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MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

2006

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PREFACE

The Yerevan Press Club, in collaboration with several NGOs - members of the Partnership for Open Society initiative, carried out first monitoring of democratic reforms in Armenia in 2005.

Before undertaking such an overview, two questions had to be answered:

1. What areas should be assessed, and what structure and methodology should be adopted?
2. How can professionalism and impartiality be safeguarded?

The 2005 monitoring was based on the main commitments undertaken by Armenia upon accession to the Council of Europe, with a particular focus on the country's performance towards honoring of commitments in the fields of human rights and democracy. The monitoring concentrated on not only the commitments *per se*, but also the requirements established in resolutions of the Parliamentary Assembly of the Council of Europe (PACE) regarding the honoring of such commitments.

To safeguard professionalism and impartiality, each section of the monitoring was delegated to a civil society organization that specialized in the relevant sector and did not have any interests vested therein. The drafts of all the sections were discussed with partner organizations and independent experts, and their comments and recommendations were reflected in the final version of the text.

The new monitoring covered the progress of reforms in 2006.

On March 27, 2006, the Millennium Challenge Corporation ("MCC") signed a US $236.65 million five-year Compact with the Government of Armenia, which is aimed at reducing rural poverty through sustainable growth of agriculture. Armenia plans to achieve this aim by investing strategically in rural roads and irrigation infrastructure, rendering financial and technical assistance, and supporting farmers and rural businesses over the course of a five-year program. The Program should generate tangible results for about 750,000 persons, which represents 75% of the rural population.

On September 29, 2006, during a ceremony held in the Republic of Armenia Ministry of Finance and Economy, Minister Vardan Khachatryan and MCC Resident Country Director Alex Russin exchanged letters signifying the launch of this poverty eradication program.

Considering that the MCC selects countries by assessing their commitment to just and democratic governance and economic liberties, and by reviewing all efforts exerted by a country to achieve prosperity for its people, as well as the fact that MCC representatives have stated on numerous occasions that Program continuation depends, among other things, on the progress of reforms in Armenia, the 2006 monitoring is based on the indicators of the "Ruling Justly" category of the Millennium Challenge Account (MCA) selection criteria.

The MCA selection criteria are broken down into the following sections: **civil liberties, political rights, voice and accountability, government effectiveness, rule of law, and control of corruption.**

The monitoring team treated each of the indicators covered under these sections as a separate issue, classifying them in the following way:

1. Civil Liberties

I. Human Rights and Personal Freedoms

Freedom of assembly
Torture and ill-treatment
Rights of religious, ethnic, and other minorities (including minority political rights)
Institutional strengthening of the Human Rights Defender

II. Freedom of Expression and Information

Legislation on mass media and information; amendments in 2006
Current situation in the areas of freedom of expression, press, and information
Free and fair competition in the media field; government funding to print press

2. Political Rights

Freedom to create and operate political associations (parties)
Prevalence of free and fair elections; possibilities of fair partisan competition in elections
Party dependence on military, foreign, and religious organizations and the economic oligarchy

3. Voice and Accountability

Ability of non-governmental structures to defend civic rights
Citizens' participation in the formation of government
Mass media control of the Government's activities

4. Government Effectiveness

Freedom of information and transparency of the Government's policies
Quality of public services
Civil servants' awareness and independence from political influence

5. Rule of Law, Justice, and Police

Law on Police and enforcement practice; prosecution activities
Public confidence in and respect for laws and law-enforcement agencies
Violent and non-violent criminality
Efficiency and predictability of the judiciary

6. Control of Corruption

Fight against corruption in Armenia
Armenia's international commitments to fight corruption
Corruption as an obstacle to doing business in Armenia
Political corruption and "usurpation of the state"

The monitoring of each issue addressed the legislative amendments, the practice of enforcing the existing laws, the progress of reforms, the current situation, and recommendations on bolstering the effectiveness of reforms.

The following methods were used in the monitoring:

1. Documentary review

Expert analysis of the legislation, statistics, official documents, and official releases; upon necessity, citizens' correspondence with official entities was examined

2. Observation

Reporting and studying human rights violations, reviewing publications related to the monitored issues, monitoring court decisions and court cases of public interest, monitoring the activities of various institutions, and measuring the efficiency of human rights protection arrangements

3. Surveys

Public opinion polls, individual interviews, and focus groups.

The different sections of the Report were prepared by:

The following NGOs, which are members of the Partnership for Open Society initiative:

Armenian Helsinki Committee;
"Collaboration for Democracy" Center;
Yerevan Press Club;
Committee to Protect Freedom of Expression;
Association of Community Finance Officers;
Center for Regional Development/Transparency International Armenia.

The monitoring team extends its gratitude to the media-supporting non-governmental organization Internews, the Armenian Center for National and International Studies, the Journalists' Association of Armenia, the Freedom of Information Center, the "Asparez" Journalist's Club (Gyumri), and the Vanadzor Office of the Helsinki Citizens' Assembly for their support in the monitoring and the discussion of drafts.

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MONITORING OF REFORMS AND THE 2007 ELECTIONS

This monitoring of democratic reforms in Armenia covers the period up to December 31, 2006, hence, excluding 2007 parliamentary elections. However, this crucial political event shed light on the state of affairs in a number of areas targeted by the monitoring.

Political and public circles in Armenia, as well as the international community had emphasized the utmost importance of parliamentary elections for the democratic future of the country. Therefore, the monitoring would be incomplete, if it did not briefly analyze the process and results of the 2007 elections. Armenia's continued participation in the European Neighborhood Policy and the Millennium Challenge Account also depended on the conformity of the parliamentary elections to international standards. In this respect, the authorities declared that the elections would be better than any election held in independent Armenia.

The international observation mission, which included the OSCE/ODIHR, the OSCE and Council of Europe Parliamentary Assemblies, and the European Parliament, concluded that the May 12, 2007 elections to the Armenian National Assembly "demonstrated improvement and were conducted largely in accordance with OSCE and Council of Europe commitments and other international standards for democratic elections." It was, however, mentioned that, although the Armenian authorities took steps to address previous shortcomings, they "were unable to fully deliver a performance consistent with their stated intention that the election would meet international standards, and some issues remained unaddressed."

The US Department of State on the whole agreed with the conclusions of the European observers. It mentioned, in particular, that "the election infrastructure has been greatly improved," which is "a step in the right direction." US Department of State Deputy Spokesman Tom Casey emphasized that, compared to past elections, this election can be considered a success, though "it did not fully meet the international standards." In this context, the US Department of State Deputy Spokesman called the Armenian authorities to carry out a thorough investigation into the irregularities and to punish the guilty ones in accordance with the country's legislation.

A number of local non-governmental organizations, which published their assessment of the elections, noted that they did not consider themselves constrained by the optimistic findings of the international mission, and that they did not fully agree with the international observers. These local NGOs said that the irregularities were of a greater scale and depth than they had been presented by the foreign observers. On May 14, 2007, 18 non-governmental organizations, including some membering in Partnership for Open Society initiative, made a statement in which they submitted their arguments and emphasized the following: "These elections do not correspond to our perception of democratic values (…) and cause serious concern about the path chosen by the Republic of Armenia."

The document prepared by the European observer mission mentioned that the public broadcasters (the First Channel of Public Television and the Public Radio of Armenia) mainly provided air access to the campaign participants, and that almost all of them used the free time for campaigning. As for the editorial coverage of the campaign, the activities of the Public Radio were considered balanced, while the objectivity of the First Channel of Public Television was questioned. The international observers stated that the leading private TV stations made paid political advertisement air time available to the election

participants, but the prices were set higher than the regular advertisement tariffs, and a number of parties criticized them for setting prices that obstructed the pre-election campaign. In their editorial coverage, both the Public Television and private televisions broadcast countrywide paid more attention to the activities of the Government and the two ruling parties (the Republican Party of Armenia and ARF "Dashnaktsutiun"), as well as the pro-government "Prosperous Armenia" party.

On the whole, agreeing with the findings and conclusions of the international mission expressed in the "Media Environment" section, local observers emphasized another key fact: during several years before the elections, up to the official start of the campaign, at least, three opposition parties ("Heritage," "New Times," and "Republic") were deprived of access to the air on either the Public Television or private TV stations. This is confirmed by findings of the Yerevan Press Club, the Committee to Protect Freedom of Expression, and other journalistic associations.

Thus, the political "taboos" and the application of various forms of hidden censorship in relation to broadcast media limited the ability of several opposition parties to communicate with the voters, which certainly influenced the outcome of the elections. Besides, just before the start of the official campaign, the majority of TV stations in Yerevan and elsewhere in the country refused to make paid air time available for political advertisement, which further proves the existence of serious problems in the media environment and the limited possibilities of conducting the pre-election campaign. This, most of all, affected the opposition parties, because the pro-power parties had their own TV stations.

During the campaign, problems arose in connection with the exercise of the right to freedom of assembly. Local human rights organizations reported cases of obstructing the campaign meetings of several opposition parties ("Heritage," "Orinats Yerkir," and the "Impeachment Bloc") in Yerevan and, especially, in the regions. One such case is presented in the report of the international observers.

An example of the authorities' intolerance towards opposition meetings was the law-enforcement agencies' response to the May 9 demonstration and ensuing rally of the "New Times" and "Republic" parties and the "Impeachment" Bloc, when violence was used in respect of the organizers, as well as peaceful demonstrators and journalists that were present.

Earlier, on May 5, searches were carried out in the apartments of two opposition figures, the former Foreign Affairs Minister Alexander Arzumanyan and the foreign Minister for Industrial Infrastructure Coordination Vahan Shirkhanyan, under the pretext of money laundering suspicion. Two days later, Alexander Arzumanyan was arrested. These acts, too, negatively influenced the campaign environment.

Local observers consider the clandestine recording of a conversation between the leader of the "Orinats Yerkir" Party Artur Baghdasaryan and a British diplomat as a method of unlawful pressure on the opposition during the campaign period. The contents of this conversation were published in several issues of the *Golos Armenii* newspaper; comments by the President of the country, the Speaker of the National Assembly, and the Prime Minister were quoted several times on the Public Television and a number of private TV stations broadcast countrywide. The President, in fact, called the opposition figure's acts "treason". The European observers paid attention to this fact by emphasizing that the Armenian authorities "have yet to underscore that free expression and secrecy of private communication are protected by the Armenian Constitution".

As in all of the past elections, the administrative resources were extensively used in the May 2007 parliamentary election, which created unequal conditions between the ruling and pro-power political forces, on the one hand, and the opposition, on the other. Both international and local observers presented in their reports examples of how public means were used, for instance, by the Prime Minister Serge Sargsyan during the campaign of the Republican Party of Armenia, of which he is the leader.

Local observers believe that vote buying practices have reached an unprecedented level, even compared to the 2003 elections. It took place long before the official campaign and lasted up to the voting day. Voter bribes, in the form of agricultural products, household appliances, and various services, were given under the cover of “charity.” On May 12, as witnessed by local observers, voters were bribed with cash. The amounts of bribes are known to be in the range of 2,000 to 30,000 drams (approximately $5-90). This phenomenon became possible on account of the intertwining between politics and business at all levels, which was noted by the international observers that expressed concern over this problem, especially in the context of transparency and declaration of funds used in the campaign. In fact, the level of corruption in the electoral process has grown.

Cases of issuing fake passports to people, with which they went to vote, became publicly known. One such fact was observed by the European observers. Local observers, on their behalf, have mentioned that voting with fake documents was of large scale, and that it could not be organized without the authorities’ involvement.

Another reason for concern is that Armenian citizens that have the right to vote, but are physically outside of Armenian borders (there are hundreds of thousands of people like this), were unable to vote. Though it is an objective problem caused by the new legislation, it is perceived with some doubt in terms of citizens’ political rights.

The female part of the population is underrepresented in the political and public life of Armenia, which was manifest in the 2007 elections, too. In spite of the Electoral Code amendments, only five out of 119 candidates (for the 41 majority-contest seats in the National Assembly) were women. There were very few women in the electoral commissions: only two out of the nine members of the Central Electoral Commission, and only three out of the 41 chairpersons of Territorial Electoral Commissions.

After the elections, on May 26 the opposition forces - “Impeachment” bloc, “New Times” party, “Republic”, “Orinats Yerkir” - addressed the RA Constitutional Court with a demand to annul the RA CEC Resolution of May 19, 2007 “On Electing RA National Assembly Deputies by Proportional Representation System”. On June 1 the Constitutional Court started the consideration of the appeal and announced its ruling on June 10. According to the ruling, the aforementioned CEC Resolution remained in force. The materials, referring to violations, recorded at four precincts, were transferred by the Court to the RA Prosecutor's Office for further investigation. At the same time, according to the ruling of the Constitutional Court, the number of legal, structural and organizational shortcomings revealed makes it expedient to introduce new amendments to the RA Electoral Code.

On the whole, the 2007 parliamentary elections revealed the majority of public and political problems that hinder Armenia’s democratic progress. These problems are presented in greater detail in the relevant sections of the monitoring report.

EXECUTIVE SUMMARY

Freedom of Assembly. In October 2005, the RA Law "On Conducting Meetings, Gatherings, Rallies, and Demonstrations" was amended; however, in spite of some improvements, the general philosophy of the Law has remained unchanged. Rather than to provide safeguards of the freedom of assembly, it remains a law that restricts the organization and holding of public events. Though 2006 was not a year of particular political activity, and the opposition did not conduct any mass events, there have nevertheless been reported cases of obstructing opposition meetings: facilities have not been provided, individuals that have supported the meetings of parties have been fired, and the police have persecuted the organizers. During the last few months of 2006, requests of "Zharangutiun" ("Heritage"), "Nor Zhamanakner" ("New Times") and "Orinats Yerkir" to lease public and private facilities for meetings with citizens were rejected with different explanations.

Torture and Ill-Treatment. The main purpose of torture in Armenia is to extort confession, rather than to punish. Further on, courts mainly accept the "evidence" put forth by the prosecution, the bulk of which is the confession by defendants. Monitoring has shown that, during trials, about 80 percent of the defendants deny the testimony they gave during the pre-trial investigation, explaining that they testified under torture and pressure. However, the torture allegations of defendants remain without consequences, and the perpetrators of torture and ill-treatment are not subjected to criminal liability.

Rights of Religious, Ethnic, and Other Minorities. The RA Constitution enshrines the freedom of religion (Article 26) and the exclusive mission of the Armenian Holy Apostolic Church - as the national church - in the spiritual life of the Armenian people, the development of the Armenian national culture, and the preservation of the national identity (Article 8.1). The Armenian authorities have not carried out a clear-cut policy on religious matters. One could not accuse the highest authorities of the country in carrying out a discriminatory policy; however, middle-rank officials, especially some representatives of local governments and law-enforcement authorities, have made statements threatening religious communities and have performed acts that limit the constitutional rights of religious organizations.

A large share of Armenia's ethnic minorities resides in fragmentation, mainly in Yerevan. There are some settlements that are compactly populated by Yezidis, Assyrians, and Molokans. The ethnic minorities living in Armenia do not pose any political demands.

Institutional Strengthening of the Human Rights Defender. OSCE/ODIHR and Council of Europe experts have pointed out Article 7(1) to be a deficiency of the RA Law "On Human Rights Defender", which prohibits the Defender from examining complaints against judicial organs and judges. In other words, the Defender may not help individuals that have suffered violations of their fair trial rights under Article 6 of the European Convention on Human Rights and Article 19 of the Armenian Constitution. Moreover, the Defender may not respond to allegations of undue delays of proceedings or the refusal of defense rights

In 2006 by the appeals of the RA Human Rights Defender the RA Constitutional Court deemed a number of legal provisions to be unconstitutional. These were the legal clauses and the appropriate resolutions of the government, making the basis for the construction in the center of Yerevan, as well as the provision of the RA law "On Parties", according to which a party must be liquidated, if, in each of any two successive parliamentary elections,

its party list receives less than 1% of the total votes cast in favor of all lists of parties running in the election.

Legislation on Mass Media and Freedom of Information, Amendments in 2006. In a situation when print media continue to enjoy relative freedom, the imperfect RA Law "On Television and Radio", the dependence of the broadcast regulatory body, the National Commission on Television and Radio, as well as the Council of Public TV and Radio Company, the existence of hidden censorship on air remain concerning. The draft law on introducing amendments and additions to the RA Law "On Television and Radio", as prompted by the constitutional reform of 2005 could not eliminate the obstacles for the development of independent broadcasting in Armenia either. These are: the dependence of regulatory body, the National Commission on Television and Radio as well as the Council of Public TV and Radio Company on authorities; their subsequent catering for the political agenda of the day; the prevalence of subjectivism and political partiality in decision-making regarding the broadcast licensing process; the vagueness of criteria for awarding licenses and the absence of a due justification in the rulings on granting or refusing a broadcast license; the absence of control over the implementation of the laws and license terms; partiality when applying punishment for infringements.

Freedom of Expression, Media, and Information: Situation Overview. In 2006 the problem of access to TV air by political forces (also the air of the Public Television) remained urgent. The impression is that there are even political figures and parties. Moreover, monitoring has shown that none of the television companies show up at their press conferences, which end up being reported only in the print press. This is a sign of hidden censorship being applied by authorities. In 2006 the intimidation and assaults on journalists and media continued, with those guilty either being not found or going without punishment.

Ensuring Free and Fair Competition in the Media, State Subsidization of the Print Press. Although the Law "On Television and Radio" contains provisions against monopolization ("every natural or legal person may obtain a license for only one television or radio company in one broadcast zone"), some persons in Armenia own several broadcast companies. The broadcasters that have created dominant positions for their media are using them to get additional advertisement by setting manifestly low prices in violation of the principles of fair competition. Such behavior creates an unsound environment and undermines the mass media situation as a whole. The state so far has not been able to create favorable conditions for the development of independent media, their fair and free competition.

Freedom to Create and Operate Political Associations (Parties). In general the Law "On Parties" effectively does not obstruct the registration and operation of parties. However, equal conditions for competition between parties are not safeguarded in Armenia. The legal requirement to have at least 2,000 members, branches in the regions, and at least 100 members in each region is very difficult for many parties to meet, because, in addition to the financial resources, it implies the creation of offices and the recruitment of additional human resources, whereas employees of central and local government bodies and private companies are cautious about becoming members of opposition parties. Meanwhile, the ruling parties have no problems opening new offices and recruiting new members. They use their administrative power to gain new members by threatening that citizens will lose their jobs, unless they join such parties. This process is widely practiced in regions that are "under the control of" a particular party, as well as in local government bodies, educational and health care institutions.

Prevalence of Free and Fair Elections; Possibilities of Fair Partisan Competition in Elections. On December 22, 2006 another set of amendments and additions was introduced into the RA Electoral Code. In 2006, there were no general elections or referenda in Armenia. There were local government elections, in which the candidates of the ruling parties or candidates "sponsored" by the ruling parties won. In Armenia, the election results are decisively influenced by the administrative and financial resources, rather than the collective will of the voters. Vote buying is becoming an orchestrated process. It begins long before the elections - under the disguise of charity. As a result the elections in Armenia have not as yet developed into a democratic institute. Certain persons and groups use them for securing their ambitions and private interests.

Dependence of Parties on Military, Foreign, and Religious Organizations, and on Economic Oligarchy. In July 2006, Serge Sargsyan, the RA Minister of Defense, became a member of the Hanrapetakan (Republican) Party of Armenia. Thereafter, in the Party Conference held on July 22, 2006, he was elected as the Chairman of the Board of the Republican Party of Armenia, which is the second highest position in the Party. A number of businessmen and MP enterprenuers followed his example by joining the Republican Party. At a party conference some of them were elected to the ruling body of the part, the Board. The large-scale businessmen's joining the Republican Party raises concern over the Party possibly becoming dependent on economic interests. The possibility of dependence on large capital is even greater in case of "Bargavach Hayastan" ("Prosperous Armenia") party. The Chairman of this Party is Gagik Tsarukyan, a famous businessman, who owns the "Multi Group" holding that includes numerous companies. There are no parties in Armenia that depend on religious organizations or follow any particular confession.

Civil Society Capacity to Protect Civic Rights. The Armenian legislation on civic rights is broadly in line with the international standards. Though with difficulties, NGOs manage to propose legislative improvements to the Parliament and to lobby civil society interests. However, the interviewees believe that the real situation in terms of respect for human rights is far from positive. Moreover, a persisting serious problem is that human rights activities of Armenian NGOs are financed mainly by foreign grants, which poses the risk of such activities weakening in case if the foreign support diminishes or ceases.

Citizens' Participation in the Formation of Government. The influence of citizens on the government formed through undemocratic elections is not big. The statement of the Millennium Challenge Corporation presented to the Armenian President Robert Kocharyan by the Corporation Chief Executive John Danilovich reads: "In 2006, Armenia's Voice & Accountability score declined from 0.27 to 0, causing Armenia to fail the indicator (…) Armenia has consistently received a 4 (where 7 is worst, and 1 is best) on the Civil Liberties indicator. However, the latest data from Freedom House indicate that Armenia's performance in the area of civil liberties has begun to deteriorate and could decline from 4 to a 5".

Media Control over the Activities of Authorities. The performance of a function of social control over the activities of the authorities is hindered also by different types of pressure on journalists and the mass media, including violence and threats, which are described in greater detail in annual reports of the Yerevan Press Club and the Committee to Protect Freedom of Expression, as well as a number of statements by associations of Armenian journalists. These facts lead to a greater degree of self-censorship in the media, which is often presented to the public as "self-restriction" of journalists. However, the

cases in which self-censorship is caused by external pressure, rather than a voluntary choice, should be seen as examples of “hidden”, “disguised” censorship.

Freedom of Information and Transparency of Government Policies. A persisting problem in the field of freedom of information is that the Government has not complied with Articles 5 and 10 of Law “On Freedom of Information”, which requires the Government to adopt regulations on the procedure of the registration, classification, and storage of information processed or received by the custodian of information, as well as the procedures of providing information or copies (photocopies) by central and local government bodies, state institutions, and state organizations. The most transparent of the three branches of power in Armenia is, perhaps, the National Assembly. In the executive branch, the decision-making process is not transparent enough, even though the Government sessions are covered by media. At the same time the preparation and adoption of decrees is a closed process, and the public can hardly influence it, because draft decrees of the Government are considered “working documents” and, as such, are not accessible to the public.

Quality of Public Sector Services. The Constitution and several laws of Armenia contain provisions on the legal relationship arising out of the delivery of services, including public sector services, and in 2003 Public Service Regulatory Commission was created to implement state regulation in the sphere and to balance the interests of consumers and service providers, the quality of public services and their accessibility for public at large, particularly, the vulnerable groups, remains limited. In the decision-making, policy-making in the system of public administration the centralization remains unjustifiably high, transparency is lacking, the accountability system is ineffective, the full-fledged participation of the civil society is not ensured.

Civil Servants’ Awareness and Independence from Political Influence. Electronic media, especially television, which is controlled by the authorities, are the main source of information for Armenian civil servants. Civil servants try to “quench their thirst” for alternative information by watching foreign television channels and listening to foreign radio stations, as well as by reading the local opposition press (the three newspapers read by most are all opposition newspapers). Civil servants have quite broad access to information related to their official duties, with the exception of materials developed in other agencies or other units of their agency. This, perhaps, is indicative of the under-developed of internal information systems. Civil servants are legally and psychologically far from being independent. There are still topics that civil servants try not to talk about altogether or to say not what they truly think.

Law on Police and Practice. Prosecution Activities. Public Trust and Respect for Laws and Law-Enforcement Agencies. The principles of the RA Law “On Police” regarding the role of Police and the principles underlying its activities are largely in accordance with the international standards; however, there are numerous shortcomings in the provisions on powers, duties, and liability. Besides, the functions and principles enshrined in the Law on Police are often violated in practice. One reform, however, has been introduced recently: the Police have created a group of public observers to monitor police facilities for holding arrested persons. The group of public observers enjoys free access to temporary holding facilities that it may monitor by, among other means, interviewing persons held there. However, ill-treatment examples are generally very difficult to find in the temporary holding facilities. Most of the ill-treatment takes place in police stations, to which the public observers have no access. Of the functions and principles laid down in the Law on Police, the following are violated more frequently than

others: compliance with the law, adequacy, proportionality, non-discrimination, prohibition of torture, and protection of individuals from arbitrariness. The public continues, as in the Soviet era, to overestimate the state's role and to underestimate the role of society, and the Police and prosecution systems continue to serve as agencies for holding the public subjugated to the power by means of creating an atmosphere of fear and punishment.

Effectiveness and Predictability of the Judiciary. Under the Amended Constitution, the Minister of Justice still has the power to organize and conduct the examinations for determining the adequate competence of judges for office and promotion. In doing so, the Minister is guided by a decree of the Prime Minister, rather than a law. The Minister of Justice presents to the Justice Council a suggestion on terminating the powers of a judge and materials to support the suggestion. At the same time, the promotion of judges is not necessarily based on the promotion list: persons that have been in the list for many years may never be promoted, while ones that have only recently been included in the list may be immediately appointed to a position. Courts continue to avoid taking decisions in favor of citizens, rather than executive or law-enforcement bodies. Courts also avoid taking acquittal judgments. An important safeguard of judicial effectiveness is still not present: courts refuse to exercise their authority to treat laws as a tool for upholding rights and not to apply laws that violate constitutional human rights. Courts mainly continue to act as the guardians of laws, rather than rights. In political terms, though, the judiciary is more predictable, because its behavior corresponds to the political circumstances; in many cases, absolutely different decisions or judgments may be taken on the basis of identical facts.

Control of Corruption. Fight against corruption was officially announced in Armenia in 2001, with the establishment of a Commission headed by the Prime Minister Andranik Margaryan to coordinate the development of anti-corruption government programs. In June 2003, a newly formed Coalition Government started a process of finalization of the Armenian Anti-Corruption Strategy and its Action Plan, which were approved by the Government and ratified by the President Robert Kocharyan on December 10, 2003. The Armenian Government adopted an approach to strengthen existing law-enforcement bodies instead of creation of new specialized agencies. Nor specific legal or procedural instruments for investigating and prosecuting corruption offences exist in Armenia. The prosecution system, the Police and the National Security Service are those institutions, which are dealing with corruption cases. Most of the corruption-related crimes (such as bribery, abuse of power, misuse of power, forgery, etc.) are investigated by the prosecution bodies. A special Anti-Corruption Department established in the Office of the Prosecutor General on April 30, 2004, coordinates corruption-related investigative activities of the Police and the National Security Service. So far, the Government has not ensured the enforcement of the laws and the equality of people before the law, regardless of their position and income. Citizens' complaints and media disclosures of corruption-related cases have not been paid due attention, and have been hushed up or addressed only as a mere formality. An increased cynicism and indifference, fear and despair dominate the society. Yet, pre-requisites for an effective anti-corruption policy include prevention and detection of corruption crimes, conviction of corrupters and corruptees, and public intolerance towards corruption. According to public and expert opinion, since the declaration of the official fight against corruption in Armenia, the level of corruption has not decreased. In 2005, a countrywide phone survey of 1,500 households was carried out by Center for Regional Development/Transparency International Armenia, which revealed that 62.9% of respondents believe that the level of corruption in the country has even increased. The majority of respondents believed that all state institutions were corrupt, while the police, the courts and the prosecution system were named as the most corrupt

institutions. Hard socio-economic conditions, anarchy and greed of state officials were mentioned as the main causes of corruption. The majority of participants in 25 individual interviews and 5 focus group discussions held at the same time also indicated that in the last three years the level of corruption in Armenia has increased. Most respondents considered anti-corruption initiatives taking place in Armenia as ineffective.

The major risks for political corruption in Armenia are abuse of power by political leaders, running offices in the government and local self-administration bodies to obtain political gains; financing from organized crime or foreign governments (in the extreme case the mentioned actors form their own parties); illegal channeling of public funds into party ‘pocket’ through specially established for this purpose companies and organizations; bribing some leaders and prominent members of opposition parties to defect from their parties; forcing civil servants and other state employees to become member of parties and then extorting money from them for party needs; illegal donations from private sector, especially from major capitalists, and granting them privileges in return; forcing entrepreneurs to “accept” ruling party bosses and high ranking political officials as ‘roofs’ for their businesses; and constraining financial and other resources available to opposition parties.

1. CIVIL LIBERTIES

1.1 HUMAN RIGHTS AND LIBERTIES

FREEDOM OF ASSEMBLY

Prior to 2004, the right to peaceful and unarmed assemblies was regulated only by Article 26 of the RA Constitution (the Constitution that was in effect prior to the Referendum on November 27, 2005). At times of political tension, participants of demonstrations and rallies would be subjected to administrative prosecution - mainly as participants of unauthorized demonstrations and rallies, as per Article 180 of the RA Code of Administrative Infringements.

It should be noted that Article 26 of the Constitution did not contain any restriction on the freedom to carry out peaceful and unarmed rallies and demonstrations. Moreover, no procedure was prescribed for holding a person liable for an administrative misdemeanor.

During 2003 and 2004, the opposition requests to hold demonstrations and rallies were mainly rejected. Any demonstrations, meetings, and rallies that were carried out were treated by the authorities as "unauthorized" events that would be followed by mass arrests.

To meet the PACE requirement (PACE Resolution 1374, Document 10163, paragraph 9/b), a Republic of Armenia Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations was adopted on April 27, 2004, which PACE called "highly restrictive."[1] Even before the adoption of the Law, the OSCE and Venice Commission experts had called the draft "unacceptable and contradictory to the European standards" (CDL(2004)022); the PACE had urged to make it compliant "with CoE principles and standards" (PACE Resolution 1361, paragraph 15, January 27, 2004, document 10027).

In October 2005, the Law was amended; however, in spite of some improvements, the general philosophy of the Law has remained unchanged. Rather than to provide safeguards of the freedom of assembly, it remains a law that restricts the organization and holding of public events. In particular, before the Law was amended, public events were prohibited in certain areas; after the amendments, the mandatory prohibition applies only to a minimum distance of 150 meters from military detachments, defense premises, penitentiary institutions, and pre-trial detention facilities. A public event in any of the other places specified in the Law "may be prohibited" by the authorized body, which means that it may also not be prohibited. The amended Article 6 of the Law imposes an additional requirement that must be met in order not to prohibit holding a public event on bridges and in tunnels, underground areas, dangerous buildings, and construction sites ("a public event [in such places] may be prohibited (…) if public safety and the health of participants or others is endangered (…)". A change for the better is the provision that states that, if a non-mass event spontaneously turns into a mass event, then it may proceed without prior notification.

The following grounds for prohibiting mass public events have been retained in the text of the Law: (i) when it is impossible to hold concurrent events in the same place; or (ii) when there is credible information that "the holding of the event poses a real threat to the life or health of individuals.

[1] For a detailed analysis, see the 2005 Report on "Monitoring of Democratic Reforms in Armenia."

In the past, mass public events could not be conducted in the territory or within 150 meters of working places of state and local government bodies and state, special, and vital premises designated as such by the Government of Armenia. The amendments have introduced a list of the places in which the holding of a public event may be prohibited. The only state body that the list includes is the Office of the Republic of Armenia President: the Police have the right to determine, based on security considerations, the minimum distance between the mass event and the Presidential Office.

Before amending the Law, a mass public event could not be held in the territory of within 150 meters of a cultural or sports facilities (in case if other events were happening in such facilities). Under the present Law, holding such an event may be "limited," but the limitation may be imposed only in the territory of the cultural or sports facilities. However, the term "limit" is not clarified in the Law, and the authorized body shall have discretion to determine the form of the limitation.

The following grounds for limiting a mass public event have been repealed: "…if a procession would disfigure traffic within a settlement or inter-state traffic…" or "if another mass public event will be held at the same time, on the same day, in the immediate vicinity of the specified place, by persons opposing the organizer of the event, and there is credible information pointing at the imminent threat of a collision between opposing forces."

On December 24, 2004, the Republic of Armenia Code of Administrative Infringements and the Republic of Armenia Criminal Code were amended. Then, on October 4, 2005, the Criminal Code was amended again. The amendments *criminalized* the organizing and holding of a public event in violation of the procedure defined by law, as well as the making of appeals to refuse to comply with the requirement of a decision to terminate a public event that violates the procedure defined by law. These rules, too, have been criticized by the OSCE and the Venice Commission, both of which have expressed doubt about the compatibility of these provisions with the principle of lawfulness, which is a fundamental principle of criminal law that prohibits the arbitrary application of law. They have deemed the prescription of criminal liability possible only in case if a person participating in the demonstration exerts violence or inflicts physical damage. In its opinion CDL(2005)018, the Venice Commission stated that the aforementioned amendments to the Republic of Armenia Criminal Code and the Code of Administrative Infringements, taken together with the amendments to the Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations, would serve as a basis for "prohibiting the organization and holding of demonstrations, which should actually be authorized."

After the Law became effective (on May 22, 2004), the Yerevan Mayor only had the right to acknowledge the holding of a demonstration or to prohibit it on the grounds defined by law. However, the former practice of prohibiting or hindering events continued through 2004 and 2005.[2]

Though 2006 was not a year of particular political activity, and the opposition did not conduct any mass events, there have nevertheless been reported cases of obstructing opposition meetings: facilities have not been provided, individuals that have supported the meetings of parties have been fired, and the police have persecuted the organizers.

[2] Ibid.

During the last few months of 2006, requests of the "Heritage" Party to lease public and private facilities for meetings with citizens in different parts of Armenia, including Gyumri, Vanadzor, Armavir, Etchmiatsin, Yeghegnadzor, Sisian, and Kapan, were rejected with different explanations.

On May 20, 2006, the leader of the "Heritage" Party Raffi Hovhannisian and members of the Party Board were traveling around a number of settlements in the Armavir Marz in order to meet with activists of the local branch of the party. Local police officers interrogated the head of the local branch of the party about the objectives of the visit, the timing, and the members of the delegation, and demanded to notify them as soon as the delegation arrived. During the meeting in the Miasnikyan Village, information was received from Armavir about the police apprehension of Levon Margaryan, an employee of the local branch of the party, who had been warned by the police that the police would exert force, if Hovhannisian's visit to Armavir actually took place. Later, police officers surrounded the Armavir office of the Heritage Party. Nevertheless, the meeting took place; after the meeting, Raffi Hovhannisian visited the Police Station in order to meet the local Police Chief - Colonel Ashot Gevorgyan. The latter refused to see Raffi Hovhannisian. Raffi Hovhannisian did not want to meet other officials and left a letter with lieutenant Karapet Melkonyan, asking for written explanation of the police conduct earlier that day.

On May 22, the Board of the Party sent a letter to Hayk Harutyunyan, the Chief of Police of Armenia, demanding to explain and to make an evaluation of the aforementioned conduct. Edik Ghazaryan, the Chief of Staff of the Armenian Police, sent a reply to Heritage Board Member Gevorg Kalenchyan on July 17, in which he stated that the Party's letter had been reviewed by the Republic of Armenia Police, and that the check had not justified the allegations made in the letter about police officers violating the law.

For the purpose of holding the 4th Congress of the Heritage Party, the Party Board sent written letters to the Republic of Armenia Government Chief of Staff, Minister Manuk Topuzyan on April 13 and 26, and later, May 4, 2006, asking to make the Government Conference Hall (located at 1 Melik-Adamyan Street) available to the Party on May 30 or 31. Written replies were received on April 19 and May 4 and 17, respectively, in which the Government Staff Office Manager Haykaram Mkhitaryan said that a number of exhibitions are scheduled to take place in the Government Conference Hall, and that renovation work will be performed on the free days, based on which he said it was impossible to grant the request.

The gathering planned in Yeghegnadzor on May 6, 2006 was banned by Mayor Sirak Babayan. On May 24, 2006, Raffi Hovhannisian sent a written inquiry to the Mayor asking to provide clarification, to which no response was given. The banning of the gathering had been preceded by the disappearance of the Heritage Party's nameplate and the so-called "explanatory and supervisory activities" aimed at citizens by the appropriate structures.

On May 17, 2006, the Heritage Party Board requested the Republic of Armenia National Academy of Sciences (NAS) President Radik Martirosyan to provide the NAS Conference Hall to the Heritage Party for holding its Congress on day convenient to the NAS, during the period from May 27 to July 1, 2006. The NAS Office Manager Elmir Gevorgyan responded on June 6 that, according to a decision of the NAS Presidency, the NAS conference halls may only be used for events of science sector organizations, scientific discussions, and seminar, and that it was not allowed to use the NAS Hall to organize public-political and partisan events. Therefore, the request was denied.

In February 2006, a preliminary oral agreement had been reached with the management of “Hoktember” Cinema in Gyumri to use the facilities for the meeting of Raffi Hovhannisian with the residents of Gyumri, but on the day of the meeting, the conference hall was not provided.

On October 9, 2006, the “National Civic Initiative” Non-Governmental Organization sent a written letter to Stepan Davtyan, the Director of the National Sundukyan Academic Theatre, requesting to make the large hall of the theatre available to the organization on October 15 for a civic meeting. Similar requests were sent on October 11 to the President of the American University of Armenia Harutyun Armenian and the General Manager of the “Karen Demirchyan Sports and Music Complex” Closed Joint-Stock Company Laura Avagyan.

The Sundukyan Academic Theatre and the American University of Armenia refused the requests in a conversation, while the Sports and Music Complex responded in writing, stating that the schedule of events in the Complex was over-saturated until December 15, and that, concurrently, the Complex was being renovated, which was the reason for suspending the execution of new contracts.

During the period from early-March to March 20, 2006, the “New Times” (Nor Jamanakner) Party continuously requested (on March 15, the Party also sent a written request to) the Republic of Armenia Government Staff Office Manager Haykaram Mkhitaryan to allocate the Government Conference Hall from noon to 6pm on April 4 for conducting a conference of the Party. The Party only received an oral response that the Hall had already been allocated to someone else. The Party members say that, on April 4, no event was conducted in the Hall.

Immediately after exiting the ruling coalition, the “Orinats Yerkir” Party has encountered obstacles everywhere. During September and October, it visited the regions of Armenia in order to meet the population. The Party had mainly oral preliminary agreements in almost all the towns, but as soon as they reached the places, they would run into closed conference halls. The halls would only be provided as a result of repeat negotiations and phone calls. This was the case, for instance, during the meetings in Gyumri, Ashtarak, and Artik on October 7, 8, and 9, respectively.

Albert Jamharyan, the Director of Hovhannes Abelyan State Drama Theatre in Vanadzor, was fired after he made the hall of the Theatre available to the “Orinats Yerkir” Party on September 2.

In the schools of Yerevan, in particular, principals refuse to provide facilities to the “Orinats Yerkir” Party, claiming that they are afraid of being fired.

On October 14, the “Orinats Yerkir” Party requested the “ArmenAkob” Cultural Center, which is located in the building of the former “Hayastan” Cinema in the Malatia-Sebastia District of Yerevan, to provide a hall for a meeting with citizens. An initial agreement was reached, but, two days ahead of the meeting, the Party received a refusal with the explanation that the building had been sold, and that the new owner refused to provide it. Armen Amiryan, a co-owner of the Cultural Center, replied to an inquiry by “Aravot” daily that “prior to entering into the sale agreement, the buyer of the cinema building had

prohibited conducting any [commercial, cultural, or political] events in the building before closing the deal."[3]

To ensure respect for the right to freedom of assembly, it is necessary:

1. To punish individuals that obstruct the exercise of the right to hold assemblies, violating the law;
2. To rule out the persecution of assembly organizers and participants; and
3. To introduce amendments into the Republic of Armenia Law "On Conducting Meetings, Gatherings, Rallies, and Demonstrations" to bring it in line with the international standards, namely:

- Conceptual changes to turn it into a Law that strengthens the guarantees of the freedom of assembly;
- Removing the limitations on organizing and conducting public events, allowing restrictions only in extraordinary situations (emergencies and military state);
- Precluding arbitrary interpretation of the Law by the authorized state bodies by means of prescribing all assembly-related procedures into the Law; and
- Lifting the ban on conducting assemblies, rallies, and demonstrations in the vicinity of the Presidential Office.

TORTURE AND ILL-TREATMENT

The Republic of Armenia Constitution contains provisions on the prevention of torture and other cruel, inhuman and degrading treatment and punishment (Articles 17 and 22).
In 1993, the Republic of Armenia ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. After accession to the Council of Europe, Armenia ratified the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment in 2002. In 2006, Armenia also ratified the Optional Protocol to the aforementioned UN Convention.

In 2004, the European Committee for the Prevention of Torture published its first report on Armenia, which was based on the findings of a visit made to Armenia in 2002. It is mentioned in the Report that arrested persons are subjected to ill-treatment in isolators, and battering and other torture are carried out during police interrogation by operational officers of the police.

In 2004, when the Armenian authorities exerted violence against opposition activists during opposition demonstrations, the Council of Europe Torture Prevention Committee representatives made a surprise visit to Armenia and met with individuals subjected to violence. The Committee report has still not been published, because the Government has given its consent to it. The most recent visit of CPT was in April 2006, but the report of this visit has not been published yet, either.

Under Article 47 of the Republic of Armenia Law "On Keeping Arrested and Detained Persons", a Group of Public Observers was created on May 14, 2004 to observe Ministry of Justice Penitentiary Administration institutions where detained persons are kept. The Group has 15 members from a number of NGOs, including human rights organizations and the Armenian Apostolic Church. As stipulated by the "Regulations of the Group of Public Observers Established to Observe Republic of Armenia Ministry of Justice

[3] *Aravot* daily of October 17, 2006.

Penitentiary Administration Institutions for Keeping Detained Persons," the Group is a body monitoring respect for the rights and freedoms of persons held in places for keeping detained persons. Under the Regulations, members of the Group are authorized to visit penitentiary institutions without any obstacles, to examine the content of various documents (including, subject to the detained person's consent, his or her personal files and correspondence, with the exception of confidential documents), to study the situation in a penitentiary institution, and to have meetings with detained persons.

The Group of Public Observers published its 2006 report based on visits to penitentiary institutions during 2005.

In Armenia, there are seven penitentiary institutions where detained persons are held, including the penitentiary institutions Nubarashen, Vanadzor, Goris, Gyumri, Abovyan, Vardashen, and Yerevan-Kentron. The report describes the overall situation in these penitentiary institutions, the physical conditions, sanitation and hygiene, communications with the outside world, and institutions' staff treatment of detained persons. The report attaches special importance to the "Yerevan-Kentron" penitentiary institution, which is located in the building of the Republic of Armenia National Security Service. During Soviet times, it served as the isolator of KGB. Unlike other penitentiary institutions, which were transferred to the Ministry of Justice system in 2001, the "Yerevan-Kentron" penitentiary institution was transferred to the Ministry of Justice only in January 2003. The Group is still unaware of any legislative or sub-legislative document that gives ground for detained persons being held in this penitentiary institution. The monitoring carried out by the Group leads to the assumption that individuals arrested on criminal charges with a political context are held in the "Yerevan-Kentron" penitentiary institution (such as the arrested participants of the opposition demonstrations carried out in April 2004), foreigners, and persons charged in criminal cases that have generated a strong public reaction. Unlike other penitentiary institutions, a visit to the "Yerevan-Kentron" penitentiary institution starts from the checkpoint of the National Security Service; in effect, accessing this institution is associated with a visit to the National Security Service. For those held in the "Yerevan-Kentron" penitentiary institution, communications with the outside world do not meet the criteria laid down in law. Although there is an internal radio facility in the institution, detainees are not allowed to have radio receivers. Moreover, the detainees may not receive newspapers, other than the newspapers that the institution governor allows them to read (such as *Hayastani Hanrapetutyun, Hayots Ashkharh*, and *Azg*).

The detainees in the "Yerevan-Kentron" penitentiary institution are deprived of telephone communication; in exceptional cases, subject to the consent of the institution governor, some detainees may use the official phone of the governor. The institution does not respect the privacy of correspondence: the opening and reading of letters is "justified" by the need to look for prohibited objects.

In violation of Article 31(11) of the Republic of Armenia Law "On Keeping Arrested and Detained Persons", detained foreign citizens are not segregated from Armenian citizens while at the "Yerevan-Kentron" penitentiary institution. Besides, the rights of foreigners are not explained to them in a language that they understand. Article 31(5) of the Law requires segregated confinement of current or former employees of courts, law-enforcement, customs, and tax bodies, as well as current or former servants in the police troops; however, on December 30, 2005, former prosecution employee (currently an advocate) Vahe Grigoryan was transferred from the Vardashen Penitentiary Institution (which is designed specifically for former law-enforcement employees) to the "Yerevan-Kentron"

penitentiary institution without any justification. In “Yerevan-Kentron,” he was kept in a shared cell with other inmates, one of which was a repeat offender.

The detainees held in the “Yerevan-Kentron” penitentiary institution, as well as their advocates suspect that their meetings with visitors are wiretapped. During the preparation of this report, *Aravot* daily (March 4, 2006) published an article, in which it wrote that the Head of the Investigative Department of the Office of the Prosecutor General asked the Head of the Technical Operations Department of the National Security Service to instruct the relevant units to audio- and video-tape the meetings between suspects Zaven and Vladimir Mkrtchyan held in “Yerevan-Kentron” and their advocates, and to report the results to the investigative authorities.

In 2005, a case of unlawful imprisonment was found in the “Yerevan-Kentron” penitentiary institution: Silva Asatryan, who was kept there, was to be released at 17:45 on November 23, 2005. (On November 22, 2005, a first instance court had denied the request to prolong her detention, and the court’s decision has been presented to the “Yerevan-Kentron” penitentiary institution at 11:00am on the same day.) On November 23, 2005, Silva Asatryan, monitored by four employees of the institution, was sent to a Court of Appeals. The Court of Appeals session was postponed till November 24, 2005, but Silva Asatryan was not released; rather, she was taken to “Yerevan-Kentron” and unlawfully kept there, deprived of her liberty, until November 24, 2005, when the Court of Appeals finally decided to prolong her detention term.

These facts indicate that, although the “Yerevan-Kentron” penitentiary institution is by legal status subordinate to the Ministry of Justice, it is in effect operating as the isolator of the National Security Service.

Considering that the “Yerevan-Kentron” penitentiary institution is located in the territory of the National Security Service, and it is technically impossible to separate the two structures, the report recommends terminating the activities of the “Yerevan-Kentron” penitentiary institution.

As for the quality of food in prisons, it is inadequate, with the exception of just one or two institutions. The food is mainly prepared by the convicts. The kitchens in some penitentiary institutions (such as Nubarashen and Gyumri) do not have sanitation. During its visits, the Group of Public Observers would rarely find the previous day’s food samples kept in the kitchen (which should normally be done in order to determine the cause of epidemics or food poisoning, if any). The kitchens have no refrigerators for storing the food received from the warehouse. It is especially important for week-ends and holidays, for which food is received in advance. In the Nubarashen Penitentiary Institution, the bread is of poor quality. Not all the institutions provide dietary food to inmates that need it. Allegations have been received from the Goris Penitentiary Institution about depriving inmates of food as a punitive measure. Numerous complaints have been received from the Nubarashen Penitentiary Institution about food deprivation of those held in punishment cells. This is a grave violation of the Armenian legislation and international standards.

The health services in penitentiary institutions are far from adequate. The institutions lack specialists, medical equipment, and medication. Nubarashen is the only penitentiary institution, which has different medical specialists. Nubarashen is also the only institution that has a psychiatrist. A psychiatrist is the most necessary at the Goris Penitentiary Institution, where convicted inmates are kept under a strict prison regime. Tooth removal is

the only service rendered by the dental units in any of the penitentiary institutions. The dental equipment is old and worn out, and cannot be used for any type of treatment.

During 2006, the Group of Public Observers found cases of cruel treatment in the Goris Penitentiary Institution. On May 6, 2006, based on calls received, members of the Group Michael Aramyan, Avetik Ishkhanyan, Andranik Harutyunyan, and Arman Danielyan made a surprise visit to the Goris Penitentiary Institution. They had meetings with the institution administration and a number of inmates, including convicts and detainees, as well as inmates held in punishment cells.

As a result of the meetings, the Group found that on April 29, 2006, a “special activity” was carried out in the Goris Penitentiary Institution by the Convoy Unit personnel of the Internal Troops of the Armenian Police and the staff of the Goris Penitentiary Institution, which included a mass search in all cells. During the search, inmates were handcuffed and taken out of cells; the cells were “turned upside down”, and the personal things of inmates were taken out and burnt in the courtyard of the institution. The items put on fire included inmates’ documents, family photos, underwear, shaving supplies, and other personal items. After the inmates were brought back to the cells, they found that their cigarettes had been taken away, and their tea, coffee, and sugar had been poured on the floor. During the mass search, a radio received owned by inmates was crashed to pieces in one of the cells. The search was accompanied with violence. Based on the private interviews, the Group concluded that, during the “activity,” at least five inmates had been brutally battered. During the battering, the inmates were handcuffed. According to the inmates, the battering was done by 7-10 people using rubber truncheons, legs, and electrical shock. Three of the inmates that had suffered from the violence said they had fainted due to the battering. During the visit of the Group, traces of battering injuries and handcuff wounds could still be noticed on different parts of the inmates’ bodies (traces of battering injuries on their backs, legs, and faces, and handcuff wounds on the wrists). Those battered had not received medical assistance, and their injuries had not been recorded in their medical cards.

During the Group’s visit, three of the battered inmates were being held in punishment cells. As a consequence of the violence and humiliation, they had gone on a hunger strike. The institution governor said that the “activity” was triggered by an April 26 incident between inmate Arthur Ayvazyan and a military prosecution investigator in the premises of the Goris Penitentiary Institution, about which the governor had informed the Penitentiary Administration. On April 29, Convoy Unit personnel of the Internal Troops of the Armenian Police went to the Goris Penitentiary Institution and carried out the aforementioned “activity” jointly with the employees of the Goris Penitentiary Institution.

Before the April 29 events, convict Sargis Harutyunyan had been sanctioned by the prison governor to 5 days in a punishment cell for violating the regime. However, execution of the sanction was delayed at the suggestion of the doctor, due to health problems. On May 4, sonographic analysis showed that Sargis Harutyunyan could be placed in a punishment cell. He claims that, on May 4, as a sign of protest, he swallowed a nail and a part of an aluminum spoon. When the Group visited, he had not been X-rayed yet. The other two inmates held in punishment cells said that, during the first three days of their confinement in punishment cells, the beds had not been unfolded, they had not been given bedding, and had been deprived of outdoor exercise.

The Group of Public Observers found that the special measures applied by the personnel of the Convoy Unit of the Internal Troops of the Armenian Police and the employees of the Goris Penitentiary Institution, including the mass punitive actions, such as the intentional

demonstrative destruction of personal property, the violence, degrading acts, cruelty, and inhuman treatment, violated the requirements and spirit of the Armenian legislation and the international conventions ratified by Armenia. Thus, the Group concluded that there had been grave violations of Articles 3, 14, and 17 of the Armenian Constitution, Articles 6, 78, and 98 of the Armenian Penitentiary Code, Articles 2, 13(13), 16, 37, 38, and 39 of the Republic of Armenia Law "On Keeping Arrested and Detained Persons", and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Armenia.

Based on Article 47 of the Law "On Keeping Arrested and Detained Persons", the Police Chief of Armenia issued Decree A1-N of January 14, 2005 approving the operational procedure of the group of public observers over Police arrest facilities. On March 10, 2006, the Group of Public Observers over places of holding arrested persons was formed. However, these are the only places that the Group may visit. In other words, the Group may not visit police stations, while practice shows that most of the torture takes place in the police stations.

Police apprehends individuals and, without documenting their apprehension and without informing them of their status, keeps them in police stations where battering and ill-treatment are practiced. The victims of violence normally do not report the violence.

The main purpose of torture in Armenia is to extort confession, rather than to punish. Further on, courts mainly accept the "evidence" put forth by the prosecution, the bulk of which is the confession by defendants. Monitoring has shown that, during trials, about 80 percent of the defendants deny the testimony they gave during the pre-trial investigation, explaining that they testified under torture and pressure. However, nothing is done to investigate the torture allegations of defendants, and the perpetrators of torture and ill-treatment go unpunished. Criminal cases are not necessarily instigated in respect of allegations of torture by pre-trial investigative bodies, even when suspects have died because of the torture. Whenever cases are instigated, the perpetrators are rarely punished. Some of these cases are dropped due to "the absence of crime elements" or "the failure to identify the perpetrators". In the better scenario, the perpetrators are charged with abuse of power.

About 60 percent of the inmates have said that they have been battered at the time of arrest or in police stations. However, the isolator admission journals contain no or very limited information on injuries.

On April 20, 2006, 47 year-old jeweler Armen Ghambaryan was unlawfully apprehended to the Republic of Armenia Police General Department against Organized Crime (6th Department) without an appropriate ruling and was kept in the same place for two days, during which he was cruelly battered "using rough blunt objects," which was later confirmed in a forensic report. On April 22, the decision on his arrest was taken, and he was moved to the Republic of Armenia Police facility for holding the arrested. On April 23, a medical examination report was filed at the duty station of the Yerevan City Department of Police. The report read, in particular: "On the left side, there are reddish-blue traces and a swelling; there are wounds on the left shoulder-blade and back; the left eye is bruised and swollen; and there are scratches near the right knee." Later, Ghambaryan was moved to the Nubarashen Penitentiary Institution, from which he was moved to the Convicts' Hospital. At the Hospital, a forensic medical examination was performed on May 3, 2006. According to the forensic expert's report (# 427/h), Armen Ghambaryan "had been inflicted injuries on the chest, left eye, left shoulder-blade, right knee, as well as spleen rupture,

which had been accompanied with internal bleeding: all of the above had been caused by rough blunt objects, and resulted in grave and life-threatening health damage". From the time of his apprehension to the Republic of Armenia Police General Department against Organized Crime, a defense lawyer was not participating in any of the acts performed in respect of Armen Ghambaryan.

To address the situation, intensive urgent measures are needed, including the following:

1. In order to comply with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, it is necessary to create a Group of Public Observers, which will have the power to visit police stations, places of keeping arrested persons, places of keeping arrested military servicemen, penitentiary institutions, armed force detachments, psychiatric institutions, orphanages, and homes for the elderly.

2. It is necessary to change the court practice in order to:
   - Apply the relevant provisions of criminal law, which provide that, if a defendant alleges torture, the court shall be obliged to demand an immediate investigation; and

   - Refuse the practice of accepting confessions as the primary evidence for conviction.

3. Police officers found guilty of torture must be punished under criminal law.

4. In order to comply with Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, Armenia should make a statement to recognize the jurisdiction of the UN Committee against Torture to receive and examine individual complaints of individuals that consider themselves victims of violations of the Convention.

5. The criminal legislation should be reformed, including:
   - The provisions of the Criminal Procedure Code on the interrogation of suspects, the accused, and witnesses should be amended to stipulate an exhaustive procedure that must be followed by police during interrogations.

6. Police staff must be trained, and new appointments must be based on merit criteria such as professionalism and knowledge of the international standards.

RIGHTS OF RELIGIOUS, ETHNIC, AND OTHER MINORITIES

RELIGIOUS TOLERANCE IN ARMENIA

Legislation

The Republic of Armenia Law "On Religious Organizations and the Freedom of Conscience" was adopted on June 17, 1991 on the basis of a 1990 USSR law with the same name. The Law has since been twice amended (in 1997 and 2001).

Article 17(2) was added to the Soviet law, which provides that “the State shall not hinder the performance of missions over which the National Church (i.e. the Armenian Apostolic Church) has monopoly” and specifies “monopoly missions” that contradict the international human rights treaties ratified by the Republic of Armenia, as well as Articles 26 and 27 of the Republic of Armenia Constitution, other provisions of the same law, and other laws and legal acts of Armenia. However, in spite of the fact that the Constitution and international treaties prevail over other legal acts, the Republic of Armenia Ministry of Justice often invokes the Law “On Religious Organizations and the Freedom of Conscience” to limit the activities of some registered religious organizations.

The Republic of Armenia Constitution enshrines the freedom of religion (Article 26) and the exclusive mission of the Armenian Holy Apostolic Church - as the National Church - in the spiritual life of the Armenian people, the development of the Armenian national culture, and the preservation of the national identity (Article 8.1).The Apostolic Church of Armenia and state bodies consider this provision of the Constitution to be a basis for establishing a special relationship with the National Church, which, too, limits the rights of other religious organizations operating in Armenia.

In November 2006, the television station “Shoghakat” broadcast a report covering a meeting to draft a new Law “On the Freedom of Conscience”, in which the Catholicos of All Armenians Garegin II and the National Assembly Speaker Tigran Torosyan took part, and the Catholicos declared that the new Law should take into account the need to fight against “sects”. The view of the National Assembly Speaker on this matter was not broadcast, but in November 2006, he initiated and, without either any public debate or the knowledge of the relevant authorities, hurriedly incorporated in the Agenda of the National Assembly a draft Law “On the Special Relationship between the Republic of Armenia and the Armenian Holy Apostolic Church”; many provisions of this draft Law contradict the international standards and the provisions of the Armenian Constitution regarding the freedom of conscience, and contains vague language that can be construed arbitrarily. The draft Law contains elements of discrimination against other religious organizations and citizens that do not belong to any religious organization. There is particular concern over the article entitled “Role of the Armenian Holy Apostolic Church in the Field of Education,” which violates the secular nature of the education sector and the constitutional rights of citizens with other views. With this Law, the Church will enter the public general schools and acquire the right to determine the content of textbooks and to organize the testing of teachers.

The draft Law was adopted by the National Assembly by a majority vote in first reading. It is known that official and independent experts have expressed negative opinions of the draft Law.

The clergymen of the Armenian Apostolic Church refer to representatives of other confessions operating in Armenia as “sect members”. The word “sect” is effectively used with the following meaning: any religious confession that operates in Armenia and is made up of ethnic Armenians, with the exception of the Armenian Apostolic Church, is a “sect.” The word [in Armenian] sounds derogatory and insults the religious feelings of the members of other churches. Another term used in the existing law and applied in practice is “proselytism”. It is perceived by the National Church and a large share of the public in the following way: any ethnic Armenian must be a follower of the Armenian Apostolic Church, and preaching any other confession upon him is “proselytism”. This term is often used with this meaning by the mass media and public officials.

In 2006, the Government's Department for Ethnic Minorities and Religious Affairs initiated an open and public discussion with a view to elaborating the principles for a new law, but the discussion has since been halted. Considering that parliamentary and presidential elections will take place in Armenia in 2007 and 2008, respectively, the drafting of a new law will most probably be delayed by at least two years.

The Armenian authorities have not carried out a clear-cut policy on religious matters. One could not accuse the highest authorities of the country in carrying out a discriminatory policy; however, middle-rank officials, especially some representatives of local governments and law-enforcement authorities, have made statements threatening religious communities and have performed acts that limit the constitutional rights of religious organizations.

"We have come to understand that the leaders of Armenia will broadly accept tolerance and work along these lines, but there are some influential layers in Armenia, which are not ready to respect the principles of international law concerning religious tolerance," says doctor Rene Levonyan, the Leader of the Armenian Evangelical Church. He then goes on: "We are concerned about three issues in this sphere, all of which are provided in the Law on Religious Organizations and the Freedom of Conscience: the monopoly to preach, the media not being accessible to religious organizations in Armenia, and the issue of "proselytism" that is used and constantly abused, but is not defined by law."

Armenia has seen some positive developments regarding the freedom of conscience. Representatives of religious organizations operating in Armenia say that they trust the Government's Department for Ethnic Minorities and Religious Affairs, especially the Head of this Department Mrs. Hranush Kharatyan. They bring many of their issues to Mrs. Kharatyan and find solutions with her help. They believe the Department to be professional and unbiased. In some cases, their appeals to the Republic of Armenia President or the highest political leaders of the country have prevented certain trends against the freedom of conscience and human rights.

The opposition parties in Armenia fail to actively criticize cases of religious intolerance. A significant share of such parties is even more fundamentally intolerant in this area.

Situation in Schools

Starting from 2003, schools have taught the "History of the Armenian Church" subject. Religious organizations may not teach religion at schools; however, organizations registered by the state may do so through private classes for the children of their members.

In public general schools, the History of the Armenian Church is sometimes taught by priests of the Armenian Apostolic Church. In particular, such cases have been reported in the Lori Marz (region). Teaching this subject has been the cause of tension in some schools against students that are not followers of the traditional church.

According to data from the Evangelical Church, there have been cases in schools when teachers or clergymen visiting schools have warned that the children that, together with their parents, attend events held by churches other than the Armenian Apostolic Church ("sects") would be punished.

Doctor Rene Levonyan, the Leader of the Armenian Evangelical Church, says that there have been cases in which the Education Departments of the Marz Governments (Marzpetarans) have invited school principals and instructed them to carry out special "anti-preaching" measures in schools targeting the children of "sect members."

Pastor Vigen Khachatryan, the Chairman of the Administrative Center of the Seventh Day Adventists Church, told the story of how seven teachers, members of their religious community, lost their jobs in the school of the Akhlatyan Village in the Syunik Marz of Armenia. He further said that the school acts in such a way as to leave the impression that it had not violated any law. "They create such conditions that force the teachers to quit their jobs," explains Vigen Khachatryan.

The main problem is linked with Saturdays. School teachers are entitled to one day-off per week: whenever a teacher that is a member of this Church asks the principal to grant him the day-off on a Saturday, the principal deliberately refuses to grant it. In the school of the Akhlatyan Village, this has been the case for 10 years. Principals of other schools mainly grant such requests.

Milena Gevorgyan, the Director for Public Affairs of the Jesus Christ Last Days' Saints Church, says that in April 2006, the Principal of school 28 in the City of Gyumri, knowing that two children from a family are members of this Church, invited the parents and forced them to get their children to attend the History of the Armenian Church class, claiming that "a 'sect member' has no right to attend this school". The incident was raised in a meeting with the Mayor, who reiterated the demand made by the school principal. As a consequence, these children were forced to change their school. Mrs. Gevorgyan says that similar cases have taken place in other schools, as well.

In October 2006, the Lori Marz Governor and the Bishop of the Lori Diocese of the Armenian Apostolic Church convened school teachers of the Marz in the Marz Governor's Office and instructed them on how to teach the History of the Armenian Church.

The Armenian Apostolic Church has regularly initiated and funded such meetings. As was already mentioned, there have been cases in which the clergymen taught the classes. All of this casts doubt on the constitutional provision about the separation of the church from the state.

According to data provided by the "Jehovah's Witnesses" organization, "problems arise in virtually all the schools in connection with not attending the lessons on or events related to the History of the Armenian Church. For instance, in school 139 in the Nor Nork district of Yerevan, the teacher teaching the History of the Armenian Church to 5th graders made a derogatory statement at the beginning of the academic year concerning Jehovah's Witnesses and threatened the children not to try to communicate with them. The teacher even insulted one of the students in front of the whole class and gave him a "fail" grade for refusing to cross. Another 5th grade teacher in school 62 of the same district shamed a child that was a member of the Jehovah's Witnesses Church for his faith in front of the whole class. In some cases, parents have had no choice but to transfer their children to different schools. For the sake of fairness, though, one must note that the number of such cases has declined considerably in the recent past. Previously, there were many cases of firing teachers that were Jehovah's Witnesses. Now, there are few Jehovah's Witnesses left among school teachers."

There have also been cases in which representatives of different religious organizations targeted teachers for their preaching efforts.

Leasing Space for Events

One of the ways to obstruct the work of religious organizations is to create obstacles to the leasing of space for various events. These are regular, rather than isolated events.

The Seventh Day Adventists Church, for instance, had made an agreement to rent the conference hall in the Tekeyan Center in Yerevan, but, at the time of signing the contract, the Center Director found out that the organization is the Seventh Day Adventists Church and refused to provide the hall. Many incidents similar to this one have been reported by members of other churches. In some cases, managers of facilities have claimed that they had been specifically warned not to provide meeting space to "sects."

According to data provided by the "Jehovah's Witnesses" organization, "in April 2006, there was an agreement with the management of the Vardan Achemyan Theatre in Gyumri to enter into a lease contract, but the Republic of Armenia Ministry of Culture and Youth Affairs subsequently prohibited the execution of the contract. In June 2006, after reaching agreement with the management of the "Vazgen Sargsyan Republican Stadium" Closed Joint-Stock Company, the execution of the contract was refused due to objection by higher authorities. In July 2006, although a contract was executed with the "Karen Demirchyan Sports and Concert Complex" Closed Joint-Stock Company for lease of space for a conference, the contract was terminated several weeks ahead of the conference date due to objection by higher authorities." During the last ten years, such complaints have been made regularly.

Situation in the Mass Media

Representatives of religious organizations operating in Armenia have long expressed concerns over the appeals of intolerance voiced in the print press and on television. Such appeals negatively influence the public opinion, which in turn generates a climate of public intolerance towards religious organizations. Inaccurate and bluntly false information is often published. When the representatives of religious organizations ask the mass media to publish refutation, they are normally denied.

On October 22, 2006, *168 Jam* daily published an article called "Crime in Religious Organizations, Too": in the article, Alexander Amaryan, the Chairman of the "Center for Rehabilitation and Aid to Victims of Destructive Creed" stated that "there is crime within religious organizations, as well," and that he considered it premature to disclose names and details. He said that "the Adventists have a charitable structure called "International Adventist Development and Relief Agency - ADRA". The Russian media have portrayed ADRA as an organization financing Chechen militia, which is presently engaged in missions in Iraq and Nakhijevan, as well. In June, this structure funded an eight-day health exhibition and seminar in Yerevan". The article makes similar allegations at a number of other religious organizations, but Alexander Amaryan considers that "time has not come yet" for publicizing the details of proof. In his not infrequent appears on television and in other mass media, he makes groundless announcements about cases of suicide and "destructive" activities amongst "sect members," which generates public hostility in relation to religious organizations. Pastor Rafayel Grigoryan of the Evangelical Christian Church in Vanadzor and Pastor Vigen Khachatryan, the Chairman of the Administrative Center of the Seventh Day Adventists Church, have complained about the aforementioned article and the activities of Alexander Amaryan. However, the representatives of religious organizations have not sued the latter for such comments and articles.

In the same article, one can read that members of the “One Nation” (“Mek Azg”) Party have chosen a unique method of “combating the sect member movement” by spreading flyers. “Capitalizing on the moral, psychological, and social crisis in the country, sects use vivid preaching and public methods to influence uneducated public masses and to commit their black deeds,” says Gor Tamazyan, the Chairman of the “One Nation” Party. Alexander Amaryan says in the aforementioned article that “in defense of the Armenian Apostolic Church, they will carry out their 11th procession in the streets of Yerevan in early November. However, this procession, which the organizers call “a struggle,” is too small compared to the large-scale “movement” that is conducted by foreign-born religious organizations in Armenia.”

In March 2006, flyers were posted in the streets of Vanadzor, which read “Death to the Sect members.” When the *Civil Initiative* newspaper of the Vanadzor Branch of the Helsinki Civil Assembly criticized the flyers, the Chairman of the Assembly Branch received e-mail messages reading “Death to the Helsinki Assembly” or “Death, Death to Sakuntz - the Chairman of the Helsinki Assembly.” After the leaders of religious organizations complained to the President of Armenia, the Speaker of the National Assembly, and the Prime Minister’s Advisor for Religious Affairs, criminal cases were instigated in respect of these cases.

According to data provided by the “Jehovah’s Witnesses” organization, “nowadays, there are more cases of physical pressure against the Jehovah’s Witnesses in different parts of the country, which are mainly due to the materials published in the press or other mass media. Physical violence has also been instilled by the campaign ran by the “One Nation” Party using processions and the distribution of flyers in public places.”

Pastor Rafayel Grigoryan of the Evangelical Christian Community of Vanadzor says that *Azg* daily has never responded to their requests to publish refutation of articles regularly published in *Azg* about their organization.

Naira Bulghadaryan, a journalist of the *Civil Initiative* newspaper, says that “Bishop Mikayel Ajapahyan, the leader of the Shirak Diocese, has directly banned local television stations in Gyumri from providing air time to other religious organizations. Prior to the ban, the Chairman of the Association of Evangelical Baptist Christian Churches of Armenia Ruben Pahlevanyan had been actively participating in numerous television programs, including some on non-religious topics.”

In the rare cases in which leaders of religious organizations have been allowed access to the air (not for preaching), the television companies that granted such access received telephone calls warning them against granting religious organizations access to the air.

Religious intolerance has been preached by some political parties operating in Armenia, too. In addition to the aforementioned “One Nation” Party, which “specializes” in the “struggle against sects,” there are some other parties that have tried to capitalize on the intensifying public sense of religious intolerance. On November 9, 2006, the website www.lragir.am published an article called “Henchaks to Fight against Sects,” in which it said the following: “The Social-Democratic “Henchak” Party’s youth-student association representative Sahak Manukyan has declared that the “Henchak” Party will continue the struggle against sects operating in Armenia. In this struggle, they will cooperate with the Armenian Apostolic Church.” Sahak Manukyan had further said that, in the frameworks of this “struggle,” their Association has organized events for 11-12 year-old children in order

to acquaint them with the history and culture of fatherland. He also said that what they did was not election campaign, as “a 120 year-old party does not need advertisement.”

Conclusions

- During the period from 1991 to 1995, there have been organized attacks on religious communities operating in Armenia. The organizers and perpetrators of attacks that were accompanied with battering and destruction and extortion of property have not been punished by law-enforcement agencies.

- The Republic of Armenia Law “On Religious Organizations and the Freedom of Conscience” was adopted on June 17, 1991 on the basis of a 1990 USSR law with the same name. The Law has since been twice amended (in 1997 and 2001). The Law contains many inconsistencies and shortcomings. Some provisions of the Law contradict the Republic of Armenia Constitution and international treaties ratified by the Republic of Armenia. In 2006, the Government’s Department for Ethnic Minorities and Religious Affairs initiated an open and public discussion with a view to elaborating the principles for a new law, but the discussion has since been halted. Considering that parliamentary and presidential elections will take place in Armenia in 2007 and 2008, respectively, the drafting of a new law will most probably be delayed by at least two years.

- In November 2006, Speaker of the National Assembly Tigran Torosyan initiated and, without either any public debate or the knowledge of the relevant authorities, hurriedly incorporated in the Agenda of the National Assembly a draft Law on the Special Relationship between the Republic of Armenia and the Armenian Holy Apostolic Church; many provisions of this draft Law contradict the international standards and the provisions of the Armenian Constitution regarding the freedom of conscience. The draft Law contains elements of discrimination against other religious organizations and citizens that do not belong to any religious organization. It was adopted in first reading by a majority vote of the National Assembly. It is known that official and independent experts have expressed negative opinions of the draft Law.

- Some of the main challenges to religious tolerance and freedom of conscience are regular statements made in the print press and broadcast media, which call for religious intolerance and, at times, even the use of force.

RIGHTS OF ETHNIC AND OTHER MINORITIES

Armenia is an ethnically homogenous state. According to a 2001 Population Census, ethnic minorities (Assyrians, Yezidis, Kurds, Russians, Ukrainians, Greeks, Molokans, Jews, and others) comprise 2.2% of Armenia’s population. The more sizeable ethnic minorities are the Yezidis (40,620), Kurds (1,519), Russians (14,660), and Assyrians (3,409). Recently, a large number of Iranian citizens have moved to Armenia for temporary residence, but no statistics on their number have been published.

A large share of Armenia’s ethnic minorities resides in fragmentation, but mainly in Yerevan. There are some settlements that are compactly populated by Yezidis, Assyrians, and Molokans. The ethnic minorities living in Armenia do not pose any political demands.

In June 1993, Armenia ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The Armenian Constitution and laws stipulate equal treatment for all persons regardless of race, ethnicity, and religion.

Article 14.1 of the Constitution, in particular, provides: “Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.”

Article 41 of the Constitution provides: “Everyone shall have the right to preserve his or her national and ethnic identity. Persons belonging to national minorities shall have the right to preservation and development of their traditions, religion, language and culture.”

The Criminal Code stipulates sanctions for ethnic and racial discrimination.

Armen Avetisyan, the Chairman of the “Union of Armenian Aryans,” was held criminally liable for making statements containing ethnic discrimination. No other widely-publicized cases of this nature have been reported.

The ethnic minorities in Armenia do not have their parties. Some members of ethnic minorities have joined different parties operating in Armenia and have been included in the party lists in parliamentary elections, but currently, ethnic minorities are not represented in the Parliament. Ethnic minorities are represented in local governments, including both elected and appointed positions. Generally, ethnic minorities are politically passive, and no obstacles have been posed to their engagement in politics. Nevertheless, members of ethnic minorities are not fully represented in either the Parliament or the Government.

Ethnic minorities do not encounter any resistance to the exercise of their right to teach the mother tongue. Ethnic minorities may study their mother tongue and receive education in their mother tongue in public general schools of Armenia. However, virtually all the ethnic minorities face difficulties in terms of the availability of specialists and curriculum development. The Russian community is better off, because it receives academic materials from and has specialists trained in Russia.

The Government is implementing a special program to publish textbooks and to develop curriculum for ethnic minorities. The Government has provided funding to ethnic minorities for cultural programs.

The Government’s Department for Ethnic Minorities and Religious Affairs has taken initiatives to support educational and cultural projects of ethnic minorities. The Department has drafted a Law “On ethnic minorities”. The draft Law intends to safeguard the rights of ethnic minorities and to create conditions for the development of their culture. The draft Law recognizes the collective rights of minorities. The draft supports not only the cultural self-sufficiency of ethnic minorities, but also their representation in local government. The draft contemplates a certain system of quotas, designed to make sure that ethnic minorities are represented in local government bodies. The draft also contemplates that the Government will create a special fund for ethnic minorities, which will support the preservation of their cultural uniqueness.

INSTITUTIONAL STRENGTHENING OF THE HUMAN RIGHTS DEFENDER

The shortcomings of the Republic of Armenia Law "On the Human Rights Defender" were thoroughly analyzed in the 2005 Report on the Monitoring of Democratic Reforms in Armenia.[4] It is worth briefly mentioning here that, among the deficiencies of the Law, OSCE/ODIHR and Council of Europe experts have pointed out Article 7(1), which prohibits the Defender from examining complaints against judicial organs and judges. In other words, the Defender may not help individuals that have suffered violations of their fair trial rights under Article 6 of the European Convention on Human Rights and Article 19 of the Armenian Constitution. Moreover, the Defender may not respond to allegations of undue delays of proceedings or the refusal of defense rights.

Article 8 of the Law limits the scope of potential applicants to the Defender: "For the protection of the rights of another person, only such person's representatives and the family members and heirs of a deceased person may apply to the Defender." Thus, the Defender may not review third party applications, including applications by human rights NGOs.

Under the Law "On the Human Rights Defender", prior to the November 27, 2005 Referendum amending the Constitution, the Defender was appointed by the President of Armenia after consultation with the parliamentary groups and factions of the Armenian National Assembly. However, the President went ahead, without any consultation, to appoint in February 2004 Larisa Alaverdyan, the Executive Director of the "Fund against Violations of Law" Non-Governmental Organization, as the Human Rights Defender of Armenia.

On April 4, 2005, the Human Rights Defender published [under Article 17 of the Law "On the Human Rights Defender"] the Annual Report [for March-December 2004] on Activities of the Human Rights Defender and the Violations of Human Rights and Fundamental Freedoms in Armenia. The numerous human rights violations covered by the Report included the violations of property rights of the residents of the Center District of Yerevan during the construction of the Northern and Main Avenues, as well as administrative detention and torture practices against opposition representatives. The Report was harshly criticized by the Minister of Justice, the Prosecutor General, and the Cassation Court Chairman; they said, in particular, that "a number of episodes mentioned in the Report are unfounded, and the allegations made in the Report are in some cases illusionary." Six months after the Annual Report was published, the Human Rights Defender published an extraordinary report presenting in detail all the human rights violations and violations of law during the development projects in downtown Yerevan.

Under the Amended Constitution of Armenia, the Human Rights Defender obtained the right of petition to the Constitutional Court. Larisa Alaverdyan exercised this right, asking the Constitutional Court to rule on the constitutionality of the Government Decree on the expropriation of assets from the residents of the Center District of Yerevan. However, she was soon thereafter removed from office, which stopped further progress of the application.

On May 26, 2005, the National Security Service (NSS) arrested a research/analysis unit employee of the Staff of the Human Rights Defender on charges of fraud; in the framework of the criminal case, a computer was seized from the Defender's Office, which contained information of the Office and confidential complaints by citizens, even though Article 19(1)

[4] *See www.ypc.am.*

of the Law “On the Human Rights Defender” provides that, throughout his term, the Defender shall enjoy immunity, which also applies to the Defender’s correspondence, communication means used by the Defender, and documents that belong to the Defender.

The term of office of the Human Rights Defender expired on January 5, 2006 (i.e. the 30th day after the Amended Constitution came into force). Under Paragraphs 1 and 4 of Article 6 of the Law “On the Human Rights Defender”, “the powers of the Defender shall terminate on the day following the expiry of his term of office … In case of terminating the powers of the Defender, a new Defender must be appointed within one month of such termination. Prior to the appointment of the new Defender, the Deputy Defender shall carry out the Defender’s duties.”

On January 4, 2006, the President of Armenia issued a decree dismissing Larisa Alaverdyan from office, as her term had expired. The same decree created a commission that replaced the Defender pending the appointment of the new Defender. The following officials were appointed as members of the commission: Arushan Hakobyan (Chief of Staff of the Constitutional Court), Martin Zakaryan (Deputy Chief of Staff of the President of Armenia), and Nune Khachatryan (Chief of Staff of the Ministry of Justice). In effect, the Deputy Defender was unable to carry out the Defender’s duties, contrary to the Law. Under Article 83.1 of the Constitution, the National Assembly had to elect a Human Rights Defender by at least 3/5 majority vote of the total number of its members prior to February 9, 2006, for a six-year term. The following candidates were nominated: Armen Harutyunyan (Provost of the Public Administration Academy), Ruben Torosyan (Chairman of the “Human Rights 96” Party), and Hrant Khachatryan (Chairman of the “Constitutional Law” Union, Member of Parliament). The first vote in the National Assembly failed, because no candidate won the necessary number of votes. The second vote, during which, according to an article published in *Haikakan Jamanak* daily (February 18, 2006), conditional signs had been used in the ballots (in order to determine how each member of parliament voted), brought victory to Armen Harutyunyan, who on February 17, 2006 was appointed as the Human Rights Defender of Armenia for a six-year term.

Article 17 of the Law “On the Human Rights Defender” provides that “within the first quarter of each year, the Defender shall present to the President of the Republic and the legislative, executive, and judicial powers a report on the Defender’s activities during the previous year and on violations of human rights and fundamental freedoms in the country.” In the National Assembly, the newly-elected Defender presented some statistics on the Defender’s activities in 2005 and stated that he is unable to report on the activities of another Defender.

In an interview with the Helsinki Committee of Armenia, Armen Harutyunyan said: “With a 95 million dram annual budget and a staff of 39, the Office of the Human Rights Defender is doing everything it can to best protect human rights.”

When inquired about the Defender’s initiatives, Armen Harutyunyan pointed at the application lodged by the Human Rights Defender with the Constitutional Court, challenging the constitutionality of laws and Government Decree 1151 of August 1, 2002 (on the space expropriated from owners), which underlay the development projects in downtown Yerevan. The Constitutional Court found that Article 218 of the Civil Code (“Taking of a Land Plot for State or Community Needs”), Articles 104, 106, and 108 of the Land Code (concerning the taking of land plots and real estate), and the aforementioned Government Decree did not correspond to several provisions in the Constitution. However, several hundred residents of downtown Yerevan, who had been unconstitutionally deprived of their property, were not given any redress. Even after the aforementioned

judgment by the Constitutional Court, residents of downtown Yerevan continued being expelled from their homes, as their properties were sold by compulsion.

Armen Harutyunyan, the Human Rights Defender, considers the Constitutional Court's judgment a positive step, because it has enabled residents to get a refund of the 10% income tax charged on the compensation they received for their properties. He suggested these citizens going to the European Court of Human Rights to challenge the amount of compensation paid to them.

The Defender also requested the Constitutional Court to rule on the constitutionality of a provision in the Law "On Parties", whereby "a party must be liquidated, if, in each of any two successive parliamentary elections, its party list receives less than 1% of the total votes cast in favor of all party lists running in the election, minus the error margin." The Constitutional Court found this provision to contradict the Constitution and annulled it.

During his 10 months in office, Armen Harutyunyan has had virtually no meetings with citizens, and has no days set aside for such meetings. "Experience shows that one does not have to have special days for receiving citizens. Meetings should only take place, if necessary," said Armen Harutyunyan in a meeting with a representative of the Helsinki Committee of Armenia.

According to statistics presented by the Defender, his Office received 2,508 applications/complaints during February-December 2006 (compared to 1,800 in 2004 and 2,640 in 2005), of which 1,158 were in writing. 155 of them were solved positively.

"A positive solution is only reported, if, after a human rights violation is found, the case is examined and measures are taken to hold the party guilty of violating the right liable, and restoring the rights of the applicant," said Armen Baghdasaryan, the Criminal Procedure and Military Servants' Rights Restoration Team Leader of the Defender's Office, to the representative of the Helsinki Committee of Armenia. However, he failed to present any specific examples. "It would take several weeks to become familiar with all the applications that were solved positively, because one needs first of all to study and sort the archives, before they can be distinguished," said Grigory Grigoryantz, the Press Secretary of the Defender, when asked by a member of the Monitoring Group interested in the cases that had been solved positively. He then added that the Defender's Office receives 150-200 applications per month, of which 40 are by phone. "Applications come to the General Unit, where they are studied to determine whether they should be forwarded to the Civil or Criminal Law teams. Thereafter, it is for the Team Leader to examine the application. At the end, only if it is necessary, the case will reach the Defender."

Under Articles 9, 11, and 15 of the Law "On the Human Rights Defender", a complaint may be filed orally or in writing. The content of oral complaints must be documented by the Defender or his Staff. The Defender must send a copy of his decision regarding the complaint to the applicant as soon as possible, but no later than within 30 days of receiving the complaint.

Experts of the Helsinki Committee of Armenia believe that, in spite of the established rules of procedure, the activities of the Defender's Office are bureaucratized, and some applicants never receive adequate support.

1.2 FREEDOM OF EXPRESSION AND INFORMATION

LEGISLATION ON MASS MEDIA AND FREEDOM OF INFORMATION: AMENDMENTS IN 2006

A detailed overview of the Armenian legislation on freedom of speech, media, and information was presented by the Yerevan Press Club in the Report on the Monitoring of Democratic Reforms in Armenia (2005),[5] which analyzed the reform progress in the context of Armenia's honoring of commitments to the Council of Europe. The Report read as follows: "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 Communication"), there still remain numerous negative phenomena in this sphere. The Republic of Armenia Law "On Television and Radio" continues to obstruct broadcast media progress and development. The Public Television Company of Armenia remains the mouthpiece 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 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 the 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 2006, there were some new developments, including primarily amendments to the problematic Law "On Television and Radio". These amendments were initiated by the Government of Armenia in September 2006. Article 117 of the Amended Constitution (adopted in the Referendum of November 27, 2005) requires the National Assembly to harmonize all existing laws with the Constitution. Amendments to the Republic of Armenia Law "On Television and Radio" are implied in Article 83.2 of the Amended Constitution, which provides:

"To ensure the goals of freedom, independence, and plurality of the broadcasting media, an independent regulatory body shall be established by the law, half of whose members shall be elected by the National Assembly for a six-year term, while 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 a majority of the votes of its members."

Journalistic organizations and media experts were expecting the National Assembly and the Government to use the Amended Constitution, which required amendments in the legislation, to work on generally improving the Law "On Television and Radio" by making

[5] *www.ypc.am*

other amendments, as well. However, in a session of September 21, 2006, the Government decided to convene an extraordinary session of the National Assembly on September 26, which would discuss, among other issues, a draft Law on Amending the Law "On Television and Radio", which were apparently not known to anyone but the authors. On September 26, 2006, five journalistic organizations (the Yerevan Press Club, Internews of Armenia, Journalists Union of Armenia, the Committee to Protect Freedom of Expression, and the "Asparez" Club of Journalists) made a statement in which they called the draft unacceptable, because:

1. The draft was circulated hastily, without any discussion with stakeholders such as the television and radio companies or non-governmental organizations.

2. The only justification for the adoption of the amendments is Government Decree 9 of December 9, 2005. There is no other justification for the contents of the draft, and only Article 21 of the draft could be supported by the requirement in Article 83.2 of the Constitution.

3. The draft had not been reviewed by international experts.

4. The draft had not been discussed by the respective parliamentary committee, i.e. the Standing Committee for Science, Education, Culture, and Youth Affairs.

5. The draft contains a number of questionable provisions, which cause serious concerns regarding freedom of expression and the fair and impartial regulation of the television and radio broadcasting market.

The draft was discussed in a September 27 session of the extraordinary sitting of the National Assembly, but was voted in a regular session of October 3. The draft did not pass. After it was rejected, the ministry presenting it, i.e. the Ministry of Justice, initiated an online discussion of the draft, which was followed by meetings to discuss it.

A detailed overview of the Law "On Television and Radio" can be found in the Report on the Monitoring of Democratic Reforms in Armenia (2005).[6] Journalistic organizations and media experts believe this Law to be conceptually flawed; many have asserted the need for a new law altogether. Moreover, most of the professional organizations of journalists generally approve of the concept developed by Internews and believe that it can serve as a basis for drafting a new law. The constitutional amendments aimed at achieving pluralism in the television and ensuring the freedom of the television companies and the broadcast regulatory body; however, the obstacles to the development of independent broadcast media in Armenia cannot be addressed by either Article 83.2 of the Constitution, which limits the possibility of amending the Law "On Television and Radio", or the proposed draft law. Some of these obstacles are mentioned below:

- The broadcast regulators, i.e. the National Commission on Television and Radio and the Public Television and Radio Board depend on the authorities, and the latter in particular depends on the President of Armenia.

- Being dependent, their activities cater to the state of political affairs.

[6] Ibid.

- The awarding of broadcast licenses is an overwhelmingly subjective process driven by political “convenience.”

- The criteria for awarding licenses are unclear, and license award or refusal decisions are not properly reasoned.

- There is no oversight of compliance with the laws and the license terms.

- Punishment for violations is applied in a discriminatory manner.

The proposed legal amendments would not address these issues. Moreover, the amendments would fully commercialize the Public Television and Radio Company by removing the advertisement restrictions that currently apply to it (under the current law, commercial advertisement in the Public Television and Radio Company cannot exceed 5% of total air time, and the broadcast of programs may not be interrupted with advertisement). Furthermore, the proposed amendments did not contain any provisions regarding the procedure of forming the Public Television and Radio Company Board, and, if the amendments passed, the Board would continue being appointed by the President, thus remaining dependent on him.

On December 15, 2006, the Partnership for Open Society, which is an initiative that unites over 60 non-governmental organizations, sent an open letter to the members of the National Commission on Television and Radio. The authors of the letter urged the members of the National Commission on Television and Radio to display civil determination and to resign after the Law “On Television and Radio” is amended. The reasoning is that, under Article 83.2 of the Amended Constitution, the National Commission on Television and Radio formation procedure has changed: half of its members must be elected by the National Assembly for a six-year term, and the other half - appointed by the President for a six-year term. Besides, Article 117(11) of the Constitution (“Final and Transitional Provisions” Chapter) provides that the members of the regulatory body shall continue to serve in their positions until the end of their term stipulated by the Republic of Armenia Law “On Television and Radio”. If their terms of office expire, or their powers are terminated before the end of the term, the vacancies shall be filled by the National Assembly and the President of the Republic successively. Thus, the authors of the open letter argue that, due to the fact that the incumbent members of the National Commission on Television and Radio have different terms of service, there is a situation in which it will take six years to achieve the “50-50” proportion required by the Constitution. The quickest way out of this situation is the voluntary simultaneous resignation of all the members of the National Commission on Television and Radio, which would enable the National Assembly and the President to elect and appoint, respectively, the new members of the National Commission on Television and Radio and to immediately comply with the constitutional requirement.

On December 19, in an interview with Radio Liberty, the Chairman of the National Commission on Television and Radio Grigor Amalyan said the following in respect of the open letter: “I have simply acknowledged its receipt.” The Yerevan Press Club reminded that it was not the first case when Grigor Amalyan did not adequately respond to letters sent to the National Commission on Television and Radio and, in effect, reserved the right to speak on behalf of all the members of the Committee.

During 2006, there remained concerns about the requirement of the Republic of Armenia Law “On Postal Communication” concerning the licensing of entities engaged in the

subscription and dissemination of periodicals. Though on January 20, 2006, the Ministry of Transport and Communication, acting under the Republic of Armenia Law "On Legal Acts", sent to the Ministry of Justice an official explanation of Article 11 of the Law on Postal Communication, where it stated that print press subscription is not a postal service and, as such, is not subject to licensing (this explanation of the Ministry of Transport and Communication was published in the 4th issue of the Bulletin of Regulatory Legal Acts of Armenia dated February 1, 2006), both this explanation and the draft amendments to the Law "On Postal Communication" (initiated by the Government) refer only to subscription not being subject to licensing, whereas distribution in effect remains subject to licensing, which means that an entity that subscribes cannot distribute without a license. In the opinion of the experts of the Yerevan Press Club, this situation means the following:

1. Small organizations engaged only in the subscription and distribution of periodicals will either have to pay the required amount (i.e. a license fee of 5 million drams), which is excessive for them and will cause them to go bankrupt, or have to carry out the subscription on their own and outsource the distribution to the national operator or another licensed entity, which would imply (i) indirect honoring of obligations in respect of subscribers, and (ii) a higher cost of subscription and a lower print run due to different entities being responsible for the subscription and distribution.

2. Entities engaged in press activities (editorial offices of periodicals and publishers) would not have the possibility of subscribing and distributing their publications on their own.

Moreover, this situation contradicts:

a) Article 27 of the Constitution, which provides: "Everyone shall have the right to freedom of expression, including freedom to seek, receive, and impart information and ideas by any means of information regardless of the state frontiers." Under Article 43 of the Constitution, this right may be restricted only "by law, if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, the constitutional rights and freedoms, as well as the honor and reputation of others." Any restriction of people's right to disseminate or receive periodicals, i.e. to exercise their freedom "to seek, receive, and impart information and ideas" through an organization of their choice, does not flow from the requirement in Article 43 of the Constitution.

b) Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which allows states to require licensing of only broadcasting, television or cinema enterprises, but not of any other activities related to the freedom to disseminate information and ideas.

c) The Republic of Armenia Law "On Mass Communication", Article 4(2) of which provides: "Mass media shall be issued and distributed without any prior or current state registration, licensing, declaration with any state or other body, or notification to any body" (emphasis added). Under Paragraph 3 of the same Article, "it shall be prohibited …(4) to exert discrimination over the civil dealings involving equipment and supplies necessary for media activities, (5) to apply any restriction over a person's right to use any mass media, including those issued and distributed in other countries."

As opposed to broadcast activities, print press is currently freer in Armenia. Creating artificial obstacles to the distribution of print press could monopolize the sector and create tight government control here, as well. Furthermore, as of yearend 2006, the National Assembly had still not discussed a set of draft amendments to the Law “On Postal Communication”, which had been proposed by several parliamentarians, and, if adopted, would dispel all of the aforementioned concerns. However, both the Government and the relevant committee of the National Assembly (i.e. the Standing Committee for Finance, Credit, Fiscal, and Economic Affairs) are negative about this draft and would prefer to retain the licensing clause and lower the licensing fee. Experts of the Yerevan Press Club are fundamentally against this approach, because they believe that licensing of the subscription and distribution of the periodical press must be abolished altogether, because state licensing of postal activities is only necessary for activities that may relate to human security or the privacy of their correspondence, telephone communication, mail, telegraph, and other communications, which is a right safeguarded by the Constitution of Armenia. Such activities could include the delivery of letters and parcels, money remittances, and the like. However, what is printed in the press is open information, and there are other laws protecting human rights in this field.

On May 2, 2006, the National Assembly of Armenia adopted amendments to the Republic of Armenia Law “On Advertisement”, which requires the permission of the Republic of Armenia Ministry of Health before advertising medication, medical equipment, and medical methods. The experts of the Yerevan Press Club believe that requiring permissions for advertising medication or anything else creates an additional risk of corruption. It is an additional obstacle to the free dissemination of advertisement information, whereas the producer of the advertisement and the advertising medium could obtain from the advertiser and check the relevant documents prior to producing or distributing any advertisement of medication, medical equipment, or medical methods. To regulate advertisement, it would be sufficient for any medication or medical equipment to be licensed in the country.

The state should perform its supervisory function by monitoring good-faith conduct and, in case of discovering bad-faith advertisement, sanction the offenders in accordance with Articles 25 and 26 of the Law “On Advertisement”.

FREEDOM OF EXPRESSION, MEDIA, AND INFORMATION: SITUATION OVERVIEW

Other than the flawed legislation, some danger stems from phenomena such as the intimidation of mass media and journalists and the impunity of the perpetrators (or the enforcement of merely superficial punishments), concentration of ownership in the information field, latent censorship of television, and the lack of pluralism.

In 2006, political forces’ access to television (including the Public Television of Armenia) remained problematic. Here is an example: on October 5, 2006, the Press Service of the “Orinats Yerkir” party informed the public that the “Mig” television company in Vanadzor (Lori Marz) refused to broadcast an interview with the leader of the party, former Speaker of the Armenian National Assembly Artur Baghdasaryan. The party claimed that the refusal to broadcast the interview was due to political pressure and censorship. The leadership of the television company claimed that the interview contained insults aimed at the Lori Marz leadership and the “Lori” television company, and that they refused to broadcast the interview, because the party leadership did not agree to have those sections

cut. The television company “Mig” also expressed willingness to refund the interviewee (as it had been a paid interview).

Generally, there are concerns about the ability of political forces to freely present their views in the broadcast media; the impression is that there are even political figures and parties (such as the Raffi Hovhannisian (the leader of the “Heritage” Party), Aram Karapetyan (the leader of the “Nor Jamanakner” Party), Aram Z. Sargsyan (the leader of the “Hanrapetutyun” Party), and Artur Baghdasaryan and his “Orinats Yerkir” Party - ever since he lost the position of the National Assembly Speaker) that face restrictions whenever they try to appear in the broadcast media. In the opinion of the Yerevan Press Club experts, this is a form of hidden censorship. Moreover, monitoring has shown that none of the television companies show up at the press conferences of the aforementioned politicians, which end up being reported only in the print press. The “Orinats Yerkir” and “Heritage” parties have released statements condemning this situation. On November 7, 2006, such a statement was disseminated by the “Orinats Yerkir” Party, which claimed that meetings of the local population in Sevan and Gavar with Artur Baghdasaryan were not reported on the local television stations; instead, the latter had broadcast some materials damaging the his reputation of the party leader.

On November 9, the Board of the “Nor Jamanakner” (“New Times”) Party contacted foreign diplomatic missions in Armenia to inform that Aram Karapetyan, the leader of the party, “has not had any access to television for about one and a half years, which keeps him from appearing on live air and informing the population about his and his party’s programs.”

On a different note, there are some privately-owned television stations that are in reality controlled or guided by certain parties. For instance, the owner, director, chief editor, and political anchor of the “ALM” television company Tigran Karapetyan happens to be the President of the People’s Party; his television company reports his regional visits as visits of the party leader (but not as visits of the director of the television company). The “Kentron” television company has effectively become a channel subordinate to Gagik Tsarukyan and the “Bargavach Hayastan” (“Prosperous Armenia”) Party led by him. The “Yerkir Media” television station is identified with “Dashnakstutiun”, and the list can be continued.

Intimidation and battering of and attacks on journalists and mass media continued in 2006, with the perpetrators either not being found or, in cases when they were found, not being punished. The most striking attack was the one against Gagik Shamshyan, a photo journalist and a freelance correspondent to *Chorrord Ishkhanutyun* and *Aravot* dailies. On July 12, 2006, Gagik Shamshyan was persecuted by relatives and subordinates of Mher Hovhannisyan, who is the Mayor of the Noubarashen District Community of Yerevan. Based on Gagik Shamshyan’s appeal, the Prosecution Office of the Erebouni and Noubarashen Communities instigated a criminal case under Article 164 of the Criminal Code of Armenia (“Obstruction of the Professional Activities of a Journalist”), as well as Article 176(1) (“Robbery”) and Article 258(3) (“Public Disorder”). Gagik Shamshyan told the Yerevan Press Club that, on July 13 and afterwards, he was subjected to different forms of pressure: the electricity in his apartment was switched off, and the phone line to his apartment was cut off. On July 25, the Office of the Prosecutor General of Armenia informed that Rouben Hovhannisyan, the brother of the Community Mayor, had been charged in respect of this case and detained, but he was soon released on bail. On November 10, Shamshyan received a letter from the Prosecution Office of the Erebouni and Noubarashen Communities informing him that the criminal case had been

discontinued and that the suspects in the case (including the Mayor's brother) were no longer subject to prosecution due to "the absence of evidence confirming that their acts contained elements of crime" (see *Aravot* daily of November 14, 2006). This is a blatant case, because the people that terrorized the journalists, all of whom were known, in fact went unpunished. Furthermore, on August 3, a criminal case (on charges of insult, fraud, and extortion) was instigated against Gagik Shamshyan on the basis of a complaint lodged by a group of citizens; the case has already been investigated and is not pending before court.

During 2006, there were two reported cases of intimidating journalists in the building of the National Assembly. On May 23, Alexander Sargsyan (the brother of the Minister of Defense of Armenia Serge Sargsyan), a member of the parliament elected on behalf of the Republican Party, cursed at and insulted Taguhi Tovmasyan, a correspondent of *Iravunk*, in front of witnesses, demanding to disclose her source of information, and going on with threats and swearwords. Nothing was done about the incident, even though the Editorial Board of *Iravunk* had lodged a complaint with the Office of the Prosecutor General of Armenia, as well as the Police and the National Security Service.

A similar incident took place on October 13, 2006, when a member of the parliament Nahapet Gevorgyan attacked a journalist of *Aravot* Anna Israyelyan with threats and swearwords. His exact words were: "I will punch your head off your shoulders." The reason was that *Aravot* had published an article mentioning this parliament member's name, although Anna Israyelyan was not the author of that article.

In the morning of September 6, 2006, the editor of *Iravunk* Hovhannes Galajyan was attacked. Two people approached him from behind, hitting and throwing him on the ground. Local and international organizations released statements condemning this fact. At the time of releasing this Report, the criminal case has still not produced any results, as the perpetrators have not been found. In a similar fashion, despite the instigation of criminal cases, the law-enforcement authorities have failed to detain the individuals that on January 30, 2006 attacked Davit Jalalyan, a sports reporter of *Haykakan Jamanak*, and those that on February 7 burned down the car of Souren Baghdasaryan, a football commentator and the founder of the *Football Plus* newspaper.

Similar cases have been reported in the regions. On February 23, the Executive Director of the "Lori" television company in Vanadzor (Lori Marz) Narine Avetisyan was intimidated by someone that is known, but has not been criminally prosecuted. Early in the morning of May 16, unknown disguised individuals threw stones at her car. The perpetrators have not been found. Thus, in spite of the Law "On Mass Communication", which provides that "during their lawful professional activities, journalists, as individuals carrying out a public duty, are protected by the legislation of the Republic of Armenia," none of the individuals that attacked or intimidated journalists during 2006 have been either found or punished; journalists and the mass media do not feel that the state is protecting them.

In the context of pressure against the media, it is necessary to examine the arrest of Arman Babajanyan, the Editor-in-Chief of *Jamanak Yerevan* daily, on June 26, 2006, and his prosecution under Article 327(2)(2) of the Criminal Code of Armenia ("Evasion of Compulsory Military Service, Drills, or Conscription"). The judicial hearing of the criminal case instigated against Arman Babajanyan ended on September 8: the First Instance Court of the Kentron and Nork-Marash Communities of Yerevan convicted Arman Babajanyan to four years of imprisonment. Numerous journalistic and human rights organizations tend to believe that Arman Babajanyan has been prosecuted for his

professional activities, and that the sentence determined by court was not proportionate to the act. The international organization “Journalists without Frontiers” shared this view in its statement released on October 31, 2006 in defense of Arman Babajanyan. Armenian organizations believe that the Editor of *Jamanak Yerevan* daily has been clearly subjected to discrimination: the court did not apply the Law “On Citizens that Did not Perform Compulsory Military Service in Violation of the Established Procedure” adopted by the National Assembly in 2003, which would have allowed any citizen that had reached age 27 and not performed military service to avoid criminal liability by paying a certain fee. Even though Arman Babajanyan had sent an application to the relevant committee dealing with the issues of citizens that have turned 27 and have not performed compulsory military service during the period from the draft of fall 1992 and 2005, asking to apply the aforementioned law in respect of him, the committee had not responded to him by the end of the year. At yearend 2006, Arman Babajanyan’s case was pending before the Appellate Court for appellate review initiated by the defense.

ENSURING FREE AND FAIR COMPETITION IN THE MEDIA. STATE SUBSIDIZATION OF THE PRINT PRESS.

Television is the primary medium of mass information in Armenia. A regulatory body (the National Commission on Television and Radio or the NCTR) is called to ensure fair competition in the broadcast media by means of competitively distributing radio frequencies and to monitor private television and radio companies’ compliance with the conditions of their licenses and the requirements of the Armenian legislation.

One would assume such a body to be independent. However, given the current procedure of its formation (all the members of this Committee were appointed unilaterally by the President of Armenia), it is clearly subject to political influence. Considering that the relevant amendments to the Law “On Television and Radio” (see the section of this Report entitled “*Legislation on Mass Media and Freedom of Information: Amendments in 2006*”), which stem from the Amended Constitution of 2005, are currently being discussed by governmental agencies and civil society, and a new procedure has not been approved yet, it would be premature to claim that the Amended Constitution has positively influenced the freedom of the NCTR. Domestic associations of journalists have expressed their position on the constitutional and legislative amendments concerning the broadcast media (see the section mentioned above).

The necessity of ensuring the independence of the NCTR has been underlined on numerous occasions in various documents of reputable international organizations regarding Armenia, including first of all the Council of Europe and the OSCE. A July 26, 2006 report of Miklos Haraszti, the OSCE Representative on Freedom of the Media, states that “legislative changes should not be limited to a “half Presidential - half Parliamentary” [regulatory body]. The composition of all [regulatory bodies] should represent the political and social diversity of the country, and should include NGOs and professional associations.”

Moreover, international organizations and local associations of journalists have harshly criticized the way in which tenders for television and radio broadcasting licenses have been carried out. The objections are mainly about two problems: insufficient transparency of the process of reviewing applications and uncertainty of criteria for awarding licenses.

The fairness of such tenders has frequently made professionals and the public at large suspicious. Although Article 26 of the “Regulations of the National Commission on Television and Radio” allow engaging non-governmental experts in the review and assessment of applications and journalistic associations have expressed their willingness to take part in this process, which they consider necessary, the NCTR refuses to be so open about its activities.

As concerns the justification of awards, the NCTR does not comply with Article 50 of the Republic of Armenia Law “On Television and Radio”, which requires the NCTR “to provide appropriate justification of its decision on awarding a license or refusing to award one.” This requirement was added to the Law on December 29, 2003 together with some other amendments, and, for the sake of being impartial, we have to note that, since then, the NCTR began to provide the bidders more detailed texts of its decisions. However, the substance has virtually not changed. Before the 2003 amendments, the NCTR decision text would read something like this: “…considering the results of the tender, company X is declared the winner of the licensing tender.” After the 2003 amendments, the NCTR also specifies the tendered frequency and the bidder’s location, the number and date of the NCTR’s decision, and some arguments, which usually read as follows: “…in view of the conformity of the bid with the “requirements of the Republic of Armenia legislation on television and Radio, as well as the requirements of the tender,” company X is declared the winner of the tender.”

In the frameworks of a project called “Regulation of Television in Armenia,” Internews Media Support NGO, has analyzed the tenders conducted by the NCTR and concluded that the way in which the NCTR currently justifies the decisions on awarding licenses is very flawed and does not meet the requirements of aforementioned Article 50 of the Law “On Television and Radio”. Other professional associations, such as the Yerevan Press Club, Committee to Protect Freedom of Expression, Journalists Union of Armenia, and “Asparez” Journalist’s Club (Gyumri) share this assessment. They believe that bidders for frequency licenses should be evaluated on the basis of the four essential criteria stipulated by the aforementioned Law, including the prevalence of own content, the prevalence of domestically-produced content, technical and financial capacity, and professionalism of staff. Moreover, they believe that tender decisions must contain justifications based on a thorough evaluation of each of these criteria.

Thus, the problems affecting the transparency of the bid review process and the insufficient reasoning of decisions cast serious doubt about the fairness of tenders conducted by the NCTR. The television company “A1+”, which was well established and had a large audience, was deprived of the air in April 2002. The mere fact that, from 2002 to 2006, “A1+” has applied for various frequencies and has been rejected on all occasions, losing the bids to companies that were often unknown, reinforces the suspicion about the fairness of tenders and, more broadly, about the independence of the NCTR - a still unsolved problem that has frequently been mentioned by both professional associations in Armenia and international organizations. Resolution 1374 of the Parliamentary Assembly of the Council of Europe dated April 28, 2004 urges the Armenian authorities to “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 authorities, in turn, invoke the formal independence of the NCTR as the reason for the authorities’ inability to influence the NCTR’s decisions, which does not correspond to the reality.

During interviews conducted in the frameworks of this monitoring, representatives of a number of companies admitted that the framework for broadcast media does not provide adequate conditions for “bona fide” and fair competition. The problems stem from critical flaws in the legislation, the failure of the NCTR to perform a number of regulatory functions, and the absence of a genuine market in general and a genuine media market in particular.

Although the Law “On Television and Radio” contains provisions against monopolization (“…every natural or legal person may obtain a license for only one television or radio company…”), there are some “persons” in Armenia that own several broadcast companies. This fact was underscored in the aforementioned report of the OSCE Representative on Freedom of the Media.

The representatives of some television companies were saying that the broadcasters that have created dominant positions for their media are using them to get additional advertisement by setting manifestly low prices in violation of the principles of fair competition. Such behavior creates an unsound environment and undermines the mass media situation as a whole. As a consequence, other broadcasters are forced to reduce the advertisement prices and to increase the amount of advertisement in order to compensate the lost income, which causes them to go far beyond the limits set by the Law “On Advertisement”.

The monitoring carried out by the Media Support Program of IREX Armenia has shown that all of the television companies monitored violate the legislative provisions on the amount of advertisement. The Second Armenian Channel was found to violate these provisions more frequently then the other private broadcasters. The IREX monitoring found that, during certain periods (such as 9am to 10am, or 1:30pm to 2:30pm, or 5pm to 8pm, or 9:30pm to 11pm), the Second Armenian Channel broadcasts 1.5-2 times more advertisement than is permitted by law. Similar violations, though in slightly smaller numbers, were found in the other television companies monitored by IREX. It was calculated that during the evening hours, including prime time, the length of advertisement permitted by law during one hour of broadcast was exceed about 2-fold by the company “Shant”, about 1.7-fold by the company “Kentron”, and about 1.5-fold by the company “Armenia”.

Even though the NCTR has no legal power to interfere and to rectify the situation in the area of broadcast monopolies (because regulating monopolies is the prerogative of the Economic Competition Committee of Armenia), the NCTR has the right to stop the “flooding” of the air with advertisement, which it does not exercise.

As for advertisement of strong alcoholic beverages (with the exception of cognac), the Internews monitoring showed that the majority of television companies do not comply with this restriction. The broadcasters only have a doubtful argument, when they claim to be showing only the trademark, rather than the alcoholic beverage. In reality, they are clearly advertising alcohol products. Here, too, the NCTR has failed to perform its functions and duties to influence the situation - something it had the authority to do.

It is also worth mentioning that the violations described above are also typical for the Public Television of Armenia (PTA). IREX reports that the PTA broadcasts on average three times more advertisement than is permitted by the Law “On Television and Radio” (under the Law, a public broadcaster may not have more than 5% of its total program volume in advertisement), in spite of the fact that the PTA receives a considerable amount

of funding from the state budget for performing public service. In essence, the Public Television is focusing on commercial projects that can increase advertisement revenue in breach of Article 28 of the Law “On Television and Radio”, which states the priorities of public television (“to ensure the citizens’ constitutional right to freely receive political, economic, educational, cultural, children’s, youth, scientific, and enlightenment information about the Armenian language and history, as well as sports, entertainment, and other information that is important and significant for the public”). As a consequence, the PTA has become dominant and created preconditions for unfair competition in the broadcast and advertisement markets.

The same violations of advertisement rules can be found in the radio, as well. In addition to breaching the maximum length of advertisement and advertising strong alcoholic beverages, the radio stations are also broadcasting advertisement in foreign languages, especially in Russian. The radio companies blame the flaws in the legislation for these problems. On the one hand, the Law “On Advertisement” provides that goods and services must be advertised in Armenian and, if necessary and if the advertiser so wishes, it may be accompanied with corresponding subtitles or text in foreign languages. On the other hand, this requirement does not apply to the radio, as the radio cannot use subtitles. Consequently, the radio broadcasters are opting to violate the law directly.

Such overwhelming incidence of the violations of law in the broadcast media poses the risk of the NCTR arbitrarily sanctioning certain companies, for instance, when they are deemed not to be loyal to the authorities. There are already examples of this practice. The NCTR tried to fine Radio Van for advertisement in Russian; and the television company “Hayrenik” had to pay a fine for re-broadcasting programs of the French “Mezzo” channel without having the required contracts, even though other companies commit the same violations. This situation poses the danger of the mass media being subjected to political pressure or corruption.

Several representatives of television and radio companies claim that, in general, the “proximity” of a broadcaster to the ruling elite will by and large determine the volume of advertisement it gets, which is an indication of business converging with politics. Furthermore, the authorities segregate between “their people” and “not their people” (opposition press is considered “alien”) when choosing journalists to accompany the most senior leaders of the state during foreign trips or to receive information from official sources: some journalists get the information earlier, while others get it later, which is a clear sign of uneven treatment of the mass media.

The situation in the broadcast media is particularly worrisome in the context of the forthcoming introduction of digital broadcasting in Armenia. This process can be seriously undermined by the formal, legal, and factual dependence of the regulatory body. In her recommendations, OSCE and Council of Europe expert Catherine Neiman-Metcalf says that considering that it will be difficult to ensure competition during the early stages of transition from analog to digital broadcast, it is necessary to take steps to prevent concentration of ownership and to avoid monopolization of the market. In order to make sure that certain companies are not better off than others, access to the new broadcast infrastructure, despite its limited nature, must be fair by means of creating the maximum possible conditions for competition. Therefore, the expert recommends that it is necessary for the regulatory body to act objectively and transparently, and for the network operator and the future digital broadcasters to be selected by means of an open tender.

At the instruction of the Government of Armenia, an inter-agency task force has developed an action plan for implementing digital broadcasting. However, the action plan has a number of mistakes and serious shortcomings. For example, it is proposed under the plan to stop issuing analog broadcast licenses from January 2007. As a result, it is possible to end up in a situation when, for several years to come, analog television and radio stations will stop operating, and digital ones will not be in place yet.

Moreover, the plan contemplates the introduction of the concept of “a social package,” i.e. the provision of a subsidy to income-deprived groups of the population for the acquisition of the minimum set of a mix of public and private television channels. The Government will have the prerogative of determining which private channels will be included in this package. This approach contradicts the principles of independent broadcasting. Such decisions should be the prerogative of an independent regulatory body, rather than the Government. The plan also contemplates significant budget investments in a state-owned broadcast operator, which may undermine the balance between this operator and private operators, further monopolizing the telecommunications market. In other words, these and other provisions of the plan in general contradict the principles of fair market competition from the standpoint of both budget investments and the state policy of regulating telecommunications.

Interference of the state in activities of the print press is far less than in the broadcast media. However, the print press has an insignificant role in the information market. The daily print run of any newspaper does not exceed 3,000 to 4,000, not all of which always gets sold. Consequently, their advertisement revenue is insignificant. Due to their inability to survive on account of this revenue, which should be their primary source of revenue, most of the print media have to use the assistance of sponsors or, often, direct financing from various political and/or oligarchic groups, on which they become dependent. This type of funding normally accounts for a considerable share of a newspaper’s editorial budget. Hence, the inexistence of either a market or competition in this sphere.

It is stated in the aforementioned report of the OSCE Representative on Freedom of the Media that, given these conditions, “the Government should consider introducing special protection of the print press in order to promote media pluralism, for example a supportive distribution system, VAT or tax breaks”. Meanwhile, the Republic of Armenia Law “On Postal Communications”, which was adopted in December 2004, requires licensing of entities distributing print press to subscribers; the license comes with a fee, which can become an insurmountable obstacle for small companies engaged in the distribution business. If these companies leave the market, this sector may become monopolized in the hands of the state enterprise called “Haypost.”

Another urgent issue is the heavy tax burden on print media. Back in 1997, journalistic associations urged the authorities to grant newspapers and journals a VAT (value-added tax) exemption. The Government came up with a different idea - to support print media by allocating subsidies from the state budget. However, its implementation, which began in 1998, showed little effect. In 2000, the main nationwide newspapers, which are representative of the Armenian press, turned down the subsidies, and the subsidies have since then been provided mainly to literary-cultural, scientific, children’s and youth, and regional publications, as well as periodicals published by national minorities. Based on a Government decree, children’s periodicals are funded through a separate line in the state budget.

In 2003, at the initiative of Journalists Union of Armenia, the President of Armenia met with the leadership of regional and town newspapers to discuss, among other problems, the problem that some regional media were unreasonably not included in the list of subsidized media. In this respect, the President instructed to allocate 2 million drams from the President's fund in order to support the regional media. In 2004, at the request of Journalists Union of Armenia, the implementation of the Government decree on subsidizing print media was stopped, because the list of beneficiaries included a large number of newspapers and journals that were not being published, while some that were being published could not get the subsidy. In 2005, despite the protest in 2004, the list of supported media again included some unknown media, and Journalists Union of Armenia boycotted and opted out of the process, as it was considered pointless to repeatedly ask the same officials for the same thing.

The absence of clear criteria for subsidizing had created the faulty practice of people creating media simply to receive the state subsidy, and then, either publishing several issues of a newspaper or journal, or not publishing anything at all. Many of the active media did not merit the attention of the Book Publication Agency under the Ministry of Culture and Youth Affairs, which is responsible for distributing the subsidy. In the Kotayk Marz, for instance, three idle media, which were all created by the same private company, received subsidies in 2005, while the only newspaper that was known in this region and was being regularly published could not get the subsidy. The analysis carried out by Journalists Union of Armenia confirms that there are many other examples of such unfair distribution of state funds.

To review the issues related to subsidies, the aforementioned Agency (due to demands of Journalists Union of Armenia and the interference of the Prime Minister of Armenia) created a committee in 2006, which had members representing all the associations of creative professionals, such as the Secretary of the Board of the Armenian Union of Writers and the Chairwoman of Journalists Union of Armenia. The other three members of the committee were from the Agency itself. The Chairwoman of Journalists Union of Armenia Astghik Gevorgyan said that the committee was unable to achieve fair distribution of subsidies: the defined criteria for the selection of media, as inadequate as they could be, were frequently ignored, and the amounts of funding were determined arbitrarily. As a consequence, a significant amount designed to support the press (over 182 million drams) was dispersed. Astghik Gevorgyan believes that, in the future, it will be necessary to develop clearer and fairer criteria for subsidizing print media, and that the funds should be distributed by an independent expert committee. A number of professional associations believe that it would be effective to distribute the funding between media in such a way as to make it proportionate to the amount of taxes annually paid by such media.

To summarize the situation in the broadcast and print media, it can be said that the government has so far been unable to create favorable conditions for either the establishment and strengthening of independent mass media or free and fair competition between the media.

2. POLITICAL RIGHTS

FREEDOM TO CREATE AND OPERATE POLITICAL ASSOCIATIONS (PARTIES)

The adoption of the Declaration of Independence on August 23, 1990 laid the groundwork for developing a multi-partisan system in Armenia. In accordance with the Declaration, the Republic of Armenia Law “On Public Political Organizations” was enacted on February 20, 1991. It introduced the possibility of registering parties. On July 3, 2002, the Republic of Armenia Law “On Parties” was adopted to define qualitatively new requirements on parties. Article 5 of the 2002 Law provides that “a party must have no less than 200 members” and “separated subdivisions in at least 1/3 of the Marzes (regions) of Armenia, including one in Yerevan”.

The Republic of Armenia Law “On Parties” was amended on December 8, 2004 to provide that “no later than within six months of state registration, a party must have no less than 2,000 members, provided that the number of members in each Marz of Armenia is at least 100, as well as territorial subdivisions in all the Marzes of Armenia, including in the City of Yerevan, about which it shall give written notice to the authorized state body” (new Paragraph 11 of Article 5 of the Law). At first sight, these requirements, which are aimed at making parties larger than forming a social basis for parties, could be considered highly necessary, but in practice, they are formalistic. The Republic of Armenia Ministry of Justice has no defined procedures for checking the lists of party members. Since the Law “On Parties” became effective, 49 parties have been liquidated by universal courts on the ground prescribed in Article 33(3) of the Law (i.e. the failure to create subdivisions in the Marzes or to comply with the minimum requirements on membership, or the failure to notify the authorized state body after complying with such requirements). The parties that submitted the lists required by law were re-registered by the Ministry of Justice.

Under Article 31 of the Law “On Parties”, the legal existence of a party was made contingent upon its participation in general elections and getting a certain minimum number of votes. The Law provided: “A party shall be subject to liquidation, if it has not participated in the last two elections to the National Assembly, or if in such election, its party list got less than one percent of the number that equals the sum of [the total number of votes cast for the party lists of all the parties taking part in the election] and the discrepancy figure.” Since its adoption, the Law “On Parties” has been amended thrice (once in each of 2002, 2003, and 2005), but this provision has been maintained, with only some changes. The requirement was, however, mitigated by the amendments of December 2, 2002 to provide as follows: “A party shall be subject to liquidation, if in each of any two consecutive elections to the National Assembly, its party list got less than one percent of the number that equals the sum of [the total number of votes cast for the party lists of all the parties taking part in the election] and the discrepancy figure.”

The Council of Europe Venice Commission expressed concern over this provision in its expert report (CDL-EL(2006)026 rev2, Venice, June 8, 2006), and suggested removing it due to its incompatibility with the Constitution. In 2006, the Republic of Armenia Human Rights Defender challenged the constitutionality of these provisions before the Republic of Armenia Constitutional Court. On December 22, 2006, the Constitutional Court ruled that these provisions contradict the Constitution and are, therefore, null and void.

In general, though, the Law "On Parties" effectively does not obstruct the registration and operation of parties. However, equal conditions for competition between parties are not safeguarded in Armenia.

An overview of recent events concerning the formation and development of parties is presented below.

Before the adoption of the Law "On Public Political Organizations" in 1991, political associations, with the exception of the Communist Party, were operating as informal or non-governmental organizations. Immediately after the adoption of the Law, 20 parties became registered; by 1995, i.e. the date of elections to the new parliament, their number reached 47. While during 1991 and 1992, the emergence of a large number of parties in a newly-created multi-partisan system lacking any tradition was a natural process, during 1994 and 1995, on the eve of parliamentary elections, many parties were mainly created artificially - opportunistically. The analysis of the party creation process that evolved during 1991-1999 shows that the more or less influential parties that are still present in politics, with the exception of the Democratic Party of Armenia (DPA), were registered in 1991-1992. The list of such parties includes the Armenian Revolutionary Federation (Dashnaktsutiun), the Armenian National Movement, the National Self-Determination Union, the Community Party of Armenia, and the National Democratic Union.

Starting from 1995, Armenia saw the practice of influential officials, especially those from the national security, defense, and law-enforcement agencies, creating parties and using them to access the parliament. An example of this practice was the phenomenon of the "Shamiram" Party registered with the support of the then Minister of Interior on the eve of the 1995 parliamentary elections, which received the second largest number of seats in parliament. In 1995, the three opposition parties together had only 15 of the 190 seats in parliament (the Communist Party of Armenia had 7, the National Democratic Union had 5, and the National Self-Determination Union had 3). The "Republic" Bloc had 114 seats, and the "Shamiram" Party had 8. The 1995 parliamentary elections in Armenia brought along another practice: the ruling party (the Armenian National Movement), instead of competing with the opposition parties, identified itself with the state and used all of the state resources, including the resources of the national security, defense, and law-enforcement agencies to retain the power. The OSCE/ODIHR observes called the 1995 elections free, but not fair. The 1995 elections were the first major blow that came to obstruct the development of parties. It is quite unnatural and illogical that the political force that got about 90% of the votes in 1995 (the Armenian National Movement), failed in 1999 to pass the 5% threshold requirement to get any seats in the parliament. This context helps to understand how the structure of forces in the parliament changed overnight in 1998.[7]

After all, any talk about the development of parties must be preceded by serious reservations, because, since 1991, there has been no classical (i.e. election-based) change in government in Armenia. Nevertheless, it should be noted that, due to the absence of a heated pre-election struggle, serious irregularities were not reported in the 1999 elections. The Republic of Armenia Minister of Defense Vazgen Sargsyan was the de-facto holder of the power. He used a different technique: instead of creating a new party (which was the case with "Shamiram" in 1995), he "took" a political force without any influence (the Republican Party of Armenia) and entered into an election bloc with the People's Party of Armenia (led by Karen Demirchyan). Thus, the 1999 elections marked the emergence of a new political phenomenon: no one could compete with the "Unity" bloc

[7] The day after the first President of Armenia Levon Ter-Petrossyan resigned.

created between Vazgen Sargsyan, who was the de-facto holder of the power, and Karen Demirchyan, who was popularly perceived as the “number one opposition figure” since 1998 (as the main rival of Robert Kocharyan in the 1998 presidential elections), and the Republican Party of Armenia, which had little influence, came to power. Any of the 86 parties that were registered in Armenia in 1999 would have the parliamentary majority today, had it been chosen by Vazgen Sargsyan in 1999.

In the 2003 elections, equal competition between the parties was not secured, and the majority of the parliamentary seats went to forces that had control of the power and had supported the incumbent president in the 2003 presidential elections (the Republican Party of Armenia, the “Orinats Yerkir” Party, and the Armenian Revolutionary Federation “Dashnaktsutiun”).

During the term between elections, it is important that parties enjoy equal access to the mass media (especially the electronic ones) and to fundraising possibilities, as well as the freedom of assembly and the freedom of party offices to operate.

According to information provided by the “Heritage” (“Jarangutyun”) Party, the party leader Raffi Hovhannisian not only has been deprived of air time, but also has seen all footage showing him edited after the fall of 2005, when the party became engaged in civic and political activities and, especially, after November 25, when Raffi Hovhannisian held a civic meeting and a sit-down strike in relation to the upcoming constitutional referendum. Television companies do not go to press conferences held by his party. After the opposition demonstration on December 9, 2005, the “Haylur” news program of the Public Television of Armenia accused Raffi Hovhannisian’s wife - Armenuhi Hovhannisian of financing her husband’s political activities using fraudulent financial means, though it did not present any evidence to support the allegations. One of the newspapers called Raffi Hovhannisian “an American spy.” None of the pro-governmental media, including the television companies, agreed to satisfy Armenuhi and Raffi Hovhannisians’ demands for refutation. Radio Liberty was the only medium that gave air time to Armenuhi Hovhannisian for a reply.

In February 2006, the Heritage Party tried to ask television companies about the price of political advertisement. The party either received excessive price quotes or was immediately refused air time, with different explanations.

According to information provided by the “Orinats Yerkir” Party, whenever “Orinats Yerkir” leaders make regional visits, the local television companies videotape the meetings between “Orinats Yerkir” and the population, but never cover these meetings on the local news.

In October 2006, the “Mig” television company of Vanadzor prepared an interview with the “Orinats Yerkir” leader Artur Baghdasaryan. However, the interview was never broadcast. Samvel Harutyunyan, the Director of “Mig,” said that, having watched the pre-recorded interview, he had some objections to the critical expressions used by Artur Baghdasaryan in respect of the Lori Regional Administration and another local television company (the “Lori” company). Samvel Harutyunyan went on to say that the interview contained apparent “political agitation,” for which “Mig” could have been penalized. Therefore, he said, he acted personally, without any external pressure, to initiate talks with the representatives of “Orinats Yerkir” with the intention to cut the parts of the interview that he considered unacceptable. However, Samvel Harutyunyan said that “Orinats Yerkir” had

only agreed to cut the criticism of the regional administration, but failed to reach agreement on other issues, which caused him to decide not to broadcast the interview.[8]

The legal requirement to have at least 2,000 members, branches in the regions, and at least 100 members in each region is very difficult for many parties to meet, because, in addition to the financial resources, it implies the creation of offices and the recruitment of additional human resources, whereas employees of central and local government bodies and private companies are cautious about becoming members of opposition parties.

In March 2006, the Heritage Party was expelled from its central office (which it had been renting from the Paronyan State Musical Comedy Theatre under a contract that ran through 2007). The Board members and office staff of Heritage were deprived of the documents that were present in the office and could no longer use the party seal. None of the lawful remedies that the party tried to exercise (applying to the Police, the Prosecution Office, and first, second, and third instance courts) bore any fruit. On March 8, 2006, which was four days after closing down the central office of Heritage, unidentified individuals broke into the main computer of the office, which contained information on the party, including the number of its members and its activities. The forensic examination of the computer by experts of the Republic of Armenia National Academy of Science "National Forensic Examinations Bureau" concluded that the computer had, indeed, been on for 22-24 minutes that night. It had been connected to an "unfamiliar monitor" and a memory drive. The Republic of Armenia Police and the Office of the Prosecutor General both refused to investigate the allegations, stating that elements of crime were not present.

Members of the Heritage Party have been persecuted nationwide. They have been threatened to be arrested and removed from work. During night hours, the party name-plates had been taken off the buildings of branch offices in Aparan, Yeghvard, Sisian, Yeghegnadzor, and Kapan.

As for the "authorities' parties," they do not encounter any difficulties in connection with recruitment of members and opening offices. In the town of Vayk, for instance, a building owned by the former District Executive Committee was privatized to the Republican Party of Armenia, which let it to government bodies. Offices of pro-governmental parties are conveniently located in the buildings of central and local government bodies and academic institutions, though Article 5 of the Law "On Parties" prohibits creation and operation of parties' structural subdivisions in central and local government bodies, the armed forces of the Republic of Armenia, law-enforcement agencies, pre-school institutions, schools, other academic institutions, and corporations.

The ruling parties are using their administrative power to recruit members by threatening that citizens will lose their jobs, unless they join such parties. This process is widely practiced in regions that are "under the control of" a particular party, as well as in local government bodies, educational and health care institutions, and private companies.

On April 21, 2006, in the vicinity of the "Erebouni" station of the Yerevan City Police, the Chairman of the "New Times" ("Nor Jamanakner") Party Aram Karapetyan and his bodyguards and drivers were attacked by employees of the National Security Service of Armenia. 12 masked individuals, armed with machine-guns and pistols, without disclosing their identity, attacked the vehicles of the Party, broke the glass, and inflicted different degrees of physical injury upon Aram Karapetyan's bodyguards. The National Security

[8] www.ypc.am

Service later called it a lawful check carried out to check intelligence leads about weapons possession by Karapetyan's bodyguards. However, the lawfulness of the three gas pistols carried by Karapetyan's bodyguards had been authorized by licenses approved by the Deputy Chief of Police of Armenia Hovhannes Varyan.

On the evening of the same day, the party requested the Medical Forensic Expertise Center to corroborate the physical injuries of the bodyguards. The Medical Forensic Expertise Center explained that a referral note from the Prosecution Office was required in order to perform a forensic examination. The party then filed requests with the Office of the Prosecutor General, the Yerevan City Prosecution Office, and the Erebouni District Prosecution Office, but a "referral note" was never issued.

On April 25, 2006, the Chairman of the "New Times" Party Aram Karapetyan sent a letter to the Prosecutor General of Armenia, Aghvan Hovsepyan, suggesting to instigate a criminal case in respect of the offenders and the violations of several provisions of the Republic of Armenia Constitution and the Criminal Code.

On May 5, the Office of the Prosecutor General provided a written response, which simply stated that the Office of the Prosecutor General was following up on the letter of the party.

Studies of electoral funds show that authorities' parties receive contributions mainly from legal entities, while opposition parties receive contributions mainly from natural persons. Business companies prefer to provide financial support to the political forces that can define the "rules of the business game." Individual businessmen make contributions to the funds of ruling parties through legal entities.

In addition to funding, businessmen become members of the ruling parties. When the Republic of Armenia Minister of Defense Serge Sargsyan became a member of the Republican Party, a large number of businessmen followed his example. The "Orinats Yerkir" Party, which had entered into a government coalition with the Republican Party of Armenia and the Armenian Revolutionary Federation after the 2003 parliamentary elections, quit the coalition after its leader Artur Baghdasaryan resigned from his position of the Speaker of the Parliament. Immediately thereafter, the businessmen quit membership of this party and created a parliamentary group called "Businessman"; later, some of the MPs that were formerly members of the "Orinats Yerkir" Party joined the Republican Party.

After exiting the ruling coalition, the "Orinats Yerkir" Party encountered numerous obstacles in its work. It is a good example of the unequal competition between pro-governmental and opposition parties in Armenia.

PREVALENCE OF FREE AND FAIR ELECTIONS; POSSIBILITIES OF FAIR PARTISAN COMPETITION IN ELECTIONS

According to the Code of Good Practice in Electoral Matters of the Council of Europe's European Commission for Democracy through Law (the Venice Commission) (adopted at the 52nd plenary session of the Venice Commission on October 18 and 19, 2002), the three pillars of the European constitutional heritage are human rights, the rule of law, and democracy. Democracy is impossible without free and fair elections. In any country, truly democratic elections can only be held, if certain basic conditions of a democratic state

based on the rule of law, such as fundamental human rights and freedoms (freedom of expression, freedom of movement, freedom of assembly, including freedom to create and operate parties), stability of electoral law, protection from political manipulation, and effective procedural guarantees (transparency, impartiality, and independence of administrative bodies (electoral commissions) from the political power), are met. The procedures must be such as to preclude any suspicion of irregularity, to provide possibilities for the effective implementation of rules, and to ensure respect for the principles of equal, secret, and free suffrage.

For over five years, international experts have demanded that Armenia amend the Electoral Code to ensure respect for these principles and to safeguard free and fair elections by means of:

- Compiling and maintaining correct voter lists;

- Granting adequate rights and safeguards of respect for such rights to proxies;

- Ensuring balanced electoral administration and the neutrality of electoral commissions and their independence from the authorities;

- Fair competition possibilities during the elections; and

- Effective and clear appeal procedures.

The Republic of Armenia Electoral Code adopted in 1999 was amended on five occasions (the last set of amendments was enacted on December 22, 2006). Each time, the amendments were enacted on the verge of elections, despite the Venice Commission's Code of Good Practice, which recommends that the law not be open to amendment less than one year before an election.

The voter list compilation and oversight mechanism has been amended four times. At first, the voter list was compiled and signed only by the community head; later, as a measure to strengthen responsibility, a provision on Central Electoral Commission oversight was added, which was then amended to require that an official of the Passport and Visa Department of the Republic of Armenia Police also sign the voter list. In all the elections conducted from 1996 to 2003, the voter lists were full of mistakes and fraud. Under the May 19, 2005 Amendments to the Electoral Code, the compilation and maintenance of voter lists was delegated to the Passport and Visa Department of the Republic of Armenia Police. Nonetheless, in the local government elections held in the fall of 2005, the voter lists contained numerous mistakes, which effectively disenfranchised thousands of people.

The May 19, 2005 the amendments to the Electoral Code further expanded the rights of proxies. As a safeguard of the rights of proxies, the Electoral Code provides: "No restriction of the rights of the proxies shall be allowed. No one, including electoral commissions, shall have the right to ask the proxies to leave the voting room or to isolate them in any other way from being present at the commission's activities, except in the case of their arrest or detention."[9] Even prior to this amendment, restrictions of proxies' rights were not allowed, but, in the 2003 elections, opposition candidates' proxies were on numerous occasions removed from the polling station or had their participation in the

[9] Article 27^1(4) added to the Electoral Code by virtue of Article 17 of the Law Amending the Electoral Code.

electoral commissions' work minimized, as they were prohibited from examining voting documents, including voted ballots.

The "Guidelines and Explanatory Report" section of the Code of Good Practice in Electoral Matters emphasizes that stability of some of the more specific rules of electoral law, especially those covering the electoral system *per se*, the composition of electoral commissions and the drawing of constituency boundaries, are regarded as decisive factors in the election results, and, therefore, care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation (paragraph 64). The Venice Commission lays a special emphasis on the importance of elections being organized by an impartial body, by stating that "only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results" (paragraph 68). "This is why *independent, impartial electoral commissions* must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity" (paragraph 71).

The Electoral Code of the Republic of Armenia still does not prescribe rules to safeguard this principle; to the contrary, it stipulates a "mixed" formation of commissions, whereby representatives of the ruling political parties have a decisive role. Despite numerous amendments to the requirements on entities making appointment to and persons appointed to electoral commissions, the "mixed political" principle of commission formation has not been amended.

The impact of the political dependence of electoral commissions in Armenia was felt in the practice of elections starting from 1995. The May 19, 2005 Amendments to the Electoral Code, instead of addressing these problems, introduced several unconstitutional provisions by stipulating the following procedure of forming electoral commissions: the Central Electoral Commission is made up of one member appointed by each party or party bloc that has a faction in the National Assembly, one member appointed by the President of the Republic, one member appointed by the parliamentary group functioning in the National Assembly (starting from the next elections to the National Assembly - one member appointed by the Council of Court Chairmen from among the judges of universal courts of Armenia), and one Cassation Court judge appointed by the Cassation Court. Members of the Territorial Electoral Commissions would then be appointed by the CEC members. The Central Electoral Commission members appointed by the Cassation Court and the Council of Court Chairmen would appoint Territorial Electoral Commission members from among the number of universal court judges.

The Constitutional Court ruled the provisions regarding the appointment of judges to electoral commissions as unconstitutional, and the Electoral Code amendments enacted on December 22, 2006 provide that, instead of judges, judicial servants shall be appointed, which essentially means that the President of Armenia will retain his authority over the commissions. In the 1999 and 2003 elections, electoral commission chairmen, with virtually no exception, were the members appointed by the President of Armenia or by the parties that later made up the coalition government. In the local government elections held in the fall of 2005, two thirds or more of the electoral commission members were representatives of the authorities.

The Constitutional Court also ruled to invalidate another provision (Article 38) of the Electoral Code, which provided that "in presidential elections, in case of terminating the

powers of a CEC member during the 20 days preceding the voting day, if the number of vacancies is greater than 1/3 of the total number of commission members, the vacancies shall be filled by the President" (as opposed to being filled by the entity that originally appointed the commission member whose position later became vacant). At any rate, there is still a provision in the Electoral Code (Article 35(3)), whereby "the composition of the Central Electoral Commission shall be approved by a decree of the President of the Republic of Armenia..." It is not clear whether or not the President may refuse to endorse a candidate nominated by any of the entities that have the power to appoint commission members.

The Constitutional Court did not address the provision of the Electoral Code (Article 35(1)) whereby one member of the Central Electoral Commission shall be appointed by a decision of the parliamentary group announced as of the first session of the incumbent National Assembly. Article 15(1) of the Republic of Armenia Law "The Statutes of the National Assembly" provides that a parliamentary group may be created by at least 10 members of parliament. Allocating a CEC seat to a parliamentary group - a non-political unit formed on unknown and unclear grounds - violates the political and legal logic of forming electoral commissions from representatives of state bodies and political parties. Besides, taking into consideration that the Armenian legislation does not preclude the inclusion in a parliamentary group of a party's members that are not included in a parliamentary faction, the party artificially receives the opportunity of having two seats in the CEC, which violates the principle of equal opportunities for political parties, against the international instruments mentioned above. Thus, the majority of the "People's Deputy" parliamentary group, which is the only parliamentary group that has a representative in the electoral commissions, has joined the Republican Party of Armenia; as a result, this party has two seats in the electoral commissions.

Both this and the previous procedures of forming the commissions do not ensure balanced and impartial electoral commissions.

On December 22, 2006, the Electoral Code of Armenia was again amended. Some of the most significant amendments are the following:

- Introducing mobile ballot boxes traveling to in-patient health care facilities;

- Removing the quorum requirement of electoral commissions for the period starting from the date of setting general elections to the date of taking a final decision on the election results, i.e. the electoral commission sessions have legal authority regardless of the number of members present in the session, as long as all the possibilities of ensuring the participation of a necessary number of commission members in the session have been exhausted. A decision is considered taken, if the number of commission members that voted for it is greater than the number of votes against. In case of a split vote, the commission chairman's vote shall be decisive; and

- Removing the prohibition of the same person becoming a community mayor for more than two consecutive terms (Article 123(9)).

In 2006, there were no general elections or referenda in Armenia. There were local government elections in which the candidates of the ruling parties or candidates "sponsored" by the ruling parties won.

The largest obstacle to free and fair elections is related not with the Electoral Code, but with its enforcement. The electoral legislation *per se* cannot safeguard democratic elections. The democratic nature of elections primarily and predominantly depends on the commitment of the authorities and all other participants of the electoral process to conduct democratic elections.

In Armenia, the election results are decisively influenced by the administrative and financial resources, rather than the collective will of the voters. Vote buying is becoming an orchestrated process. It begins long before the elections - under the disguise of charity.

Consequently, elections in Armenia have been perverted from a democratic process to an arrangement serving the personal interests of individuals or their groups.

With under-developed political parties, the campaign struggle turns into a struggle of individuals; there is virtually no debate around fundamental values and alternative paths of development.

In the absence of democratic cornerstones, there is effectively no possibility of fair competition between pro-power and opposition parties. The competition between ruling or pro-power parties is essentially rivalry of party-leading oligarchs for control of the administrative levers.

DEPENDENCE OF PARTIES ON MILITARY, FOREIGN, AND RELIGIOUS ORGANIZATIONS, AND ON ECONOMIC OLIGARCHY

The Republic of Armenia Law “On Parties” stipulates that parties may be funded by donations, among other sources (Article 24). Article 25 of the Law prohibits a party from receiving donations from “foreign states, foreign citizens and legal entities, and foreign-owned legal entities in the statutory equity of which the [foreign] shareholder’s share is greater than 25 percent, and from international organizations and international non-governmental movements.”

In November 2006, during one of his regular visits to Armenia, businessman Ara Abrahamyan, who is a citizen of the Russian Federation and the Chairman of the World Congress of Armenians and the Association of Russian Armenians, announced that, during the 2007 parliamentary elections, the World Congress of Armenians and the Association of Russian Armenians will support one of the parties. This is an example of an international organization and a foreign one interfering with the activities of parties in Armenia. It is common knowledge that, in the 2003 parliamentary elections, Ara Abrahamyan was supporting the campaign of the Liberal-Democratic Party of Armenia (HRAK). On May 23, 2006, HRAK Chairman Harutyun Arakelyan announced that HRAK, which is a co-founder of the World Congress of Armenians, “is not particularly overwhelmed” by the activities of this entity. He went on to say that some within HRAK intend to quit the Congress. “I am the one restraining such intention.”[10] On November 11, 2006, HRAK disseminated a statement that read: “The leadership of HRAK has on numerous occasions requested the leadership of the World Congress of Armenians to present an annual report of activities, but has to date not received an answer, and, considering the present work style of the Congress leadership, which has continued for

[10] “HRAK Dissatisfied” in *Aravot* daily of May 24, 2006

three years, HRAK announces that it is leaving the founding college of the Congress: the HRAK National Board announces that it is henceforth not in any way responsible for the activities of the World Congress of Armenians." In response to this statement, the Deputy Chairman of the World Congress of Armenians Vladimir Aghayan said the following in an interview with *Azg*: "HRAK was never a founding member of the World Congress of Armenians, because the World Congress of Armenians is an international non-governmental organization registered by the Ministry of Justice of the Russian Federation. Under the laws of the Russian Federation, political parties may not be founding members of a non-governmental organization."[11] Nevertheless, the fact that a businessman who is a Russian citizen, together with an organization created by him, has supported the campaign of a party (in 2003) is a violation of law. The aforementioned statement by Ara Abrahamyan, too, violates the law.

The authorities have announced that Aram Karapetyan, the leader of the "Nor Jamanakner" ("New Times") party is tied to foreign states. Aram Karapetyan in turn has officially refuted the existence of any such ties.

In July 2006, Serge Sargsyan, the Republic of Armenia Minister of Defense, became a member of the Hanrapetakan (Republican) Party of Armenia. Thereafter, in the Party Conference held on July 22, 2006, he was elected as the Chairman of the Board of the Republican Party of Armenia, which is the second highest position in the Party. The fact that the Minister of Defense became partisan generated an intense public debate. Article 10 of the Republic of Armenia Law "On Parties" provides that the following may not be members of a party: "…4) Servicemen of the armed forces and other troops of the Republic of Armenia." Invoking this provision, the Board of the "Human Rights-96" party declared that the Minister was violating the Law. In response to this statement, Seyran Shahsuvaryan, the Press Secretary of the Republic of Armenia Minister of Defense said in an interview with a correspondent of the *Haykakan Jamanak* daily that "the Minister of Defense is a civilian and, therefore, the Republic of Armenia Constitution and legislation do not prohibit him from being a party member."[12] The Press Secretary expressed the belief that Minister Sargsyan's position would have been incompatible with party membership, if the Minister were military. In other words, Shahsuvaryan believes that Serge Sargsyan has the right to be a party member, because he does not carry shoulder straps.[13] The debate around this issue continues. In any event, there remain concerns that the Republican Party may become dependent on the armed forces, or, alternatively, the majority of the army might end up voting for the Republican Party in the 2007 parliamentary elections.

Other problems arose when the Minister of Defense became a party member. A number of businessmen and businessmen that are members of the Parliament followed his example by joining the Republican Party. In other words, a large share of the business community became partisan. In the Party Conference, some of them were elected to the Board of the Party. Indeed, the Law does not prohibit businessmen from joining a party, but the large-scale businessmen's joining the Republican Party raises concern over the Party possibly becoming dependent on economic interests. Moreover, public officials of different ranks followed the Minister's example by joining the Republican Party, including the Mayor of Yerevan, Yervand Zakharyan, the Mayor of the Center District of Yerevan, Gagik Beglaryan, and others.

[11] "HRAK Never was a Member of the World Congress of Armenians" in *Azg* daily of November 23, 2006
[12] "Military Man Not Engage in Politics" in *Haykakan Jamanak* daily of July 18, 2006
[13] Ibid

The possibility of dependence on large capital is even greater in case of the “Prosperous Armenia” Party. The Chairman of this Party is Gagik Tsarukyan, a famous businessman, who owns the “Multi Group” holding that includes numerous companies, including large companies such as the Ararat Cognac, Wine, and Vodka Factory, the Ararat Cement Factory, the “Multi Stone” stone processing company, the “Multi Leon” network of gas stations, the “Mek” network of furniture shops, and the like. From mid-2006, this Party has effectively started preparing for the 2007 parliamentary elections by carrying out charity campaigns in the regions of Armenia and holding meetings with the local populace. It is very likely that, if this Party succeeds in the elections, it will end up catering to the interests of large-scale businesses.

In May 2006, the “Orinats Yerkir” (“Country of Laws”) Party left the ruling coalition, and its leader Arthur Baghdasaryan resigned from his post of the Speaker of the National Assembly. Thereafter, a group of businessmen that were members of the Party and members of the parliamentary faction of the party left Orinats Yerkir and joined the Republican Party of Armenia. This, taken together with the points made earlier, support the assertion that, in Armenia, politics depend on business and the vice versa (i.e. a more or less large businessman that is a member of a party that is not pro-governmental, or is pro-opposition, will always risk facing serious difficulties in his business).

There are no parties in Armenia that depend on religious organizations or follow any particular confession.

3.VOICE AND ACCOUNTABILITY

CIVIL SOCIETY CAPACITY TO PROTECT CIVIC RIGHTS

To evaluate the capacity of Armenian civil society to protect civic rights, in-depth interviews were conducted with the leadership of 11 reputable non-governmental organizations[14] representing different areas of activities.

Almost all of the interviewees believe the legislation regulating human rights activities in Armenia to be sufficiently liberal to allow NGOs to freely do their work. They also stated that there is positive cooperation between the branches of power and the mass media.

However, the interviews have also revealed that any positive reaction of government bureaucrats to appeals of human rights organizations are normally due to the personal reputation of specific NGO leaders and their track record of contacts and relations with public officials, rather than the formal or constitutional accountability of public servants in respect of society.

The information presented by the experts, as well as their opinions and assessments underlie the following overview of human rights activities in Armenia in various fields.

As concerns the right to freedom of assembly, none of the experts reported any problems in this sphere, with the exception of the infamous events related to the forceful suppression of opposition demonstrations during April 12 and 13, 2004. Following these events, NGOs undertook rigorous and rather effective action to protect the active participants in the demonstration, which had been arrested and prosecuted.

The interviewees consider the current procedure of creating (registering) non-governmental organizations to be quite liberal. However, the legislation poses some restrictions on the activities of NGOs. Moreover, some representatives of civil society are concerned and anxious that, as a result of adopting the draft amendments to the Republic of Armenia Law “On Non-Governmental Organizations”, the authorities will be able to introduce new forms of governmental control over civil society, similar to what has recently been done in Russia.

In the field of the freedom of cultural expression, the freedom of conscience, and the freedom of scientific research, the experts did not report either any administrative restrictions or any facts of discrimination against citizens. However, some criticism was expressed in respect of general schools, in many of which an atmosphere of intolerance has been forming towards all religions other than the Armenian Apostolic Church.

In the field of the right to private property, protection against economic exploitation, and the creation and functioning of professional organizations, the situation is apparently the least favorable. In particular, the public loudly echoed the events related to violations of the rights of homeowners on Buzand Street in the capital city Yerevan, as their property was

[14] List of interviewed experts: Abgar Yeghoyan (Association for Protection of Consumer Rights), Avetik Ishkhanyan (Helsinki Committee of Armenia), Amalia Kostanyan (Center for Refional Development/Transparency International Office in Armenia), Artak Kirakosyan (Civil Society Institute), Gevorg Arakelyan (Association for Sustainable Human Development), Gevork Poghosyan (Armenian Social Studies Association), Greta Mirzoyan (Mother of Soldier), Jemma Hasratyan (Association of Women with University Education), Larisa Alaverdyan (Fund against Violation of Law), Lilit Bleyan (Center for Public Dialogue and Development), and Stepan Danielyan (Cooperation for Democracy).

unlawfully expropriated. The victims' demonstrations, together with extensive civil society support, have resulted in certain positive results: the Constitutional Court of Armenia declared unconstitutional the Government decrees adopted on this matter.

There are particular concerns about the abuse of hired workers, which are practically not protected at all, having to work 12-14 hours a day without any breaks, leaves, health benefits, or any protection against arbitrary firing.

Trade unions exist formally, but are unable to function, which in the opinion of experts is largely due to the government's policy: "Strikes are the last thing we need now," said a senior public official in a conversation with one of the interviewees.

To be effective in protecting citizens against police harassment, unfair detention, and torture, several NGOs, together with the respective government agencies, have created a committee to address these issues. The committee regularly monitors detention places; the experts consider it rather effective in reviewing specific cases. Moreover, the interviewees said that the system of physical abuse and torture, especially at the stage of pre-trial detention, has been traditionally widespread in Armenia.

Problems of equality before the law and equal opportunities are particularly urgent for Armenia. The majority of experts said that there is neither equality before the law, nor equal opportunities in Armenia: "We find discrimination based on economic status: only the rich are protected," said one of the experts. This was a common belief that was by and large shared by the majority of the interviewees.

As for gender equality, there are many different studies and a great number of women's organizations in Armenia, which are implementing awareness-raising and training projects among various groups of the population. However, the number of women in the Armenian parliament and government, as well as in business, remains extremely low, which in the opinion of some experts is due, on the one hand, to latent discrimination and, on the other, to the fact that in the process of "mass" privatization in the 1990s, women were not given access to large businesses and presently lack resources to enter into politics.

As for the right to freedom of movement, the freedom to choose a place of living and work, and the right to create and plan a family, the interviewees did not report any significant limitations and violations by the state. However, they did state that, in practice, the exercise of these rights is limited due to the low living standards of a considerable share of the population.

As for environmental protection, general desertification of the country and overly dense construction in the center of Yerevan, in breach of environmental standards, are considered by the experts to be the main problems. The NGOs' struggle in this field is variably successful. Sometimes, they do achieve positive decisions (the case of protecting the Shikahogh Reserve and others). However, the experts recalled another example: when a coalition of environmental NGOs filed a court claim on the logging of trees in the Victory Park in Yerevan with the aim of freeing up space to build a hotel, the judge declared the claim inadmissible, citing a public statement made by the President on the same issue ("we have built and shall continue to build"). The interviewees concluded that, as a whole, the authorities have recently started to pay closer attention to and often take into consideration the warnings from environmental specialists.

As for public health, a number of organizations are active in protecting consumers' rights. They identify low-quality products, participate in the setting of fair prices for the services of natural monopolies, fight for the quality of potable water, and often help consumers that ask for their support in the protection of consumers' rights.

It is common knowledge that, in any society, civil rights are regulated by laws, the enforcement of which the respective governmental agencies are called to ensure. NGOs engaged with these problems have two functions: (i) generating ideas and developing recommendations on improving the legislation, and (ii) controlling the enforcement of the legislation by the public agencies.

Thus, an overview of the opinions and assessment of interviewed experts leads to the conclusion that the Armenian legislation on civic rights is broadly in line with the international standards. Though with difficulties, NGOs manage to propose legislative improvements to the Parliament and to lobby civil society interests. However, the interviewees believe that the real situation in terms of respect for human rights is far from positive.

Owing to the rather strong reputation of a number of NGOs earned by many years of public service, as well as the active role of their leaders and their personal connections in public agencies, they are achieving certain successes, especially in raising the awareness of the public and of public servants, provided that it does not conflict with the personal interests of influential individuals.

Civil society representatives also stated that violations of the rights of ordinary citizens and the abuse of power that runs through all of society are forming a sense of helplessness in the population. Some experts believe that one of the reasons for the inability to exercise civil liberties is the domination of the "right of the strong," the low legal awareness of the public, the dependence of the judiciary on the executive, the weakness of the opposition, and, last but not least, the lack of political willpower on the part of the authorities to achieve a greater degree of respect for civic liberties.

The experts have different opinions regarding trends in the human rights activities of NGOs. Some observe a positive trend and explain it by the general improvement in the qualification of both human rights activists and public servants. Others believe the changes to be nothing but decorum, which imitates the formation of civil society, which in their opinion is supported by both Russia and the West. Finally, a third group sees no change and believes there to be stagnation.

The capacity of civil society is weakening in part due to the presence in this field of so-called "GONGOs" (i.e. governmental NGOs founded by bureaucrats of different levels or by their relatives), which by virtue of the protection they enjoy are "winning" tenders for government grants.

Moreover, a persisting serious problem is that human rights activities of Armenian NGOs are financed mainly by foreign grants, which poses the risk of such activities terminating altogether in case if the foreign support diminishes or ceases.

CITIZENS' PARTICIPATION IN THE FORMATION OF GOVERNMENT

The Republic of Armenia Constitution promulgates Armenia as a sovereign, democratic, social, and legal state. Article 2 of the Constitution provides: "In the Republic of Armenia, the power belongs to the people. The people exercise their power through free elections, referenda, as well as central and local government bodies and officials contemplated by the Constitution."

A 2005 "Monitoring of Democratic Reforms in Armenia" report states that none of the elections carried out in Armenia during the last decade were recognized as free, fair, transparent, or compliant with international standards. If the elections are not fair, the citizens cannot do much to influence the formation of government.

On July 4, 2006, the "Radio Free Europe" Armenian Service reported that a statement of the Millennium Challenge Corporation presented to the Armenian President Robert Kocharyan by the Corporation Chief Executive John Danilovich reads: "In 2006, Armenia's Voice & Accountability score declined from 0.27 to 0, causing Armenia to fail the indicator."

"Armenia has consistently received a 4 (where 7 is worst, and 1 is best) on the Civil Liberties indicator. However, the latest data from Freedom House indicate that Armenia's performance in the area of civil liberties has begun to deteriorate and could decline from 4 to a 5 in MCC's Fiscal Year 2008 selection process," say the authors of the statement. They added: "Armenia's 2006 Political Rights score will also be negatively impacted by the conduct of the 2005 November constitutional referendum, after which election observers expressed concern regarding fraud, electoral mismanagement, and the mistreatment of opposition party actors."

Elections of the Mayor of the Arabkir District Community of Yerevan took place in October 2006. The elections were intriguing from the very beginning, because the incumbent Artsrun Khachatryan and the former Deputy Mayor of Yerevan Arman Sahakyan (who is the son of Galust Sahakyan - the leader of the Republican Party's parliamentary faction, the largest faction in the Armenian Parliament) were interested in running for this position. However, the events developed in another direction: neither of the two candidates was nominated, and their non-nomination paved the way for the nomination of a third person - Rouben Hovsepyan, the brother of the Prosecutor General of Armenia (who had a significant advantage over the two other candidates). As was expected, the campaign intrigues resulted in the absolute indifference of the voters: the voter turnout was 25 percent, though the turnout in local government elections is normally higher.

In this respect, one could cite Lyudmila Harutyunyan, a sociologist and a professor at Yerevan State University. She believes that the public forgets that it has the power to form the government. She says the authorities expect to "rotate" once again in the 2007 elections, while businesses expect to fortify their political positions; as for the public, which is the main stakeholder in forming non-corrupt government in the country, is less interested in the process than either of the power or the business community.[15]

Representatives of the power in effect ignore the opinions of citizens. On November 13, for instance, the National Assembly was scheduled to discuss a draft Law on Expropriation for Needs of Society and the State - a draft initiated by the Government, but protested against by citizens that had already suffered from expropriation. These citizens were threatening

[15] www.Lragir.am, 01.12.2006

that if the draft were adopted, they would hold a protest in front of the Government's building and demand Prime Minister Andranik Margaryan to resign. In response to this threat, the Prime Minister said literally the following: "I would suggest to them taking a look at the Constitution and seeing whether they have the right to demand that the Government resign."[16]

MEDIA CONTROL OVER THE ACTIVITIES OF AUTHORITIES

Social control of mass media over the activities of authorities is an essential prerequisite of a nation's democratic development. To determine how successfully the Armenian mass media are in accomplishing this mission, interviews were conducted with the leadership and staff of a number of the top print press, broadcasters, and associations of journalists.[17]

Though the interviewees represented a wide spectrum of the media - from pro-opposition to pro-governmental - they effectively agreed in their assessment that the mass media are broadly unable either to carry out a function of social control over the activities of the authorities or to influence decision-making on key public issues.

During the interviews, the media leadership also reported some positive examples of certain acute publications (television stories or reports) triggering an adequate response on the part of the authorities, such as effective measures being taken and editorial offices being notified of such measures. Journalists reported that the Prime Minister and the Staff of the Government, the Ministry of Justice, and the Dashnaktzutiun Party (which is a part of the ruling coalition) are relatively more attentive towards criticism of their activities. However, these are nothing but rare cases, which should rather been considered exceptions. Generally, though, the interviews admitted that the authorities are indifferent towards media publications. It is noteworthy that such an opinion was expressed by the representatives of not only pro-opposition, but also pro-governmental media.

Aram Abrahamyan, the editor-in-chief of *Aravot* daily, says that the print press cannot seriously influence the activities of the authorities due to their very limited print run, resulting in an insufficiently wide coverage, and that the television companies, being the most popular among the mass media, are controlled by the authorities themselves. This opinion was shared by the chief editors of two other dailies - *Azg* and *Hayastani Hanrapetutiun*. Hakob Avetikyan, the editor-in-chief of *Azg* daily, believes that had television companies been free, the situation would have been very different from what it is currently. As for the newspapers, Tigran Farmanyan, the editor-in-chief of *Hayastani Hanrapetutiun* daily, believes that the limited print run and the insipidity of materials are interconnected problems. "It is a vicious circle, which makes it difficult to tell whether the print run does not increase due to the virtual absence of truly acute articles, or whether the absence of such articles is due to the low demand for the print press. As a consequence, serious problems are not audibly discussed," says Farmanyan.

Naira Zohrabyan, a journalist of *Haikakan Jamanak* daily, believes the engagement of the mass media to be the cause of their ineffectiveness in terms of ability to influence the

[16] *Haykakan Jamanak* daily, 14.11 2006

[17] List of interviewees: Hakob Avetikyan (editor-in-chief of *Azg* daily), Aram Abrahamyan (editor-in-chief of *Aravot* daily), Gegham Manukyan (information and public-political programs consultant at Yerkir Media Television Company), Naira Zohrabyan (journalist of *Haikakan Jamanak* daily), Nune Sargsyan (executive director of "Internews Armenia" NGO), Tatul Hakobyan (editor of "Radiolur" information program of the Public Radio of Armenia), and Tigran Farmanyan (editor-in-chief of *Hayastani Hanrapetutiun* daily).

policies of the authorities. She says that both the print press and the broadcast media are used by different political powers in their relationship with one another and, instead of objectively covering conflicts related to the activities of the authorities, the mass media are ending up as parties to such conflicts.

Tatul Hakobyan, the deputy director of the “Radiolur” information program of the Public Ratio of Armenia, believes that the media are becoming instruments also in the fight between different groups within the authorities. He claims this to be the only case in which the media, by supporting one position versus another, play a certain role in and influence on the decision making. However, Hakobyan considers this situation an obvious “match” between the interests of specific groups within the authorities and the media used by them in furtherance of their aims.

In terms of coverage, television companies, but primarily, the Public Television Company H1, as well as numerous private broadcasters, are the main source of information for the public. However, being rigid controlled by the authorities, they normally serve the authorities instead of ensuring political pluralism in the air. This situation is reflected in numerous documents concerning Armenia, which have been prepared in recent years by a number of reputable international organizations, such as the Council of Europe, the OSCE, and others. In particular, a July 26, 2006 report of Miklos Haraszti, the OSCE Representative on Freedom of the Media, states that “although numerous private broadcasting outlets exist, in this sector the Representative found no systematic coverage of the diversity of public opinion.”

On this background, the interviewed independent experts believe the activities of the “Yerkir Media” television company to be somewhat different from those of the others, as “Yerkir Media” has recently been able to considerably expand the spectrum of political views and opinions, including opposition views, presented by this TV station, and has been increasingly more often raising publicly important issues, which require effective action from the authorities.

However, like the print press, “Yerkir Media” representatives, too, say that such materials normally do not produce the expected results. Most often, the lowest levels of government agencies react to the criticism, whereas the senior officials ignore it. Here is an example that Yerkir Media used to illustrate the point: when the station broadcast a report on illegal logging in a park in Yerevan, the Yerevan Municipality responded by suggesting that the station stop spoiling the festive atmosphere of the celebration of “The Day of Yerevan”.

The performance of a function of social control over the activities of the authorities is hindered also by different types of pressure on journalists and the mass media, including violence and threats, which are described in greater detail in annual reports of the Yerevan Press Club and the Committee to Protect Freedom of Expression, as well as a number of statements by associations of Armenian journalists. These facts lead to a greater degree of self-censorship in the media, which is often presented to the public as “self-restriction” of journalists. However, the cases in which self-censorship is caused by external pressure, rather than a voluntary choice, should be seen as examples of “hidden” censorship.

In general, speaking of media control over the activities of the authorities, independent local experts graded the performance of this function by mass media somewhere between 0 and 10 points on a scale of 100.

4. GOVERNMENT EFFECTIVENESS

FREEDOM OF INFORMATION AND TRANSPARENCY OF GOVERNMENT POLICIES

Despite the possibilities afforded by the Republic of Armenia Law "On Freedom of Information" (adopted on September 23, 2003, effective from November 15, 2003), the situation in the field of freedom of information cannot be considered satisfactory. According to a Compilation of Court Files Related to the Protection of the Right to Receive Information during 2001-2006[18], which was published by the Freedom of Information Center, 17 court cases were instigated from the adoption of the Law "On Freedom of Information" till December 1, 2006 for the failure to provide information, of which eight were in the regions outside of Yerevan. According to the same source, three of the instigated cases ended before reaching court, because the relevant officials provided the information in order to avoid the judicial hassle. The Freedom of Information Center also reports that, although both criminal and administrative laws prescribe liability for breaching the right to freedom of information, none of the officials that breached this right have been subjected to criminal or administrative penalties yet.

Another problem in the field of freedom of information is that the Government has not complied with Articles 5 and 10 of the aforementioned Law, which requires the Government to adopt regulations on the procedure of the registration, classification, and storage of information processed or received by the custodian of information, as well as the procedures of providing information or copies (photocopies) by central and local government bodies, state institutions, and state organizations. The Freedom of Information Center believes that, in some cases, courts have dismissed claims regarding the failure to provide information on the ground that the Government has still not adopted regulations defining the procedure of providing information. The need for adopting these regulations was highlighted in a July 26, 2006 report of Miklos Haraszti, the OSCE Representative on Freedom of the Media. Another example is that the Republic of Armenia Ministry of Transport and Communication sent three inconsistent replies to an inquiry made by the Freedom of Information Center and ultimately refused to provide the minutes of the negotiations held during 2005 between the Ministry and the telephone operator ArmenTel, claiming that the Government has not defined the procedure of providing information or copies of documents.[19]

The most transparent of the three branches of power in Armenia is, perhaps, the National Assembly. Without judging the effectiveness of laws and decisions adopted by the National Assembly, the process of their adoption can be considered transparent: sessions of the National Assembly are open, and all drafts of legislation to be discussed are placed on the website of the National Assembly, which also contains all of the adopted laws, information on the work of standing committees, and information about press conferences of parliamentary groups and factions held after each four-day sitting. There are civil society councils "adjacent to" the standing committees, which are engaged in the preliminary discussion of draft legislation in case of necessity.

In the executive branch, i.e. in the Government, the decision-making process is not transparent: an example of this is the story about how the Law amending the Law "On

[18] http://www.foi.am/UserFiles/File/GirqDatakan.pdf
[19] http://www.foi.am/am/content/117/

Television and Radio" was discussed by the Government before submission to the National Assembly (*see the section of this Report entitled "Legislation on Mass Media and Freedom of Information: Amendments in 2006"*).

Another example of the Government's policies not being transparent is Decree 1151 of August 8, 2002 "On Measures to Implement Urban Development Projects in the Administrative Territory of the Center District Community of the City of Yerevan," on the basis of which houses of citizens that used to live on Buzand Street in Yerevan were expropriated. This decision, which affected the fate of a large number of families, was adopted without any regard for the public interest; furthermore, numerous complaints by the concerned residents, civil society organizations, and public figures did not influence the Government for several years. Four years after the events (i.e. on March 18, 2006), after a claim filed by the Human Rights Defender of the Republic of Armenia, the Constitutional Court ruled the aforementioned decree unconstitutional; however, this governmental decree, which had effectively been adopted behind closed doors, had already negatively affected the fate of many citizens.

Information on Government sessions is provided. Every Thursday, after the Government session is over, journalists get the possibility to pose questions to official responsible for the most important issues addressed during the session. However, the preparation and adoption of decrees is a closed process, and the public can hardly influence it, because draft decrees of the Government are considered "work in progress" and, as such, are not accessible to the public.

Official statements on the Government sessions are published on the Government's website (www.gov.am) on a same-day basis, whereas the actual Government decrees are published with a delay. For instance, if someone visited the website on November 18, 2006, he would only find decrees adopted prior to or on October 19, 2006. In other words, Government decrees adopted during the four sessions that had taken place since October 19 would be posted on the website with a considerable delay. Under Article 62 of the Republic of Armenia Law "On Legal Acts", "laws, decisions of the National Assembly, judgments of the Constitutional Court, Government decrees that have the power of law, presidential decrees and orders, and decrees of the Government and the Prime Minister shall be officially published in the "Official Bulletin of the Republic of Armenia" within 10 days of their receipt". However, it has been found that Government decrees are not posted on the Government's website even after their official publication. The Official Bulletin of the Republic of Armenia is published every Tuesday with a small print run (1,080 copies). Moreover, the "Official Bulletin" company is also responsible for maintaining the http://www.arlis.am website, which, too, contains laws and government decrees. Under Article 7(5) of the Law "On Freedom of Information", information subject to mandatory publication shall be published in the website of the information custodian, if the latter has a website.

Monitoring conducted by the Freedom of Information Center and the Yerevan Press Club has shown that the following websites of government agencies are more effective than others: www.mss.am (website of the Ministry of Labor and Social Affairs), www.mfe.gov.am (website of the Ministry of Finance and Economy), www.minted.am (website of the Ministry of Trade and Economic Development), www.justice.am (website of the Ministry of Justice), and www.ArmeniaForeignMinistry.am (website of the Ministry of Foreign Affairs).

The Ministry of Culture and Youth Affairs has only created a website on youth policy (www.youthpolicy.am), which does not contain any new or useful information. The websites of the Ministry of Health (www.armhealth.am) and the Ministry of Energy (www.minenergy.am) were not operational in November 2006.

Quite some information can be found on the website of the Police (www.police.am) and the Office of the General Prosecutor (www.genproc.am). The same does not hold true for the Ministry of Defense (www.mil.am): the only advantage of this official website is the legislation, while its "News" section resembles a component of the Minister's PR campaign.

The last entry in the "Regulations" section of the website of the State Customs Committee (www.customs.am) is a decree of March 18, 2002. The last entry in the section on Government decrees related to customs functions was made in August 2002 (not to mention that the entries that exist only contain a reference to the issue of the Official Bulletin in which the decree was published, but not the decree itself).

QUALITY OF PUBLIC SERVICES

PUBLIC SECTOR SERVICES AND THEIR REGULATION

Under article 2 of the Republic of Armenia Law "On the Public Service Regulatory Body", it applies to the following sectors:

a) The energy sector, which includes the electricity, heat supply, and gas supply systems;

b) The water sector, which includes the supply of potable, irrigation, technical, and industrial water, sewerage, and cleaning of wastewater; and

c) The telecommunications (e-communication) sector.

This Chapter makes use of the Armenia Rural Infrastructure Study carried out in 2004 with funding from the International Bank for Reconstruction and Development (IBRD) and the World Bank, with the involvement of the Association of Community Financial Officers. The situation in the public services sector is presented with a focus primarily on rural communities, which is mainly due to the fact that 871 of the 926 communities of Armenia are rural. The situation of infrastructure and, therefore, also the quality of services in the rural settlements of the country is on average worse than in urban settlements. Besides, the public service sector problems are more visible in rural areas.

Within public administration, the policy and the decision-making processes remain highly concentrated, with neither any transparency nor an effective system of accountability. Civil society participation is not ensured. Services have poor quality and are unaffordable for the public, especially the poor.

The Constitution and several laws of Armenia contain provisions on the legal relationship arising out of the delivery of services, including public sector services.

Article 31.1 of the Constitution provides: "The state shall protect the interests of consumers, and take measures prescribed by the law to exercise quality control over goods, services and works."

The Republic of Armenia Law “On the Public Service Regulatory Body” was enacted on December 25, 2003. Under the Law, the Republic of Armenia Public Service Regulatory Commission was created to balance the interests of consumers and those carrying out regulated public sector delivery activities, to create a level playing field for regulated bodies, to facilitate the development of competitive markets, and to promote the efficient use of resources.

The Republic of Armenia Law “On the Protection of Consumer Rights” was enacted on June 26, 2001. This Law regulates the relationship between consumers and producers (sellers, performers) during product sales (work performance, service delivery), the consumers’ rights to obtain goods (works, services) of proper quality, which are safe for consumers’ life and health, and the arrangements for exercising such rights.

The Law is aimed not only at safeguarding the protection of consumers’ rights, but also increasing the accountability of producers of goods, performers of work, and providers of services for the quality of their work.

This Law is particularly important for consumers that, having very limited purchasing parity, have to opt for low-price and, therefore, low-quality goods and services.

Article 5 of this Law stipulates several obligations concerning the quality of goods (works, services). First of all, the provider is obliged to provide service to the consumer, which must correspond to the quality stipulated by the contract. Secondly, if the contract does not contain any stipulation of service quality, the provider is obliged to provide such service that is fit for the purposes for which such services are normally used. Thirdly, if regulatory documents stipulate mandatory requirements on service quality, then the provider is obliged to provide services that meet such requirements.

The Republic of Armenia Civil Code was adopted on May 5, 1998. Article 485 of the Code defines the concept of “the quality of goods” and the seller’s obligations in matters of quality. Article 486 defines the concept of “guarantees of the quality of goods”. Articles 490 and 491 define the procedure of checking the quality of goods and the consequences of transferring goods of improper quality. Article 521 defines the notion of a “supply contract,” and Article 500 - that of an “energy supply contract.” Articles 551-560 regulate the energy supply contract-covered relationship between the supplier and the consumer.

The Republic of Armenia Law “On Energy” was adopted on March 7, 2001. This Law regulates the relationship between state bodies, legal entities operating in the energy sector, and suppliers of electricity, heating, and natural gas in the Republic of Armenia.

The Law defines the Republic of Armenia Public Service Regulatory Commission (“PSRC”) as the body regulating the energy sector. The PSRC has the power, among other things, to define the regulated tariffs and requirements concerning service quality (Article 10(c)(g)).

The Republic of Armenia Water Code was adopted on June 4, 2002. Article 7 of the Water Code, which defines the objectives of the Code, states, among others, the objective of “providing the necessary quantity and quality of water to households and the economy at regulated tariffs.”

Article 38 of the Code stipulates, among the mandatory conditions of water sector use, the requirements on the quality of delivered services.

Article 66 addresses the water quality standards, and Article 67 covers the compliance with standards. Potable water standards are defined in Article 70. Articles 79 and 79.1 are devoted to the setting and review of non-competitive water use tariffs.

The Republic of Armenia Law “On E-Communications” was enacted on July 1, 2005. Article 1(6) of this Law states, among the objectives of the Law, the objective of ensuring the efficient regulation of the sector, including “the fair and timely response to consumer complaints.”

Article 5 obliges the regulator to make sure that the quality of e-communication services, the choice of the related infrastructure, the prices, and the quality are convenient for the end-users. It also requires the regulator “…to regulate services by means of establishing certain standards for the activities of public e-communication network operators and service providers.”

Chapter 9 of the Law is called “Protection of Consumer Rights.” However, experts believe this Chapter to contain more restrictions than rights for consumers. Article 43, for instance, provides in Paragraph 1 that, in certain circumstances, the service provider has the right “to refuse, terminate, or suspend the delivery of services.”

The Republic of Armenia Law “On Standardization” was adopted on November 9, 1999. Article 2(e) of this Law defines “technical specifications” as a document setting out technical requirements, which certain products, works, or services must correspond to. Article 3 provides that the goal of standardization is to improve the quality of products, works, and services, and that the target of standardization is the product, work, and service. Article 9(2) stipulates national standards requirements on the quality of works and services.

The Republic of Armenia Law “On Uniformity of Measurements” was adopted on May 26, 2004. Article 13 of the Law provides that state measurement control and supervision apply, among others, to measurements the results of which are used to check and test the quality and safety of products and services.

The Republic of Armenia Law “On Public Sanitation and Epidemiological Safety” was adopted on November 16, 1992. Under this Law, residents of cities and other settlements shall be provided with an adequate quantity of potable water for household needs and biological needs of people, which must correspond to the regulatory standards on hygiene. The quality of potable water and water used for household, economic, production, and technical needs must correspond to sanitation rules.

State bodies carry out measures to maintain and develop the water supply system, and to provide high-quality water to the population.

The quality of centralized and non-centralized water supply, bathing water, and water used for sports, leisure, and health care, as well as the quality of water contained in reservoirs located within the boundaries of settlements must correspond to sanitation rules.

To prevent and eliminate the pollution of sources used by households, local government bodies shall delineate sanitary protection zones subject to a special regime in accordance with the Republic of Armenia legislation.

If the quality of water does not correspond to sanitation rules, the Republic of Armenia State Hygiene and Epidemiological Service may decide to halt the operation of water sources by enterprises, institutions, organizations, and citizens.

The Republic of Armenia Law “On Local Self-Government” was adopted on May 7, 2002. Article 37 of this Law provides that a community mayor shall have several binding functions in urban development and utilities, including “the organization and management of the operation of community-owned intra-community communications, water supply, sewerage, irrigation, and heating networks and other structures.”

The Temporary Rules of Natural Gas Supply and Use was approved by a December 9, 2005 decision of the Public Service Regulatory Commission.

Most of the gas supply contracts between suppliers and consumers are concluded on the basis of these Rules. The Rules define “natural gas” or “gas” in accordance with the GOST 5542-87 definition. Paragraph 36 of the Rules stipulates a fine for interruptions or limitations of gas supply to the consumer, which, under the Contract, must be paid to the Consumer. Under Paragraph 41, a consumer has the right, if the gas quality does not correspond to the contract, to stop the consumption of gas after giving formal notice.

The Temporary Rules of Electricity Supply and Use was approved by a May 29, 2001 decision of the Republic of Armenia Energy Regulatory Commission. Paragraph 37 of the Rules provides: “A company supplying electricity is obliged to ensure high-quality, safe, and reliable electricity supply to consumers in accordance with the supply scheme stipulated by the contract.” Paragraph 40 stipulates a penalty in the amount of 2% of electricity not supplied. Paragraph 41 obliges the supplier to comply with the electricity quality standards stipulated by the contract or, in the absence of such standards in the contract, the quality standards stipulated by technical regulations. Paragraph 42 provides that the supplier must, in accordance with the procedure stipulated by the contract and by the Republic of Armenia legislation, compensate damage inflicted upon the consumer by electricity supplied not in accordance with the quality standards.

QUALITY OF PUBLIC SECTOR SERVICES

“Quality” is defined and regulated by Article 5 of the Republic of Armenia Law ‘On the Protection of Consumer Rights” and Article 485 of the Civil Code. Article 5(1) of the Republic of Armenia Law “On the Protection of Consumer Rights” obliges the provider of services, among other things, to deliver services (products) of quality that corresponds to the contract. Article 5(2) obliges to deliver services (products) for which such services (products) are normally used. Article 5(5) provides that, if regulatory documents stipulate binding requirements on service (product) quality, then the provider must deliver to the consumer services (products) that meet such requirements. Identical requirements can be found in Article 485 (paragraphs 1, 2, and 4) of the Republic of Armenia Civil Code.

A. Energy Sector

1. Electricity Supply

In Armenia, the coverage of electricity supply is close to 100%; electricity is supplied to almost all households. The electricity distribution network of Armenia belongs to the Armenia Electricity Networks Closed Joint-Stock Company, which is also its operator. Payments for electricity account for a sizeable portion of household budgets (5% of total household spending on average[20] or 87% of total household utility spending).

Condition of Infrastructure

The electricity supply network is largely old. In many rural areas, the network is over 40 years old and does not correspond to present-day technical standards of safety. The aforementioned Armenia Rural Infrastructure Study found that the system is in good condition in less than 11%, in satisfactory state - in 76%, and in poor state - in 13% of Armenia's rural communities. This leads to frequent power outages, in spite of timely payments. Outages average 20-25 hours per month.

Notwithstanding the overall poor condition of the system and the limited recurrent expenditures, public satisfaction is rather high: the Armenia Rural Infrastructure Study found 87% of the population content with electricity supply, with 40% considering the supply to be good.

In general, electricity is affordable to residents of all communities. There are very few of those that cannot pay and are having their power disconnected. The reason why their number is small is because they are supported by the village administration and fellow residents; in some cases, the electricity network staff makes concessions and waits for the family to receive pensions or allowances to be able to pay the electricity bills.

People complain about night-time power outages, which are sometimes regular. In some communities, the power outages result in a breakdown of telephony, as well. This is especially a problem for communities in which digital stations have been installed.

The positive public perception of the quality of electricity services is due to their affordability and the sometimes "nice" treatment of people by the network employees. People only complain when the power fluctuation causes household appliances to stop working.

The aforementioned Study also found that the electricity infrastructure is worn out: in many places, it has not been replaced since Soviet times. Strong wind and rain often cut the worn-out wires.

Respondents are not content about the operation and maintenance of these services. In some cases, the electricity poles fall, bring the wires down, as well. Poles and lines installed or rehabilitated by residents willing to pay for it often fall short of the standards, including safety standards. Many poles do not stand straight and need rehabilitation due to the danger they pose to the population.

[20] Social Dimension of Poverty in Armenia, statistical-analytical report, Yerevan 2003.

Some respondents said that the electricians work without delays, addressing breakages in a timely manner; however, more respondents said that the electricians respond too late, which leaves people without power for quite some time.

2. Heating

Heating services are highly inaccessible. In Soviet times, all the cities and some villages had centralized heating. The privatization of the housing stock, the higher prices of energy carriers, and the lower purchasing parity of the population made the delivery of centralized heating virtually impossible. In recent years, centralized heating has been available only to several districts of Yerevan, Gyumri, Hrazdan, Charentzavan, and Jermuk.

“Local” heating options are perhaps more feasible. The only settlements or districts that will not convert to “local” heating are the ones located close to heat energy producing stations (such as the Hrazdan and Yerevan thermal power plants).

3. Gas Supply

In terms of gas supply infrastructure, communities can be classified into three groups: 1) communities that used to have such infrastructure; 2) communities that are just having gas infrastructure installed; and 3) communities in which gas infrastructure was installed in Soviet times, but the community developed and expanded, and its new districts do not have such infrastructure.

In some communities, a significant share of the population has gas, but the physical condition of the infrastructure causes serious concern to the villagers. In some communities, the Soviet-era infrastructure has become depleted or stripped of assets. This situation is typical especially of borderline communities.

Gas supply to rural communities does not put a complete end to the use of traditional fuel for heating. When a community has access to cheap traditional fuel, it will normally combine such fuel with natural gas. This is especially found in communities with developed animal breeding, which have sufficient pressed dung for fuel.

As for service quality, there are different assessments. In some cases, respondents say that “half of the supplied gas is air,” while other are content. Respondents complain about mass cuts due to late payment by some residents.

Despite considerable demand for natural gas, it is unaffordable for many (more due to the cost of installing the pipes, than tariffs).

Nevertheless, many are ready to compromise their subsistence money to obtain natural gas, because they are confident that having gas will ensure:

- Cost efficiency, because natural gas is cheaper than the other fuels currently used;
- A cleaner and safer household;
- Less physical work required of the families;
- Sparing of manure for better use (as fertilizer);
- Solving environmental issues and stopping the logging; and
- The creation and development of greenhouses.

Before 1991, the gas distribution system served up to 480,000 subscribers, covering 42 cities and 365 villages. However, the system started falling apart after the collapse of the USSR, and gas supply to the population was phase out during 1991-1997.

In recent years, the system has been rehabilitated; the current numbers of gas consumers are presented in the table below.

Year	2004	2005	2006
Subscribers (thousand)	270	360.6	413.6
Communities with gas infrastructure	276	316	420
Of which, cities	40	41	42

B. Water System

1. Potable Water Supply and Sewerage

Armenia has a relative abundance of water resources - 10.2 billion cubic meters (m^3) of total water resources per annum, of which only 2.4 billion is used as potable water. The potable water system consists of 123 water collector stations, 176 underground water sources (Artesian wells and others), 29 river collector stations, and 4,820 km of mains (of which 700 km is around Yerevan and the rest - in the regions). The total distribution network is 8,020 km, of which 1,900 km is in Yerevan.

The centralized water supply system covers all the cities and 36.5% of the rural settlements. Centralized water supply is accessible to 71% of households (87% of urban and 45% of rural households).

The internal networks of potable water pipes are normally community-owned, while the external networks are mainly owned by water entities.

In Armenia, most potable water comes from underground sources, including natural springs and deep wells. About 10% of the water comes from surface sources. In addition to potable water, there is a significant demand for irrigation water, which is partially met on account of the Lake Sevan water.

Armenia's water supply and distribution systems are in depleted and poor condition. Service quality is generally short of international standards.

The potable water sources are of good quality. Often, the sources are not sufficient to meet consumer demand for water. Although the geographic distribution of sources is such that water can flow by gravity to most settlements, pumps are still used to supply water to a large number of settlements. The water supply systems pump stations are in poor state; pumps, electrical engines, and valves need to be replaced, and the buildings - repaired or rehabilitated.

The majority of available chlorinating devices need to be replaced. Some systems fed by local sources do not even have chlorinating stations. The pipes between sources and daily

reservoirs and communities are made of steel or cast iron, and some are made of asbestos cement.

Although the quantity of water taken at sources is larger than the estimated demand, excessive losses and unreported use within the system leads to a failure in ensuring round-the-clock supply to consumers. Consequently, a large share of the consumers receives water for not more than five hours per day. Many small villages do not have distribution networks within the village, which means that the villagers have to use outdoor taps or individual wells.

The Armenian Water and Sewerage Company (AWSC) has the monopoly of water supply and sewerage in all 10 regions of Armenia outside of Yerevan. The Yerevan Water and Sewerage Company (YWSC) ensures water supply to the City of Yerevan and several adjacent villages. About 500 small villages have autonomous water supply systems and are not served by either AWSC or YWSC.

During the last decade, water supply system improvement activities, funded by humanitarian aid, loans, or non-governmental or inter-state programs, have been carried out in 242 settlements of Armenia.

Thanks to such activities, most of the water supply problems have been resolved in about 120 settlements.

Renovating the potable water infrastructure will facilitate:

- Access to high-quality water, which will be clean and will not cause epidemics or disease;
- Increased water volume and round-the-clock supply;
- Improved livelihood and quality of life;
- Financial savings, because water currently has to be bought in some communities; and
- Time savings, because in some communities, people spend a large part of their days physically carrying water.

The Armenia Rural Infrastructure Study confirmed that almost all the communities in Armenia need major repairs of their potable water infrastructure, including both internal and external components.

The Study found[21] that the potable water infrastructure is in good state in only 2% of the rural communities, while 63% need financial investment to improve the situation.

[2] The situation assessment is based on feedback from the village mayors.

Potable Water Systems, Situation by Regions

Region	Number of Communities	Condition of Potable Water System		
		Good	Satisfactory	Poor
Aragatsotn	111	5%	26%	68%
Ararat	93	1%	47%	52%
Armavir	94	2%	22%	76%
Gegharkunik	87	0	14%	86%
Kotayk	30	3%	43%	53%
Lori	105	4%	30%	67%
Shirak	116	3%	29%	68%
Syunik	106	0	69%	31%
Tavush	58	0	40%	60%
Vayotz Dzor	41	0	20%	80%
Total	**871**	**2%**	**35%**	**63%**

In the majority of the communities covered by the aforementioned Study, the potable water pipes, which are asbestos-made, have long become worn out and are unsafe. According to the respondents, it causes not only water losses, but also the penetration into water pipes of wastewater, melting snow and rain water, insects, and rodents.

In the surveyed communities of the Armavir region, people mainly use water from Artesian wells, which is pumped into the internal network. According to the respondents, this water is intended for irrigation or, in extreme cases, animals, because it does not correspond to the potable water standards. There are some villages in which there is not even such water. For example, in the Vanand and Arevadasht villages of the Armavir region, there is no potable water whatsoever. For their household needs, people buy water at 150-200 drams for 40 liters, the quality of which they are doubtful about.

In the Arteni village of the Aragatsotn region, 70% of the villagers, according to the study, have to buy water, while the remaining 30%, which cannot pay, use artesian water. In some communities, such as the Debedavan, Movses, and Barekamavan villages of the Tavush region, there is no internal water network.

In virtually all of the surveyed communities, water is supplied during certain hours in the day. There are few communities in which water is supplied round the clock. Often, the geographic position of a village is such that, when the water is scarce, it only reaches the “upper” districts that are close to the water main. The other villagers then have to carry water in buckets from those districts.

The lack of potable water is a cause of major tension and conflicts in the relations within and between communities.

The study found a ubiquitous problem of low quality. In almost all places, the respondents said that almost no filtration and no chlorination are performed. In some communities, they complained that the water was too rough, containing too much lime, and not sufficient iodine.

The study also found that 88% of the rural communities have full or partial access to potable water, while the rest depend on either water suppliers or water from neighboring villages.

Only 51% of the rural communities have taps in the household, compared to 87% in urban communities.

The responses showed that about 10% of rural households incur significant cash costs for buying water, as they pay 100-1,000 drams for one bucket of water.

86% of rural households reportedly spend more than one hour per day collecting water (for storage), while 26% spend more than four hours.

In the communities, water is supplied on average 14 hours per day; however, only 44% of Armenia's communities have round-the-clock water supply. Supply inadequacy is especially a problem in the Ararat, Shirak, and Tavush regions.

Satisfaction with water quality is low in communities: only 44% of the respondents had "satisfactory" or "good" opinions of water quality.

Another problem worrying the residents is that, when the water is treated, the quantity of chlorine added to it is normally not sufficient to protect the distribution network from pollution.

Sewerage

Centralized sewerage operates mainly in urban communities. Only 11% of the rural communities have centralized sewerage. Due to the depleted condition of the centralized sewers, accidents are not infrequent, posing danger to public health. Treatment of sewerage water and pollution of natural water bodies cause problems, as well.

The Shirak and Ararat regions are doing better than the others (205 of the communities in these two regions have essential sewerage), while in Tavush and Vayotz Dzor regions, there is hardly a few communities.

2. Irrigation Water Supply

Over 80% of Armenia's agricultural output comes from irrigated husbandry. During the last years of the Soviet era, about 280,000 hectares of land was irrigated in Armenia, for which there were over 70 reservoirs, 3,000 km of mains and secondary canals, about 18,000 km of tertiary canals, and over 400 large and medium-sized pump stations. Annual operation costs of this system were over 60 million rubles, with system development taking up another 120 million. With electricity tariffs low, the nation made extensive use of pump irrigation, for which up to 800 million kW/h of electricity was used annually. Irrigation water was supplied to water users (collective farms and Soviet farms) at no cost, and all the expenditures of the sector were born by the state budget.

After the USSR collapsed, the irrigation system faced an imminent threat of failure caused by the lack of paid irrigation schemes and the insolvency of small farms. From the mid 1990s, the World Bank supported the implementation of an Irrigation Systems Rehabilitation project (US $55 million during 1994-2001), which ensured the smooth

operation of eight large irrigation systems in Armenia. Under the same project, the International Fund for Agriculture Development (IFAD) supported the rehabilitation of tertiary canals irrigation over 42,000 hectares of land.

Condition of Irrigation Systems

The lack of current repairs and insufficient maintenance during the last decade have caused the system to disintegrate. According to assessments of the Water Sector Development and Institutional Strengthening PIU, the irrigation system is in poor state or non-operational in 52% of formerly irrigated land.

According to the IFAD database,[22] only 39% of the irrigable land is currently irrigated (compared to 54% in the past). This decline is due to not only the infrastructure deterioration, but also the higher electricity tariffs.

In some communities, the internal network is not evenly distributed, and the streams do not reach all the land plots, which causes fighting and conflicts. When the water passes through several communities, there are frequent disputes and conflicts between communities.

In general, there is dissatisfaction about the water tariff, which people consider unreasonably high, making irrigation unaffordable for the majority of the population. In some communities, where water flows by gravity, users mainly do not pay for irrigation water.

There are also complaints about the payment scheme. The inadequacy of irrigation networks makes precise metering of supplied water impossible. The villagers, therefore, pay by the hectare or the hour. Due to inadequate supplies of water or calculation errors, there is an inconsistency between the amount of water received and the fee charged. Moreover, villagers are mostly required to pay the water fee at the beginning of the irrigation season, which creates difficulties.

In some communities, the scarcity of irrigation water has forced villagers to reconsider their choice of plants.

In all the communities, the respondents are not content about the water supply schedule. First of all, the water supply starts too late. According to respondents, the Ararat Valley starts vegetating in May, while irrigation water is only supplied from June 10. Furthermore, supplies are sometimes stopped without any explanation in the middle of the irrigation season.

Crop losses caused by the lack of irrigation are as follows: 10% of the respondents said they did not suffer any such losses, while 35% reported having lost over 50% of their anticipated crop. On average, each community lost about US $150,000 worth of crops due to poor irrigation

29% of the communities receive irrigation water during the whole season, and about 50% receive it only during half of the season.

[22] Date collected in 2003.

An Irrigation Systems Development project, for which preparation started in 1997, has been implemented since 2002, covering reforms at all levels of governance - from state bodies to water users.

A reform program adopted by the Armenian Government stipulates participatory governance of the irrigation sector, which is aimed at improving the irrigation system and making it more reliable. An essential component of this reform is the creation of the Water Users' Association (WUA). The WUA has undertaken to operate and maintain the secondary and tertiary systems, and to collect fees. Management functions and the system operation right have been transferred to the Water Users' Companies (WUCs).

Under the Irrigation Systems Development and the Agricultural Services projects, 52 WUCs have been founded throughout Armenia, covering most of the irrigable land (225,000 hectares). The WUCs cover 624 communities of Armenia with a total of 295,000 water users. Of the approximately 250 remaining communities, about 50 do not have irrigable land, and 200 use local sources, are isolated from other communities, and currently do not need to join a WUC.

The WUCs have been given a 25-year right to use state- and community-owned irrigation systems at no cost; however, the systems (with the exception of structures rehabilitated in recent years) transferred to the WUCs are hardly functional. Out of 280,000 hectares of irrigable land, only 160,000 are adequately irrigated. The state-owned mains and secondary canals, pump stations, and community-owned networks need to be rehabilitated. The cost of their rehabilitation has been estimated to exceed US $800 million.

C. Telecommunications (E-Communication)

The telecommunication infrastructure is owned by the company ArmenTel.

Unlike electricity, this service is less accessible to communities. Compared to urban communities, all of which have internal telephony, the situation is very different in rural communities. There are communities in which there is no wire telephone. In the majority of communities, there are several telephone lines; in some, there is only one line, which is located in the village administration or postal office. Respondents said that the telecommunication infrastructure is as important as the other sectors, considering the emigration from the country, including labor migration.

In the new district of the Shatin Village in the Vayotz Dzor region, there is no telephony whatsoever. Considering that the district is one kilometer away from the village center, and that the road is impassable during the winter, the district completely loses contact with the rest of the world.

Among the surveyed communities, there are some in which a handful families have telephones.

The telephone station equipment is temperature-sensitive and does not work in the winter cold and summer heat. The equipment also fails at times of rain and power outages. In the past, there were batteries that supplied power during the outages, but they no longer work.

There are quite a few communities in which there is telephony, but the telephones of up to 50% of the villagers are disconnected due to arrears. The villagers claim it makes no

sense to pay and turn the phones back on, because they cannot be used due to poor quality.

70% of the village residents said the quality of communication services is poor and unsatisfactory, while 19% considered it satisfactory, and only 11% considered it good. The quality of long distance calls was considered the worst. There are also complaints about the ArmenTel operators that serve long distance calls.

The existence of mobile telephony, however, significantly mitigates the situation. However, mobile telephone service remains expensive and unaffordable to the public at large. The situation in this sector somewhat improved after a second operator - VivaCell -was allowed entry into the market, putting an end to ArmenTel's monopoly.

CIVIL SERVANTS' AWARENESS AND INDEPENDENCE FROM POLITICAL INFLUENCE

In order for Armenia to achieve the constitutionally-declared goals of becoming a democratic state based on the rule of law and building civil society, it is essential to have professional and fair governance. Professionalism and fair governance depend largely on civil servant's awareness of political developments and the ideologies of various political groups active in the country, as well as their ability to remain free from the influence of political structures during the performance of their official duties. Otherwise, it would be impossible to have unbiased governance and to provide for a balanced and effective protection of the rights and interests of all layers of society.

Since declaring independence, the predominant practice in public administration was that the political force that came to the power started replacing with "its teammates" if not all the people in the public administration system, then at least the majority of the key officials. This practice was rather bluntly enforced in the cases in which the head of a public agency was replaced only by virtue of short-term considerations, rather than a true reshuffling of the political forces. If the newly-appointed head of the agency did not clearly represent any political force, the replacement of staff with "teammates" lost any ideological and political justification, and was guided merely by personal or plutocratic interests. As a consequence of over ten years of such practice, Armenia's public administration system [and other sectors] gave birth to the phenomenon of so-called "political migration", which can be defined as officials without a firm political stance changing their political orientation or party with a view to keeping their position or achieving a more desirable one, thus undermining the stability of the political framework and, more broadly, society's ability to be self-governed. Naturally, a civil servant that believes in and practices "political migration" cannot be expected to deliver unbiased and fair governance.

In 2002, the Republic of Armenia introduced a civil service system (hereinafter, "CSS") on the legal basis of the Republic of Armenia Law "On Civil Service". During the last 4.5 years, this Law has been amended seven times (the last time was on May 23, 2006). The introduction of CSS was expected to help overcome public administration employees' dependence on changes in the political landscape; however, four years of experience have proven that, instead of CSS reducing the political migration of public servants, the problem has become more wide-scale and overt.

In view of this reality, the author of the study[23] advanced the following working hypotheses:

a) In the Republic of Armenia, CSS still broadly remains under the direct influence of the ruling political elite, while the ability of a person to become a civil servant and the ability of a civil servant to keep his position or to move up the career ladder, despite the existence of a rather difficult system of competitions and tests, still largely remains dependent on the arbitrary will of the person that has the authority to make an appointment to such position;

b) The majority of civil servants in Armenia cannot display autonomous and stable ideological and political conduct, which would somehow influence both the key decisions taken within the public administration system and the major events taking place in public life.

To confirm or deny these hypotheses, it was necessary to determine:

1. The level of civil servants' awareness (of different sectors of the nation's public and political life and institutions) and the ability to access sources of information needed for their official work;

2. The degree of civil servant's participation in taking working decisions; and

3. The degree of supervisors' political influence during the decision-making process, as well as other forms of influence, the frequency of such case, and the like.

These matters were studied in light of *de-jure* and *de-facto* circumstances. The "legal" review addressed the civil servants' rights and restrictions, as defined by law, in accessing information. The "factual" assessment addressed the real-life possibilities for civil servants to access information and to take decisions on their own.

Two methods were used: (i) review and analysis of legislative and other legal acts regulating CSS functions, including the Republic of Armenia Constitution, the Republic of Armenia Law "On Civil Service" (hereinafter, "the Law"), and the Ethics Code of Civil Servants, approved by Civil Service Council decision 380 of December 1, 2004 (hereinafter, "the Code"); and (ii) a questionnaire-based survey in order to determine the real extent of civil servants' awareness and political independence.

The number of civil servants is rather large - 7,230 as of October 1, 2006, distributed over 40 institutions of public administration, including the Staff of the Republic of Armenia President, the Staff of the Republic of Armenia Government, 14 ministries (in some ministries, CSS has not been introduced yet), six bodies adjunct to the Government, six other bodies created by law (regulatory commissions for different sectors), and the Staff of the Civil Service Council. The study covered over one quarter of such bodies, including nine ministries and two regional administration bodies (including the Yerevan City Administration and the Vayotz Dzor Regional Administration (Marzpetaran)). This sampling was due, among other things, to the restrictions of the study in terms of resources and time, although, in quantitative terms, the sample is representative enough for an induction.

The survey of the aforementioned 11 bodies covered a total of 128 civil servants representing the largest three categories of civil service positions (senior, leading, and

[23] The study was carried out in 2006 and availed for purposes of this Report by sociologist Vardan Gevorgyan, the Co-Chair of the NGO called "Yerevanyan Akademia" International Association of Social Scientists, who retains copyright of the data presented herein.

junior). Due to their limited number and special status, representatives of the highest category of civil servants were not included in the survey. To the extent possible, the sample follows the sex breakdown and categories of civil servants in the respective public bodies. A breakdown of surveyed civil servants by sex and position is presented in the table below.

Survey Sample, Breakdown by Agencies

#	**Sex** / **Position Category** / **Body**	**Female**			**Male**		
		Senior	**Leading**	**Junior**	**Senior**	**Leading**	**Junior**
1	RoA Ministry of Agriculture	1	1	1	4	0	0
2	RoA Ministry of Energy	1	2	3	2	0	0
3	RoA Ministry of Culture and Youth Affairs	3	2	3	1	1	0
4	RoA Ministry of Urban Development	1	1	2	3	2	1
5	RoA Ministry of Education and Science	4	2	3	1	0	0
6	RoA Ministry of Nature Protection	2	2	2	3	4	1
7	RoA Ministry of Health	6	1	0	2	1	2
8	RoA Ministry of Labor and Social Affairs	2	4	4	3	3	0
9	RoA Ministry of Transport and Communication	2	2	1	5	1	1
10	Yerevan City Administration	3	3	1	6	1	2
11	Vayotz Dzor Regional Administration	1	3	2	5	1	1
	Total	**26**	**23**	**22**	**35**	**14**	**8**

Taking into account the small number of civil servants surveyed from each public body, the analysis below is aggregated.

AWARENESS OF CIVIL SERVANTS

Article 27(2) of the Republic of Armenia Constitution provides:

“Everyone shall have the right to freedom of expression, including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers.”

The implementation of this constitutional clause in laws subjects this right to certain restrictions for a number of groups working in certain institutions.

Chapter 5 of the Law (“Chapter 5. Legal Status of Civil Servants”) provides (in Article 22) that a civil servant shall have the right to become familiar with legal acts defining the rights and duties associated with his office, all the materials of his personal file, and the evaluations of his performance. A civil servant may, in accordance with the established procedure, receive information and materials necessary for the performance of his official duties.

The findings of the survey show that civil servants generally display a high degree of interest in public and political events that take place in the country. About 70% of the respondents graded their interest between 7 and 10 points (on a scale of 10, where 10 is the highest degree of interest). Men are the absolute majority of such civil servants (80% men vs. 20% women). The degree of interest does not vary much between the different categories of positions.

For all civil servants, television is the “number one” source of information about political and public events. About 70% of the respondents mentioned newspapers as another important source; radio is the third most popular source (about 51%). The next most popular source is the Internet (more than 27%). The percentage of female civil servants using the Internet is about 30% greater than that of male ones. Among other important source of information, the respondents mentioned fellow employees, friends, and acquaintances (20% each).

In addition to the general sources of information, the survey inquired about the most popular local and foreign television and radio stations and local newspapers.

The television station watched by most is the Public Television of Armenia (also known as “H1”). Three quarters of the civil servants “always” watch it. The second is the First Channel of Russia (more than 48%), and the third is the “Shant” Television Company (more than 31%). The fourth most popular TV channel, which is not far behind the third, is the “RTR-Planeta” station of the State Radio and Television Company of Russia. It is noteworthy that 40% of the 15 television companies mentioned by the respondents are foreign ones, mainly Russian.

The most popular radio stations are (in the order of popularity) the Public Radio of Armenia (about 35%), Radio Liberty (about 22%), “Russkoye Radio” (about 15%), and Radio Van (13.3%). None of the other 10 radio stations crossed the 5% threshold. A large number of civil servants (over 40%) do not listen to the radio. This figure is due also to objective reasons, especially outside of Yerevan. In Vayotz Dzor, for instance, civil servants do not listen to the radio because of the absence of a wire network and local broadcasters.

As for newspapers, the respondents mentioned a total of about 30 newspapers. The following newspapers were mentioned by 10% or more of the respondents: *Aravot* (about 54%), *Iravunk* (41.5%), *Haykakan Jamanak* (more than 40%), *Hayastani Hanrapetutyun* (about 23%), *Hayotz Ashkharh* (more than 16%), and *168 Jam* (10%). 82.5% of male and 56.3% of female civil servants consider newspapers an essential source of information. To determine the degree of awareness of civil servants, it was necessary to possibilities for civil servants to become familiar with legal acts concerning their rights and duties, their personal files, materials related to the performance of official duties, materials developed by a civil servant’s unit, agency, or another agency, which is directly linked with a civil servant’s work, decisions of immediate and indirect supervisors and of the Republic of Armenia Government, acts adopted by the Republic of Armenia National Assembly,

messages and decrees of the Republic of Armenia President, and decisions taken by international organizations in relation to the Republic of Armenia.

The survey showed that officials in the “senior” category have the greatest access to materials developed by their units, which are directly linked with their official duties, as well as to acts adopted by the Republic of Armenia National Assembly. The respondents in this category gave a rather low score to their access to international organizations’ decisions concerning the Republic of Armenia and to materials developed by other agencies and other units of their own agency, which are related to their work.

Officials in the “leading” category, unlike those in the “senior” category, reported that they have better access to legal acts concerning their rights and duties and, to a slightly lesser degree, to documents adopted by the Republic of Armenia National Assembly. In addition to the information mentioned by officials in the “senior” category, the officials in the “leading” category reported to have little access to messages and decrees of the Republic of Armenia President.

“Junior” officials have difficulties accessing decrees of the Republic of Armenia Government and Prime Minister. The percentage of female “junior” civil servants unaware of decisions taken by international organizations is 1.5-2-fold greater than that of male ones.

In terms of awareness of the situation in different spheres of public life and of the activities of various institutions, the survey showed that all categories of civil servants are most informed about education, social security, and foreign policy, and least informed about the army, law-enforcement activities, and the industrial sector. Officials in the “leading” and “junior” categories also reported little awareness of agriculture.

Civil servants in the “senior” category are relatively well-aware of the activities of parties (especially the ruling parties), non-governmental organizations, and the Apostolic Church of Armenia. They are least aware of the activities of other religious organizations and foreign diplomatic missions in Armenia. The “leading” officials are least aware of the work of international organizations in Armenia, while the “junior” officials are also least aware of the work of non-governmental organizations.

POLITICAL INDEPENDENCE OF CIVIL SERVANTS

The political independence of civil servants was reviewed in the context of the following inquiries: (a) decision-making authority and actual participation in the decision-making process; (b) civil servants’ ability to protect their rights and to influence decisions taken by supervisors; (c) detection of corruption in work and the response of supervisors to such cases; (d) attitude in respect of the provisions of the Code concerning the political conduct of civil servants; and (e) frequency of sanctions being applied to civil servants for failure to share supervisors’ political beliefs.

The Republic of Armenia Constitution (Article 27(1)) provides: “Everyone shall have the right to freely express his opinion. No one shall be forced to recede or change his opinion.”

Under Article 22 of the Law, a civil servant has the right: (1) to take part in decision-making in accordance with the established procedure and, if necessary, to demand an internal

investigation; (2) to have legal protection, including protection from political persecution; and (3) to appeal the results of competitions and tests.

Article 23 defines the obligations of civil servants, including the obligation to perform instructions and decisions of higher-standing bodies and officials, and to comply with the Code.

One of the restrictions applicable to civil servants (stipulated by Article 24(d) of the Law) is worth particular attention: “A civil servant shall not have the right … to violate the principle of political self-restraint of civil servants by means such as the use of his official position for the interests of, or for preaching certain attitudes in relation to, parties, non-governmental organizations, and religious associations, or the performance of political or religious activities while carrying out his official duties.” This restriction has been further elaborated in the Code. The Code, which is merely a sub-legislative act approved by the Civil Service Council, has effectively become the legal document regulating civil servants’ political independence. The Code, which has seven sections, introduces a number of additional restrictions on civil servants, as follows:

1. A civil servant shall eschew practical contacts with persons that have entered into a clash with public authorities, other than contacts that are within the scope of his official duties. (Part 1, Paragraph 1.5.)

2. A civil servant shall not make appearances in the mass media, participate in interviews, or express an opinion in any other way, which is fundamentally different from the state policy as a whole or the policy of the state body the interests of which he represents in his official capacity. (Part 1, Paragraph 1.6.)

3. Ethical rules require a civil servant to engage in a political career only after his release from the position. (Part 6, Paragraph 6.3.)

Paragraph 4.8 in Part 4 of the Code defines that “in discovering cases of corruption, a civil servant shall not be restrained by his official hierarchy or the principle of collectivity.” The study has tried to examine the extent to which civil servants concur with the aforementioned provisions and the real possibilities of applying the latter provision in governance practice.

At the outset, certain working hypotheses were advanced for this part of the study, as follows:

1. The aforementioned three requirements are not perceived straightforwardly by civil servants due to the fact that they contain elements of political censorship; and

2. The provision on corruption cannot be effective in practice, and civil servants will avoid free discussion of their relation to the concerns expressed in this provision.

The study showed that over 18% of the “senior” officials never or rarely participate in decision-making, although they have such authority ex officio. Over 16% of “leading” and about 7% of “junior” officials always or rather frequently participate in decision-making. It is worth noting that about 10% of the “senior” officials are generally unaware of their legally-prescribed authority to participate in decision-making.

In terms of evaluating the extent of political independence, decision-making is directly related to civil servants' ability to protect their own rights, to advance in their careers, to take autonomous working decisions, and to influence decisions taken by supervisors. The study found that women in "senior" positions have the highest self-perceived ability of career advancement (70%), protection of their own rights and ability to take autonomous working decisions (58% each).

Male "senior" officials have an even higher perception of their ability to advance in their careers (80%). Many of these officials (over 70%) consider themselves capable of taking autonomous decisions. Men and women in the "senior" category of positions have the lowest perception of their ability to influence decisions by supervisors (31% and 26%, respectively).

The proportions are the same in the other categories of positions, including the issue concerning their ability to influence supervisors' decisions.

As was assumed, very few respondents (only 5 respondents, or 4% of the total number) said "yes" when asked about discovering cases of corruption, although this finding is perhaps unrealistic. The interviewers noticed that the majority of respondents took a rather long time to answer this question. Many of them tried to circumvent it, and hesitantly marked "no" only after being strongly urged by the interviewer to answer the question. About 10% of the respondents, after they marked the "no" answer, orally commented that they have encountered corruption cases, but cannot mention it due to various reasons, such as "a "no" answer is really never possible in our country, but one would be assuming a great responsibility by making such a statement in writing," or "everyone knows, in any case, that corruption is an omnipresent phenomenon in our country," or "for one such case, I was forced, two years after an audit, to change my audit findings" and the like. Many of the respondents made such confessions on the question about participation in decision-making ("so what if I have the authority to take decisions; in reality, no one would allow me to participate in the decision-making process").

As was already mentioned, the attitude towards the Code and, especially, its provisions on civil servants' political conduct, was considered as a key indicator of their political independence.

It was found that about 51% of the respondents (including 26% of the female and about 50% of the male "senior" officials, over 52% of female and 50% of male "leading" officials, and 54.5% of female and 37.5% of male "junior" officials) fully or mainly disagree with the provision whereby "a civil servant shall eschew practical contacts with persons that have entered into a clash with public authorities, other than contacts that are within the scope of his official duties." Taking into account the peculiar political situation in Armenia, this provision significantly limits the ability of civil servants to join opposition parties.

About 40% of the respondents (including 30.8% of the female and 37% of the male "senior" officials, 39% of female and 28.5% of male "leading" officials, and about 60% of female and 50% of male "junior" officials) fully or mainly disagree with the provision whereby "a civil servant shall not make appearances in the mass media, participate in interviews, or express an opinion in any other way, which is fundamentally different from the state policy as a whole or the policy of the state body the interests of which he represents in his official capacity."

Over 39% of the respondents (including 35% of the female and 40% of the male “senior” officials, 39% of female and 36% of male “leading” officials, and about 50% of female and 25% of male “junior” officials) fully or mainly disagree with the provision whereby “Ethical rules require a civil servant to engage in a political career only after his release from the position.”

Thus, the survey confirmed the hypothesis that civil servants do not have a straightforward perception of the aforementioned three rules of the Code.

Moreover, the survey of civil servants’ attitudes towards certain provisions of the Code was used to check the validity of their responses to other questions. Their responses proved that civil servants are not free in either legal or practical or psychological terms. The points that they fail to make when inquired about their work are made by them when they are inquired at the theoretical level. The survey of ethical matters was also used to check the sincerity of civil servants’ responses. The provision of sincere responses is greatly hindered by an atmosphere of total control of civil servants’ conduct in some agencies. In some ministries, civil servants agreed to participate in the interview only after obtaining the permission of their direct supervisors or the chief of staff. In the Ministry of Health, for instance, civil servants agreed to participate only after getting the permission of the Head of the Public Relations Unit, who seized the questionnaires after the end of the interview and insisted that they will be returned only after a “review” by the Chief of Staff. The questionnaires were returned thanks to the interference of the Deputy Chief of Staff.

Another question to which, in the opinion of the interviewers, the civil servants did not respond sincerely, was the question about administrative sanctions applied by supervisors in relation to civil servants for arguing against supervisors, maintaining close contact with persons disliked by the supervisors, failing to share the supervisors’ political beliefs, having contact with opposition individuals or groups, or failing to carry out instructions that contradict the law.

On this question, only 13.3% of the respondents stated that they are rather frequently or sometimes sanctioned for arguing against their supervisors. The same number of respondents said that they are sanctioned, though rarely, for the same reason.

Three times fewer respondents said that they had been reprimanded for being close to individuals “disliked” by supervisors or for failing to share their supervisors’ political beliefs.

About 9% of the civil servants said to have been sanctioned for contacts with opposition individuals or groups or failing to carry supervisors’ instructions that contradict the law.

The sincerity of civil servants could also be checked by asking them a question about how, in their opinion, state authority should be formed. About 65% of the surveyed civil servants said that, in the last election, they had voted for the incumbent President of Armenia, and fewer (about 38%) said that the majority-contest candidate of their choice was elected to the Parliament of Armenia in the 2003 elections.

About 43% said that the candidate of their choice had been elected a head of local government.

The interviewers believe that the respondents were not sincere in their responses about the party to which they belong. This belief is based on the observed behavior of respondents during the interviews, the mismatch between the information available to the

interviewers about the party membership of some respondents, on the one hand, and their actual responses, on the other, and the time that some respondents took to think, before failing to answer this question. Thus, only 11% of the respondents said that they belong to some political party. Of the partisan respondents, about 70% are members of the Republican Party of Armenia, 23% belong to the ARF, and others are members of other parties.

The findings of the survey can be summarized in the following way:

1. Electronic media, especially television, which is controlled by the authorities, are the main source of information for Armenian civil servants.

2. Civil servants try to “quench their thirst” for alternative information by watching foreign television channels and listening to foreign radio stations, as well as by reading the local opposition press (the three newspapers read by most are all opposition newspapers).

3. Civil servants have quite broad access to information related to their official duties, with the exception of materials developed in other agencies or other units of their agency. This, perhaps, is indicative of the under-developed IT systems for information sharing within and between agencies.

4. Civil servants are quite well informed of the situation in sectors such as education, health care, and social security, as well as the activities of parties, but are unaware of the situation in the army, law-enforcement authorities, religious organizations (save the Apostolic Church of Armenia), international organizations, and foreign diplomatic missions.

5. Civil servants are legally and psychologically far from being independent, as is proven by restrictions prescribed by the Ethics Code of Civil Servants and the cautious responses provided by civil servants during the interviews. There are still topics that civil servants try not to talk about altogether or to say not what they truly think.

5. RULE OF LAW, JUSTICE, POLICE

LAW "ON POLICE" AND PRACTICE. PROSECUTION ACTIVITIES. PUBLIC TRUST AND RESPECT FOR LAWS AND LAW-ENFORCEMENT AGENCIES. VIOLENT AND NON-VIOLENT CRIMES

The powers of the Armenian Police are stipulated by the Republic of Armenia Law "On Police" adopted in 2001. Experts consider this Law to be adopted without any consideration for the Council of Europe standards. Since adoption, the Law has since been amended several times (the most recent amendments were enacted on June 1, 2006).

The principles of the Law "On Police" regarding the role of Police and the principles underlying its activities are largely in accordance with the international standards;[24] however, there are numerous shortcomings in the provisions on powers, duties, and liability.

Besides, the functions and principles enshrined in the Law "On Police" are often violated in practice.

Some of the areas in which the Law is flawed are as follows:

- The functions of Police are too generally defines, and the Law does not provide specific definitions of concepts that are essential to the application of principles and functions;

- The Law lacks clear definition of he cases of legitimate use of force and concepts such as "mass disorder dismantling traffic and the functioning of other organizations," "prevention of group acts," "overcome disobedience," and "sufficient grounds";

- The Law makes too many references to other laws and contains too many declaratory statements;

- The Law lacks safeguards against conduct that exceeds the authority stipulated by Law;

- Article 1 of the Council of Europe Declaration on the Police requires a police officer to "fulfill their duties the law imposes upon him by protecting his fellow citizens and the community against violent, predatory and other harmful acts, as defined by law." Article 3 of the Declaration provides that a police officer is under an obligation to disobey or disregard any order or instruction involving inhuman or degrading treatment. A similar obligation in Article 38 of the Republic of Armenia Law "On Police" provides: "In the cases of receiving from supervisors (immediate or direct) or other authorized officials commands, instructions and orders obviously contradicting the law, a police officer must guide himself solely by the requirements of the law, advising so to his higher officer". A police officer may not be held liable for failing to perform an obviously illegal order or instruction. However,

[24] Standards of law-enforcement work are contained in the key international human rights instruments. Besides, special documents have been adopted by the Council of Europe and the UN, which stipulated the fundamental principles directly concerned with law-enforcement work and law-enforcement officers, including the Council of Europe Declaration on the Police, the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Body of Principles for the Protection under Any Form of Detention or Imprisonment, and others.

the notion of “obviously illegal” has not been defined. A police officer is personally liable for acts performed by him; however, the police agency is a hierarchical-discipline structure, and, in practice, a police officer would rarely be able to disobey any order or instruction.

The international standards prohibit police torture, inhuman or degrading treatment, or any use of violence against persons, which is considered punishable by law. The European Court of Human Rights defines inhuman or degrading treatment as the acts that physically and mentally oppress, intimidate, and cause feelings of incompleteness and duress. The Republic of Armenia Law “On Police”, too, prohibits torture; however, Article 30 of the Law, which authorizes police use of compulsory means (including special means) is not clear and provides a very generic definition of the cases in which compulsion may be used. Article 30 provides: “In order to restrain or prevent offences, to seize and introduce the offenders to the Police, in the events when the citizens do not obey the lawful demands of the Police officer and reveal disobedience or put up resistance, as well as for reasons of self-defense, a police officer shall have the right to exercise towards offenders physical force (including contrivances of hand-to-hand fighting) as well as necessary means at hand if non-forcible means fail to ensure the fulfillment of duties of the Police.

Article 31 of the Law provides that, while performing their official duties personally or in the composition of the subdivision, the Police employees shall have the right to exercise special means at the disposal of the Police in several cases, including “while overcoming disobedience or preventing resistance to a police officer…” (paragraph 2), or “while preventing mass riots and illegitimate group acts dissolving the work of the transport, communications and other organizations” (paragraph 3).

These provisions are leniently and discretionarily interpreted by the authorities to justify violence by the provisions of the Law “On Police”.

After dispelling the 2004 April demonstrations of the Armenian opposition,[25] a statement issued by the Armenian Police read: “In view of the dangerousness of the situation and the need to neutralize threat to human life and health, the police were compelled to use physical force and special means in accordance with the procedure stipulated by the Law “On Police” The statement does not justify how exactly the peaceful demonstrators threatened human life and health.

One reform, however, has been introduced recently: the Police have created a group of public observers to monitor police facilities for holding arrested persons. The group of public observers enjoys free access to temporary holding facilities that it may monitor by, among other means, interviewing persons held there.[26] However, ill-treatment examples are generally very difficult to find in the temporary holding facilities. Most of the ill-treatment takes place in police stations, to which the public observers have no access. Nonetheless, the creation of this group is a step towards cooperating with civil society.

Of the functions and principles laid down in the Law “On Police”, the following are violated more frequently than others: compliance with the law, adequacy, proportionality, non-discrimination, prohibition of torture, and protection of individuals from arbitrariness.

[25] See the 2005 Report on Monitoring of Democratic Reforms in Armenia (“Demonstrations, Meetings, and Free Movement of Persons” section).
[26] For details on the group of public observers, see the “Torture and Inhuman Treatment” section of this Report.

As for the other principles and provisions of the Law, they are mainly violated when there is some political activity. Proportionality, for instance, implies a balance between the freedom of assembly, on the one hand, and the need for maintaining the public order and preventing crime, on the other. However, any time the opposition holds a demonstration, maintaining the public order becomes the dominant principle. Article 29 of the Law provides: "Prior to using physical force, special means and firearms, a police officer shall be obligated to warn about the exercise thereof, giving sufficient time to perform the lawful demands and to stop the offence." However, during the night of April 12, 2004, when the Police was dispelling the demonstration, the warning came about one minute before the water cannons approached the crowd. Article 31 of the Law defines the cases in which special means (rubber clubs, attention-distracting light and vocal means, water cannons, electric shocking devices, and others) may be used. However, when dispelling the April 12 demonstration, only two of the nine paragraphs of this Article were only partially complied with. The Law permits the use of special means when "overcoming disobedience or preventing resistance." However, on April 12, resistance by the demonstrators only began after the Police used special means.

During the 2004 demonstrations, the Police also failed to comply with Article 5(3) of the Law, which provides: "The Police shall be obliged to give detained or arrested persons a real opportunity to exercise their rights to receive legal assistance, inform their close relatives and the administration of their working place or educational institution about their whereabouts in accordance with the legislation. In case if necessary, the Police shall take measures to render medical or other assistance to them."

Article 43 of the Law prescribes liability for police officers that fail to perform or improperly perform their responsibilities. The Prosecution has the power to supervise the lawfulness of Police activities. Under the Constitution, the Prosecution and Police are separate from one another; in reality, though, they are parts of the same system, because, to date, there has been no case of punishing any police officer for torture (despite numerous allegations), the failure to register a citizen's crime report, or violating the rights of witnesses and apprehended persons, even though Article 103 of the Republic of Armenia Constitution provides that the Prosecution is responsible for supervising the lawfulness of investigation, in particular the use of compulsory means.

In the Soviet era, the police and prosecution were the "pillars" of the state. A transition to democratic police should have implied the conversion of an administration-subservient police to agency serving the community. But, since this conversion hinges on the broader democratization process, which is still not the case in Armenia, the public continues, as in the Soviet era, to overestimate the state's role and to underestimate the role of society. Police and prosecution systems continue to serve as agencies for holding the public subjugated to the power by means of creating an atmosphere of fear and punishment.[27] In 2004, when a wave of opposition protests was expected, changes were made to the police system, and the President of Armenia himself explained the change by saying: "The changes are indeed for the purpose that you are thinking about."[28] In March 2004, after appointing Aghvan Hovsepyan as the Prosecutor General (who had been Prosecutor General in 1999, as well), the President of Armenia declared that the Prosecution needed hard-liners.[29]

[27] "Police Role in Democratic Systems." Armenian Center for National and International Studies, Yerevan, 2001, p. 53.
[28] *Azg* daily of February 24, 2004.
[29] "Ditord" 9 (27) of 2005, pp. 2-8.

Under the European Neighborhood Policy and the Millennium Challenge Account programs, Armenia has undertaken to strengthen prosecutorial independence, impartiality, and appointment and promotion procedures. Under the Amended Constitution, the Prosecutor General is appointed by the National Assembly upon nomination by the President of Armenia for a six-year term (under the 1995 Constitution, the Prosecutor General was appointed by the President of Armenia upon nomination by the Prime Minister). Now, the Prosecutor General may only be dismissed by a majority vote of the National Assembly. However, the National Assembly may appoint or dismiss the Prosecutor General (Article 103 of the Constitution) only upon nomination by the President of Armenia in cases stipulated by law. Furthermore, the deputies of the Prosecutor General, too, are appointed and dismissed by the President of Armenia upon nomination by the Prosecutor General (Article 55(9) of the Constitution). The candidacy of the Prosecutor General must be nominated to the National Assembly by the President of Armenia no later than five months after the National Assembly elections in 2007.

Even under the totalitarian Soviet system, the public perception of law-enforcement agencies was more positive than now. One of the reasons is that the public, despite some fear of such agencies, perceived them as protectors of the public from destructive elements. Today's law-enforcement system is often publicly perceived as the "sponsor" of such elements, rather than the protector of citizens.[30]

As for the legislation, the Law "On Police" does not incorporate the principles of law enforcement agencies being representative, serving the needs of community, and being accountable to the public, which are stipulated by the UN Code of Conduct for Law Enforcement Officials. These principles have not been reflected in the Republic of Armenia Law "On the Police" Disciplinary Code of Conduct, either. Under the European Neighborhood Policy and the Millennium Challenge Account programs, Armenia has undertaken to implement the European Code of Police Ethics adopted by the Committee of Ministers of the Council of Europe on September 19, 2001 in relation to Armenian police and prosecution.

Police performance continues to be judged by quantitative indicators of criminality, which does not provide an understanding of whether or not the police have carried out their main function of protecting human rights and freedoms. A particular problem is that the police are reluctant to register citizens' complaints in order to minimize the number of "unsolved" cases.

Generally, the evaluation of law-enforcement agencies' work does not in any way reflect the public opinion. According to the Annual Report of the Armenian Human Rights Defender, disgruntled citizens' complaints against police accounted for the third largest number of complaints received by the Human Rights Defender in 2005. Public opinion polls on corruption in some 20 agencies have ranked police in the top 2-6.[31]

Under the European Neighborhood Policy and the Millennium Challenge Account programs, Armenia has undertaken to implement and enforce special anti-corruption measures for police and prosecution, to cooperate closely with the OSCE and the Council of Europe to eradicate corruption, and to strengthen confidence between the public and the police.

[30] "Police Role in Democratic Systems." Armenian Center for National and International Studies, Yerevan, 2001, p. 31 and p. 53.
[31] Public opinion poll conducted by the Armenian Center for National and International Studies in 2004.

According to an opinion poll conducted by the Center for RegionalDevelopment/Transparency International Armenia, prosecution ranks number 5 and police - number 6 among the most corrupt state agencies.[32]

100 out of 117 citizens polled in the Town of Etchmiadzin in 2006 by the Helsinki Committee of Armenia said they did not feel themselves protected. Only nine respondents believed they would be able to protect their interests through the law-enforcement agencies, and only two respondents said that they would go to the police, and two more - to the prosecution, if their interests were encroached upon. 39 of the 117 respondents considered police, and 42 - the prosecution to be the most corrupt agencies.[33]

In general criminal law, violent crimes are the crimes accompanied with violence. In Armenia, however, the analysis of crime statistics is broken down into the following sections, each of which contains a sub-section on “violent” and “non-violent” crimes. The number of crimes increased by 10% in 2006.

Particularly grave crimes accounted for 1.7% of all crimes reported in 2006, representing a 23% increase over 2005. Grave crimes accounted for 37% of all crimes reported in 2006, representing a 15% increase over 2005. The number of medium-gravity crimes increased by 85% in 2006 over 2005, while the number of non-grave crimes fell by 21%.

Violent crime statistics for 2006 changed in the following way in comparison to 2005:
1. Crimes against the person, of which:
- Murder attempts (declined in 2006 over 2005);
- Deliberate infliction of health damage (declined);
- Rape, rape attempt, and other violent acts against sexual immunity (declined);
- Murder (increased).

2. Crimes against public health (increased), of which:
- Battering and other violent acts (increased).

3. Crimes against representatives of the public power, i.e. assassination of state and public figures or violence against a representative of the public power (declined).

The share of violent crimes in the number of total crimes against property is rather small (despite a general increase in the number of crimes against property in 2006 over 2005). Furthermore, violent crimes do not account for a large share of economic crimes (although the number of economic crimes grew in 2006 over 2005).[34]

EFFECTIVENESS AND PREDICTABILITY OF THE JUDICIARY

The legal grounds for the formation of judicial authority in the Republic of Armenia were laid down in the 1995 Constitution, which provided that the Republic of Armenia would have three levels of universal courts and a Constitutional Court. The Constitution enshrined the safeguards of judicial independence. Article 5 provided: “State power shall be exercised in accordance with the Constitution and the laws based on the principle of

[32] “Corruption Perception in Armenia in 2006.” Regional Development Center/Transparency International Armenia, Yerevan, 2006, pp. 14-15.
[33] Findings are currently being finalized.

[34] Statistical data from the official websites of the Armenian Police (www.police.am) and the National Statistical Service (www.armstat.am).

the separation of the legislative, executive, and judicial powers." Article 91 provided: "In the Republic of Armenia, justice shall be administered solely by the courts in accordance with the Constitution and the laws." Article 96 provided: "Judges and Constitutional Court members are irreplaceable." Article 97 provided: "When administering justice, judges and Constitutional Court members shall be independent and may only be subject to the law."

However, the main safeguard of judicial independence, i.e. the legal basis for the independence of courts from the executive authority, was not prescribed. The Constitution provided that, upon nomination by the Justice Council, the Republic of Armenia President appointed and dismissed the judges, approved the official qualification and promotion lists of judges, and provided agreement to detain a judge or to order an administrative or criminal sanction in respect of a judge. In addition to the power to make nomination to the President, the Justice Council was given the power to apply a disciplinary sanction against a judge.

Though Article 96 provided that "judges and Constitutional Court members are irreplaceable," the President made an early termination of the office of several judges during the period from 1996 to 2006. Judges do not have access to any legal, including judicial remedies to uphold their rights.

Studies by the Armenia Country Office of the American Bar Association Central and Eastern Europe Law Initiative (ABA/CEELI) confirm that the Soviet-era mindset still prevails in Armenia, whereby law-enforcement agencies (prosecution and police) are placed higher than all others in the legal system.

Courts (mainly first instance courts) almost never deny law-enforcement agencies' motions to issue detention orders or to extend the term of pre-trial detention (during 2003 and 2004, only 4% of such motions have been denied[35]). During trials, about 80% of the defendants renounce the statements made by them during the pre-trial investigation and explain that they have so testified under the influence of torture and ill-treatment.[36] However, courts disregard such allegations;[37] in some cases, courts even justify the ill-treatment. For instance, Syunik Marz First Instance Judge Atanyan wrote in his judgment: "Having evaluated the contradictory testimony given by G. Tavaratsyan … during the pre-trial investigation and in court, has found that, in reality, the investigation body exerted violence in the Military Police Station with the aim of revealing the truth."[38]

The majority of cases returned to investigatory bodies by courts for the purpose of performing additional investigation are terminated, but courts refuse to undertake the responsibility of passing acquittal judgments. During 2000, there were no acquittal judgments; there were three acquittal judgments in 2001, four in 2002, 10 in 2003, and only one during the first half of 2004.39

There are many cases in which procedural rules are violated during both criminal and civil proceedings. A survey by legal academia representing Yerevan State University shows that the trial of criminal cases can be protracted to two years or, at times, even longer. In

[35] Results of the activities of the Office of the Prosecutor General during 2004, as presented in an extended session of the Board of the Office of the Prosecutor General on February 18, 2005.
[36] "A Crime Committed to Solve A Crime," *Ditord*, #3 of 2002.
[37] Republic of Armenia Cassation Court Criminal and Military Chamber Judgment of June 13, 2003 concerning convict Y.L.
[38] *Law and Reality* (*Orenk yev Irakanutyun*), 2003, ##5-6, p. 19.
[39] Written statement issued by the Republic of Armenia Cassation Court Criminal and Military Chamber.

civil cases, for which a maximum two-month period is prescribed by law, 20 out of 100 civil cases reach judgments with a one-month delay, 8 out of 100 cases are delayed by two months, and 5 out of 100 are delayed by three months.

The late starting of judicial sessions, delays, the failure to provide due notification to parties, holding hearings in the absence of the respondent, and delaying the provision of the judgment to the parties have turned into universal practice.

In line with this practice of violations, courts have granted almost all the claims of the "Northern Avenue and Cascade" Project Implementation Unit against citizens on the expropriation of citizens' property during the period from fall 2003 to 2004. Shortly after receiving claims, courts have been issuing judgments on expelling citizens from their homes.[40]

To bring the Armenian judiciary in line with the international standards and to carry out judicial reform, the World Bank has provided a US $11.4 million grant that has funded the reconstruction of court buildings and the implementation of structural reform. A www.arlis.am website has been created in order to improve access to legal information; unlike the paid "Irtek" system, the "Arlis" website is structurally not sound, and the search engine is flawed.

The Constitution of Armenia was amended in a referendum conducted on November 27, 2005. Some of the amendments are presented below.

1. Article 94 of the Constitution has been amended to provide that the guarantor of judicial independence is the Constitution and the law, rather than the President of Armenia;

2. The composition and the powers of the Justice Council, which plays a crucial role in the appointment and early dismissal of judges, have changed.

Under the Amended Constitution (Article 94.1), the President of the Republic is no longer the head of the Justice Council. Sessions of the Justice Council are chaired by the Cassation Court Chairman, but the latter has no right to vote in such sessions. The Justice Council comprises nine judges elected by secret ballot for a five-year term by the General Assembly of Judges of the Republic of Armenia, as well as four legal academics, two of which are appointed by each of the President and the National Assembly. Under the transitional provisions of the Amended Constitution, only the judges and legal academics that are members of the incumbent Justice Council shall continue to serve in this capacity [until the expiration of their terms in the Justice Council]. In March 2006, the National Assembly appointed the two new members (legal academics) that were to be appointed by the National Assembly.

The Justice Council (under Article 95 of the Amended Constitution) will henceforth:

- Autonomously prepare and submit to the President of Armenia for approval the list of judicial candidates and the official promotion lists, on the basis of which appointments shall be made (prior to the amendments, the Justice Council would prepare the lists upon nomination by the Minister of Justice);
- Nevertheless, the Amended Constitution has retained the provision of 1995 Constitution, whereby the Republic of Armenia President has the power to

[40] *Ditord*, #3 of 2004 and #12 of 2005.

terminate the powers of judges nominated by the Justice Council and to appoint nominated candidates as judges. In other words, the President still has the final decision-making authority, and the Constitution does not provide what the Justice Council may do, if the President refuses to appoint a judicial candidate nominated by the Justice Council.

Experts say that, although the constitutional amendments represent a step forward, they cannot be deemed sufficient to safeguard the institutional independence of the judiciary.

Under the Amended Constitution, the Minister of Justice still has the power to organize and conduct the exams for determining the fitness of judges for office and promotion. In doing so, the Minister is guided by a decree of the Prime Minister, rather than a law. The Minister of Justice presents to the Justice Council a suggestion on terminating the powers of a judge and materials to support the suggestion. At the same time, the promotion of judges is not necessarily based on the promotion list: persons that have been in the list for many years may never be promoted, while ones that have only recently been included in the list may be immediately appointed to a position. For instance, Tigran Mukuchyan, the Chairman of the Civil Appellate Court of the Republic of Armenia, was appointed to this position immediately after his inclusion in the list in 2006.

Courts continue to avoid taking decisions in favor of citizens, rather than executive or law-enforcement bodies. Courts also avoid taking acquittal judgments.

The dependence of courts was manifested during the political tension of November and December 2005 (during the acts of protest regarding the outcome of the constitutional referendum), when opposition activists were once again persecuted and subjected to administrative detention.

An important safeguard of judicial effectiveness is still not present: courts refuse to exercise their authority to treat laws as a tool for upholding rights and not to apply laws that violate constitutional human rights. Courts mainly continue to act as the guardians of laws, rather than rights. Prior to amending the Constitution, courts had the power to suspend the proceedings in a case, if they considered that the legal provision concerning the case contradicted the Constitution; in doing so, they would raise the issue before the Council of Court Chairmen, which in turn would raise it before the President of Armenia in accordance with the procedure stipulated by law, and the President would then raise the constitutionality of the legal provision before the Constitutional Court. After amending the Constitution in 2005, courts were given the right to go directly to the Constitutional Court, asking the latter to rule on the constitutionality of legal provisions that affect cases pending before such courts (Article 101 of the Amended Constitution). However, as of yearend-2006, courts had not lodged any such applications to the Constitutional Court. Courts still prefer simply to apply the legal provisions, and, similar to the past, when they were reluctant to use the indirect possibilities of raising such issues, they are reluctant to use the right to raise such issues directly before the Constitutional Court.

As for another important criterion of an effective judiciary, the financial independence of judges, it should be noted that, compared to Azerbaijan and Georgia, judicial salaries are low in Armenia. The Minister of Justice takes the initiative to raise judicial salaries, which he treats as a component of an anti-corruption plan for the judiciary. It is surprising how indifferent judges are in relation to their own salaries: when the request to increase judges' salaries in the 2007 state budget was denied, judges did not act against this decision in any way, as they had done in the past.

The effective administration of justice is also influenced by the degree of access to justice. In civil and criminal cases, citizens have real extensive opportunities to go to court. Unlike the 1995 Constitution, the Amended Constitution no longer provides that only the Prosecutor General, his deputies, or advocates holding a special license have the right to bring appeals against final decisions, judgments, and rulings to the Cassation Court.

In practice, though, access to justice runs into problems due to the unfavorable social and economic conditions of the population. The Armenian legislation currently stipulates two financial instruments to facilitate access to justice: (1) some exemptions in terms of judicial costs; and (2) citizens' right to receive free legal aid in certain cases. Free legal aid is provided mainly in criminal cases, although civil cases account for about 90% of all cases tried by courts. Due to social and economic difficulties, the bulk of Armenia's population cannot pay for legal services.

After amending the Constitution in 2005, citizens got the right to apply to the Constitutional Court (Article 101 of the Amended Constitution). Every person may challenge the constitutionality of a law applied towards him by a final act of court in a specific case, if all judicial remedies have been exhausted. From July to November 2006, 15 applications were lodged to the Constitutional Court, in respect of which seven cases were heard, and in two out of the seven cases, the challenged provisions were found to contradict the Constitution, on the basis of which they were declared null and void.

The predictability of the judiciary essentially has two aspects - legal and political. In terms of legal predictability, legal precedent is soon going to enter into the practice of courts. A study of the application of bail, carried out by ABA/CELLI in 2006, showed that courts are already applying the legal precedent of release on bail pending trial. There are also cases in which the Appellate and Cassation courts of Armenia have applied the case law of the European Court of Human Rights. In its judgments, the Constitutional Court of Armenia has made references to both its previous judgments and the case law of the European Court of Human Rights. For the first time ever, [Article 92 of] the Constitution provides: "The Cassation Court is called to ensure the consistent application of law."

In political terms, though, the judiciary is more predictable, because its behavior corresponds to the political circumstances; in many cases, absolutely different decisions or judgments may be taken on the basis of identical facts.[41]

[41] "2003 Presidential Elections in the Republic of Armenia," "Supreme Council" Club of Parliamentarians, Yerevan 2003.

6. CONTROL OF CORRUPTION

FIGHT AGAINST CORRUPTION IN ARMENIA

According to Transparency International (TI) 2006 Corruption Perception Index (CPI)[42], almost three-quarters of the countries score below five (on the "1-10" scale, where index "10" is given to a state absolutely "clean" from corruption and "1" - to a state, which is "absolutely" corrupt) indicating that most countries in the world face serious perceived levels of domestic corruption. Seventy-one countries - nearly half - score below three, indicating that corruption is perceived as rampant. Currently, Armenia is placed in this group and during the last three years has not shown any visible progress, with CPI equal to 3.1, 2.9 and 2.9 in 2004, 2005 and 2006, respectively.

Fight against corruption was officially announced in Armenia in 2001, with the establishment of a Commission headed by the Prime Minister Andranik Margaryan to coordinate the development of anti-corruption government programs[43]. In 2002, a working group of local and foreign experts drafted a national Anti-Corruption Strategy Program, with the World Bank assistance provided to the Armenian Government. Despite of availability of the draft Strategy by the beginning of 2003, its review and adoption was postponed by authorities because of the coming Presidential and Parliamentary elections, which took place in February and May 2003, correspondingly.

In June 2003, a newly formed Coalition Government started a process of finalization of the Armenian Anti-Corruption Strategy (ACS) and its Action Plan (AP), which were approved by the Government[44] and ratified by the President Robert Kocharyan on December 10, 2003. Both ACS and AP were drafted "behind close doors", with no consultations with other stakeholders. They were incorporated in one document[45], and are to be completed by 2007. Therefore, a new version of the Strategy and its AP are to be prepared and approved in the coming months. At the moment, there is a revised ACS version posted on the Government web-site[46], which may serve as a basic document for further revisions.

The Armenian Government adopted an approach to strengthen existing law-enforcement bodies instead of creation of new specialized agencies. Nor specific legal or procedural instruments for investigating and prosecuting corruption offences exist in Armenia. The prosecution system, the Police and the National Security Service are those institutions, which are dealing with corruption cases. Most of the corruption-related crimes (such as bribery, abuse of power, misuse of power, forgery, etc.) are investigated by the prosecution bodies. A special Anti-Corruption Department established in the Office of the Prosecutor General in April 30, 2004, coordinates corruption-related investigative activities of the Police and the National Security Service.

In June 2004, the Anti-Corruption Council (ACC) and its Monitoring Commission (MC) were established to support the implementation of the anti-corruption policy of the Armenian Government[47]. ACC is headed by the Prime Minister and includes high-level state officials representing the National Assembly (NA), the Government Staff, the Office

[42] http://www.transparency.org/policy_and_research/surveys_indices/cpi
[43] See the Decision of Prime Minister N44 on June 1, 2001.
[44] See the Decision 1522-N of the Government of Armenia on November 6, 2003.
45 *Anti-Corruption Strategy and Its Action Plan*. Yerevan. 2003.
[46] http://www.gov.am/armversion/premier_2/primer_council_6hashvet.htm
[47] See the Decree NH-100 of the President of Armenia on June 1, 2004.

of the Prosecutor General, the Ministry of Justice, the President's Staff, the Central Bank, the Commission on Protection of Economic Competition and the Chamber of Control.

The main functions of ACC are: coordinating the ACS implementation, discussing the proposals submitted by MC, analyzing the performance of those responsible for implementation of the ACS measures, organizing and coordinating development and implementation of anti-corruption programs of the ministries, etc. Certain information regarding ACC is available on www.gov.am, but it is not regularly updated (e.g. as of December 2006, no minutes for the year of 2006 were posted). The general public is mainly informed about ACC through media reports.

The fact that ACC consists of high-ranking officials representing state institutions perceived as highly corrupt[48,49] does not ensure public trust in this institution. Irregularity of the ACC meetings is an additional evidence to question the availability of true political will to fight corruption (as a minimum to establish efficiently functioning structures to coordinate and control implementation of anti-corruption policy in the country). In 2004-2005, ACC held only 4 meetings and only three meetings in 2006, though according to Point 5 of its Charter[50] it should have at least two regular meetings quarterly.

MC was initially headed by Bagrat Yesayan, Adviser to the Armenian President on anti-corruption matters, until his appointment to a position of the Deputy Minister of Education and Science in May 2006. On June 21, 2006, the President Decree NH-100 N replaced the title "Advisor to the President" by "Assistant to the President" in the ACC composition. However, no respective replacement took place in MC until September 2006. Along with the Head of MC, the Head of the Armenian delegation in Group of Countries against Corruption (GRECO), Secretary of the Commission on Public Sector Reform, a representative of the Government Staff, as well as representatives of the NA factions and groups, as well as non-governmental organizations (NGOs), comprise MC.

The NGO sector is presented by the Chairwoman of the Center for Regional Development/Transparency International Armenia (CRD/TI Armenia) and one NGO appointed by each NA faction and group for one year period. Since the opposition factions (Justice bloc and National Unity party) boycott MC, the latter is lacking 4 members (2 from opposition factions and 2 from NGOs to be nominated by those factions). Meanwhile, it is not understandable why the NGO membership should depend on the nomination of political parties and parliamentary groups.

MC has the following functions: to monitor the implementation of ACS and ministerial anti-corruption programs by involving the civil society and the media, to study and summarize international and local experience in anti-corruption, to monitor the implementation of Armenia's international obligations in the field of anti-corruption and to carry out expert analysis to reveal possible corruption risks in legal drafts[51]. In the meantime, MC limits itself only by collecting statistics on corruption offences (see the 2005 data on government web-site[52]) and checking the implementation of the AP measures based on the information received from responsible state institutions. All complaints and appeals received by the

[48] *Corruption Perception in Armenia: 2005 Phone Survey*. CRD/TI Armenia, Yerevan, 2006; *Fight against Corruption in Transition Countries: Who Succeeded?… and Why?* The World Bank Report. 2006
[49] http://www.transparency.am/media_archive.php
[50] http://www.gov.am/armversion/premier_2/primer_council_6kanon.htm
[51] *Official Bulletin of the Republic of Armenia,* 30(329), June 9, 2004
[52] http://www.gov.am/armversion/premier_2/pdf/prog_d_2.pdf

Head of MC are normally sent to corresponding bodies, frequently even to those which are accused of corruption by applicants.

Twelve working groups consisting of representatives of NGOs were established under MC. The groups were entitled to trace the implementation of AP in certain areas (for example, financial, educational, public health, environment, transportation, etc.) and their work plans for 2005 were developed and submitted to MC. Nevertheless, after having few meetings the groups' activities were also frozen. In general, MC does not possess adequate financial, administrative and other resources to carry out serious monitoring, which in its turn impedes the promotion of the fight against corruption in Armenia. Moreover, since December 2005 only two MC meeting have been held in 2006, which is a direct violation of its Charter[53], according to which the meetings should be held "at least once a month". This proves that there is no sufficient institutional framework in Armenia to ensure coordinated efforts to implement and monitor ACS.

So far, the Government has not ensured the enforcement of the laws and the equality of people before the law, regardless of their position and income. Citizens' complaints and media disclosures of corruption-related cases have not been paid due attention, and have been hushed up or addressed only as a mere formality. An increased cynicism and indifference, fear and despair dominate the society. Yet, pre-requisites for an effective anti-corruption policy include prevention and detection of corruption crimes, conviction of corrupters and corruptees, and public intolerance towards corruption.

According to public and expert opinion, since the declaration of the official fight against corruption in Armenia, the level of corruption has not decreased. In 2005, a countrywide phone survey of 1,500 households was carried out by CRD/TI Armenia[54], which revealed that 62.9% of respondents believe that the level of corruption in the country has even increased. The majority of respondents believed that all state institutions were corrupt, while the police, the courts and the prosecution system were named as the most corrupt institutions. Hard socio-economic conditions, anarchy and greed of state officials were mentioned as the main causes of corruption. 25 individual interviews and 5 focus group discussions, with participation of state officials, businessmen, journalists, representatives of NGOs, Diaspora and international organizations, also indicated that the majority of participants believe that in the last three years the level of corruption in Armenia has increased[55].

The judiciary, the prosecution system, the police, the traffic police, tax and customs services, the education and healthcare systems, and politics were considered to be the most corrupt. Regarding the major causes for the spread of corruption, difficult social conditions (low salaries), imperfect legislation, poor law enforcement, absence of political will to fight corruption, an atmosphere of impunity, a lack of freedom of speech and press, tolerance towards corruption within the society, national mentality, a limited access to information, maladministration, etc., were noted. The majority of participants considered anti-corruption initiatives taking place in Armenia as ineffective[56].

According to the results of the study published by *Freedom House* in 2006 (see *Nations in Transit* report[57]), corruption at all levels of government has not changed in Armenia since 1999, with the index of corruption equal to 5.75 (on a "1-7" scale, where "7" means

[53] http://www.gov.am/armversion/premier_2/pdf/prog_d_2.pdf
[54] *Corruption Perception in Armenia: 2005 Phone Survey*. CRD/TI Armenia, Yerevan, 2006.
[55] *Anti-Corruption Policy in Armenia*, CRD/TI Armenia, Yerevan, 2006.
[56] *Ibid.*
[57] http://www.freedomhouse.hu/nit.html

absolutely corrupt and "1" – absolutely "clean"). The 2006 Gallup Corruption Index ranked Armenia as 69th out of 101 calculated countries, with a score of 82 (where the lowest score indicates that the population is least likely and the highest score - most likely - to perceive corruption as widespread)[58]. In addition, the World Bank report *Anticorruption in Transition 3: Who Is Succeeding…and Why?* points to the fact that, in spite of development of ACS and its AP in 2003 and creation of a high-level ACC chaired by the Prime-Minister in 2004, the situation in Armenia, along many dimensions of corruption, was significantly worse in 2005 compared with 2002[59].

ARMENIA'S INTERNATIONAL OBLIGATIONS IN THE FIELD OF ANTI-CORRUPTION

Armenia signed and ratified the Council of Europe (CoE) Criminal Law and Civil Law Conventions on June 8, 2004 and December 8, 2004, correspondingly, and became a member of GRECO[60] in January 2004. It is also involved in the Istanbul Anti-Corruption Action Plan[61] developed for 8 former Soviet republics by the Organization for Economic Cooperation and Development (OECD). In May 2005, Armenia signed the UN Convention against Corruption, which was ratified by NA in October 2006. In November 2006, the European Union and Armenia ratified the Action Plan within the framework of the European Neighborhood Policy (ENP), which includes the fight against corruption as a priority area[62]. Therefore, Armenia is subject to international monitoring to evaluate its compliance to international anti-corruption standards.

The OECD Istanbul Action Plan includes Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Ukraine. It is directed to improving anti-corruption policies of the participating countries' through the implementation of the recommendations developed by international experts. Recommendations for Armenia were developed and adopted during the Paris Meeting during June 15-18, 2004. The Armenian Government regularly reports to OECD on the implementation of the recommendations. Totally, there are 24 OECD recommendations, which are categorized into three pillars: 1) "National Anti-Corruption Policy and Institutions" (7 recommendations); 2) "Legislation and Criminalization of Corruption" (8 recommendations); and 3) "Transparency of Civil Service and Financial Control Issues" (9 recommendations).

In December 2006, the 6th OECD Monitoring Meeting in Paris examined Armenia's progress in implementing the 2004 recommendations and adopted the country's monitoring report. The report highlighted a number of positive aspects, where progress has been achieved, but also stated that much remains to be done to reduce the burden of corruption in various spheres of public and business life[63]. According to the report[64], one OECD recommendations is fully compliant, 8 recommendations are largely compliant, 11 – partially compliant and 4 – non-compliant. Only non-compliant recommendations are presented below, though there was also certain criticism with regard to partially and even largely compliant recommendations.

[58] http://www.galluppoll.com/content/?ci=25612&pg=1
[59] *Anticorruption in Transition 3: Who Is Succeeding… and Why?* The World Bank, 2006, p. 63.
[60] http://www.greco.coe.int
[61] http://www.oecd.org/corruption/acn
[62] http://www.delarm.cec.eu.int/en/press/16_11_2006.pdf
[63] http://www.oecd.org/document/35/0,2340,en_2649_34857_37846947_1_1_1_1,00.html
[64] http://www.oecd.org/dataoecd/18/19/37835966.pdf

Recommendation 10 concerns the adoption of clear, simple and transparent rules for the lifting of immunity and the review of the categories of persons benefiting from immunity and the scope of such immunities to ensure that they comply with international standards. As mentioned in the OECD report, the Armenian law is not clear on this matter. For instance, according to the Constitution, the President, acting on the recommendation of the Council of Justice, may lift the immunity of judges. In the meantime, it is uncertain if the President is required to follow either a positive recommendation or if he is prevented from lifting immunity in the case of a negative recommendation. It is also problematic that there are no rules stipulating the criteria to use in deciding whether lifting immunity is appropriate. There could be, for example, written criteria indicating that immunity will be lifted as long as there is no indication that the charges are politically motivated or designed to pressure or retaliate against the officeholder.

Another non-compliant recommendation is Recommendation 18, which refers to ensuring the constant monitoring of the observance of rules on gift acceptance and the avoidance of conflicts of interest and applying sufficient sanctions in cases of non-compliance. It has been said that there is no clear definition of a conflict of interest and no legally prescribed sanctions against perpetrators. Neither there is a system to monitor the implementation of the conflict of interest regulations, which remains one of the most vulnerable aspects of the anticorruption system in Armenia.

Recommendation 20 regards enhancing the obligation to report suspicions of corruption, adopting measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launching an internal campaign to raise awareness of those measures among civil servants. The OECD report indicates that Armenia lacks such a mechanism for the protection of employees in state institutions.

To ensure fluent and permanent contacts and coordination among financial control/auditing institutions in order to facilitate revealing of corruption offences is required by Recommendation 24. However, coordination and exchange of information among financial control, external and internal audit institutions and with the law-enforcement bodies remains weak in Armenia. The auditing of such institutions as customs, military and law-enforcement bodies is difficult due to large volumes of confidential information. Moreover, while ACS foresaw the adoption of the new law on state financial control in 2007, no actions were undertaken to implement this provision of the Strategy so far, in opinion of the OECD monitoring team.

Armenia's first GRECO Evaluation Report was adopted on March 10, 2006. It combined the first and second round assessments to assess the efficiency of the implementation of the anti-corruption measures carried out by the Armenian Government. The report indicated that corruption in Armenia "…is a major problem that affects many sectors of the public service"[65] and provided 24 recommendations directed to improve the current situation in the field of anti-corruption[66]. The deadline for the implementation of the GRECO recommendations is September 30, 2007.

The majority of the GRECO recommendations are of preventive and detective nature and mainly (20 out of 24 recommendations) aimed at adopting or improving the laws and

[65] *Joint First and Second Evaluation Round Evaluation Report on Armenia,* Strasbourg, 10 March, 2006 (see also http://www.greco.coe.int/evaluations), p. 37.
[66] http://www.greco.coe.int/evaluations

regulations. Training of public officials and auditors is foreseen by 6 recommendations, while Recommendation 1 requires conducting relevant studies to reveal a more complete picture on the phenomenon of corruption and its manifestations in Armenia. The public participation component is included only in Recommendation 2, which points to a necessity to regularly inform the public about anti-corruption measures and results of their implementation. It should be also noted that the OECD Recommendations 1, 5, 8, 10, 12, 17 and 20 completely or partially coincide with the relevant GRECO recommendations.

The UNCAC provides an effective framework for combating corruption around the world. The Convention focuses on preventive measures; criminalization of corruption and law enforcement; international cooperation; asset recovery; technical assistance and information exchange; as well as mechanisms for implementation of the Convention provisions. A decision was made at the First Conference of State Parties to the UNCAC held in Jordan in December 2006 to set up a full scale review mechanism to cover mandatory and non-mandatory provisions, as well as to establish an international fund for experts in legal cases and a global capacity-building program with a focus on the judiciary and law enforcement agencies.

Among specific priorities for action set out within the ENP Action Plan for Armenia, particular attention has been given to 8 anti-corruption measures such as ensuring adequate prosecution and conviction of corruption-related offences through the establishment of administrative courts; compliance of the Criminal Code with international standards; development of the Code of Ethics for judges and prosecutors; adoption of sanctions in case of wrong declaration of assets and income by officials; increase of the salary of the judges, etc. Almost all the measures listed in the ENP Action Plan are also incorporated in the abovementioned Conventions, as well as the GRECO and OECD recommendations.

Overall, to guarantee effective application of international instruments it is necessary to maintain permanent and impartial control over the implementation of Armenia's international obligations. Otherwise, it would seem that Armenia ratifies international conventions and thus takes certain obligations in fighting corruption, which are unlikely to be implemented. If the existing political, legal, institutional or other serious obstacles are not taken into account, then the expediency and efficiency of Armenia's membership in various international structures becomes questionable.

CORRUPTION AS A BARRIER FOR DOING BUSINESS IN ARMENIA

The 2005 Business Environment and Entrepreneurial Performance Study (BEEPS) revealed that, compared with 2002, corruption became a more serious problem impeding business activities in Armenia[67]. According to the results of this study, the increased percentage of firms indicated corruption, along with macroeconomic instability, tax administration, title or leasing land, access to land, and access to financing, as an impediment for business development. In the meantime, other countries were reported less concern on this matter.

The surveyed firms stated that in 2005 bribes as a share of annual sales raised in comparison with 2002, while in the case of other CIS and ECA countries it declined. Meanwhile, a frequency of bribes was decreased in Armenia, which can be explained by

[67] http://www.info.worldbank.org/governance/beeps

increasing institutionalization of corruption (or existence of embedded networks of corruption). In opinion of the interviewed firms, unofficial payments are more often made to obtain government contracts, to issue business licenses and permits, to get connected and maintained public services (electricity and telephone), to deal with taxes and tax collection, occupational health, safety, fire, building and environmental inspections, as well as with customs/imports and courts.

The results of another study published in "*Doing Business 2007: How to Reform*" report[68] indicated that compared to 2005 Armenia's position worsened, along the following indicators: "employing workers", "protecting investors", "paying taxes" and "closing a business". Meanwhile, a visible progress was registered for "dealing with licenses" and "getting credits" indicators. Interestingly, Armenia was placed as the 2nd out of 175 examined economies in the category of "registering property" and as the 148th in the category of "paying taxes".

In September-October 2006, CRD/TI Armenia carried out face-to-face interviews with representatives of tax and customs authorities, Public Procurement Agency and Commission on Protection of Economic Competition, as well as several business associations and private companies. The organization experts also reviewed the media coverage of related topics for the last few months. Analysis of the gathered information revealed that, in spite of ongoing reforms aimed at promoting more favorable environment for developing small and medium business and fair economic competition, business community in Armenia is still facing serious difficulties.

Customs reforms directed to reducing corrupt opportunities were presented during the interview with a customs official as initiated in three main directions: to increase qualification of customs officers, to advance technical capacity and to improve relevant legislation. It was mentioned during the interview that numerous training programs were organized for the customs service staff and that since 2003 appointment of customs officers (except high level officials) has been based on a competition. In 2005, 55 employees were fired as a result of internal investigation, while administrative fines were imposed on 95 people. After the last attestation, 70 employees of customs service were fired for not meeting required professional standards.

The main mentioned achievement was an e-declaration of customs value, which can be submitted to the Customs Committee if a company received a special code. As reported by a representative of the Customs Committee, introduction of three-year post-delivery control over the goods is another progressive step to ease customs formalities for importing companies. The installed satellite communication system improved effective connection between central and regional customs structures and speeded up customs clearance. Installation of the advanced X-ray equipment at the "Zvartnots" airport was said to have the same effect on customs formalities.

The loopholes in the customs and other relevant legislation are also being targeted, for instance, harmonization of the Customs Code and the Code of Administrative Violations. It has been noted that the Customs Service is trying to cooperate with business people and publicize its ongoing activities and innovations. Though since 2005 there have been special complaint mailboxes available both at the Customs Committee and Customs Points, so far only one complaint has been received.

[68] http://www.doingbusiness.org/ExploreEconomies/Default.asp?economyid=10

In opinion of the interviewed businessmen, corruption in customs is still one of the biggest problems for small and medium business development. They said if a businessman tries to protect his rights and appeal, for instance, the customs value imposed on him by a customs officer, to the Head of the Customs Committee, it normally takes so long and brings so much loss that he would never try again to solve problems with customs clearance in a legal way.

Media reports on the situation in customs are mainly critical. For a long time, a special attention was paid to arrests of the Chair of the Board and the former Director of coffee importing company "Royal Armenia". Their lawyer Ashot Sargsyan claimed that it was an obvious revenge of authorities in response to accusations on corrupt behavior of the customs leadership[69]. Though the decision has been recently made in the first instance court of Kentron and Nork-Marash Neighboring Communities to free 115 tones of confiscated coffee, which belonged to "Royal Armenia"[70], the future of those arrested persons is still uncertain.

Another media report referred to the World Bank study according to which 46% of the costs covering customs clearance by exporters go to bribes and 8% - in the case of importers[71]. Remarkably, one of the big Armenian businessmen, member of the NA Khachatur Sukiasyan, also expressed his concern regarding the situation in customs, mentioning that no due attention is paid by authorities to the fact that the Deputy Head of the Customs Committee has several businesses, which inevitably creates problems for importing companies[72].

A high level tax official introduced tax service reforms with mentioning that tax revenues in 2006 were equal to 220 billion Drams (10 times more than the amounts collected in previous years). He noted that for the last several years there was no tax rate increase except the one related to social tax. Meanwhile, a raise of tax revenues is higher than the economic growth rate, which is an evidence of improving tax collection and administration. The main directions of tax reforms being implemented in Armenia are preparation for enforcement of the new Law "On Declaration of Income and Assets of Natural Persons" (will be in force in 2008); adoption of stricter punishments for tax avoidance; promotion of transparency and publicity of tax service performance; submission of financial reports through post service; further installation of cashier machines; introduction of fines for false invoices; improvement of relevant legislation and procedures; formation of new tax inspectorates; establishment of a special complaints commission; and the strengthened punishment for administrative violations among tax officials.

In opinion of a representative of tax authorities, it was important initiative to regularly publicize the lists of the biggest taxpayers (e.g. those having the biggest tax debts and the biggest losses). Mailing tax reports is also seen as an effective tool to reduce corrupt opportunities by eliminating a possibility of face-to-face contacts between taxpayers and tax officials. In 2005, a half of 200 complaints submitted to the mentioned commission were resolved in favor of taxpayers. In 2006, 70 out of 500 tax service employees did not pass attestation. Only during the first part of this year, more than 40 internal investigations were carried out based on complaints related to abuse of power; and 2 persons were fired.

[69] *Aravot* daily, January 4, 2006; *Haykakan Zhamanak* daily, March 4, 2006.
[70] *Haykakan Zhamanak* daily, November 11, 2006
[71] *Azg* daily, February 28, 2006.
[72] *Chorrod Ishkhanutyun* (*Kiraknamut)*, September 23, 2006.

It has been also mentioned that businessmen are used to practice tax avoidance and tax evasion, since they typically try to find any opportunity to violate the law and corrupt tax officials. As it is technically hard to audit financial performance of all 130,000 taxpayers in Armenia on an annual basis, the biggest taxpayers are audited in the first place to make a correct estimate of the budget revenues. Due attention is paid, according to the interviewee, to risk management by creating a taxpayers' data base and analyzing their performance, so that tax control will be implemented more effectively.

The representatives of businesses had quite an opposite view concerning the current situation in tax service. One of them believed that tax inspectors treat businessmen with a prejudice that they all violate the law. Additionally, the practice of demanding tax prepayments by tax officials does not contribute to the building of trustful and cooperative relationships between them and taxpayers. Another representative of private sector stated that those companies in Armenia, which have no "umbrella" in the political arena, cannot survive under the 72% of tax burden imposed on them. He particularly referred to a 20% VAT and a taxed 1% of turnover as alternative to profit tax for those companies, which cannot make profits, and suggested having a unified tax, as in other countries, to avoid confusion with innumerous taxes and waste of time for paperwork. He also stressed the fact that businessmen are seen by tax inspectors as potential criminals. The third interviewee supported the idea of importance of easing the tax burden in order to promote business development in the country and pointed to the existence of too many inspecting institutions (about 40), which creates a lot of opportunities for corruption.

Public procurement system in Armenia has quite an advanced legal framework, as reported by a representative of the State Procurement Agency. A new Law on Public procurement entered into force on January 1, 2005. He mentioned that all the necessary secondary legislation is also in place. He believed there is no need for major reforms in this field, though it would be better to ensure, for instance, on-line broadcasting of all the biddings, which take place in the Agency. It has been stressed that everything is done to ensure transparency and publicity of the procurement processes. However, he was concerned about a low number of companies using Internet and submitting on-line applications as well as an inaccuracy of the documents enclosed in the application packages.

The businessmen's and journalists' view on public procurement was different from the one above. Small and medium companies do not even try to participate in the announced tenders, since they are well aware about a common practice of collusive agreements among applicants and procurement officials. According to some businessmen, no information is published in Armenia concerning criteria based on which the companies were selected to be the state contractors. Moreover, one of the newspaper articles pointed to the fact that Point 10.2 of the model procurement contracts, which are normally published in "Official Procurement Bulletin", leaves a room for changing terms of the already signed contracts. The journalist argued that this creates an opportunity to increase the costs (by 20-25%) after signing and publishing the contracts, which in its turn leads to using higher prices than the market ones. However, there are no serious evidences of corruption in this field most probably because those, who are involved in collusions, are not interested in being witnesses and taking responsibility for illegal behavior.

Finally, all the surveyed businessmen indicated the severe inequality in the Armenian market and the absence of fair economic competition. One of them mentioned that small and medium companies are allowed to enter only those market spots, which are not profitable at all. The main reason is that all profitable sectors are monopolized by

"oligarchs". In the meantime, a company should find a "patron" holding a high level position and share some substantial portion of the gained profits in return to the granted "protection" even in the case of a medium level profit.

A written report provided by the Commission on Protection of Economic Competition as per CRD/TI Armenia request, explained the fact of monopolization of the Armenian market by low demand, shadow economy, privileges for certain companies, the lack of correct information regarding real prices and thus a distorted market "picture", etc. Bearing all this in mind, it is hard to examine the economic activities and find effective solutions, as highlighted in the report. An additional barrier on the way to assess the Armenian market trends is the lack of cooperation with private companies, which are not very actively addressing the Commission with complaints. As mentioned, without support of businessmen, the Commission is unlikely to take effective measures to promote economic competition in the country.

POLITICAL CORRUPTION AND STATE CAPTURE

There are ten types of political corruption such as illegal expenditure (including vote buying) during elections; funding of candidates and political parties from unknown sources; selling appointments, honors or access to information; abuse of state (administrative) resources; personal enrichment; demanding contributions from public servants; activities disobeying political finance regulations; political contributions for favors, contracts or policy change; forcing private sector to pay 'protection' money; and, limiting access to funding for opposition parties[73]. The Armenian legislation includes provisions aimed at curbing some of the mentioned types of political corruption.

Thus, Article 139 of the Electoral Code defines 30 types of offences, for which their perpetrators could be held liable (including forging ballot papers and seals of electoral commissions, falsifying voters' lists, impeding voting processes, attempting to violate the secrecy of the ballot, etc). Articles 149-154 of the Armenian Criminal Code, as well as Articles 40.1-40.7 of the Code on Administrative Violations specify the penalties for these offences.

The Electoral Code (see Articles 18-23) regulates the conduct of election campaign and includes specific provisions regarding manifestations of political corruption. In particular, it ensures the equal opportunities for all parties and candidates, prohibits conducting election campaign and disseminating campaign materials by state officials (during their working time), members of the Constitutional Court, judges, police and national security service officers, employees of the prosecution bodies and the military, members of religious and benevolent organizations, citizens and organizations of foreign states, and members of electoral commissions. It also prohibits the participating parties and candidates to provide or promise money, food, goods, stocks or services and requires equal conditions to parties and candidates to be provided by mass media outlets, as well as for using posters and other campaign materials. These issues are also regulated by Article 11 of the Law on Television and Radio, Point 4 of Article 8 of the Law "On Mass Communication" and Articles 79 and 80 of the Law "Regulations of the National Commission on Television and Radio".

73 Financing Politics: A Global View by M. Pinto-Duschinsky, *Journal of Democracy*, Vol. 13, No 4, October 2002.

Electoral campaign financing of parties and candidates is regulated by Articles 25, 26, 79, 112 and 128 of the Electoral Code. The Code (see Article 25) defines the sources from which the election funds of the candidates and parties can receive means and prohibits financing from certain sources such as funding from the means possessed by state and local self-administration bodies; organizations and entities funded from state budget; foreign physical or legal persons; persons with no citizenship; economic entities partially owned by the government or communities; organizations, 30%n of whose stocks are owned by foreign entities; benevolent, religious and international organizations, as well as international NGOs.

There are certain limitations for the election funds and contributors, specified by Article 79 (in the case of presidential candidates), 112 (in the case of individual candidates and political parties in the parliamentary elections) and 128 (in the case of candidates in the local self-administration elections). At the same time, the Code does not establish safeguards against the cases when the contributors buy goods or services for the needs of the parties or candidates they favor without directly donating the money to the electoral funds.

Another manifestation of abuse of administrative resources during the elections is exerting influence or even intimidating the participants of the electoral process (voters, journalists, proxies, observers and members of electoral commissions) by high ranking public officials or persons and institutions connected with them. To some extent, these issues are regulated by Article 22.1 of the Electoral Code: specific articles of the Code define the status, rights and duties of the proxies, observers and journalists, and members of electoral commissions and contain provisions prohibiting any improper influence on them (see Articles 27, 27.1, 30 and 33). The independence of the electoral commissions is also internationally recognized mechanism to curb political corruption in the electoral processes. Articles 32-37 of the Electoral Code regulate the issues related to ensuring independence of the electoral commissions (for more detail see “Prevalence of Free and Fair Elections; Possibilities of Fair Partisan Competition in Election” chapter of this report).

CRD/TI Armenia conducted the monitoring of election campaign finance of political parties during the 2003 Parliamentary elections. The project findings revealed numerous violations in campaign funding, especially for those three parties, which later formed the Coalition Government. However, none of them was held accountable for violating the electoral legislation. Evidences of non-transparent campaign funding of candidates and use of administrative resources were also detected in the 2005 elections of the Mayor of the City of Vanadzor. According to surveys and observations, vote buying was common place for both elections[74].

The major risks for political corruption in Armenia are abuse of power by political leaders running offices in the government and local self-administration bodies to obtain political gains; financing from organized crime or foreign governments (in the extreme case the mentioned actors form their own parties); illegal channeling of public funds into party ‘pocket’ through specially established for this purpose companies and organizations; bribing some leaders and prominent members of opposition parties to defect from their parties; forcing civil servants and other state employees to become member of parties and then extorting money from them for party needs; illegal donations from private sector, especially from oligarchs, and granting them privileges in return; forcing entrepreneurs to

[74] See www.transparency.am/publications.php

“accept” ruling party bosses and high ranking political officials as ‘roofs’ for their businesses; and constraining financial and other resources available to opposition parties.

The Law “On Political Parties" includes a number of provisions, which address the above-mentioned corruption risks. For instance, Article 10 of the Law prohibits those members of the parties who run offices in the governmental agencies or local self-administration bodies to use their official status to promote the interests of their parties. It also explicitly forbids judges, prosecutors, officers of the national security service police and army to join any political party.

Articles 23-25 regulate issues related to the finance and property of the parties such as definition of the sources from which the property of the party can be generated; the sources from which the funds of the parties are generated (membership fees, donations, state budget for parties represented in the Parliament, etc.), and specification of donation procedures. The following entities are prohibited to make donations to parties: benevolent and religious organizations and organizations established by them; governmental agencies and local self-administration bodies; institutions and organizations of governmental agencies and local self-administration bodies or organizations founded with participation of such bodies; state-run administrative institutions; state-run non-commercial organizations; legal persons founded within the six months prior to making donations; foreign governments, legal and physical persons, and legal persons where foreign entities own at least 25% of shares or stock; international organizations and international NGOs; and anonymous sources. Such donations should be returned back to the donor, except the last case (anonymous sources) when the donation should be transferred to the state budget. In addition to this, Article 28 requires submission of the parties’ financial annual reports not later than by March 25 of the year following the reporting year. The same day is set as the deadline for the publication of the financial reports in mass media.

Political corruption can be also reduced by other preventive measures such as declaration of income and assets of high ranking state and political party leaders, regulation of the issues connected with defections of the Parliament members from their factions, prohibition of members of the executive and legislative branches of the government from holding other offices in businesses or other state institutions, etc. The Armenian legislation provides some regulation concerning those issues, for instance, through the Law “On Declaration of Assets and Income of High Ranking Officials”, which requires annual submission of declarations not only by state officials, but by their close relatives as well.

Also, Article 65 of the Armenian Constitution prohibits the members of NA to hold any positions in the governmental agencies or local self-administration bodies or carry out entrepreneurial activities, Article 88 of the Constitution imposes the same restrictions on the members of the Government, and Article 94 declares the independence of the judiciary, which is another effective safeguard against political corruption. Nevertheless, so far not a single high ranking official has been punished, for instance, for declaring false information on his/her income and assets[75].

On December 22, 2006, the Armenian NA passed (in the second reading) new changes and amendments to the Electoral Code to ensure better administration and fairness of the coming 2007 Parliamentary and 2008 Presidential elections. Nevertheless, all the previous elections demonstrated that, despite the continuous improvements of the Electoral Code (since February 1999 it has been amended six times), the international observers

[75] *Hayoc Ashkharh* daily, October 28, 2006.

concluded that the Armenian elections did not meet international standards. Yet, the current authorities have not demonstrated genuine interest in and actual commitment to enforcement of the existing legislation to reduce political corruption.

As to the concept of state capture (or influence of big businesses, military or other powerful groups on the legislature, the executive or the judiciary), it was reflected in all BEEPS studies conducted by The World Bank and The International Bank for Reconstruction and Development in 1999, 2002 and 2005. The 1999 BEEPS revealed that, together with Slovenia, Armenia had the lowest state capture index among 22 transition countries involved in the survey[76]. One of possible explanations of the low level of state capture in Armenia by that time is that the economy was not so much concentrated in hands of a small group of "oligarchs". Another reason is that the state was already captured by other groups, rather than firms.

The findings of the 2002 BEEPS demonstrated that the degree of impact of state capture in Armenia was again the lowest among all surveyed countries[77]. In 2005, however, Armenia had a significant regress in respect with the state capture ranking[78]. The results indicated that the oligarchic structures are playing an increasingly decisive role in shaping and implementing public policies in the country. Meanwhile, no serious studies have been carried out to specifically analyze and measure a phenomenon of state capture in the country. Yet, there is certain expert opinion, for instance, on the degree of monopolization and "oligarchization" of economy, according to which, the level of concentration of the imports of 40% of the assortment reaches, on average, 78%[79].

One of the sources pointing to the existence of political corruption in Armenia are facts of political corruption revealed through the stories and publications in mass media (normally, in the opposition newspapers) or via monitoring conducted by NGOs. According to the Article 176 of the Armenian Criminal Procedure Code, publications in mass media could be used as a ground for filing a criminal suit. Article 179 of the Code defines what qualifies as such statements and requires the media outlets to cooperate with the prosecution bodies. However, the governmental officials or law enforcement bodies have never took such information seriously claiming that it is groundless. As a result, no high-ranking politicians have been ever prosecuted or convicted on this ground.

A number of publications appeared in some oppositional newspapers regarding a corruption scandal associated with the Minister of Environment Protection, who demanded a bribe of 3 million US dollars for issuing a license for the gold mining company. Though the Minister denied all allegations and no criminal proceedings were initiated against him, it is not clear why he did not file a suit on libel against any of the newspapers that publicized that story.

Another case is connected with the continuing revaluation of the Armenian national currency – Dram - to US dollar, Euro or British pound. Opposition newspapers and politicians, as well as many economists, claim that Dram's revaluation is artificial and that the Central Bank of Armenia is simply closing its eyes (obviously, not for free) on the manipulations in the currency market initiated by some oligarchs, who monopolized the imports to Armenia of vitally important goods such as gasoline, sugar, etc. The main

[76] *Anticorruption in Transition: A Contribution to the Policy Debate,* The World Bank, Washington, D.C. 2000.
[77] *Anticorruption in Transition 2: Corruption in Enterprise-State Interactions in Europe and Central Asia 1999-2002,* The World Bank, Washington D.C. 2004.
[78] *Anticorruption in Transition 3: Who Is Succeeding… and Why?* The World Bank, Washington D.C. 2006.
[79] *Delovoy Eksp*ress weekly, No 38(695), October 14, 2006.

argument is that despite the revaluation of local currency, the prices of goods have not decreased, but even increased, which resulted in additional profits for monopolists. The Central Bank repeatedly denied these accusations and no investigation were initiated on this case either.

The construction of “elite” residential buildings in the central district of Yerevan started from 2004 was also a precedent falling under the definition of "state capture". This construction was legalized based on the Articles 104, 106 and 108 of the Land Code of Armenia and the Decision N1151-N of the Armenian Government on August 1, 2002. Nevertheless, it was accompanied by mass violations of human rights of the owners of the small houses, which were demolished at the construction sites. Opposition leaders and media claim that most of the owners of these “elite” buildings are companies unofficially owned by high ranking state officials.

On April 18, 2006, the Constitutional Court of Armenia ruled unconstitutional the above-noted legal acts and, subsequently, all previous court decisions against residents. In the meantime, the Government drafted a new Law “On Alienation of Property for Public and State Use”, which was passed by the NA on November 27, 2006. Some experts argue that if passed this law would give a legal justification to the violations above and would further deprive the owners from their property in the cases of demolition of the buildings without residents’ consent or/and proper compensation to them.