many themes, mentioned by experts during the previous surveys. One of them, the issue nuclear development in North Korea and Iran, even became one of the leaders on the news air of “Shant”, becoming the fourth and getting 682 seconds of coverage.

The commenting programs of “Shant” TV channel, namely, the “Position” and “Second Glance”, did not address the problems seen as most important by experts.

FEBRUARY 21-28, 2005

EXPERT SURVEY

On February 21-28 the exported noted a total of 19 events, of which the following 6 were most frequently mentioned:

1. Meeting of Presidents of the USA and Russia George Bush and Vladimir Putin in Bratislava (18 points);
2. Visit of the US President George Bush to Europe (5 points);
3. Securing of the suit of Chechnya residents versus Russia by the European Court of Human Rights (5 points);

4. Visit of the NATO Special Representative for the Caucasus and Central Asia Robert Simmons to Armenia (5 points);
5. Statements of the US Ambassador in Armenia John Evans during the meetings with Armenian Diaspora in California (4 points);
6. Tension between "Orinats Yerkir" party and Republic Party of Armenia, making up the ruling coalition (4 points).

The remaining subjects mentioned by experts scored from 3 to 1.

PUBLIC TELEVISION OF ARMENIA

13 of 18 themes, named by experts on February 21-28 as most important ones, were covered in the main issues of "Haylur" newscast and "360 Degrees" news/analysis program for the period. Yet, they failed to be present among the air leaders: the biggest coverage was given to events commemorating the anniversary of Armenian pogroms in Sumgait, also named by experts, scoring the 7th place (598 sec.) The greatest attention was paid to current events and chronicle in various public life spheres: sport (1,882 sec.); events in RA culture and science (1,642 sec.); current activities of the RA President and his administration (1,316 sec.); international programs and activities of international organizations in Armenia (1,166 sec.)

A number of subjects, named by experts at the previous stages of the research, remained at focus of the PTA news programs, yet being at low level of coverage, too.

The PTA commenting program, "5th Wheel", similarly to the previous researcher stages, did not address the subjects seen as most important by experts.

"ALM"

The biggest coverage in the main issues of "Day by Day" news program and its Sunday news/analysis issue was given to the trips of the owner of "ALM" TV company Tigran Karapetian in the regions of Armenia (1,406 sec.) Of the 12 themes, leading on the air of "Day by Day", 10 were devoted to current events and chronicle of various spheres, including the inner politics (1,098 sec.) and current activities of the RA President and his administration (622 sec.)

Of the subjects, mentioned by experts as most urgent ones, the greatest coverage was given to the working meeting of the RA President Robert Kocharian with the members of the Government on the issue of capital construction (497 sec.)

The leader of the expert survey, "Meeting of Presidents of the USA and Russia George Bush and Vladimir Putin in Bratislava", was the 26th in "Day

by Day" (150 sec.), and the next two subjects, singled out as priorities by the experts ("Visit of the US President George Bush to Europe" and "Securing of the suit of Chechnya residents versus Russia by the European Court of Human Rights"), were not covered directly by the program at all.

The visit of the NATO Special Representative for the Caucasus and Central Asia Robert Simmons to Armenia received much more coverage (350 sec.), than the other theme, also mentioned by experts as most urgent – the statements of the US Ambassador to Armenia John Evans during the meetings with Armenian Diaspora in California (89 sec.)

Of the 18 themes, mentioned by experts as the most important ones, only five were covered in "Day by Day".

The commenting program of "ALM" studied did not touch on the themes, named by experts as most urgent in the given period.

"ARMENIA"

The first 10 places among the subjects, receiving the greatest coverage in the main issues of "Zham" program on February 21-28, were taken by those on current events and chronicles of various public life spheres. In particular, the leaders of the news air were the official visits of the Armenian leadership (810 sec.), the chronicle of events in Yerevan (787 sec.) and the current activities of the RA President and its administration (732 sec.)

The second ten are opened by the subject, named as most important by the experts – "Statements of the US Ambassador in Armenia John Evans during the meetings with Armenian Diaspora in California" (356 sec.) The leader of the expert survey, "Meeting of Presidents of the USA and Russia George Bush and Vladimir Putin in Bratislava", was the 23rd (175 sec.) The visit of NATO Special Representative in the Caucasus and Central Asia Robert Simmons received 286 sec.

Overall, 7 of the 18 themes mentioned by experts to be most urgent were covered by "Zham".

The commenting program "Indeed" addressed two themes specified by experts in great detail. These were – the visit of Robert Simmons to Armenia and statements of the US Ambassador in RA John Evans.

9 events, named as important by the experts on February 21-28, were covered by the commenting "Express" program: events commemorating the anniversary of pogroms in Sumgait (6 times); meetings of US and Russian Presidents in Bratislava (6 times); visit of the US President to Europe (3 times); tension between "Orinats Yerkir" and Republican Party of Armenia, making up the ruling coalition (3 times); political consequences of the mur-

der of Lebanon Prime Minister Rafik Hariri (3 times); the visit of the NATO Special Representative to Armenia (2 times); Oscar Award Ceremony (2 times); earthquake in Iran (2 times); terrorist attack in Iraqi El-Hilla town (1 time). Besides, “Express” continued addressing some of the subjects, mentioned by experts before.

SECOND ARMENIAN TV CHANNEL

The greatest attention in the main issues of “Lraber” newscast and “Sunday Lraber” news/analysis program on February 21-28 was given to the current events in various public life spheres, in particular: international programs and activities of international organizations in RA (1,371 sec.); current activities of the RA President and its administration (1,294 sec.); social issues (1,105 sec.)
The event number one in the eyes of experts, the meeting of US and RF Presidents in Bratislava received 394 seconds on the news air of the Second Channel. Yet the visit of the US President George Bush to Europe (rated as second by exerts) was the fourth in the list of subjects covered the most (941 sec.)

Of the subjects, sharing the 3rd-4th places by urgency in the opinion of experts (“Visit of the NATO Special Representative for the Caucasus and Central Asia Robert Simmons to Armenia” and “Securing of the suit of Chechnya residents versus Russia by the European Court of Human Rights”) the former was covered (361 sec.), and the second – not.

Overall, of the 18 themes named by experts to be most important, the news programs of the Second Channel covered 13. Besides, a number of themes, specified by experts at previous research stages, remained at focus of newscasts.

The commenting programs “Right to Tell” and “Fourth Studio” several times referred to the events that were mentioned as most important by experts and were related to Karabagh conflict (in particular, the anniversary of Armenian pogroms in Sumgait).

“SHANT”

The undisputed leader among the themes, singled out by experts as the most important ones on February 21-28, the meeting of the US and Russian presidents in Bratislava, was the second covered in the main issues of “Horizon” program (1,004 sec.) Ahead of it was the theme “Demands of Azerbaijan to recognize the Khojalu events to be genocide” (1,073 sec.), not specified by experts at all.
Of the 18 themes, mentioned by experts, 11 were covered on the air of

“Horizon”. These included events, commemorating the anniversary of Armenian pogroms in Sumgait, being the fourth most covered subject (637 sec.)

Of the themes, sharing 2nd-4th places in the expert survey only “Securing of the suit of Chechnya residents versus Russia by the European Court of Human Rights” was omitted. “Visit of the US President George Bush to Europe” received 330 seconds of coverage and “Visit of the NATO Special Representative for the Caucasus and Central Asia Robert Simmons to Armenia” - 174 sec. “Statements of the US Ambassador in Armenia John Evans during the meetings with Armenian Diaspora in California “, another priority theme for the experts, received 341 seconds of news coverage.

Besides, “Horizon” continued to address a number of events, specified by experts during the previous stages of the study.

The commenting “Perspective” program devoted 3 of its 6 issues to themes mentioned by experts in various stages of the study: history and process of resolution of Karabagh conflict (twice) and the failure to start the spring session at the RA NA in the context of the next session (once).

VII. CONCLUSION

1. The major Armenian TV channels, deemed to be the main information sources for the population of the country by surveys and other tools for studying public opinion, do not cover a significant part of urgent issues, thus restricting the right of the audience to be informed and neglecting its demands and needs.

2. Unlike the periods, decisive for the political future of the country (elections of various levels, referenda), when, according to the previous studies, the main TV channels displayed an obvious slant in favor of the incumbent authorities, this study did not record any prevalence of any political stance on TV air.

3. At the same time, the certain passive behavior of the TV companies in terms of presenting the opinions of political and public figures on a whole range of issues was noted. Thus, the contribution of media in shaping the public policy culture in the country is unsatisfactory.

4. The commenting programs of most TV channels studied are not sufficiently contributing to the audience finding its way through information flow.

5. In particular, the international and social problems, which, according to the all public opinion polls of the past years, are of utmost interest to the audience, are not a priority in the programming policy of the media studied.
6. At the same time, the TV channels pay much attention to the routine,

day-to-day activities of the state structures, the leadership of the country, the political figures and businessmen who have certain levers of affecting the given TV company. Yet, this information is not much of demand with the society.

Yerevan Press Club expresses its gratitude to Public Television of Armenia, "ALM", "Armenia", Second Armenian TV Channel and "Shant" for technical assistance provided during the monitoring.

European Commission for Democracy Through Law (Venice Commission)

Strasbourg, 25 October 2005
Opinion no. 313/ 2004 CDL-AD(2005)025

FINAL OPINION

ON CONSTITUTIONAL REFORM IN THE REPUBLIC OF ARMENIA

Adopted by the Venice Commission
at its 64th Plenary Session
(Venice, 21-22 October 2005)

On the basis of comments by Mr Aivars ENDZINS (Member, Latvia) Mr Kaarlo TUORI (Member, Finland) Mr Vlad CONSTANTINESCO (Expert, France)

I. Introduction

1. In June 2005, the Commission adopted its second interim opinion on constitutional reforms in Armenia (CDL-AD(2005)016). It concluded that the proposed constitutional amendments, as adopted in their first reading, required important amendments in the areas of the separation of powers, the independence of the judiciary and the manner of appointment of the Mayor of Yerevan.

2. As previously agreed, on 17 June 2005 the Armenian authorities submitted revised constitutional amendments to the Commission's working group.

3. On 23-24 June 2005, a meeting was held in Strasbourg, at which representatives of the Armenian authorities and of the civil society and the Commission working group, composed of Messers Endzins, Tuori and Vlad Constantinesco, discussed these revised amendments with a view to improving them. As a result of this meeting, certain principles which were to guide the further constitutional works were agreed upon (CDL(2005)052).

4. On 7 July 2005, the Armenian authorities submitted a further revised version of the constitutional amendments (CDL(2005)058).

5. The Commission's working group prepared an assessment of this version of the constitutional amendments and sent it to the Armenian authorities on 21 July 2005.

6. On 1 September 2005, these amendments passed their second reading in the National Assembly. They were submitted to the Commission in their final version on 9 September 2005.

7. The present opinion relating to the constitutional amendments as adopted in second reading was prepared by the working group and submitted to the Armenian authorities on 19 September 2005. It was subsequently endorsed by the Commission at its 64th Plenary Session (21-22 October 2005).

II. Analysis of the revised draft constitutional amendments adopted in the firstreading

A. Preliminary remarks

8. The present comments only relate to the aspects which were specifically discussed at the meeting of 23-24 June 2005, and which were summarised in document CDL(2005)052. In elaborating them, the working group has aimed at achieving solutions allowing for the workability of the democratic institutions of Armenia.

9. Other aspects of the Constitution, which have not been addressed by the Commission in this opinion but in previous ones[1] may well deserve discussion among the Armenian authorities, the opposition forces and the civil society.

B. Human Rights

Ombudsperson

10. The constitutional foundation of the institution of the Ombudsperson represents an important step towards ensuring an effective protection of human rights and freedoms in Armenia.

11. It is now expressly foreseen in Article 83.1 § 1 that the ombudsperson shall be elected by a majority of 3/5 of the deputies, as currently provided in the Law of the Republic of Armenia on the Human Rights Defender. The principle of irrevocability of the Ombudsperson has also been explicitly stated in paragraph 3 of the same Article.

Freedom, independence and plurality of the media.

[1] CDL(2000)102rev., CDL-INF(2001)017, CDL-AD(2004)044 and CDL-AD(2005)016).

12. Article 83.2 of the proposed Constitution now sets out the manner of appointment of the members of National Commission on Radio and TV.

13. The members of the National Commission on Radio and TV are no more appointed by the President under the general clause of Article 55.5, but are appointed, for 6 years, as follows:
- ½ by the National Assembly, and
- ½ by the President.

14. The Commission welcomes this solution, which constitutes an undoubted step forward towards the independence of the NCRT. The Commission recalls the need, for both the National Assembly and the President, to follow a transparent and merit-based procedure of selection of candidates. It points out in particular that members if the NCRT should not be active members of political parties.

15. The Commission also wishes to refer to the need for the members of the boards of management of public service broadcasting organisations to be appointed so as to avoid the risk of "any political or other interference[2]". In this respect, the appointment by the President of the Republic of all the members of the Council of the Public TV and Radio has been seen as problematic, and the need for the appointment process, if this power of the President is to be retained, to be open and transparent and not open to political abuse, has been underlined.[3] The Commission notes in this respect that the CPTR is, according to the information submitted by the Armenian authorities, a joint stock company. It follows that the members of its managing board are not "state officers" and need not be appointed by the President of the Republic under Article 55 § 5 of the Constitution. Other options could indeed be preferable, such as, for instance, the appointment by civil society and professional bodies.

16. The Commission underlines the importance of regulating this matter in accordance with the applicable European standards. It recommends therefore that the relevant legislation be brought in compliance thereof with the assistance of the Council of Europe.

C. Separation of powers

Presidential immunity

17. With respect to the presidential immunity, the Commission notes with approval that the revised Article 56.1 § 2 fully reflects both the principle of the President's non-liability in respect of the acts arising from his or her presidential duties during and after the mandate, and the immunity from prosecution, during the mandate, for acts not arising from his or her presidential duties.

---

2 See, in particular, Recommendation No. R(96)10 of the Committee of Ministers to Member States on the Guarantee of Independence of the Public Service Broadcasting, adopted by the CoM on 11 September 1996. See also Recommendation Rec(2000)23 of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the CoM on 20 December 2000.

3 "Analysis and comments on the Law of the Republic of Armenia on TV and Radio broadcasting, adopted in October 2000 and amended in 2001, and the regulations of the National Committee on TV and Radio adopted by law on 11 January 2002 (ATCM (2002)016rev, 26 June 2002) carried out by the Council of Europe's Division on the Media, Directorate General of Human Rights.

Extraordinary sittings and sessions of the NA

18. The Commission notes with approval that the revised Article 70 on extraordinary sessions and sittings now clearly stipulates that it is the Chairman of the National Assembly who will convene a parliamentary session or sitting upon the initiative of the President of the Republic, or of at least 1/3 of the deputies or of the Government.

Formation of government

19. The Commission welcomes the revised provisions on the formation of government, which now provide guarantees for the indispensable balance in the relations between the main constitutional organs in Armenia.

20. Pursuant to the new Article 55 § 4, the President of the Republic will appoint as Prime Minister the person who enjoys the confidence of the majority of the deputies. The meaning of the following expression in the second part of the first sentence "*if it is not possible*, the person who enjoys the confidence of *relative majority*" is unclear and the exact procedure to be followed should be spelled out.

21. The Prime Ministers can now only be dismissed by the National Assembly through a vote of non-confidence. On the other hand, as a compromise solution, the President has the right to present to the National Assembly a motion of non-confidence in the Government (new Article 84 §2).

22. At the meeting of 23-24 June, the possibility of introducing a constructive vote of nonconfidence was discussed. The members of the Commission's working group considered that such mechanism generally contributes to the stability of the government and that, as such, it might be useful.

23. With regard to the President's power to dissolve the National Assembly for "technical" reasons, the revised Article 74.1 § 2 now rightly provides for the involvement of the Chairman of the National Assembly or the Prime Minister.

24. As regards the composition of the government, the Commission notes with approval that it is now to be fixed by law.

Foreign policy

25. The new Article 85 now correctly stipulates that the Government shall "determine and implement" the foreign policy of Armenia jointly with the President of the Republic. In fact, Article 55 on the competences of the President of the Republic should more accurately provide that the President "determines and implements the foreign policy jointly with the Government" rather than "executes the general guidance" of it.

Sittings of the government

26. The Commission notes with satisfaction that the new Article 86 § 2 expressly states that the President may convene and chair sittings of the government *in connection with foreign policy, defence and state security issues* only.

D. Independence of the Judiciary

Prosecutor General

27. In accordance with the revised Article 55 § 9, the appointment and dismissal of the deputies of the Prosecutor General will be done upon the recommendation by the Prosecutor General.

Appointment and dismissal of judges/ Composition of the Justice Council

28. Recommendation No. R (94)12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and the role of judges provides as follows: “The authority taking the decision on selection and career of judges should be independent of the government and administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules. However, where the constitutional or legal provisions and traditions allows judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above ”.

29. The European Charter on the Statute for judges provides as follows:
“In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary”.

30. According to the Explanatory Memorandum of the European Charter, the term “intervention” of an independent authority means an opinion, recommendation or proposal as well as an actual decision[4].

31. Article 94.1 of the proposed Constitution sets out the composition of the Justice Council as follows: nine judges (it should not say “up to” nine judges, but according to the Armenian authorities this is a translation inaccuracy) elected by secret ballot for a period of five years by the General Assembly of Judges of the Republic of Armenia, two legal scholars appoint-

[4] See Consultative Council of European Judges (CCJE), Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, § 39.

ed by the President of the Republic and two legal scholars appointed by the National Assembly.

32. Under new Article 94.1 § 3, the sittings of the Justice Council will be chaired by the Chairman of the Cassation Court *without a right to vote.*

33. In the Commission's view, the composition of the Justice Council conforms to European standards as highlighted above.

34. At the meeting of 23-24 June, it had been agreed that the President of the Republic can only appoint or dismiss someone upon a recommendation or conclusion of the Judicial Council to this effect. This important principle needs to be more clearly reflected in Article 55 § 11.

35. The expression "upon the recommendation or conclusion of the Council of Justice" must unequivocally refer to any decision concerning the appointment, career progress or termination of office of a judge. The expression "*may* terminate their powers" should be replaced by "shall terminate their powers". It should be clearly stipulated, in an additional point of paragraph 11, that the President shall, upon the recommendation or conclusion of the Council of Justice, "promote judges who are candidates for professional advancement".

36. The Commission underlines the importance of regulating this matter in accordance with the applicable European standards. It recommends therefore that, in addition to rephrasing paragraph 11 of Article 55, the Armenian authorities prepare or revise the relevant law with the assistance of the Council of Europe.

E. Local self-government

37. The changes made in Chapter 7 on Local self-government meet the recommendations made by the Commission in its previous opinions. Thus, the principle that Yerevan is a community, hence a local self-government unit, is expressly stated. The new Article 108 affirms the principle that the Yerevan Mayor must be elected, though the law may provide for an *indirect election*, which is legitimate under the European Charter on Local Self-Government. Detailed provisions on the formation of the local self-government bodies and their functioning in the City of Yerevan will be specified by law. Should an indirect election of the Mayor *by the Council of Aldermen* be already envisaged as the solution, it would be appropriate to state it in Article 108.

F. Amendments to the Constitution

38. Pursuant to the revised Article 113, in order for the referendum on the constitutional reform to be considered valid, ¼ (instead of previously 1/3) of registered voters must effectively express their vote. In the Commission's view, this simplification is to be welcomed.

G. Transitional provisions

39. The Commission considers that the new constitutional provisions should enter into force as soon as practicable. The provisions concerning the mandates of the elected bodies (Article 63 § 2 and Article 107 § 1) obviously need to await the expiry of the mandate of the current ones.

III. Conclusions

40. The revised draft constitutional amendments represent an undoubted improvement as compared to earlier drafts commented upon by the Venice Commission. In the opinion of the Commission, a successful constitutional referendum on the basis of this text would constitute a good basis for ensuring the compliance of the Armenian Constitution with the European standards in the fields of respect for human rights, democracy and the rule of law, and would pave the way to further European integration. The Commission acknowledges the efforts and the good will of the Armenian authorities.

41. It is certainly important that the discussions of the final text be pursued in an open and transparent manner with the opposition forces and the civil society in Armenia. The broadest political consensus must be found.

42. The next main challenge will be to organise an appropriate referendum campaign leading to the adoption of the new Constitution for Armenia. The Commission encourages the Armenian authorities to do their utmost to ensure the success of the constitutional reform in November 2005. The reform must be presented in due time and form to the Armenian people. To this end, it is crucial that the referendum campaign be fairly, adequately and extensively broadcast by the media.

43. The Commission wishes to underline that the success of this process of constitutionalre forms depends on and is the mirror of the maturity of the Armenian political class. Not only the majority, but also the opposition must prove their capability of compromising in order to achieve a workable political environment, which only can lead to democracy in Armenia.

44. Indeed, a good Constitution is certainly the first crucial step towards democracy. It is not sufficient though. The Armenian authorities will have to build a political and social context allowing for an effective realisation of the newly established system of government. The Commission stands ready to assist them in this crucial task.

Report on Monitoring of Armenian Media Coverage of the Referendum on Draft Amendments to the RA Constitution *(NOVEMBER 27, 2005)*

I. LEGAL REGULATION OF THE REFERENDUM COVERAGE

According to a study conducted by Yerevan Press Club (YPC), the RA Law "On Referendum" and other laws regulating the rights and responsibility of the media do not ensure equal air time and newspaper space for expressing various positions in the period of campaign preceding a referendum.

The RA Law "On Referendum" simply states (Article 20) that *"the state guarantees free campaigning on the issue put to a referendum"* and that *"campaign may be conducted through the media, in the form of public campaign events (gatherings, meetings, public debates, discussions, rallies, marches and demonstrations), through publication of print materials and dissemination of audio-visual materials"*. However, unlike the Electoral Code, the law on referendum does not provide mechanisms for implementing these provisions.

Paid campaigning is mentioned only in Article 11 of the RA Law "On Television and Radio". The last paragraph of that Article reads: *"In the period of campaign before referenda and elections, TV and radio companies shall publish the price of their airtime for paid political advertising and other campaign-related programs. Everyone who wishes to make use of that paid airtime shall do so on contractual basis and on equal terms."*

The course of campaigning before the constitutional referendum revealed that Armenian TV and radio companies failed to meet this requirement of the law - they did not announce the price of airtime for paid campaigning. In fact, TV companies monitored by YPC did not provide any paid airtime for the campaign.

Article 21(1) of the RA Law "On Referendum" states that *"persons, who have the right to campaign, may create campaign funds for the purpose of financing their campaign".* Paragraph 2 of the same Article says that *"the money of the fund shall be collected in a special account at the Central Bank of the Republic of Armenia on the basis of a letter by a person with the right to campaign".* Paragraph 6 of the same Article says that *"during the campaign, it is forbidden to spend any money that is not in the campaign fund".*

One of the reasons for small amounts of money in special accounts and insignificant expenses was the fact that the media did not provide any opportunities for paid campaigning.

II. GENERAL INFORMATION

The monitoring of the Armenian media coverage of the November 27, 2005 referendum on draft amendments to the RA Constitution was conducted by Yerevan Press Club from November 5 to 25, 2005, as part of YPC's "Monitoring of Democratic Reforms in Armenia" project supported by Open Society Institute Human Rights and Governance Grants Program.

Monitoring Group:

Project Director - Boris Navasardian

Coordinator/Editor - Elina Poghosbekian

Consultants - Vardan Poghosian, Mesrop Harutyunyan

Monitors - Armineh Sukiassian, Seda Shiganian, Armen Nikoghosyan, Satenik Dabaghian.

***The purpose of the monitoring was* to** collect and analyze quantitative data in order to assess the following:

- the degree of the Armenian media's attention to the upcoming November 27, 2005 referendum on constitutional amendments;

- how adequately the public was informed about the upcoming referendum, the process and content of the proposed constitutional reform.

The monitoring covered:

Four national TV companies - Public Television of Armenia (PTA), "ALM", "Armenia" and Second Armenian TV Channel (Second Channel), all of them broadcasting on the whole or most of the Armenian territory;

Seven national newspapers - official "Hayastani Hanrapetutiun" (daily) and "Respublika Armenia"; "Aravot", "Azg", "Haikakan Zhamanak" and "Hayots Ashkhar" dailies, and Russian-language "Golos Armenii".

(*See below the list and brief profile of the monitored media.*)

The monitoring objects were: all publications in the aforementioned newspapers, main newscasts, news/analytical programs and commentary programs of the aforementioned TV companies containing any reference to the November 27, 2005 referendum, draft amendments to the Constitution, etc.

III. MONITORING METHODOLOGY

Monitoring methodology differed depending on the media type.

1. METHODOLOGY OF TV MONITORING

The methodology of TV monitoring, in turn, differed depending on the type of the programs studied (news, news/analytical and commentary programs).

A. NEWS AND NEWS/ANALYTICAL PROGRAMS

The methodology of monitoring news and news/analytical programs included:

- Counting the total duration (in seconds) of every main newscast, every news/analytical program of the TV company, except weather forecast, political and commercial advertising, announcements, TV schedule presentations, etc.

- Counting the total number of TV pieces (in absolute values) in every main newscast, every news/analytical program of the TV company, except the weather forecast, political and commercial advertising, announcements, TV schedule presentations, etc.

A TV piece was defined as follows:

An airtime unit, distinct in its theme, composition and design, i.e.:
a. an individual story in a newscast;
b. an individual communication presented by the program host;
c. a thematically distinct part (section, story) of a program, touching on various issues/problems;
d. a thematically distinct question and answer in a TV interview, touching on various issues/problems;
e. a program or an interview on a single issue/problem was not subdivided and was viewed as a single piece;
f. introductory announcements of the TV pieces were viewed as a part of the story they referred to;
g. headlines/sub-headlines, leads, texts of the host introducing the TV pieces (report, etc.) were viewed as a part of the piece (report, etc.) they referred to.

- Counting the total number (in absolute values) of mentions of the November 27, 2005 referendum, the constitutional amendments, etc. in TV pieces of every main newscast and news/analytical program of the TV company. Only one mention of the monitored subject was recorded for each TV piece.

- Counting the total duration (in seconds) of mentions of the November 27, 2005 referendum, the constitutional amendments, etc. in TV pieces of every main newscast and news/analytical program of the TV company.

- Counting the total number (in absolute values) of positive, negative and neutral mentions of the November 27, 2005 referendum, the constitutional amendments, etc. in TV pieces of every main newscast and news/analytical program of the TV company. Only one attitude to the monitored subject was recorded for each TV piece.

Tinted (positive, negative) mentions were understood to be those that gave the audience obviously positive or negative impressions about the subject matter (i.e. for or against the draft amendments to the Constitution). In cases where these impressions were not unambiguous, the mention was recorded as neutral. If the monitor had doubts as to the impressions conveyed to the audience, the mention was interpreted as being neutral. *(The same principle applied to the monitoring of commentary programs and newspaper publications.)*

- Recording (in absolute values) the mentions of subjects directly related to constitutional reform in every TV piece in every main newscast and news/analytical program of the TV company.

Following is the list of monitored subjects related to constitutional reform:

1. Rights and freedoms of the RA citizens
2. Authority of the RA President
3. Authority of the RA National Assembly
4. Jurisdiction and authority of the RA Government
5. Independence of the Armenian judiciary
6. Status and authority of the RA Prosecutor's Office
7. Local self-government
8. Issue of dismissal of community heads
9. Status of Yerevan
10. Sphere of information and freedom of expression
11. Dual citizenship
12. Electoral rights and referenda
13. Foundations of constitutional order and other general related issues
14. Issues related to the preparations and the conduct of the November 27, 2005 referendum.

The subjects listed above were identified on the expert level. These included 12 main thematic sections (points 1-12) of the draft constitutional amendments put on the November 27, 2005 referendum. In addition, two more issues (points 13 and 14) were included. Thus, point 13 (Foundations of constitutional order and other general related issues) treated subjects contained in the constitutional reform, but not covered in points 1-12, whereas point 14 treated procedural issues related to the preparations and the conduct of the referendum. *(The aforementioned list of subjects was also used for monitoring commentary programs and newspaper publications.)*

B. COMMENTARY PROGRAMS

The methodology of monitoring commentary programs included:

- Recording the main participants of the program, including the first and last names and position/occupation of every participant.

- Identifying (in absolute values) the subject presence form:
1. a program fully dedicated to the monitored subject;
2. a program partially dedicated to the monitored subject or containing any mentions of it.

- Identifying (in absolute values) the nature of attitude (positive, negative, or neutral) to the monitored subject in the program. Only one attitude to the monitored subject was recorded for each program.

- Recording (in absolute values) the mentions of subjects related to constitutional reform in every program. *(See above for list of subjects.)*

2. METHODOLOGY OF NEWSPAPER MONITORING

- Counting the total number of pieces (in absolute values) in every issue of every newspaper, except weather forecast, political and commercial advertising, announcements, TV program schedules, horoscopes, crosswords, etc. Various supplements to newspapers were not monitored.

A newspaper piece was defined as follows:

a. A unit of newspaper text that is distinct in its theme, composition and design (article, report, etc.);
b. Piece announcements were considered a part of the material they referred to;
c. Headlines, subtitles and leads introducing the pieces were considered a part of the piece they referred to;
d. Editorial comment on various pieces clearly marked as “Editor’s Note”, “Comments from the Editor”, etc. were viewed as separate pieces;
e. Photographs (drawings, sketches, cartoons, collages, illustrations, charts, etc.), which were not part of any newspaper piece, yet contained a headline or a text or conveyed a certain message, were viewed as separate pieces. If a photograph accompanied a newspaper piece, it was considered a part of the piece it referred to.

- Identifying (in absolute values) the subject presence form:

1. counting the number of newspaper pieces fully dedicated to the monitored subject;

2. counting the number of newspaper pieces partially dedicated to the monitored subject or containing any mentions of it.

- Counting the total number (in absolute values) of mentions of the November 27, 2005 referendum, the draft constitutional amendments, etc. in the pieces of every issue of the monitored newspaper. Only one mention of the monitored subject was recorded for each piece.

- Counting the total number (in absolute values) of positive, negative and neutral mentions of the November 27, 2005 referendum, the draft constitutional amendments, etc. in the pieces of every issue of the monitored newspaper. Only one attitude to the monitored subject was recorded for each piece.

- Recording (in absolute values) the mentions of subjects directly related to constitutional reform in every piece. *(See above for the list of subjects.)*

IV. THE LIST AND BRIEF PROFILES OF THE MONITORED MEDIA

PUBLIC TELEVISION OF ARMENIA (PTA) - public TV and radio company, founded in 2001. The governing body is the Council of Public TV and Radio Company. Airtime - 19 hours per day.

The PTA First Channel was monitored, in particular: main newscast **"Haylur"** and Sunday news/analytical program **"360 degrees"**; commentary programs **"The Crossroads"** and **"5th wheel".**

"Haylur" newscast was aired 6 days a week - 6 times a day Monday through Friday, and 5 times on Saturday. The objects of monitoring were the main "Haylur" issues at 21:00, except the November 24 issue, which was aired at 19:00. A total of 18 issues were monitored in the whole period of monitoring.

"360 degrees" news/analytical program was aired once a week at 20:00 on Sundays. A total of 3 issues of "360 degrees" were monitored in the whole period of monitoring.

Commentary program **"The Crossroads"** was aired 3 times a week (on Tuesdays, Thursdays and Fridays) at 18:50, except the November 24 issue, which was aired at 18:20. A total of 9 issues of "The Crossroads" were monitored in the whole period of monitoring.

Commentary program **"5th wheel"** was aired once a week at 22:00 on Mondays. A total of 3 issues of "5th wheel" were monitored in the whole period of monitoring.

■

"ALM" - private TV company, founded in 2000 by the President of "ALM-Holding" Tigran Karapetian. Airtime - 21 hours per day.

The following programs were monitored on "ALM": main newscast **"Day by**

Day” and its Sunday news/analytical issue; commentary programs **“Position”** and **“Price of the Question”**.

“Day by Day” newscast was aired 7 days a week - 4 times a day Monday through Saturday, and once a day on Sundays. The objects of monitoring were the main issues of “Day by Day” at 20.00, and the Sunday issues at 17:00 (November 6) and 14:00 (November 20). A total of 20 issues were monitored in the whole period of monitoring.

Commentary program **“Price of the Question”** was aired twice a week (on Tuesdays and Saturdays) at 21:30. A total of 5 issues of “Price of the Question” were monitored in the whole period of monitoring.

Commentary program **“Position”** was aired once a week (on Thursdays) at 21:30. A total of 3 issues of “Position” were monitored in the whole period of monitoring.

■

“ARMENIA” - private TV company, founded in 1998. The founders are the Cafesjian Family Fund and the Sargsian Family Fund. Airtime - 24 hours per day.

The following programs were monitored on “Armenia”: main newscast **“Zham”** and commentary program **“Indeed”**.

“Zham” newscast was aired 7 times a week - 4 times a day Monday through Saturday and once a day on Sundays. The objects of monitoring were the main issues of “Zham” at 20:30. A total of 21 issues were monitored in the whole period of monitoring.

Commentary program **“Indeed”** was aired 5 times a week Monday through Friday at 19:00, except two issues on November 7 and 8, which were aired at 22:30. A total of 15 issues of “Indeed” were monitored in the whole period of monitoring.

■

SECOND ARMENIAN TV CHANNEL (SECOND CHANNEL) - private TV company, founded in 1998 by private persons. Airtime - 18 hours per day.

The following programs were monitored on the Second Channel: main newscast **“Lraber”** and **“Sunday Lraber”** news/analytical program, commentary programs **“The Right to Tell”** and **“The Fourth Studio”**.

“Lraber” newscast was aired 6 days a week - 3 times a day on Mondays and 5 times a day Tuesday through Saturday. The objects of monitoring were the “Lraber” issues at 23.00, except the November 25 issue, which was aired at 20:00. A total of 18 issues were monitored in the whole period of monitoring.

“Sunday Lraber” news/analytical program was aired once a week on Sundays at 21:00. A total of 3 issues of “Sunday Lraber” were monitored in the whole period of monitoring.

Commentary program **“The Fourth Studio”** was aired as part of “Lraber” news program. A total of 9 issues of “The Fourth Studio” were monitored in the whole period of monitoring.

Commentary program **“The Right to Tell”** was aired once a week at 21:30 on Saturdays. In addition, a special edition of “The Right to Tell” was aired on at 20:30 on November 12. A total of 4 issues of “The Right to Tell” were monitored in the whole period of monitoring.

■

“HAYASTANI HANRAPETUTIUN” - daily newspaper (comes out five times a week), founded in 1990 by “Hanrapetutiun” CJSC. Standard size - 8/A2 pp. Registered circulation - 6,000 copies. A total of 15 issues came out during the period of monitoring, including one issue on 12/A2 pp.

■

“RESPUBLIKA ARMENIA” - Russian-language newspaper (comes out twice a week), founded in 1990 by “Hayastani Hanrapetutiun-Respublika Armenia” CJSC. Standard size - 8/A3 pp. Registered circulation - 2,000 copies. A total of 6 issues came out during the period of monitoring, including one issue on 16/A3 pp.

■

“ARAVOT” - daily newspaper (comes out five times a week), founded in 1994 by “Aravot Daily” LLC. Standard size - 8/A3 pp. Registered circulation - 4,100 copies. A total of 15 issues came out during the period of monitoring, including 4 issues on 16/A3 pp and 1 issue on 12/A3 pp.

■

“AZG” - daily newspaper (comes out five times a week), founded in 1991 by “Azg Daily” LLC. Standard size - 8/A3 pp. Registered circulation - 3,000 copies. A total of 15 issues came out during the period of monitoring. 8 of them had “Azg-Nerdir” supplements, which were not monitored.

■

“HAIKAKAN ZHAMANAK” - daily newspaper (comes out five times a week), founded in 1997 by “Dareskizb” LLC. Standard size - 8/A3 pp. Registered circulation - 4,840 copies. A total of 15 issues came out during the period of monitoring, including 4 issues on 12/A3 pp.

■

"HAYOTS ASHKHAR" - daily newspaper (comes out five times a week), founded in 1997 by "'Hayots Ashkhar Daily Editorial Office" LLC. Standard size - 8/A3 pp. Registered circulation - 3,500 copies. A total of 15 issues came out during the period of monitoring, including 2 issues on 16/A3 pp and 1 issue on 12/A3 pp.

■

"GOLOS ARMENII" - Russian-language newspaper (comes out three times a week), founded in 1991 by "Golos" LLC. Standard size - 8/A2 pp. Registered circulation - 3,500 copies. A total of 9 issues came out during the period of monitoring. 3 of them came out with "Monitor.Ru" supplements, which were not monitored.

V. TECHNOLOGY OF TV AND NEWSPAPER MONITORING

In order for the findings to be comparable, the data received from monitoring the news, news/analytical and commentary programs of every TV company and pieces in every newspaper were summarized on a weekly basis and for the entire whole period of monitoring.

VI. THE RESULTS OF TV AND NEWSPAPER MONITORING

Following are the monitoring results for every monitored TV company and newspaper summarized for the whole period of monitoring (November 5-25, 2005).

PUBLIC TELEVISION OF ARMENIA (FIRST CHANNEL)

The total duration of the monitored main issues of "Haylur" newscast was 48,985 seconds, of which 11,459 seconds (or 23.4%) were dedicated to the constitutional reform, the upcoming referendum and other related issues. 98 (or 19.7%) of the 497 TV pieces from "Haylur" touched on a monitored subject. Most of the pieces dedicated to a monitored subject were either neutral (49) or positive (41) in tone. Most of the positive coverage was found in reports on the campaign conducted by the supporters of the proposed constitutional amendments ("Yes" campaign headquarters). Those reports conveyed their position on a number of general issues related to the Constitution, the preparations and the conduct of the referendum, as well as on specific provisions of the draft on dual citizenship, authority of the President and the National Assembly, rights and freedoms of citizens. 8 news pieces were negative in their tone. In them, the opponents of the Amended Constitution (the "No" campaign headquarters) urged to vote against the draft and, later on, called for boycotting the referendum.

As for the scope of subjects, "Haylur" covered all sections of the draft constitutional amendments, except the issue of dismissal of community heads.

The most frequently covered subjects on the news program included issues related to the preparations and the conduct of the November 27, 2005 referendum (in 79 pieces) and other general issues related to constitutional amendments (32). Dual citizenship was touched upon in 15 pieces, whereas the authority of the President, and rights and freedoms of citizens were talked about in 12 pieces each. 9 pieces talked about the authority of the National Assembly. Local self-government and independence of the judiciary were treated in 5 pieces each. The remaining subjects were mentioned even less frequently.

2,604 seconds (or 29.3%) of the 8,877 seconds of the monitored "360 degrees" news/analytical program were dedicated to a monitored subject. The monitored subject was mentioned in 6 of the 18 pieces of the Sunday program. In 4 cases the mentions were neutral. There were also 2 positive mentions in the coverage of President Kocharian's meeting with students of Yerevan State University and the President's visit to Greece. The issue of constitutional amendments was raised during both events.

A total of 14,063 seconds (or 24.3%) of the 57,862 seconds of the monitored "Haylur" and "360 degrees" airtime were dedicated to constitutional reform. The coverage was neutral in 53 pieces, positive in 43 pieces and negative in 8 pieces.

All the three monitored issues of "5th wheel" commentary program were fully dedicated to the monitored subject. Two of the programs were neutral in tone. Their participants expressed both positive and negative opinions about the amendments to the Constitution. In one of the programs, there was a discussion for and against the issue of dual citizenship. Another program was a discussion of Armenia's European integration prospects in the light of constitutional amendments, particularly the ones related to the rights and freedoms of citizens, and separation of power between the legislative and executive branches. The judiciary reform, included in the draft put on the referendum, was the main subject of the third program. Both participants of that program expressed positive opinion about that part of the amendments.

PTA First Channel started a new program called "The Crossroads" in the period of the referendum campaign. All of its 9 issues were fully dedicated to constitutional amendments. Guests of "The Crossroads" were, alternately, representatives of the "Yes" and "No" camps. Thus, 5 of the program's issues were positive, and 4 - negative. They mainly touched on general subjects (in 9 cases), organizational issues related to the referendum, dual citizenship and authority of the President (8 each), rights and freedoms of citizens (6) and authority of the parliament (5).

"ALM"

The total duration of the monitored issues of "Day by Day" main newscast and its Sunday news/analytical issue was 35,111 seconds, of which 9,182

seconds (or 26.2%) were dedicated to the constitutional reform. 58 (or 17.3%) of the 335 TV pieces touched upon a monitored subject. Most of the pieces on that subject were neutral in nature (35), whereas 20 were positive and 3 negative. Like in the case of PTA, tinted mentions appeared mainly in news reports on campaign by the supporters and opponents of constitutional amendments, which conveyed their opinions about various provisions of the draft. Similarly to "Haylur", "ALM" newscast's most frequently covered subjects included issues related to the preparations and the conduct of the referendum (in 45 pieces), other general issues related to constitutional reform (27), dual citizenship (12) and authority of the President (10). Authority of the National Assembly, and rights and freedoms of citizens were talked about in 9 and 8 pieces, respectively. Other subjects were mentioned even less frequently. There were no mentions of the status of Yerevan or the sphere of information and freedom of speech.

None of "ALM" commentary programs ("Position" and "Price of the Question") were fully dedicated to the monitored subject. All the 3 neutral partial mentions in "Position" dealt with general constitutional issues and the referendum, as well as dual citizenship, presidential authority, civil rights and freedoms. As for the "Price of the Question", only one of the 5 monitored issues of the program had a guest. The only person appearing on the other four issues of the program was the owner of "ALM" and the program's host, Tigran Karapetian. Of the 5 partial mentions in the "Price of the Question", 3 were positive and 2 - neutral. The program touched upon general issues and authority of the President, dual citizenship and the status of Yerevan, issues related to the referendum, local self-government, authority of the parliament and civil rights and freedoms.

"ARMENIA"

A total of 29,144 seconds of the main issues of "Zham" newscast were monitored in the whole period of monitoring, of which 7,624 seconds (or 26.2%) were dedicated to the constitutional reform. Thus, "Armenia" and "ALM" devoted an equal amount of news airtime to the monitored subject (in percents). However, the share of pieces dedicated to the monitored subject in the total number of monitored pieces on "Armenia" is almost twice as high as on "ALM". Of 191 pieces on "Zham", 63 (or 33%) were devoted to the subject of the Constitution. In most cases (38), the amendments put on the referendum were talked about in a positive tone, whereas in 25 cases the mentions were neutral. In addition, "Zham" is the only newscast among the monitored news programs that did not contain a single negative mention of the constitutional amendments. For them, the positive context was mainly the coverage of the campaign conducted by the supporters of the Amended Constitution. The coverage of the campaign by the opponents of the draft amendments was presented in such a way that the context turned out to be neutral. In other words, the journalists either ignored the content of an event they were covering, or the negative opinion about the reform, contained in the positions of the main heroes of the coverage, was compensated by commentary in one way or another. The most atten-

tion was paid to general issues (in 47 pieces) and issues related to the referendum (36). Dual citizenship and the authority of the parliament received 16 mentions each; the authority of the President, and the rights and freedoms of citizens received 13 mentions each, whereas jurisdiction and authority of the RA Government, and independence of the judiciary were mentioned 5 times each. Other subjects were mentioned even less frequently. The sphere of information and freedom of speech, status and authority of Prosecutor's Office, and dismissal of community heads were not mentioned in the newscast at all.

In the period of monitoring, commentary program "Indeed" on "Armenia" channel dedicated 13 out of its 15 issues to constitutional reform (12 were dedicated to the subject fully, and 1 - partially). In 12 issues, supporters of the draft amendments were invited to appear on the program and they spoke positively about the amendments. The only negative opinion on an "Indeed" issue was voiced when a representative of the opposition, Chairman of the "Block of National Democrats" party Arshak Sadoyan was invited to the program. The main subjects discussed were, in particular, general issues (13), authority of the President and the parliament (10 each), issues related to the conduct of the referendum, rights and freedoms of citizens (9 each), and dual citizenship (5).

SECOND ARMENIAN CHANNEL

A total of 39,206 seconds of "Lraber" newscast were monitored in the whole period of monitoring, of which 12,607 seconds (or 32.2%) were dedicated to the constitutional reform. Of 400 TV pieces in "Lraber", 106 (or 26.5%) touched on the monitored subject. Like in the case of "Armenia", positive mentions were dominant in the Second Channel ("Lraber") coverage of the subject (58); there were also 39 neutral and 9 negative mentions. The positive context was mainly present in reports on the campaign conducted by the supporters of the constitutional amendments, whereas the negative context was present in speeches by the opponents. The most attention was paid to general issues (in 82 pieces) and issues related to the referendum (73). Then came other subjects, such as authority of the President (24), dual citizenship, rights and freedoms of citizens (23 each), authority of the parliament (19), independence of the judiciary (10). On the whole, "Lraber", like "Haylur" (PTA), covered all thematic sections of the draft, except the issue of dismissal of community heads.
Of the 5,529 seconds of "Sunday Lraber" news/analytical program that were monitored, 1,326 seconds (or 24%) were dedicated to the monitored subject. It was mentioned in 7 out of 22 pieces of the Sunday program, mostly in the positive context (in 5 cases). In 2 cases the mentions were neutral. There were no negative mentions. In most cases, they talked about general issues, and preparations and the conduct of the referendum.

Of the total 44,735 seconds in "Lraber" and "Sunday Lraber" that were monitored, 13,933 seconds (or 31.1%) were dedicated to the constitutional reform. In 63 pieces, the coverage was positive, in 41 - neutral, and in 9 - negative.

Thus, the Second Channel paid the most attention among all studied broadcast media to the monitored subject. The coverage on the Second Channel, as well as on “Armenia”, was distinguished by very clear slant: tinted (in most cases - positive) mentions exceeded the neutral ones.

This slant towards the positive was typical for the Second Channel’s commentary programs, “The Right to Tell” and “The Fourth Studio”, as well. Of the 9 monitored issues of “The Fourth Studio”, 7 were fully dedicated to the constitutional amendments, whereas 2 were partially dedicated to the subject. The only negative opinion about the draft was heard in the program that was partially dedicated to the subject. The guests on 8 other issues talked in support of approving the Amended Constitution. 3 of the 4 issues of “The Right to Tell” were fully dedicated to the monitored subject (2 were positive and 1 was negative). Participants of both programs discussed various aspects of the draft amendments, except the issue of dismissal of community heads, the status of Yerevan, electoral rights and referenda.

“HAYASTANI HANRAPETUTIUN”

Of 698 monitored pieces in “Hayastani Hanrapetutiun”, 125 (or 17.9%) were dedicated to the constitutional reform, of which 103 (82.4%) were dealing with the subject fully and 22 (17.6%) - partially. In 72 pieces, the coverage was neutral, whereas in 53 cases - positive. Unambiguously negative attitude to the constitutional reforms was not found in any single piece in this official daily. The newspaper widely covered the campaigns of the “Yes” and “No” headquarters. Articles about the campaign by the supporters of the draft were presented mostly in a positive context, whereas articles about the campaign by opponents of the amendments were neutral. In particular, there were various positive opinions about the expansion of parliamentary and the reduction of presidential powers, more independence of the judiciary, removal of the ban on dual citizenship and new developments in the area of local self-government. As a whole, the newspaper paid most attention to issues related to preparations and the conduct of the referendum (in 60 pieces), general issues (59), authority of the National Assembly (34), dual citizenship (23), authority of the President (20), rights and freedoms of citizens (19), independence of the judiciary (16). All other aspects of constitutional amendments were also touched on in the “Hayastani Hanrapetutiun” pieces.

“RESPUBLIKA ARMENIA”

Of 150 monitored pieces in “Respublika Armenia”, 32 (or 21.3%) were dedicated to the constitutional reform, of which 26 (81.2%) were dealing with to the subject fully and 6 (18.8%) - partially. Like in “Hayastani Hanrapetutiun”, the official Russian-language newspaper with the same name was characterized by the absence of negative pieces. There were 19 neutral and 13 positive mentions only. In particular, there were positive opinions about the increase of the authority of the National Assembly at the expense of reduction of presidential powers, as well as about more general balance between the three branches of power. All the sections of consti-

tutional amendments were touched upon in the “Respublika Armenia” pieces in one way or another, with the exception of two subjects - the sphere of information and freedom of speech, and authority of the Prosecutor’s Office. However, most of the attention was paid to general issues and issues related to the referendum (in 19 and 14 pieces, respectively).

“ARAVOT”

Of 701 monitored pieces in “Aravot”, 186 (or 26.5%) were dedicated to the constitutional reform, of which 157 (84.4%) were dealing with to the subject fully and 29 (15.6%) - partially. The coverage was mostly neutral (133 mentions). The number of negative mentions (42) exceeded the number of the positive ones (11) by nearly four times. This can be explained by the newspaper’s attention to the campaign and the position of opponents of the draft constitutional amendments. Removing the ban on dual citizenship was frequently mentioned as one of the negative aspects of the draft amendments, among others. Pieces in “Aravot” touched on all sections of the Constitution with more or less intensity, but most of the pieces talked about issues related to preparations and the conduct of the referendum (125) and general issues (72). All of the other subjects were mentioned in about 20 cases or less - authority of the President (21), dual citizenship (17), authority of the parliament (15), rights and freedoms of citizens (14).

“AZG”

Of 530 monitored pieces in “Azg”, 43 (or 8.1%) were dedicated to the constitutional reform, of which 33 (76.7%) were dealing with the subject fully and 10 (23.3%) - partially. “Azg” was the least interested in the subject of the Constitution among all the monitored print media. Also, it is the only newspaper where the number of tinted mentions is almost equal - 8 negative and 7 positive mentions. In most cases, the mentions were neutral (28). Removal of the ban on dual citizenship and expansion of rights and freedoms of citizens were noted among the positive changes in the Constitution. Negative mentions were found mostly in reports about the campaign conducted by opponents of the constitutional amendments, which contained negative opinions. The newspaper touched on all the sections of constitutional amendments. The daily more frequently talked about issues related to the referendum (in 39 cases) and general issues (21). Then come the rights and freedoms of citizens (15), electoral rights and referenda (11).

“HAIKAKAN ZHAMANAK”

Of 491 monitored pieces in “Haikakan Zhamanak”, 153 (or 31.2%) were dedicated to the constitutional reform, of which 131 (85.6%) were dealing with the subject fully and 22 (14.4%) - partially. “Haikakan Zhamanak” paid the most attention to the subject of the Constitution, among all the monitored print media. The number of tinted and neutral mentions in this news-

paper was almost equal, with the tinted mentions being mostly negative. There were 76 neutral, 69 negative and 8 positive mentions of constitutional amendments. In terms of the negative mentions, there was criticism of the constitutional amendments as a whole, as well as criticism of individual provisions of the draft, including the provisions on the authority of the executive and the legislative branches of power, and dual citizenship. Attention was paid to the campaign and the position of opponents of the Amended Constitution. “Haikakan Zhamanak” touched on all the sections of constitutional amendments (in most cases - actively). In the vast majority of pieces, they talked about issues related to preparations and the conduct of the referendum (127). General constitutional issues were raised in 72 pieces, rights and freedoms of citizens - in 43 pieces, electoral rights and referenda - in 39 pieces, authority of the President and parliament - in 36 and 33 cases, respectively. The newspaper touched on issues of dual citizenship, jurisdiction and authority of the Government in 22 and 20 pieces, respectively.

“HAYOTS ASHKHAR”

Of 539 monitored pieces in “Hayots Ashkhar”, 145 (or 26.9%) were dedicated to the constitutional reform, of which 124 (85.5%) were dealing with the subject fully and 21 (14.5%) - partially. This was the second highest attention to the monitored subject among the studied newspapers after “Haikakan Zhamanak”. Similarly to “Haikakan Zhamanak”, the ratio between neutral and tinted mentions of the subject in “Hayots Ashkhar” is practically the same. However, unlike “Haikakan Zhamanak”, the vast majority of the tinted mentions are positive (positive - 70, negative - 3, neutral - 72). This reversed picture can also be seen in pieces dedicated to individual provisions of the draft amendments. In particular, there were positive opinions about distribution of power between the executive and legislative branches and about dual citizenship. Also, attention was paid to the campaign and the positions of supporters of the Constitution. Like in “Haikakan Zhamanak”, 127 pieces in “Hayots Ashkhar” touched on issues related to preparations and the conduct of the referendum. The next most frequently mentioned subjects included general issues related to constitutional amendments (70), electoral rights and referenda (51), rights and freedoms of citizens (47), authority of the parliament and the President (31 and 28, respectively), dual citizenship (27), jurisdiction and authority of the Government (20). Also, like in “Haikakan Zhamanak”, “Hayots Ashkhar” also touched (mostly actively) all sections of the constitutional amendments, except the issue of dismissal of community heads.

“GOLOS ARMENII”

Of 488 monitored pieces in “Golos Armenii”, 56 (or 11.5%) were dedicated to the constitutional reform, of which 45 (80.4%) were dealing with the subject fully, while 11 (19.6%) - partially. Even though most of the coverage was neutral in nature (34 mentions), the ratio of tinted mentions in “Golos Armenii” is almost the same as in “Aravot”, but in reverse: the number of

positive mentions exceeds the number of negative mentions by more than four times (18 and 4, respectively). On the newspaper's pages, positive attitude was most frequently expressed in connection with removing the ban on dual citizenship and redistribution of power between the President and the parliament. Pieces in "Golos Armenii" touched on all sections of the Constitution in one way or another, but more often attention was paid to general issues and issues related to the referendum (31 and 28, respectively). Dual citizenship was mentioned in 16 cases, authority of the President - in 13 cases, authority of the National Assembly and independence of the judiciary - in 12 cases each, and rights and freedoms of citizens - in 11 cases.

VII. CONCLUSION

1. News coverage on TV channels. Out of the total news coverage of broadcast media monitored the greatest amount of ***air time*** was allocated to the referendum of November 27, 2005, the draft amendments to the RA Constitution and other related issues by the Second Armenian TV Channel (31.1% of the total amount of the news air time studied on the channel). It is followed by "Armenia" and "ALM" TV companies (26.2% each), First Channel of Public Television of Armenia (24.3%).

However, in terms of ***the quantity of news TV pieces*** on the monitoring subject, the top position is taken by "Armenia" (33% of the total number of news pieces studied on the channel), followed by the Second Channel (26.8%), PTA First Channel (20.2%) and "ALM" (17.3%).

2. Connotation coloring of the news coverage on TV channels. The most vividly expressed connotation was present in the studied news/news and analysis programs of the Second Channel and "Armenia". Here the connotation (mostly positive) references prevailed over the neutral ones. At the same time, "Zham" ("Armenia" TV) was the only news program, the coverage of which never had negative references. The news pieces of PTA and "ALM" were mostly neutral or positive in context. At all TV channels the connotation references appeared mostly in the reports of promotional campaigns waged by supporters and opponents of the amendments to the Constitution, quoting their opinion on various provisions of the draft on ballot. The small share of the negative coverage is due primarily to the fact that in many cases the reporting of the activities of the Amended Constitution opponents did not communicate on the content of their actions, thus resulting in neutral context.

3. Commenting programs. The monitored commenting programs of "Armenia" and Second Channel devoted 80% of the issues to the constitutional reform in full, while PTA First Channel devoted to the subject all the issues. The guests of these programs were usually the supporters or opponents of the draft amendments introduced to the referendum, thus, conditioning their connotation. However, in terms of connotation references a strong positive slant can be observed in the programs of "Armenia"

("Indeed") and Second Channel ("Fourth Studio" and "The Right to Say"). As to PTA, the almost balanced proportion of connotation references was present in "Crossroads" program, launched during the referendum run-up. Its guests interchangeably were representatives of "pro" and "con" of the draft amendments to the Main Law. Another program of the First Channel of Public Television, "5th Wheel", had mostly a "face to face" format, that is, its participants were both the supporters and opponents of constitutional amendments, expressing both positive and negative opinions. This resulted in the neutral nature of the program. Unlike these channels, the commenting programs of "ALM", "Attitude" and "Price of the Question", addressed the event number one for Armenia only "in passing". This probably reflected the stance of the TV company, since their host and direct participant is the owner of "ALM" himself. At the same time, the nature of partial references was either neutral or positive.

4. Coverage in print media. Of all newspapers monitored the greatest attention to the referendum, draft amendments to the Constitution, etc., was paid by "Haikakan Zhamanak" (31.2% of the total number of pieces studied in the daily). It is followed by "Hayots Ashkhar" (26.9%), "Aravot" (26.5%), "Respublika Armenia" (21.3%), "Hayastani Hanrapetutiun" (17.9%), "Golos Armenii" (11.5%), "Azg" (8.1%). All publications displayed quite significant interest to the subject. At the same time, the pieces, fully dealing with the constitutional reform, prevailed over the number of pieces, partially dealing with the subject.

5. Connotation coloring of newspaper coverage. Pieces in official "Hayastani Hanrapetutiun" and "Respublika Armenia" were presented only in neutral or positive context (no negative attitude was recorded in any of the pieces). The articles, dealing with the activities, the opinions of the proponents of the Amended Constitution bore mostly positive nature, and those of opponents - neutral.

The attitudes of "Haikakan Zhamanak" and "Hayots Ashkhar" are very similar, with a mirroring proportion. Both dailies had almost equal fraction of neutral and connotation references, yet these had polar coloring: in "Haikakan Zhamanak" negative references prevailed, while in "Hayots Ashkhar" the predominance was give to the positive ones. The criticism (on the pages of "Haikakan Zhamanak") and approval (in "Hayots Ashkhar") were contained in articles touching upon certain provisions of the draft amendments to the Constitution: in particular, positive/negative opinions were voiced over the power distribution between the executive and the legislative branches, the dual citizenship. "Haikakan Zhamanak" was actively covering the campaign and the stances of the opponents of the draft of Amended Constitution, while "Hayots Ashkhar" focused on those of its supporters.

Such parallel is noticeable also in the coverage of two other newspapers - "Aravot" and "Golos Armenii". Against the background of prevailing neutral references in both newspapers, the proportion of connotation mentionings

is quantitatively the same, yet qualitatively polar: in “Aravot” the negative references are almost four time more than the positive ones, in “Golos Armenii” - the positive references exceed the negative ones more than four times. There was also a drastic difference in the attitude expressed in the newspaper pieces towards specific aspects of the constitutional reform. For example, the abolition of the ban on dual citizenship was seen on the pages of “Aravot” to be one of the drawbacks of the draft, while in “Golos Armenii” it was qualified as its achievement.

“Azg” daily, paying least attention to the subject of Constitution, is the only publication having an almost equal proportion of positive and negative references, and the attitude of the newspaper may generally be described as neutral.

6. The coverage by print and broadcast media of subjects, related to constitutional reform. In terms of mentioning of the subjects, being directly related to the constitutional reform, the lead topics for both broadcast and print media monitored in their coverage were the issues of organizing and conducting a referendum, and on other general matters of the constitutional amendments. The third most frequently discussed subject on TV channels was the dual citizenship. In newspapers this subject was rated only the sixth, while the rights and freedoms of the RA citizens were the third. On TV the rights and freedoms rated the fifth. The television spoke a bit more about the authority of the RA President (4th place on TV and 5th in newspapers), and the press - about the authority of the RA National Assembly (4th place in newspapers and 6th on TV). The elective right and referenda is another subject that scored over one hundred references in newspapers but did not get even a dozen mentionings on TV air. Almost equal positions in broadcast and print media were given to: the jurisdiction and authority of the RA Government, the independence of the judiciary, local self-government and the status of Yerevan. The outsiders both on TV and in newspapers were: the status and the competence of the RA Prosecutor’s Office, the sphere of information and freedom of expression, the issue of the dismissal of communal heads.

7. Media direction. All TV companies and four out of seven newspapers (“Hayastani Hanrapetutiun”, “Respublika Armenia”, “Hayots Ashkhar”, “Golos Armenii”) monitored covered the forthcoming referendum, the amendments to the Constitution, etc., with a slant towards the supporters of the draft. A strongly critical stance was taken by “Haikakan Zhamanak”, while “Aravot” was inclined towards the opponents of the document. “Azg” did not display obvious likes or dislikes.

Yerevan Press Club expresses its gratitude to Public Television of Armenia, “ALM”, “Armenia” and Second Armenian TV Channel for technical assistance provided during the monitoring.

VIII. EXPERT EVALUATION

An expert evaluation was conducted in order to determine how adequately and with what quality did the monitored media inform the audience about the content of constitutional reform.

The Chairman of the "Democracy" NGO, lawyer Vardan Poghosian served as the expert.

Newspaper and TV pieces containing analysis, commentary and opinion on the draft constitutional amendments were selected from the studied media in the course of the monitoring (from November 5 to 25, 2005).

Considering that print media have wider opportunities for more detailed examination of issues of public importance, including the content of the proposed amendments, the expert analyzed mainly newspaper pieces.

The study showed that the pieces with neutral and in-depth analysis of the essence of the issue were few in number, while their impact was insignificant. Below are some examples of such materials that may be divided into three groups.

The first group includes pieces containing mostly statements (sometimes alternating with swearing) and labels. For example, an article in "Hayots Ashkhar" *(November 11, 2005)* entitled "Why Do They Speculate with the Issue of Dual Citizenship" did not touch on any real problems that many results from lifting the ban on dual citizenship, but only declared that *"in reality, (...) this is an unsuccessful attempt to cover up the "double standards" in the current position of Armenian National Movement*".

An editorial article in "Haikakan Zhamanak" *(November 17, 2005)* entitled "Stupidity without Borders" was in the same spirit. The article contains the following wording: *"In that case, a natural question comes up: what's the referendum (moreover, a mandatory one) is for? Why are you holding the referendum? Is it to waste money from community budget, you, Venice (...)"*, or *"If we look at draft as a legal document approved by the Venice or local boneheads (...)"*, etc.

The second group includes pieces where one can see incompetence of their authors or intentional distortion and disinformation of the readers.

One of such examples is an article called "Beware - Conspiracy" by Anna Mkrtchian, published in "Haikakan Zhamanak" *(November 25, 2005)*. The piece contains perhaps only one accurate statement: *"In violation of the proper procedure, with this Draft "On Amending the Constitution", the administration has put to a referendum not only its proposals, but also those Constitutional norms that have not been amended."* Then the author insists that we must be careful, because the draft contains a conspiracy. She cites provisions that cannot possibly contain any conspiracy. This indicates that the author didn't want or couldn't understand the essence of those amend-

ments. Here are two examples. Citing Article 6 of the draft, the author thinks that removing the provision that *"laws that are recognized as contradicting the Constitution, as well as legal acts that are recognized as contradicting the Constitution and the laws, shall not have legal force"* is a negative thing. At the same time, she fails to mention other provisions, included in the draft in place of the said provision, which clearly define the hierarchy of legal norms. The author also touches upon the right to inviolability of property, saying that *"the citizens of Armenia will not have the right to inviolability of property."* However, the draft amendments to the Constitution clearly state that the Republic of Armenia recognizes and guarantees the right to property (Article 8), which also implies its inviolability.

Another example of incompetence is an article by MP Armen Ashotian entitled "The Power Belongs to the People. Every Citizen Must Be Aware of That" *("Respublika Armenia", November 23, 2005)*. The article is dedicated to Chapter 8 of the draft constitutional amendments. In fact, the author cites the text of the current Constitution, but insists that these are the advantages of the draft amendments. In essence, Article 111 of the Constitution is practically not amended in any significant way, except for the last part that defines a time period, during which the National Assembly must discuss an issue in cases if an initiative to amend the Constitution comes from the President of the Republic. But from this, the author comes to a conclusion that *"the draft clearly differentiates between the rights and responsibilities of the President and the parliament".* Then he makes the following incorrect statement: *"I think it is very important that the draft contains a provision allowing for referenda on draft laws that are most important for the country and the people."* This provision is not new - it exists in the current Constitution as well. Also, it is not about referenda on the most important issues, but about any draft laws that may be put to a referendum. According to the author, Article 114 of the draft is particularly important, which says that Articles 1, 2 and 114 of the Constitution may not be amended. This provision is also not new - it is taken verbatim from the current Constitution.

Serious analysis is lacking in a "Hayastani Hanrapetutiun" *(November 23, 2005)* article called "Serious Guarantees of Justice", in which the author, Gohar Nurijanian, hardly ever talks about issues of justice, despite the headline. She makes some general comments that, in most cases, do not lead to any logical conclusion. In the article, the raises the issue of separation of power (President-parliament) and makes a strange statement that currently *"the relations between the President and the political majority"* cannot be an object of serious discussion, because political parties often change their positions, and *"in our country, it is possible to go to bed being a Socialist or a Democrat and then wake up being a Christian-Nationalist."* The author never explains the link between that and the President's relations with the National Assembly. At the end of the article, the author notes: *"They often say that this draft is a forced step on the way to integration into the European family. According to specialists, we have taken on this obligation as a member of the European family."* It turns out that, without the

specialists' opinion, the author could not reach the simple conclusion that we must carry out the obligations that we had taken on ourselves.

The third group includes pieces where authors or interviewees analyze various provisions of the draft amendments to the Constitution, but draw conclusions based on their own political or other subjective convictions.

For example, a piece in "Hayastani Hanrapetutiun" *(November 15, 2005)* called "From Hat to Local Ruler" is dedicated to issues of local self-government or, more specifically, Article 109 of the draft amendments to the Constitution, according to which dismissal of a community head requires an appropriate ruling of the Constitutional Court. Based on the amendments to this Article, the author of this publication, Aram Sargsian, draws an extremely positive conclusion, which is not justified, since local self-government is a separate and independent system of a democratic state and therefore should not be dependent on the executive branch in any way.

In a "Respublika Armenia" *(November 9, 2005)* article called "Mechanism of Democracy Deepening and Civil Society Building", author and constitutional law expert Aram Ananian talks about the positive changes in the procedures for forming the National Commission on Television and Radio, but fails to mention that the composition of the Commission will not be changed immediately, as was demanded by the Council of Europe.

In an article called "Guarantees of Independence of the Judiciary" published in "Respublika Armenia" *(November 16, 2005)*, Chairman of the National Assembly's Standing Committee on State and Legal Issues, doctor of law, professor Rafik Petrosian notes that, under the current Constitution, the Minister of Justice is responsible for creating promotion lists for judges, instituting disciplinary procedures against judges and petitioning the President for terminating judges. The author insists that, under the draft amendments, these functions will go to the Justice Council. However, these are already functions of the Justice Council, but the Council carries them out by recommendation of the Minister of Justice. According to the author, independence of judges would be guaranteed more, if their termination required National Assembly's approval. This is a point of view one may or may not agree with, but it would make any sense to think that this would provide *"100 percent independence of the judiciary"*, as Rafik Petrosian puts it.

"Aravot" published two interviews with political scientist Levon Zurabian *(November 19 and 24, 2005)*. These are perhaps the only two pieces out of all monitored publications that contain deep and serious analysis. First of all, it must be noted that, in both interviews, Levon Zurabian makes a number of accurate statements. In the first piece *("They Are Trying to Legalize the Violations with the Constitution", "Aravot", November 19, 2005)* he claims that the draft of constitutional amendments is prepared rather ignorantly from the point of view of the technique of legal amendments, which is an opinion one can agree with. The second statement is

the following: in the form in which the draft was presented, it is unclear what exactly was changed. An average citizen, who does not have to be a constitutional law expert, has to take the text of the current Constitution and the official bulletin or a special booklet with the draft and compare 117 articles in order to understand what was different in the draft. This is a blatant violation of the current law and human rights, because a citizen is forced to do the work of the National Assembly. In this regard, the interviewee's assessment is appropriate. Levon Zurabian also talked about provisions on disposition of property and dual citizenship. One can agree with him, when he says that, in comparison with the current Constitution, these provisions are regressive. The political scientist provided grounded arguments in connection with these two provisions.

In the second interview *("The Draft Contains a Threat of a Crisis ", "Aravot", November 24, 2005)* he talks about Articles 51 and 52 of the draft amendments that contain serious faults, because they do not contain a clear timetable for presidential elections in cases when the voting does not produce a winner or when one of the candidates dies. In principle, these articles have a threat of a crisis. Levon Zurabian's conclusions on these articles are grounded. At the same time, both interviews also contain ungrounded conclusions.

Thus, talking about the Article on the protection of privacy, he claims that the amendments are a regress, even though they are simply editing changes.

Examining Article 26 of the draft, which refers to the freedom of religion and conscience, the political scientist ignores the fact that Article 23 of the current Constitution contains a typo. It says that the freedom of religion and conscience may be limited only by law, on grounds provided for in Article 45 of the Constitution. In reality, Article 45 of the does not provide for any such grounds. It should be Article 44. The draft amendments simply corrected the typo.

On the whole, the article "The Draft Contains a Threat of a Crisis" reflects the political scientist's strongly critical attitude to the draft amendments. When asked by the journalist whether Levon Zurabian really doesn't see any balance of power between different branches in the draft, he says: *"Let's analyze - is that really the case?"* Then he cites only the negatives aspects of the document. The political scientist does not even want to talk about the provisions that provide that balance and creates an impression that the draft contains a threat of a crisis.

Based on these examples and on the data of monitoring conducted by Yerevan Press Club, according to which the media mostly talked about general issues related to constitutional reforms, one can conclude that the media did not sufficiently inform the public about the essence of constitutional amendments.

IX. GENERAL FINDINGS

Armenian media monitoring conducted from November 5 to 25, 2005 revealed that Armenian newspapers and TV companies paid a fair amount of attention (in terms of quantity) to the subject of the referendum on constitutional amendments. However, in covering the campaign, the vast majority of the monitored media ignored the principles of impartiality and pluralism. The public was not provided with comprehensive, reliable and competent information about the content of constitutional reform.

The above is true, above all, of the leading Armenian TV channels that are currently the most effective and influential instrument for shaping the public opinion in the country. Newspapers traditionally separated into rival camps and covered the campaign in accordance with their own political orientation. However, this was only the second time in history of YPC media monitoring during the most important political campaigns in Armenia since 1996 when TV channels turned out to be as biased as the print media. The first time such situation had occurred in 1996, when state TV channels dominated the market, whereas today Armenia has dozens of private TV companies and the law has transferred state broadcasting into public broadcasting.

While newspapers balanced each other, in a way, by standing firm on their opposing positions, and “Azg” was the only one of the monitored media where the numbers of positions for and against the draft constitutional amendments were roughly equal, all national TV channels contained a significant slant towards a single point of view supporting the draft. Such coverage on the part of the broadcast media constitutes a violation of universally accepted international standards.

Monitoring of official Armenian media (First Channel of Public Television of Armenia, “Hayastani Hanrapetutiun” and “Respublika Armenia” newspapers) revealed that they either completely failed to give voice to the opponents of the draft amendments (in the case of newspapers) or the supporters of the draft were given advantage over the opponents (in the case of TV). The latter constitutes a violation of Article 28 of the RA Law “On Television and Radio”. However, it is necessary to mention that “The Crossroads” program on First Channel turned out to be the only one among the monitored programs where the supporters and the opponents of the draft amendments received equal opportunities to formulate their positions.

Quality coverage of the referendum campaign was made difficult for a number of objective reasons. In particular, constitutional reform covered a wide specter range of principally important issues and it would be extremely difficult for the media to give enough attention to all of them. On top of it, the situation was made even more difficult by time constraints: significant changes to the draft amendments were being made to the last moment and the final version of the text was made public only a month and a half before the referendum.

The task of informing the public about the content of constitutional reform was made difficult also because it was, as a rule, the full amended text that was presented for discussion, where it was hard to separate the amendments from the original text. Only specialists who had studied the document in great detail could judge the advantages or faults of the proposed amendments. As a results, arguments “for” and “against” that were found in the press could refer to either the provisions of the current Constitution or the proposed amendments. This only served to confuse the majority of citizens and made it difficult for them to make an informed choice.

Other objective reasons included the insufficient development of the part of the RA legislation on referenda that regulates media activities in the period of referendum campaigns. However, it is also necessary to point out the practice of evading the law in order to advance political goals, which is becoming more common in the media.

The quality of campaign coverage was significantly affected by the over-politicized situation around the constitutional reform. The conduct of various political forces had resulted in a situation where the perception of the whole process was focused not so much on the content of the amendments, their positive or negative sides, but rather on the rivalry between the authorities and the opposition. It is not accidental that, in the monitored media, the campaign was most actively covered in newspapers with radically opposing political points of view - “Haikakan Zhamanak” and “Hayots Ashkhar”. In their coverage, the component of enlightening the public was clearly less prominent that the campaign/propaganda component.

On the whole, one can note that most of the attention in the media coverage of constitutional reform was given to issues related to preparations and conduct of the referendum and to general topics, whereas the essence of the amendments and their main provisions were pushed to the background. Thus, issues of principal importance, such as guarantees of freedom of speech and information, dismissal of community heads, status and authority of Prosecutor’s Office, received minimal coverage.
It is significant that the somewhat superficial approach to covering the essence and content of constitutional reform was adopted in equal measure by both broadcast and print media. However, one would think that newspapers, given their nature, would cover the subject more deeply and with more analysis than electronic media.

The monitoring allows one to reach a conclusion about the low level of the public policy culture in Armenia. While most of the monitored media showed some biasness and one-sidedness, it is obvious that they also encountered difficulties in finding appropriate people to provide the public with better knowledge about the content of constitutional reform. There was a clear lack of politicians and experts prepared to talk about the issues of interest to the public in the context of constitutional reforms in a responsible, objective, competent and uninhibited fashion.

The current political campaign had another typical trait: some media representatives complained that politicians from the opposition refused to be interviewed. That is how some of the media explained the imbalance in presenting various points of view on the draft amendments. To some extent, this fact also evidences the aforementioned problems with public policy. However, the main reason is probably the opposition's growing distrust of the pro-government media that, in turn, is a result of precedents when words uttered by opposition politicians had been distorted, their interviews had been edited or interviewers had shown excessive partiality. The lack of live information/political programs further aggravates this problem.

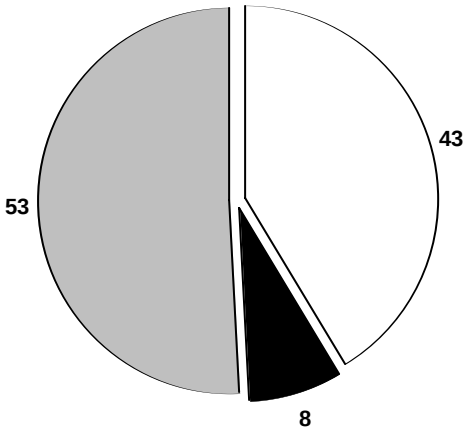
The monitoring of Armenian media coverage of constitutional reform once against brought out the negative trends in the area of information in Armenia that Yerevan Press Club, other local and international NGOs have been noticing for the past three-four years. These trends include retreat from pluralism, increasing government control (especially in the case of television), ignoring the information requirements of the society, decreasing role of the media in public and political processes.

Nature of Mentions of Constitutional Reform in TV Pieces (in Absolute Values)

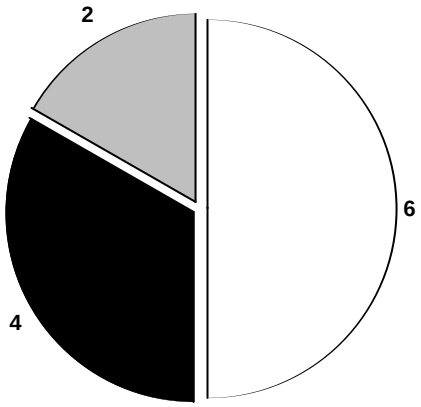
positive
negative
neutral

FIRST CHANNEL OF PUBLIC TELEVISION OF ARMENIA

News and New/Analytical Programs ("Haylur", "360 Degrees")

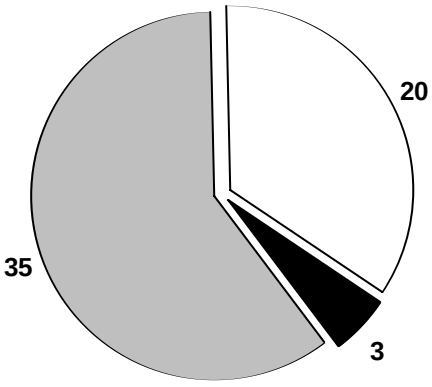


Commentary Programs ("The Crossroads", "5th wheel")

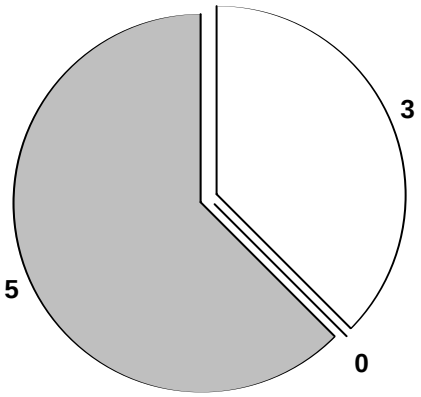


"ALM"

News and New/Analytical Program ("Day by Day")



Commentary Programs ("Price of the Question", "Position")

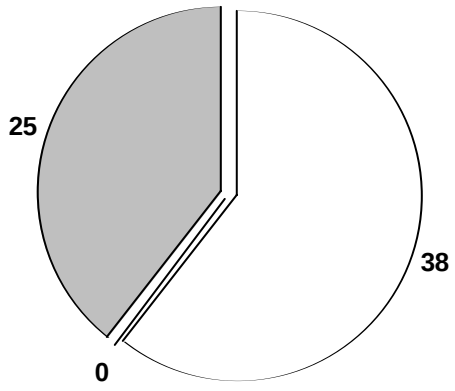


Nature of Mentions of Constitutional Reform in TV Pieces (in Absolute Values)

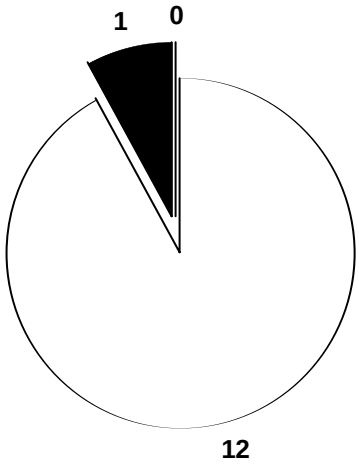
positive
negative
neutral

"ARMENIA"

News Program ("Zham")

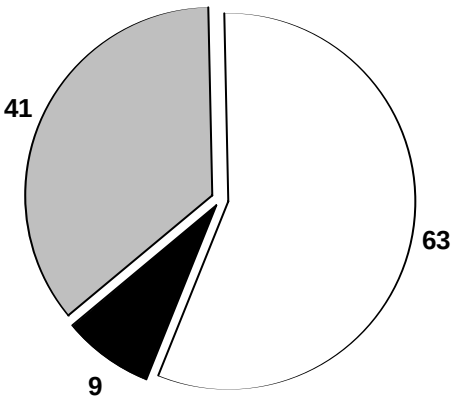


Commentary Program ("Indeed")

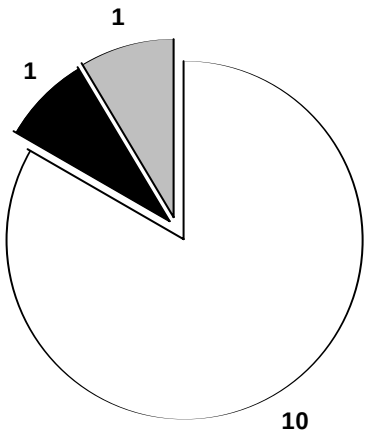


SECOND ARMENIAN TV CHANNEL

News and New/Analytical Programs ("Lraber", "Sunday Lraber")



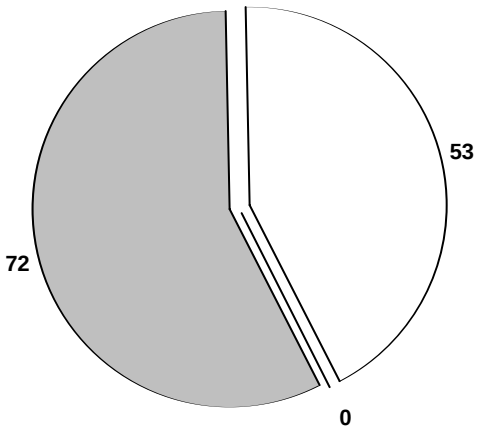
Commentary Programs ("The Fourth Studio", "The Rights to Tell")



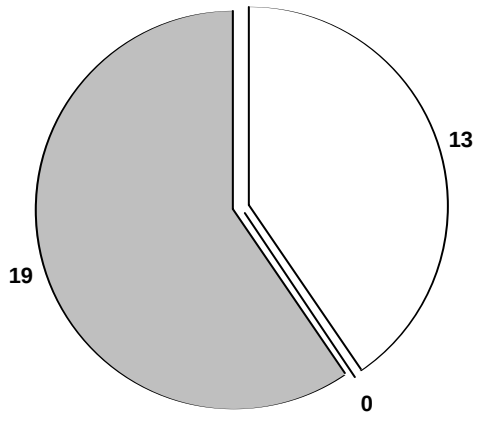
Nature of Mentions of Constitutional Reform in Newspapers (in Absolute Values)

positive
negative
neutral

"HAYASTANI HANRAPETUTIUN"



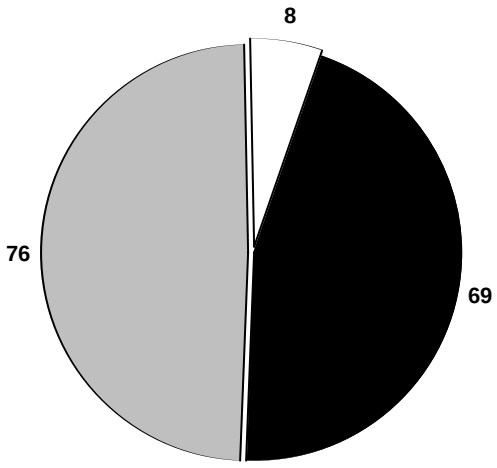
"RESPUBLIKA ARMENIA"



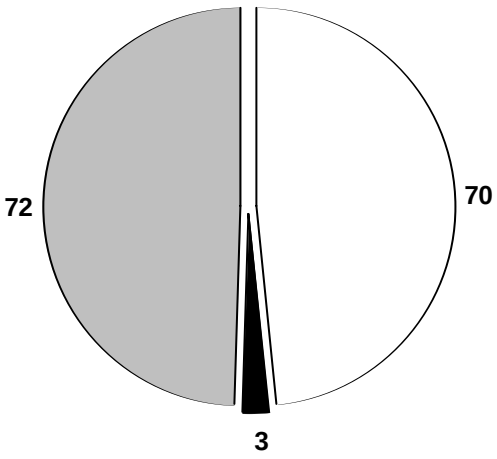
Nature of Mentions of Constitutional Reform in Newspapers (in Absolute Values)

positive
negative
neutral

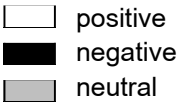
"HAIKAKAN ZHAMANAK"



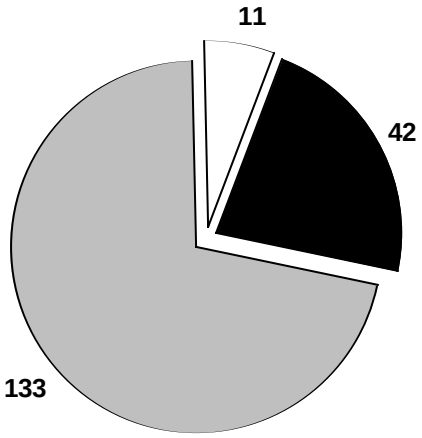
"HAYOTS ASHKHAR"



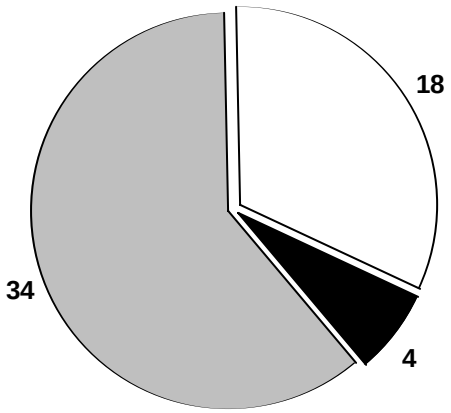
Nature of Mentions of Constitutional Reform in Newspapers (in Absolute Values)



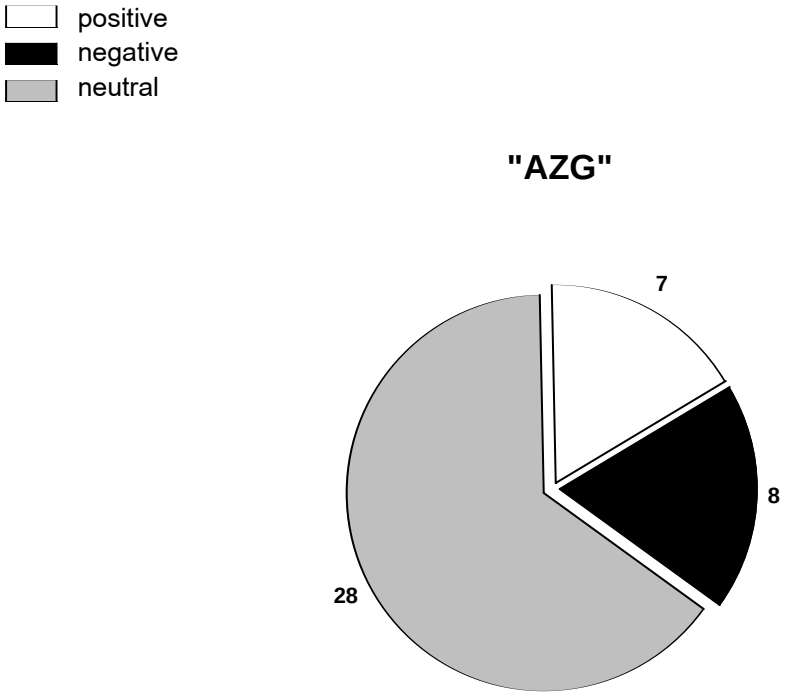
"ARAVOT"



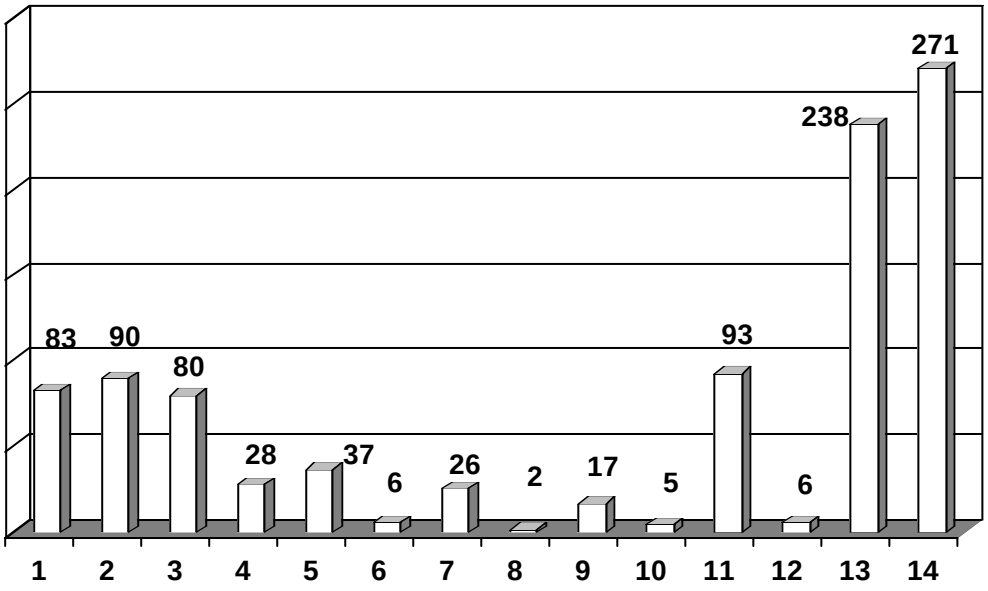
"GOLOS ARMENII"



Nature of Mentions of Constitutional Reform in Newspapers (in Absolute Values)



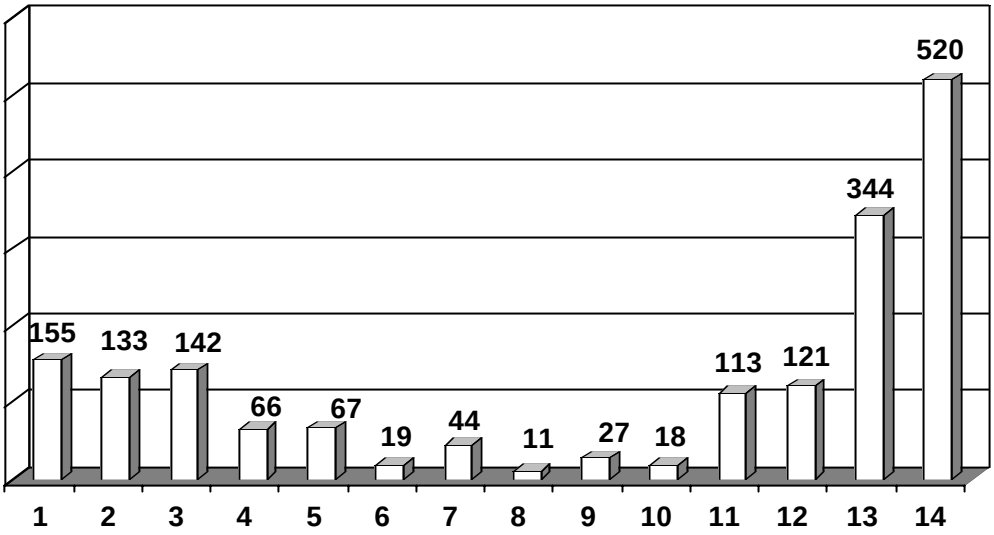
Number of Mentions (in Absolute Values) of Subjects Related to Constitutional Reform on TV Channels: First Channel of Public Television of Armenia, "ALM", "Armenia", Second Armenian TV Channel



List of Subjects Related to Constitutional Reform:

1. Rights and freedoms of the RA citizens
2. Authority of the RA President
3. Authority of the RA National Assembly
4. Jurisdiction and authority of the RA Government
5. Independence of the Armenian judiciary
6. Status and authority of the RA Prosecutor's Office
7. Local self-government
8. Issue of dismissal of community heads
9. Status of Yerevan
10. Sphere of information and freedom of expression
11. Dual citizenship
12. Electoral rights and referenda
13. Foundations of constitutional order and other general related issues
14. Issues related to the preparations and the conduct of the November 27, 2005 referendum.

Number of Mentions (in Absolute Values) of Subjects Related to Constitutional Reform in Newspapers: "Hayastani Hanrapetutiun", "Respublika Armenia", "Aravot", "Azg", "Haikakan Zhamanak", "Hayots Ashkhar", "Golos Armenii"



List of Subjects Related to Constitutional Reform:

1. Rights and freedoms of the RA citizens
2. Authority of the RA President
3. Authority of the RA National Assembly
4. Jurisdiction and authority of the RA Government
5. Independence of the Armenian judiciary
6. Status and authority of the RA Prosecutor's Office
7. Local self-government
8. Issue of dismissal of community heads
9. Status of Yerevan
10. Sphere of information and freedom of expression
11. Dual citizenship
12. Electoral rights and referenda
13. Foundations of constitutional order and other general related issues
14. Issues related to the preparations and the conduct of the November 27, 2005 referendum.

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

2005

Yerevan Press Club
9B, Ghazar Parpetsi str., 0002 Yerevan, Armenia
Tel.: +37410 53 00 67; 53 35 41
Fax: +37410 53 76 62; 53 56 61
E-mail: pressclub@ypc.am
YPC Web Site: www.ypc.am