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FOREWORD

The Partnership and Cooperation Agreement (PCA, signed in 1996 and in force since 1999) between European Union and Armenia serves as the legal framework for bilateral relations. Since 2004, Armenia and the other South Caucasus states have been part of the European Neighbourhood Policy (launched by the European Union, following its enlargement), encouraging closer ties between Armenia and the EU. An ENP Action Plan for Armenia was published on March 2, 2005, "highlighting areas in which bilateral cooperation could feasibly and valuably be strengthened". The Plan sets "jointly defined priorities in selected areas for the next five years". In November 2005, formal consultations on the Action Plan were opened in Yerevan and as of 2008 are ongoing.

The EU-Armenia relations play an important role in the strengthening and development of democracy in Armenia. The present research aimed to determine whether the reforms, envisaged by the bilateral documents EU-Armenia, are implemented consistently.

Priority Areas 1 and 2 of the Action Plan for Armenia were taken as a basis for the monitoring.

Thus, **Priority Area 1** calls for strengthening of democratic structures, of the rule of law, including reform of the judiciary, and combat of fraud and corruption. **Priority Area 2** calls for strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).

The study was undertaken by Yerevan Press Club under the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Governance Grant Program of Open Society Institute. Support for researching into certain sections of the project and the preparation of this report was also provided by the Open Society Institute Assistance Foundation-Armenia.

Sections of this report were developed by YPC and its partner NGOs - Committee to Protect Freedom of Expression, Helsinki Committee of Armenia, Right and Information Center, Transparency International Anticorruption Center, Communities Finance Officers Association, Collaboration for Democracy Center, as well as individual experts candidate of economic sciences David Tumanian, sociologist Vardan Gevorgian, Doctor of Law Hrayr Ghukasian and Doctor of Law Lilit Simonian.

EXECUTIVE SUMMARY

RA HUMAN RIGHTS DEFENDER INSTITUTE. The cooperation of the RA Human Rights Defender and the state bodies is somewhat hindered. This is mainly manifest in shape of occasional controversies with RA Government, National Assembly and law enforcement bodies. In the first case the difficulties deal with the funding of the Defender's Institute, in the second one - the issue of his mandate revision, and in the third case is the matter of principal divergences in situation assessment. Besides, the RA Law "On RA Human Rights Defender" does not stipulate the involvement of NGOs and civil society in the nomination of the candidate for the post of the RA Human Rights Defender and his election. Besides, the human rights NGOs are unable to address the Defender as a third party. Overall, the cooperation with the civil society institutes is duly developed. With regard to ensuring easy access the need to set up regional representations of the ombudsman is emphasized.

FREEDOM OF ASSEMBLY. While RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" is seen by the Council of Europe to be largely compliant with the European standards, yet it is more of a restrictive than regulatory nature. It is the law enforcement practice that is the most concerning. The competent body with no substantial justification impedes and prohibits assemblies, particularly, marches. The practice of challenging in court is unsatisfactory, too, as it does not ensure fair trial and proportionality, in accordance with Articles 6 and 11 of the European Convention of Human Rights.

RIGHTS OF ETHNIC MINORITIES. None of the ethnic minority groups in Armenia is the main population of any territorial unit of the country. They all are dispersed all over Armenia. No international document expressed serious concern with the rights of ethnic minorities in Armenia. This is due to the fact that ethnic minorities in Armenia do not come out with political demands. They refrain from being actively involved in domestic policy. Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

LOCAL SELF-GOVERNMENT. The requirements on local self-government in the European Neighborhood Policy EU/Armenia Action Plan remain almost unfulfilled in 2007-2008. Certain steps were made only starting from autumn 2008. Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan". The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions. Overall, the institute of local self-government is not substantial in many communities.

LEGAL AND JUDICIAL SYSTEM. The reforms of judicial and legal system that resulted in a number of amendments made in legislative acts and law in force, only partially correspond to the spirit and content of commitments stipulated by ENP EU/Armenia Action Plan. Moreover, if one looks back and analyzes the developments of February-March 2008, one can conclude that most of the amendments made follow a certain pattern and aim to ensure the achievement of certain timeserving objectives. Hence, the reforms in legal and judicial system have not improved most of the existing definiteness, and sometimes have raised new problems that require complex and consistent solutions.

CIVIL SERVICE. With regard to civil service in Armenia the priorities of ENP EU/Armenia Action Plan can be assessed as “partly fulfilled”. The realization of the majority of steps is to a certain extent related to the draft law “On Public Service”. The delay in the adoption of this draft was due to debates regarding its comprehensiveness. Its regulation domain covers not only the civil service, but also all legal relations for all kinds and levels of state and communal administration. In the opinion of most civil service experts, after the adoption of the law “On Public Service” many problems will be resolved or preconditions will be set to solve issues that are in cause and effect relationship.

FREEDOM OF SPEECH, MEDIA AND INFORMATION. Despite the amendments to RA Law “On Television and Radio”, the requirement of ENP EU/Armenia Action Plan - “ensure the independence of media by strengthening the independent regulatory body for the public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” - is not in fact fulfilled. The National Commission on Television and Radio has failed to become an independent regulator. According to amendment made in the Broadcast Law on September 10, 2008, broadcast licensing competitions were frozen for two years. The amendment was assessed by independent experts as a deprivation of the right to take part in broadcast licensing competitions for independent broadcasters that are not subject to governmental control. During the state of emergency announced in Yerevan on March 1-20, 2008, for the first time factual preliminary censorship was exercised not only in Yerevan but also all over the country. Meanwhile the restrictions, introduced by the Decree on State of Emergency, did not stipulate censorship, which is prohibited by the RA Constitution and the RA Law “On Mass Communication”.

ELIMINATION OF TORTURE. Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Armenia ratified in May 2006, stipulated the establishment of national monitoring mechanism in closed systems (penitentiaries, police stations, psychiatric clinics, etc.). Both the Public Monitoring Group in the Detention Centers of the RA Ministry of Justice (in 2005) and the Council of Europe Committee to Prevent Torture in their reports note the degrading treatment of prisoners by prisons’ representatives. The situation is particularly alarming in police stations and other investigatory bodies. The complaints of illegal detention, violence and terror in police stations are numerous. The violence in police stations was practiced mostly to gain confessions or testimony against other people.

ELECTORAL SYSTEM. By ENP EU/Armenia Action Plan Armenia undertook the commitment to ensure the electoral framework in full compliance with OSCE commitments and other international standards for democratic elections. Yet this obligation remains unfulfilled. Amendments to Electoral Code have not included the recommendations of the OSCE and Venice Commission. The Central Electoral Commission was quite formalistic in addressing the complaints received. The courts did not ensure judicial protection of violated electoral rights in any of the more than 20 complaints received with regard to CEC’s actions or inaction. Overall, the international observers, when assessing both the parliamentary elections of 2007 and the presidential elections of 2008, particularly, the post-election situation in 2008, noted the lack of necessary political will and public trust towards elections and their results.

FINANCING OF PARTIES. The satisfactory level of party funding could have been ensured, had the appropriate legal acts been applied properly. Yet the monitoring of election campaigns during parliamentary elections of 2007 and presidential elections of 2008, showed that the expenditures for campaigning do not correspond to those, officially quoted by parties and candidates as their elections funds. The competent state body, the

Ministry of Justice, that receives the financial reports of the parties, never mentioned any cases of fraud, i.e., discrepancy between the information in the reports and the reality. It is hard to say whether this is a consequence of conscientious and honest financial reporting by parties or their reports are simply never audited.

FIGHT AGAINST CORRUPTION. In 2007-2008 in Armenia numerous legal and sublegal acts with anti-corruption trends were adopted and/or enforced, and a number of anti-corruption initiatives were implemented. Yet, the international and local experts believe that the level of corruption in Armenia is still quite high and the anticorruption reforms are of little effect. Thus, in 2007-2008, according to Index of Corruption Perception of Transparency International, Armenia remains in the list of most corrupt countries. According to the World Corruption Barometer of Transparency International, in 2007, 52% of respondents of Armenian survey believed that within upcoming 3 years the corruption level in the country "would grow substantially" or would "grow moderately". In 2007 and 2008 the data of "Freedom House" showed that the corruption index of the country remained the same as during the previous years, while in 2007 the Global Integrity Index of Corruption in Armenia was "extremely weak". One of the World Bank's criteria of good governance, "control on corruption", in 2007 was also assessed quite low. Proceeding from the reports of local and international organizations regarding elections 2007-2008 and numerous press reports, one can conclude that during this period in Armenia the political corruption level has enhanced, such as the abuse of administrative, communication, financial and other resources, election bribes. The increase of political corruption in Armenia is becoming a source of political and social crises.

ACTIVITIES OF THE HUMAN RIGHTS DEFENDER INSTITUTE

The European Neighborhood Policy EU/Armenia Action Plan[1] makes the following note regarding this area: “Develop the Human Rights Ombudsman institution in accordance with the Paris Principles based on UN General Assembly Resolution 48/134 of December 1993” (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Preface

The UN Economic and Social Council (ECOSOC) stressed in the Resolution adopted in 1960, that with regard to the protection and endorsement of human rights a crucial role is played by national institutions that should independently reflect the universal ambition to stand for human rights on the national level. These institutions are competent to engage in activities to attain certain universal goals on national level. In 1991 this Resolution became the basis for the Paris Principles, approved on the Global Human Rights Conference, held in Vienna in 1993 and ratified by the UN General Assembly in 1993[2].

The Paris Principles stipulate the minimal criteria for the foundation and effective activities of the national human rights ombudsman that this institute should be guided with. These criteria allow assessing the structure, the legal basis of establishment, independence from executive and legislative branches of power, guarantees of securing diversity, the competence, partnering with other structures, mission and objectives, awareness-raising activities with regard to human rights, etc.

Human Rights Defender Institute in Armenia

Armenia was the last of South Caucasus countries to have a human rights defender (ombudsman), even though preparations for this started as early as in 1990. This process was accelerated by the country’s accession to the Council of Europe and its commitments in this regard. The draft law on the RA Human Rights Defender was developed on the basis of a similar law of the Russian Federation on Human Rights Commissary. In December 2002 the RA National Assembly adopted the law in the first reading, after which the document was sent for the international expert review. On October 21, 2003 the law was adopted finally, it was enforced on January 1, 2004. The law stipulates the procedure for electing the Human Rights Defender and his dismissal, his competence, terms of service and guarantees.[3]

It should be noted that in 2007 the UN International Coordination Committee for National Institutions dealing with human rights endorsement and protection granted the RA Human Rights Defender the highest A status. This means the Armenian ombudsman corresponds to Paris Principles and enables him to take part in the sessions of UN Human Rights Council.

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[1] http://ec.europa.eu/world/enp/documents_en.htm#2

[2] Human Rights Defender’s Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 20.

[3] Article 1 of the RA Law "On RA Human Rights Defender".

Despite the high status, the RA Law "On RA Human Rights Defender" needs development and improvement. The analysis of the law herein is based on Paris Principles, the survey on Human Rights Defender[4]. Also, a comparative analysis with laws of other countries is made, where the provisions are more specific, distinct, clear and in harmony with Paris Principles.

Scope of Action

According to Paris Principles, the ombudsman must have as broad scope of action as possible. Article 2 of the RA Law "On RA Human Rights Defender" defines the main activities of the ombudsman, enabling him only "to protect the rights and liberties, violated by state bodies, bodies of local self-government and officials" (spelt also in the RA Constitution[5]). Meanwhile, the Paris Principles call for a more broad scope for an ombudsman, enabling him not only "to protect the violated rights and freedoms", but also contribute to the development and advancement of human rights and fundamental freedoms. The ombudsman must be more active. According to Paris Principles, the national institute of ombudsman in the absence of complaints-appeals from individuals should be competent to initiate research, to make official inquires, demand clarifications from state and local self-government bodies. Clause 3 of Article 11 of the Law entitles the Defender to imitate discussions if there are reports of mass violations or the issue is of exceptional importance for the society or is related to the protection of certain persons, yet this norm is envisaged for *emergency* and *exceptional* cases, when the violations are already *committed*.

In accordance with Paris Principles, the mission of the national ombudsman can be seen in the promotion and endorsement or development of human rights and fundamental freedoms. The protection includes the consideration of complaints, legal consultancy, dispute resolution, etc. The endorsement or development process includes quite a broad scope of action, from the promotion of respective laws and international agreements, promotion of human rights to awareness-raising activities in education and other institutions, with vulnerable groups of the society[6]. In essence, the RA Law stipulates protection of human rights and fundamental freedoms, but not the activities with regard to their endorsement, progress and development. Only by Clauses 3 and 4 of Article 7 of the Law the Defender is entitled to be present at the sessions of the Government and other state bodies, the RA National Assembly and to raise issues, if the discussion agenda relates to human rights and fundamental freedoms. According to Paris Principles, the law on ombudsman must distinctly specify that the ombudsman must, *upon his initiative and systematically,* monitor the correspondence of local laws to the international documents on human rights and fundamental freedoms and, if necessary to make appropriate proposals; to control resolutions, legal acts, adopted by state bodies and local self-government so as for them not to go against human rights and fundamental freedoms, and if necessary, to take steps to achieve their abolition (this competence is only stipulated by Clause 1 of Article 15 of the Law only after the consideration of complaints).

Presently the main functions of the RA Human Rights Defender's Office are the independent monitoring of public administration and consideration of citizens' complaints

[4] In October-November the Helsinki Committee of Armenia administered an expert interview at the ombudsman's institute itself.
[5] Article 83.1 of the RA Constitution.
[6] Taking the Paris Principles into Asia. A study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines. Hugo Stokke, Chr. Michelsen Institute Report, page 2.

against state bodies[7]. The research of Helsinki Committee of Armenia showed that experts have much appreciation for the ombudsman's efforts in legislative reforms. The experts emphasized the fact that it is upon the proposal of the ombudsman that some laws ("On State Pension" and "On Alienation of Property for the Needs of Society and State") were amended. With regard to violation of the right of property of the Northern Avenue residents, proceeding from the statement of the ombudsman the RA Constitutional Court recognized that the resolution No.1151 of the RA Government of August 1, 2002 regarding the construction in Kentron community of Yerevan, as well as Article 218 of the Civil Code and Article 104, 106 and 108 of Land Code run counter the RA Main Law. Nevertheless, in the human rights domain a number of issues were noted, related to state bodies, the police and difficulties in terms of cooperation with civil sector. On March 1, 2008 the Head of the Criminal Investigation Division of Kanaker-Zeytun Police Department A. Abrahamian impeded the activities of the Defender, prohibiting his entry to the police station, refused to provide information, as well as was disrespectful, violating thus a number of provisions of the Law, including Article 12, according to which the Defender must have unimpeded access to state institutions, including military units, prisons, detention centers, etc. Besides, while on duty the Defender enjoys the right of being immediately admitted by state bodies and local self-government, received by their officials, the management of penitentiaries[8].

On July 19, 2007 the Government adopted Resolution No.927, according to which the draft laws related to human rights and fundamental freedoms, before being submitted to the sessions of the Government, are sent to the ombudsman for an opinion. While steps are taken to regulate the legislation and harmonize the laws, legal acts and resolutions with the international agreements, ratified by Armenia, there is still a number of laws that contradict the norms and principles of human rights and fundamental freedoms. These laws were never submitted for the Defender's opinion, such as the RA Laws "On Investigating Activities" and "On Holding Assemblies, Rallies, Marches and Demonstrations".

In accordance with the Paris Principles the ombudsman must also contribute to the ratification and application of international treaties, to cooperate with the UN and other international and local structures that operate in human rights domain. According to the research above, the international cooperation of the Defender is expressed mostly in joint experience exchange projects, training, awareness raising. Under a memorandum signed with the Helsinki school some staff of the ombudsman's office have regular training. In partnership with UN awareness campaigns are waged, leaflets and posters are published and disseminated. Under UN Development Program, "Empowerment of Human Rights Defender Institute", the office develops information materials, holds training courses, plans a TV program on vital human rights issues in Armenia. With the assistance of international organizations the Human Rights Defender's office now has a library. To implement legal reforms the Defender appeals for international support, too.

The Paris Principles make a particular emphasis on the ombudsman's activities on awareness raising, media relation and coverage of ombudsman's activities, involvement in curricula development. The RA Law "On RA Human Rights Defender" does not refer to these provisions at all. Currently the real activities of the Defender's office are substantial not only in terms of human rights protection, but also in awareness raising. Awareness raising with regard to human rights is initiated by the Defender through meetings and focus

[7] Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 3.
[8] http://ombuds.am/main/am/9/16/0/36

group discussions, material dissemination. Meetings are held both in office and out of it - universities, schools, senior residences, etc. The Defender pays regular visits to regions, too. The office activities are regularly covered by media, in the annual report. With regard to awareness raising the ombudsman's staff pointed out two major issues: lack of representatives in the regions and the lack of funds for developing information materials.

As the survey showed, these activities are in fact implemented by the ombudsman's office, while not being stipulated by the law. In other words, the Law does not give the legal framework for such activities, thus restricting the mandate of the Defender. That is, the Law does not reflect the issues of awareness and coverage, as required by Paris Principles at all. The Paris Principles also call for the Defender's office to hold human rights training for the police, the representatives of judicial system and other state bodies, vulnerable and special needs groups of the society, at schools, universities, etc.

Election of Defender

Specifications are also necessary in the clause of the Law referring to the election of the Defender. Thus, Clause 1 of Article 3 does not define any professional criteria and gives only a general overview that fully coincides with the requirements posed to a member of parliament, while the mandates for these two positions are quite different in nature. Thus, for example, Article 2 of the Poland's Law "On Representative of Citizens' Rights", apart from stipulating the requirement of being a citizen and enjoying public respect, the ombudsman must also have legal knowledge and professional experience[9]. While the Paris Principles do not single out the legal knowledge, they emphasize expertise in human rights. The Armenian Law refers to the need of legal or special expertise indirectly. Thus, according to Clause 1 of Article 7, "The Defender is competent to give the applicant its recommendations or consultations for challenging resolutions, court rulings or sentence justification", and according to Subclause of Clause 1 of Article 12, the Defender is entitled to "have access to cases on criminal, civil, administrative, disciplinary, economic and other law infringements that have their sentences, rulings and resolutions enforces, as well as the materials that were a basis for refusing institution of proceedings". These functions cannot be performed by the Defender unless he has adequate legal expertise or professional experience. Clause 2 of Article 3 of the Law does not provide for case when more than one candidate is nominated and gains sufficient number of votes, or if none of them gains sufficient number of votes. No provision is made regarding the number of nominations and elections of the same candidate, either. Similar laws of Georgia and Poland envisage only two terms of service for the same candidate[10]. The Paris Principles call for the ombudsman election provisions to contain the following clauses: terms of service, re-election terms, dismissal terms, etc.[11] It is also preferable for the ombudsman to be elected at least for five years' term and have a change to be re-elected for the same term[12].

The Law does not require the legislature to involve representatives of civil society, human rights and other organizations, educational institutions, religious groups to nominate candidates, as well as hold consultations on electing and appointing the Defender, to ensure transparency and confirm his real independence[13]. The law does not regulate the procedure for nomination and election of candidates, either (through open calls for

[9] National Ombudsmans, Code of Legal Provisions, Biuro Rzecznika Praw Obywatelskich, Warsaw, 1999, page 279.
[10] Ibid, pp. 129, 280.
[11] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, page 16.
[12] Ibid.
[13] Ibid.

applications, competitions, etc.). The Paris Principles emphasize the transparency of Defender's election and involvement of all groups of the society in the election process.

Clause 2 of Article 4 of the Law imposes certain restrictions on ombudsman being engaged in other activities. In particular, the ombudsman is prohibited from membering in parties but not from involvement in the activities or assisting any party (such as taking part in sessions or campaigns), which cannot guarantee his independence, impartiality and objectivity.

The norms of early dismissal of the Defender do not provide for the cases of permanent failure to implement his duties of violation of the oath made. Meanwhile, Article 7 of similar law in Poland stipulates that the ombudsman can be dismissed early if he violates his oath[14].

Human Rights Defender as a Mechanism of Independent Monitoring

Paris Principles call for the establishment of special centers adjacent to ombudsman to protect vulnerable groups of society (children, women, the disabled, etc.). The monitoring of compliance with the UN Convention of the Rights of Children is made by ombudsman, yet the Law in force does not contain either provisions or regulating mechanisms. According to research administered, the RA Human Rights Defender has neither a section nor a special children's center - a fact that gained the attention of the Council of Europe[15].

On April 8, 2008 the RA Law "On RA Human Rights Defender" was addended by Article 6.1, referring to the activities of the Defender in international law: "The Defender is the independent national mechanism for prevention, as defined by the Optional Protocol to UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment. The comment on this norm is presented in Chapter 8 of this publication. Yet it is necessary to note that this amendment was not accompanied by any regulatory provision.

Consideration of Complaints

As to the complaints to be considered by the ombudsman (Article 7), it should be noted that the amendment, made on June 1 2006, certainly restricted the Defender's mandate in the judicial. The amendment contradicts the principles of the right to fair trial, prescribed in international documents and RA Constitution. Moreover, if one takes into account that post-Soviet countries are in transition, and the judicial system so far is imperfect, the Defender should be entitled to be present at court sessions (as stipulated by, say, Article 9 of a similar law of Ukraine)[16]. The interview with the ombudsman's office staff revealed that they are occasionally present at court sessions, yet this is not envisaged by the RA Law "On RA Human Rights Defender".

According to Paris Principles, the ombudsman must be entitled to appeal to court on behalf of those who cannot go to court themselves for certain reasons (children, the disabled, convicts, etc.)[17].

[14] National Ombudsmans, p. 281.
[15] Table of Treaty Body Recommendations Relating to National Human Rights Institutions, CRC/C/15/Add.119, 24 February 2000, 23rd Session, COs Europe.
[16] Institute of Ombudsman: evolution of traditions and modern practice (comparative analysis), A. Sungurov, Saint-Petersburg Humanitarian Political Science Center "Strategia", 2005, p. 179.
[17] Institute of Ombudsman: evolution of traditions and modern practice, p.179; Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 10.

The Law does not stipulate the mandate of human rights organizations to address the defender on behalf of third persons, either. The Paris Principles also stipulate close cooperation between the Defender and human rights NGOs. In the case of Armenia such cooperation is particularly important because the Defender does not have regional offices, yet can become acceptable to the people in the regions through local NGOs.

In the course of research one of the respondents noted that the representatives of the Defender must be entitled to suspend proceedings in case of the restoration of rights infringed, which is not envisaged by the law in force.

Ensuring Accessibility

Clause 3 of Article 23 of the Law stipulates that in regions regional offices of the Human Rights Defender *can be* established. As noted above, in accordance with Paris Principles the national ombudsman's institute must be accessible and available for *all groups* of society, and geographic location must not be an impediment for addressing the Defender. Steps are to be taken to establish regional offices or to launch partnership with local NGOs. Apart from this, the offices of the Defender must be accessible for people with special needs, i.e., be duly equipped[18]. According to the research noted above, the national ombudsman's institute has no regional offices or representatives, yet there is the practice of regular visits for awareness raising. The out-of-schedule visits to the regions are made only when an urgent complaint is received. Reasons for the lack of representatives in the regions include the need for office space, furniture and communications, as well as staff.

According to the annual report of the Defender in 2007, most of the complaints (65.8%) are received from residents of Yerevan, while the proportion of these received from the regions is very small (6.8%). Such huge difference is due also to remoteness of location.

Defender's Report

During the period of January 1 - September 30, 2008 the Defender received more than 2845 complaints, 907 of which were in writing. Throughout this period the Defender was addressed by 4096 people[19]. The complaints were mostly directed against the Special Investigative Service (311), Yerevan municipality (293) and the RA Police (222). In the opinion of one of the respondents, it is mostly conditioned by the situation after presidential elections-2008, with regard to which an extraordinary report was made by the Defender.

In accordance with Clause 1 Article 17 of the Law the Defender submits a report on his activities and human rights and fundamental freedoms to the country's President, the legislative, executive and judicial power. According to Paris Principles this is a mandatory component of the ombudsman's activities. In 2008 the Defender presented his report for the previous year, which described the Defender's activities, the human rights and fundamental freedoms situation, the results of complaint consideration, the list of state bodies that made infringements, etc.

In accordance with Clause 2 of the same Article the Defender has the competence of making an extraordinary report on certain issues of public significance or rough human

[18] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, page 22.
[19] Data provided by the RA Human Rights Defender.

rights infringements, as well as in cases of mass failure to eliminate the infringements. In 2008 the Defender made an extraordinary public report on presidential elections of February 19, 2008, post-election situation and events of March 1. This step was somewhat inadequately received by the authorities, in particular, the former RA President; moreover, the General Procuracy and the Ministry of Justice presented their objection, the whole point of which was that the Defender exceeded his mandate[20]. According to the Paris Principles, the ombudsman's mandate includes the issuance of an annual report and, if necessary, issuance of an extraordinary report. The Paris Principles also stipulate that the reports presented by the ombudsman and the infringements they contain must be discussed by the Parliament to be resolved[21] - a fact that is not taken into account by the RA Law "On Human Rights Defender".

The research administered reveals that there are certain problems in cooperation with state bodies. Difficulties were mainly noted in interacting with the Government, the National Assembly and the Police. In the former case difficulties were related to financial issues, in the latter - to the problem of mandate review.

In accordance with the Paris Principles the ombudsman's report must also contain a financial report to ensure public accountability and transparency, also stipulated by the Law, but not reflected in the report for 2007.

Defender's Office

According to Clause 1 of Article 23 of the Law the Defender recruits his staff to implement his activities, yet no procedure is prescribed and no reference to other provisions of the Law is made. The staff of the RA Human Rights Defender includes a secretariat, correspondence department, and a legal service that includes groups for rights of the military, protection of criminal procedural, social, economic, civil and cultural rights. The separate subdivisions are the information and public relations department and international relations department[22]. As follows from the data obtained, the currently existing of the Defender's staff and its statutes will soon be renewed. The draft has already been developed by the Defender and submitted for the approval.

The new structure and statutes call for the introduction of job descriptions, specifying the areas of competence of the staff members, as well as the hierarchy of positions, staff modifications aimed at optimizing the staff. The staff lacks the following professionals: lawyers, experts on international relations, journalists. As the staff members say themselves, the lawyers are particularly necessary.

In accordance with the Paris Principles, the ombudsman forms a staff (as stipulated by the Law), and he must act with sufficient transparency. A special procedure should be used for recruitment.

Yet it should be noted that there is no distinct recruitment procedure. The Defender's staff is quite closed for new staff members. No announcements are published if there are vacancies. The recruitment is made by the Defender through informal interviews. The most significant criterion in recruitment is the experience of dealing with the potential candidate

[20] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, pp. 12, 16.
[21] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, p. 28.
[22] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 4.

in the past. Yet this method contradicts the recruitment transparency, as required by Paris Principles.

According to Paris Principles, to effectively evolve their activities the Ombudsman's staff must be very qualified. They must also be constantly trained[23]. Overall, the staff noted the importance of the trainings, in particular, on human rights and public relations, yet preference is given to experience exchange with experts from other developing countries and practical job placements at some international institutions. It should be noted that the Head of staff assessed the role of training courses as quite low, since all such courses are detached from Armenian reality.

According to Amnesty International, the national ombudsman institutes must create opportunities for recruitment of such vulnerable groups as people with disabilities, women, ethnic minorities who, being well aware of the problems of their groups, may be neglected or underestimated by state bodies[24]. It should be noted that the Defender's staff is quite representative: it includes, refugees, people with disabilities, representatives of ethnic minorities.

Clause 4 of Article 23 of the RA Law "On RA Human Rights Defender" stipulates that the staff of the Defender are employed on short-term contractual basis. Yet this contradicts the norms of International Labor Organization, according to which the short-term contracts are signed with the specific project staff. Such contracts allow the employer to break the contract upon the end of its term with no substantial justification. It should also be noted that short-term contracts are quite demotivating. The contract is signed for a year, yet after its expiration the employer is not reevaluated or tested, the contracts are automatically prolonged.

Immunity

According to Clause 5 of Article 23 of the Law when on duty the staff of the Defender is immune, which is in accordance with Paris Principles. In June 2008 the RA Ministry of Justice proposed an amendment to the Law depriving the ombudsman's staff of immunity[25]. The Paris Principles establish the right of the ombudsman's staff to enjoy immunity that would ensure their implementation of their professional duty as well as guarantee the independence of the ombudsman's staff. This proposal was criticized as well as disapproved by the Venice Commission[26].

Partnership with Civil Society, NGOs and Expert Council

Paris Principles attach importance to the broad involvement of civil society in the institute of ombudsman and the establishment of the Expert Council which is also a guarantee for the development and endorsement of human rights and fundamental freedoms, as well as for the guarantee of diversity[27]. Meanwhile, Article 26 of the Law leaves the issue to the discretion of the Ombudsman. The reality is as follows. Overall, as the respondents say,

[23] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 14.
[24] Ibid, p. 6.
[25] http://ombuds.am/main/am/9/27/1765/
[26] Ibid.
[27] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 32.

the cooperation with the institutes of civil society is still at a low level, in particular, with the NGOs. Nevertheless, in the annual report of the Defender in 2007 the cooperation with the NGOS was quite highly assessed[28]. A relatively positive assessment was given to cooperation with media, too, mostly realized through press-conferences held 4 times a year. In special cases the Defender summons an extraordinary press-conference.

According to the Law, for consultations the Defender can set up an Expert Council. The interview with the key staff revealed that such a Council has already been established upon the initiative of the Defender, its members being representatives of NGOs. The number of the Council members is constant and does not exceed 20. The sessions of the Council are held two or three times a year. The Council is not seen as very effective, which is conditioned by the NGO sector in Armenia being underdeveloped.

Funding of the Human Rights Defender Institute

According to Article 24 of the Law the Defender and his staff implement their activities with funding from state budget. According to the statement of the Head of the Office, the funding of the national ombudsman is stable. Yet the budget allocated to the Defender and his staff is occasionally reduced with no substantiation by the National Assembly and Government, which runs contrary to Clause 4 of the same Article. It should be noted that the budget categories are generally acceptable, yet the amounts allocated are constantly reduced. In the opinion of the Head of the staff and other staff members of the Defender, the low pays are a reason for staff turnover. This situation does not reflect either the Law provisions or the Paris Principles, according to which the state should contribute and establish financially favorable conditions for effective activities of the ombudsman. Because of financial issues a number of problems arise with regard to Defender's activities, contrary to Paris Principles. Moreover, in the interviews it appeared that Clause 1 of Article 21 of the Law is violated, according to which the salary of the Defender must be equal to the salary of the Chairman of the RA Constitutional Court, and this is in compliance with the Paris Principles, yet far from reality.

Conclusion

The RA Law "On RA Human Rights Defender" and its practical application were subject to analysis. It is very important for all provisions of the Law to be implemented in practice and the Law be amended and improved. The Law is the basis and the guarantee for the Defender's activities, the more harmonious it is with Paris Principles, the more effective the activities of the ombudsman in the country will be.

- The Law must provide not only for the activities of the Defender in the human rights protection, but also their endorsement and awareness raising.

- The Law must stipulate a specific procedure for the nomination and election of the Defender, with the civil society being involved in the process.

- Being a mechanism that monitoring the implementation of the UN Convention on Children's Rights, the Human Rights Defender institute must provide for a children's center establishment.

[28] Annual report of RA Human Rights Defender, pp. 46-48.

- The Law must provide for a broader group of potential applicants, including human rights NGOs in it.

- The right to monitor trials should be prescribed by the Law.

- To ensure transparency of the Defender institute vacant positions must be publicly advertised, a distinct formal procedure should developed for recruitment, and the contracts should be signed for longer term.

- To ensure easy access for all citizens, regional representations of the Defenders must be made obligatory.

- The Defender must meet Expert Council member as well as other human rights and other NGOs more often, establishing a closer contact with them.

- The state must ensure appropriate funding for effective activities of the Defender.

- The law must be distinct in stipulating that the report of the Defender should be debated at the National Assembly and resolutions must be sought to eliminate the human rights violations noted in the report.

FREEDOM OF ASSEMBLY

In the ENP EU/Armenia Action Plan it is noted: "Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations". (Section 3 "Priorities for Action", Priority Area 2, Specific Actions).

At the same time, Clause 10 of the RA Government's resolution of July 19, 2007 regarding the implementation of ENP EU/Armenia Action Plan deals not with the amendment of the law, but rather with law enforcement, i.e., no improvement of the law is envisaged.

The RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" has contradictions to the RA Constitution.

1. The first controversy is the name of the Law itself. According to Article 29 of the RA Constitution, "everyone has a right to peaceful unarmed assembly". The concept of "assembly" as provided for by the Constitution in the title of the Law was transformed into 4 notions - "assemblies", "rallies", "marches" and "demonstrations".

2. According to Article 43 of the RA Constitution, the fundamental human rights and freedoms that include freedom of assembly can be restricted by the Law only, "if it is necessary to protect in a democratic state national security, public order, to prevent crime, protect public health and morals, constitutional rights and freedoms, dignity and reputation of other individuals". The remaining restrictions, listed in Clause 1 of Article 1 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", are definitely different from those provided for by the Constitution.

3. It follows from the last sentence of Clause 1 of Article 1 that the police and the state bodies may also restrict the realization of these rights. Meanwhile, Part 2 of Article 29 of the RA Constitution make a comprehensive list of the categories of individuals that can be restricted from exercising fundamental rights and freedoms, and by law only: servicemen in the Armed Forces, the Police, national security bodies, prosecuting agencies, as well as judges and members of the Constitutional Court.

4. According to Clause 2 of Article 5 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", "a public event can be organized and conducted in one or several kinds, as stipulated by this Law". Article 2 of the Law lists these kinds: assembly, rally, demonstration, march, spontaneous public event and others that include festivities, ceremonies, cultural and sports events. This conveys that the right to assembly may be restricted if held in a form, other than those listed in the law.

5. According to Clause 6 of Article 5 of the Law, "mass public event cannot start, if none of its organizers have come". This conveys that if the organizers of the event have failed to be present at it, its other participants may be deprived of the right to realize their constitutional right.

At 60th session of the Venice Commission (Venice, October 8-9, 2004) an opinion was voiced that the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" does not correspond to the demand that the laws on right to assembly must only be restricted through defining legal grounds for acceptable intervention of state bodies. Apart from this, the Law stipulated undue reasons for restricting the conductance of events. In its

Resolution 1405(2004) the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to amend the Law no later than March 2005 for it to be compliant with the standards of the Council of Europe and ensure the freedom of assembly in practice. The authorities developed a draft law on introducing amendments to the Law, consisting of 11 clauses. It was assessed by the experts of OSCE/ODIHR and Venice Commission whose conclusions coincided. Both expert bodies thought the draft submitted did have certain positive shifts, but at the same time there remain serious restrictions, and recommended that further steps be taken to improve the law. In comparison with the Law, adopted on April 28 2004, the prevailing part of the amendments proposed by the draft was seen by the Venice Commission (Strasbourg, February 8, 2005, Opinion 290/2004 CDL (2005)018) as amendments of editorial nature, not requiring substantial change and not influencing the rights and responsibilities of public event participants. The Venice Commission reaffirmed its opinion on the need to bring the Law in compliance with the requirements of the European Convention of Human Rights and Fundamental Freedoms, adopted at its 60th session (CDL(2004)42).

On October 4 2005 the RA National Assembly, having taken into account the recommendations of OSCE/ODIHR and Venice Commission, made certain amendments to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations". Yet, a number of recommendations were ignored. In particular Articles 7 and 9 keep the restrictions, qualified by the international experts as unacceptable.

Throughout 2005-2007 the bids to hold rallies, submitted to Yerevan municipality by both opposition parties and non-governmental organizations, were repeatedly declined on the basis of Clause 2 of Article 12 of the Law as “on the same day, at the same time and in the same place another event is being held”. Yet in the majority of cases no other event was held, or hastily some cultural event or a show for children and adolescents was staged.

On February 20, 2008 after the Central Electoral Commission announced the preliminary results of the presidential elections, the supporters of candidate Levon Ter-Petrosian, refusing to acknowledge the election results, started a termless sit-in protest action. The action was accompanied by crowded rallies and marches. In the early morning of March 1 the police violently dispersed the protesters. Thousands of opposition supporters gathered in the vicinity of Myasnikian monument. In a clash of protesters and the police in the early morning of March 2 ten people died, many were injured.

On March 1, 2008 by a decree of the RA President in Yerevan emergency rule was introduced for 20 days, during this period holding assemblies was prohibited. On March 17 the RA National Assembly introduced amendments to the Law that, contrary to positive expectations, made assemblies questionable.

Thus, Clause 3 of Part 4 of Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was narrated in new edition, according to which the competent body can prohibit holding public events, if it has reliable information that the events are “aimed at violent overthrow of constitutional regime, incitement of national, race, religious hatred. Endorsement of violence or war or can result in mass disorder or crime, harm the national security, public order, health and morals of the society, can infringe constitutional rights and freedoms of other citizens”. The new edition also says: "The information may be considered reliable, if the Police or the National Security Service at the RA Government have given their official assessment of it. The same procedure applies for the assessment by the same bodies of discontinuation of these restrictions”.

Moreover, the list of the terms entitling a competent body to prohibit the event has been expanded. Besides, the Law does not clarify where this information is available to the applicant and the public, whether it can be challenged. Whenever an application for an unwanted rally is submitted, this norm allows getting all the necessary “reliable information” from the competent body.

According to Part 6, inserted in this Article, if the events have resulted in mass disorder with casualties, the competent body can prohibit holding mass public events until the crime is investigated and the perpetrators are identified. This provision of the Law means that if during an event and as a result of mass disorder casualties occurred, holding say environmental rallies can be prohibited. Besides, this provision in essence gives the local self-government structures the mandate to introduce emergency rule, which runs contrary to the RA Constitution and international norms.

Part 1 of Article 10 of the Law has also been amended, omitting a provision that allowed to hold mass public event if it grew spontaneously from a non-mass public event.

The same Article was amended once again, stipulating a timeframe of at least five working days to notify the competent body about holding a mass public event (this timeframe earlier was three working days). At the same time, in Part 1 of Article 12 of the Law the term of notification consideration was prolonged: "The competent body considers the notification within 72 hours after its receipt, in the succession of receipt”. The notifications used to be considered the next day after their receipt by the competent body.

Clause 3 of Part 1 of Article 13, according to which the competent body can prohibit any public event on the grounds, stipulated by Article 9 (described above). This practically means a possibility to prohibit any event.

Thus, the Republic of Armenia not only failed to comply with its commitment to reform the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, but also, with its restrictive amendments, introduced on March 17, 2008, made a serious retreat from democratic principles.

After March 17, 2008 dozens of bids, submitted to Yerevan municipality by the opposition parties and non-governmental organizations, were declined on the basis of restrictions in Article 9 of the Law. Thus on May 6, 2008 the Helsinki Committee of Armenia made an application to Yerevan municipality to hold a march in commemoration of Levon Gulian, dead in the RA Police, on May 12. The notification was declined by the Yerevan municipality proceeding from Clause 6 of Article 9 of the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. The response from the municipality was received by the organization on May 13 only, yet on May 12 the Police impeded the march.

On March 28, 2008 in a joint conclusion 474/2008 of the Venice Commission and OSCE/ODIHR the adopted amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” were strongly criticized and qualified as inappropriate. It was recommended to abolish some of the provisions of the Law, as well as introduce amendments enabling challenging decisions in court in certain cases.

On April 15, 2008 by the results of a discussion at the National Assembly of the Law “On Amending the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” with the involvements of Finola Flanagan, Simona Granata-Menghini (Venice Commission), Denis Petini, Niel Jarmani (OSCE/ODIHR), RA NA Chairman Tigran

Torosian, RA Minister of Justice Gevorg Danielian, RA President's Assistant Gevorg Mherian and the RA NA Chairman's Councilor David Melkonian, the parties reached an agreement that a new draft of five clauses will be developed and submitted to Venice Commission and OSCE/ODIHR before April 25, 2008.

Further on, on the basis of the conclusion of international experts this draft must be introduced to the NA agenda.

It was proposed:

- to amend Clause 3 of Part 4 of Article 9 of the Law, according to which the security threats must be immediate (see above), as well as stipulate that the official conclusion of the Police or National Security Service must be justified;

- to exclude Clause 6 of the same Article, to provide for a possibility to challenge the ban on the event in the court in Article 9;

- to add the clause on the commitment to consider the notification within 72 hours into Part 8, Article 12, as recorded in Part 1 of the same Article;

- to restore the possibility to hold a spontaneous public event without a notification lasting not more than 6 hours with regard to a specific phenomenon or event.

In Clause 12.3 of the Resolution of the Parliamentary Assembly of the Council of Europe 1609 "Functioning of Democratic Institutions in Armenia" of April 17, 2008 it was noted: "The amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect."

On June 11, 2008 the Parliament of Armenia adopted another law on introducing amendments to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations". The following amendments were made:

1. Clause 3 of Part 4 of Article 9 was amended to include immediate threat of violence or real danger (see above);

2. Part 6 of Article 9 is abolished.

3. Possibility to challenge events in court is stipulated. In Clause 3 of Part 4 of Article 9 it was stipulated that the official assessment of the Police or the National Security Service must be justified.

4. In Part 8 of Article 12 a clause on considering the notification submitted within 72 hours is added, recorded in Part 1 of the same Article.

5. Article 2 is addended with a definition of "spontaneous public event".

6. It follows from Clause 1 of Article 10 that no notification is necessary for a spontaneous public event.

7. Article 9 is addended by Part 6.1, according to which no spontaneous public event can last more than six hours. Any subsequent event on the same occasion cannot be

considered spontaneous and must be held in accordance with the defined procedure of notification.

Despite the fact that the recommendations of the Venice Commission and OSCE/ODIHR were mostly realized (except for one), the Law did not come back to its previous version. Some restrictions introduced on March 17, remain in force. In Clause 4.1 of Resolution 1620 of June 25, 2008 the PACE welcomed the amendment of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" in accordance with the standards of the Council of Europe, stating in this regard the assumed commitments are fulfilled. At the same time, in Clause 4.2 the PACE confirmed its requirement that the freedom of assembly in Armenia must be guaranteed in practice. For the reason PACE insists, the Resolution noted, that the Armenian authorities, according to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" guaranteed that no unjustified restrictions be applied with regard to opposition events, in particular, in terms of rally venues.

Despite this, dozens of bids by opposition forces were declined by Yerevan municipality on the basis of Article 9. In the second half of 2008 the representatives of the opposition challenged the bans of the Yerevan municipality with the Administrative Court over 40 times. In the vast majority of cases the opposition suits were not secured. There were two exceptions to this: on September 3 the Administrative Court allowed the conductance of "Dashnaktsutiun" party's rally, then a part of the ruling coalition, and on September 8 the suit of the Armenian National Congress was partly secured - the rally was allowed but not the march initially planned. Contrary to the municipal bans, the opposition held 4 rallies that went in peace - on June 20, July 4, August 1 and September 26, 2008.

Conclusion

While the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" was acknowledged by the Council of Europe as corresponding to the European criteria, it is of more restrictive than regulatory nature. This is true in particular of Article 9. The greatest concern is caused by its practical application. The competent body with no serious justification impedes the conductance of rallies and marches, in particular. The practice of challenging the bans with the court is not satisfactory either, as the court does not ensure the principles of fair trial and proportional punishment, stipulated in Articles 6 and 11 of the European Convention of Human Rights, respectively.

Recommendations

1. To amend the Law "On Holding Assemblies, Rallies, Marches and Demonstrations". To revise Article 9, in particular, abolish Clause 3 of Part 1.4

2. To make the procedure for court challenges more effective

3. To commit the competent body (Yerevan municipality) to placing all the bids for holding assemblies on the web site.

RESPECT FOR THE RIGHTS OF ETHNIC MINORITIES

The ENP EU/Armenia Action Plan notes: "(...) Ensure respect for the rights of persons belonging to national minorities" (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

According to 2001 census, ethnic minorities are 2.2% of the total population of Armenia. There are 11 ethnic communities in Armenia: Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian and German. The biggest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), Kurds (1,519). The greatest part of these communities was formed in the first half of the 19th century. Apart from Yezidis, other communities are concentrated in cities, mostly in Yerevan.

None of the ethnic minority groups dominates any of the territorial units of Armenia. They all are dispersed all over the country. Upon its accession to the Council of Europe Armenia did not assume any special commitment with regard to ethnic minorities. No international document voiced any serious concern with regard to the rights of national minorities. This is due to the fact that ethnic minorities of Armenia make no political demands.

Individual complaints are occasionally received - with regard to pasture use, property, unfair trial, yet such complaints are characteristic of the whole population of Armenia and are not directly related to ethnic discrimination.

During the meetings with representatives of ethnic minorities discontent was mostly heard with regard to lack of funds for more active cultural life, notwithstanding the fact that the RA Government does allocate certain amounts to this effect.

The tense political situation in the country that affected various social groups after the presidential elections of February 2008 does not seem to have directly affected the minorities. Ethnic minorities refrain from being actively involved in domestic politics.

Ethnic minorities are represented in local self-government. In the National Assembly of Armenia there is a deputy of Greek descent, one of the leaders of a ruling party, the Republican Party of Armenia. The biggest community, the Yezidis, is not represented at the parliament, yet they were present in the election party lists of several parties. The absence of Yezidis in the parliament may be explained by the lack of organization within the community. Meanwhile, the correctly organized campaigning can enable Yezidis to have several MPs.

Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

According to Article 14.1 of the RA Constitution: "Everyone shall be equal before the law. 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 ".

Besides, Article 41 of the Constitution says: "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."

Article 1 of the RA Law “On Language” guarantees free use of minority languages in the Republic of Armenia, and Article 2 - a right to be educated in the mother tongue. According to Article 4 of the RA Law “On Language” in official documents, stationery, stamps of ethnic minority organization they can use their mother tongue along with the state language. Article 8 of the RA Law “On Basis of Legislation on Culture” provides that the state “contributes and assists establishment of such conditions that will return the cultural identity of various national minorities”. Article 15 of the RA Criminal Proceedings Code guarantees a state-funded translator’s services to the participant in a trial that do not speak Armenian.

There is no Law on national and ethnic minorities, despite the appeals made by NGOs and political parties since 2003 regarding the need to adopt one. Throughout at least five years various legislative initiatives kept being developed, yet none of the drafts was adopted as a basis for a law.

In 2008 to ensure the rights of ethnic minorities, a number of steps were taken in Armenia[29]:

- The RA Ministry of Culture developed a concept of protecting, retaining and developing the non-material cultural heritage, in which a lot of significance is attached to the issues of protecting and developing the culture of ethnic minorities.

- The volume and the duration of broadcasting in Assyrian and Greek languages on Public Radio of Armenia was increased.

- With state funding, the medieval Jewish cemetery on the bank of Eghegis river was renovated.

- The RA Ministry of Culture organized a republican festival of culture of ethnic minorities.

- The budget of Ministry of Culture has a separate line for funding publication of literary works by ethnic minority writers.

- The expert group of the Council of Europe monitored the process of implementation of European Charter of Regional Languages. Within the monitoring a scientific conference was held, giving floor to discussion of legal and cultural aspects of the problem.

[29] Information is provided by the Department of National Minorities and Religion at the RA Government.

LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.

REFORMS OF LEGAL AND JUDICIAL SYSTEM

The ENP EU/Armenia Action Plan stipulates the following steps to be taken in this domain:

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly (during 2006);

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;

- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006);

- Improve the legal and particularly free legal aid system by improving and , strengthening the system of advocates and develop a school of professional practice for young graduates in law;

- Establish administrative courts (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Current Situation

Amendments made to the RA Constitution on November 27, 2005 launched the implementation of the second stage of the legal and judicial reform. The amendment of the Main Law was aimed to improve the existing legal system, within the concept set as a basis for 1995 Constitution and condition by the principle of separation of powers.

The general analysis of the amendments made to the Constitution in 2005 allows stating the following:

- the institute of the Constitutional Court gained more detailed regulation and became more democratic;

- the legal status of the Court of Cassation was changed;

- additional guarantees for the independence of judges were recorded;

- the limits of constitutional basis for justice were expanded and some of the fundamental principles were prescribed in greater detail;

- the procedure for the formation and activities of the Council of Justice was reconsidered, etc.

Main Objectives

Despite the fact that after the Constitutional reform a number of new legislative acts were adopted and numerous amendments to the laws in force were made, the issue of how compliant the legislative amendments are to the spirit and content of commitments, stipulated by ENP EU/Armenia Action Plan, remains open.

Moreover, looking in retrospect and analyzing the developments of February-March, 2008, one can conclude that most of the amendments were aimed at specific practical targets.

Judicial Power

Current Situation

The primary objective of the reforms was the establishment of unified, full-fledged and independent judicial power, and this consideration lay at the heart of the whole concept of judicial and legal system. This concept was realized through the Judicial Code, adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resolved a number of important and crucial issues. In particular, for the first time the relations, linked to organization and activities of the judicial, were for the first time regulated in a systemic form. Previously these were regulated by separate law - the RA Laws "On the Council of Justice", "On Trials", "On Legal Status of the Judge". Specialized - criminal, civil - courts and the Administrative Court was set up. The role and the significance of the Court of Cassation in the judicial system of Armenia changed; presently its main function is to ensure uniformity of law application and to contribute to the development of the law. Self-regulation bodies for the judicial power were formed, too - the General Conference of the RA Judges and the Council of Court Chairmen, a school has been establish to train judge candidates (Court School), that is to ensure the competence and appropriate training for future judges.

Main Issues

At the same time the legal and judicial reform in general and the Judicial Code in particular did not solve the most important of the urgent issues - creation of real independence guarantees and the practical application. The steps directed at strengthening the independence of the judicial system did not ensure the real independence of certain judges. As a result, within the de jure independent judicial system there are de facto dependent judges, which are illustrated by examples on both legislative and practical level.

Thus, one of the main guarantees for ensuring the independence of judicial system and the judges was to be the Council of Justice, entitled with a new status by the Constitution. Yet the analysis of the legislation shows this body, and hence, the whole judicial system, remains under the influence of the RA President.

This can be proved by several vivid examples:

- According to the Law, the Council of Justice is competent to make up the lists of candidate judges, yet this list is ratified by a decree of the country's President (Part 4 of Article 117 of the RA Judicial Code).

- The lists of promotion of judges of special primary courts and courts of appeals are also made up by the Council of Justice through a secret ballot, yet the President of the country leaves the candidates he finds acceptable on this lies, too and adds new candidates to the list within ten days. If the list is not addended it is considered to be declined (Part 9 of Article 137 and Part 8 of Article 138 of the RA Judicial Code).

- A similar mechanism is stipulated for filling in vacancies on the courts of general jurisdiction. Upon the consent of the candidate the Chairman of the RA Court of Cassation presents his candidacy to the Council of Justice. Unless the procedures stipulated by the Code are violated, the Council of Justice gives a positive opinion through an open ballot. In the case of a positive opinion, the candidacy is presented to the President of the country. If the President fails to appoint the judge this candidacy is considered rejected, it is excluded from the candidate judge list and a nomination to the vacancy is made anew (Parts 9 and 10 of Article 123 of the RA Judicial Code).

It is not surprising that the judges appointed by the abovementioned procedure mostly came up with verdicts of guilty on the criminal cases instituted on the events of February-March 2008, and the 1-2 verdicts of non guilty can be considered a negligible exception. Therefore, one of the conclusions of PACE Resolution 1609 - "despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process" - may be considered fully compliant with the reality.

Another example is the statistics of detention on the cases above - the motions on detainment and its prolongation filed by prosecutors and investigators were almost 100% secured. In Resolution 1609 it was also noted that the courts did not display critical approach to the need for preliminary detainment, did not duly consider the arguments of the defense attorneys, which does not meet the requirements of the European Convention of Human Rights and Fundamental Freedoms and once again raises questions regarding the independence of the judicial.

Procuracy

Current Situation

The constitutional reform was aimed at creating not only an independent judicial, but also a procuracy, independent from all branches of power. The system was supposed to be profoundly changed, as shown in the new RA Law "On Procuracy", adopted on February 22, 2007.

In the new Law "On Procuracy" the following was defined: main principles of procuracy organization and activity; the new procedure for appointing the RA General Prosecutor (upon a proposal of the RA President is appointed by the National Assembly for six years, and can be dismissed by the National Assembly - in the cases specified by the law - with a majority of votes); the structure and the system of the procuracy; the procedure and the conditions of prosecutor's subordination, their appointment and dismissal; immunity, material and social guarantees of prosecutor's activities. Yet the main accomplishment of the Law was certainly the separation from the procuracy of the criminal investigation function, as a result of which this body at the pre-trial investigation had to predominantly concentrate its efforts on the implementation of the control over the legitimacy of the investigation and preliminary examination.

Main Issues

Nevertheless, the developments showed there was no real intention to free the procuracy from investigative functions. Through consistent legislative amendment the procuracy not only restored the former positions, but also gained new privileges.

The first step was the adoption of the RA Law “On Special Investigative Service”. This Law established the new formally independent body in charge of investigating criminal cases. The head of the service is appointed by the RA President upon a proposal from the General Prosecutor.

Appropriate amendments were made to the RA Criminal Proceedings Code, too. According to the amendments the Special Investigative Service was to undertake the preliminary investigation on Articles 149, 150, 154.1, 154.2 of the RA Criminal Code on the cases dealing with the involvement in a crime of the leadership of the legislative, executive and judicial branches of power, of people on special state service, abusing their official positions, as well as dealing with elections.

Besides, a separate provision was made to the effect that the RA General Prosecutor can transfer those criminal cases from other investigative bodies to the Special Investigative Services that involve accomplicity or crime of the officials above as well as the cases in which these individuals are victims (Part 6 of Article 190 of the RA Criminal Proceedings Code).

Further on it became clear that all the loud cases on the events of February-March 2008 under various pretexts were concentrated in the Special Investigative Service, with the whole complex of legislative “innovations” used “successfully” by the RA Procuracy for a total control and investigation in the right direction, in both individual cases and against certain defendants. In fact the previous mandate of the procuracy was restored, with no serious commitments and responsibility.

Access to Justice

Current Situation

The solution of issues related to access to justice, in particular, the establishment of effective mechanisms to ensure free legal aid is a logical component of the whole legal and judicial reform process. The experience of the structures, established at the first stage of the legal and judicial reforms, their benchmarking against the world experience and the study of the legal practice showed that the free legal aid as a way to ensure access to justice is only possible through structural change. It is to this effect that the draft law “On State-Funded Legal Aid” was developed, with the support of Open Society Institute, and submitted to public debate.

Main Issues

Yet another solution was preferred in the course of the legal and judicial reform. In particular, through the RA Chamber of Advocates man attempt was made to regulate a whole domain of public relations outside legal framework by one amendment only, introduced to the RA Law “On Bar”.

This prospect is characterized by a whole number of negative characteristics. First of all, specific criteria of determining inability to pay are lacking, as well as the effective mechanisms for proving the necessary aid. This will have complicated and very negative consequences for the beneficiaries involved.

Besides, the real number of the public attorney of the Public Attorney Office (34, 7 of them working part-time) cannot objectively ensuring free legal aid to vulnerable social groups, in particular in the regions.

Finally, this initiative, being insufficient and completely ineffective, can be presented as an example of state implementation of the commitments to ENP.

Solutions Proposed

Analysis of the problems above allows concluding that the legal and judicial reforms have not corrected most of the existing shortcomings, and in some cases also created new problems, allowing complex and consistent approach. In this regard it is necessary, in particular:

1. To make complex amendments in the RA Judicial Code, aimed at ensuring real independence of judges;

2. To amend the RA Criminal Proceedings Code and the RA Law “On Special Investigative Service” so as to de facto excludes the investigation of criminal cases by the procuracy, as well as the total control of the RA General Prosecutor over the Special Investigative Service;

3. To take productive steps to have adopted by the RA National Assembly the draft law “On State-Funded Legal Aid”, currently in circulation, and have appropriate amendments made in other legal acts.

CIVIL SERVICE DOMAIN

The ENP EU/Armenia Action Plan stipulates the following regarding the civil service reform:

- Establish a unified and transparent system of recruitment for civil servants and develop incentives to promote public integrity through the establishment of merit-based payment structures. Promote the improvement of coherent civil service policy mechanisms and strengthen administrative capacity;

- Promote a merit-based system of payment for civil servants and introduce a rational system of evaluation of work performed;

- Support the improvement of civil service system activities and institutions (job advertisement/selection, appraisal, civil service passports etc.) and bring them in line with European standards;

- Support the improvement of educational and training programs for civil servants (in particular those related to computer and management skills, foreign languages, ethics code etc) in accordance with European standards;

- Establish a coordination network between the relevant authorities of civil service systems of EU Member States and Armenia, to ensure harmonization of legislation (and other relevant activities) and exchange of best practices and data (Section 4 "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform").

In Section 5 of the RA Government Resolution No. 927 of July 19, 2007 on the implementation of ENP EU/Armenia Action Plan, the following priorities are defined:

1. To improve the RA civil service and mechanisms for having a unified policy;

2. To create a single list of professions pertaining to the public administration in Armenia;

3. To develop and introduce a rational system of performance evaluation for the civil servants;

4. To improve the merit-based remuneration system for civil servants;

5. To improve the Ethical Code of the civil servants and its compliance;

6. To ensure incessant renewal of job descriptions for civil service;

7. To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

The reform process in this domain received much attention in the Armenia section of the current report "Implementation of the European Neighborhood Policy in 2007", presented by the Committee of European Communities in Brussels in April 2008. "While no comprehensive evaluation was made of the civil service, nevertheless, steps were taken to improve the system, with particular emphasis made on ethical code, anti-corruption

measures and employment procedures. The process of defining a unified legal norm of civil servants has not been completed yet", - the report noted in particular.

The present research aims to disclose the situation in terms of implementation of priorities above, the results, the reasons that impede their full-fledged and effective implementation.

To obtain information, the following methods were used in the course of the research: document research, in-depth interview or focus group discussion.

Thus, the first method was used to study the following legal, methodological and information documents: the RA Law "On Civil Service" , the RA Law "On Remuneration of Civil Servants"; the draft law "On Introducing Amendments to the RA Law 'On Civil Service' " (July 21, 2008); draft law "On Public Service"; resolutions, current reports, information from the RA Council of Civil Service, etc.

In-depth interviews were administered (personal and group) with the deputy chairman of the RA Council of Civil Service and the Council staff - the heads of subdivisions engaged in the research issues and individual experts. A special questionnaire was developed for in-depth interviews.

The interview participants were offered to give a quantitative and qualitative assessment of the process of the implementation of priorities for 2007-2008 and its results. To this effect we developed certain quantitative and qualitative indicators.

In particular, in terms of quantity the experts were offered to assess the implementation of each of the 2007 priorities by a three-unit scale, where 1 stands for "fully implemented", 2 - for "partially implemented" and 3 - for "nothing is done".

To make a qualitative assessment the experts were offered:

1. To list all steps taken to implement the priority during the reporting period;

2. To describe the rationale, the principles of the abovementioned steps, the criteria of their implementation, changes made, their direction, nature, etc.;

3. To present the reasons, for which the steps planned were not taken or were not fully implemented.

Priority 1: To improve the RA Civil Service and mechanisms for having a unified policy.

The following steps were taken:

To ensure transparency all the agencies have public information departments set up, in which job descriptions have been developed for 55 out of 80 civil servants. The Procedure for Freedom of Information and Provision of Information in Civil Service is being discussed currently. Training of all staff of public information departments was made. Proceeding from the positions in civil service, in the first (special) departments of all agencies the list of staff having access to secret information has been developed, with the level of acceptable access to such information being defined.

All agencies have unified departments of human resource management.

Aiming to overcome corruption in public administration, income statements have become mandatory for all civil servants - in the first years after civil service system was introduced not all classes of civil servants had such an obligation. Notably, the statement of incomes is a necessary but insufficient condition to overcome corruption in public administration.

The draft law “On Public Service” stipulates the introduction of the following new institutes: to expand the Code of Ethics of Civil Servants; the information institute; the notion of conflict of interest; the notion of gifts to officials at duty (in particular, types and cost of the permissible gifts to officials, the circle of interlinked individuals, etc. should be regulated - this requirement is also made by GRECO).

In terms of ensuring unified recruitment mechanisms as well as their examination, a pilot management information system has been developed with the assistance of the Yerevan Institute of Mathematical Machines to hold competitions. It is expected that this system will be used throughout administrative system. Today all human resources management departments perform 90% of their functions through electronic management systems.

By a unanimous opinion of experts, all measures taken to realize priority 1 either have already been taken or are being taken.

The failure to implement some of the recommendations of the priority is due to the fact that the RA Law "On Public Service” has not been adopted yet.

Priority 2: To create a single list of professions pertaining to the public administration in Armenia.

The following steps were taken:

The RA Government has approved a list of positions. While this list, in accordance with the market demands, is being reviewed every year, it still does not include all the diversity of professions necessary in public administration.

After the formation of civil service system a unified list of professions in public administration was to be developed. To this effect the following steps were made:

- the need to create a unified list of professions in administrative system was justified;

- the professions, necessary for various subdivisions, were subdivided into groups;

- the task of specifying requirements for special education for experts in various subdivisions was defined to finalize job descriptions (thus, for example it was hard to define the education background necessary for a HR manager, etc.);

- in the development of a single system of professions, the real requirements of the market and analysis of data on actual basic education of civil servants, employed in public administration from 1960-1970s, archive check-up of the data reliability, as well as the development of mechanisms to ensure effective application.

The problems, related to the implementation of this priority, require knowledge, its solution is impossible through the efforts of the Council of Civil Service, therefore, with no additional funding the single list of professions for public administration is impossible to develop.

In the opinion of experts, this priority was assessed as mostly unfulfilled.

Priority 3: To develop and introduce a rational system of performance evaluation for the civil servants.

The following steps were taken:

Upon the initiative of the RA Government it was proposed to develop a new system, according to which as a main performance evaluation criterion the following indicators are taken:

- volume of work;

- time of implementation;

- quality (compliance with the established quality norms);

- contribution (share or value in the working programs of the subdivision);

- nature (mechanical, semi-mechanical, creative, etc).

In 2007 the Yerevan Institute of Mathematical Machines developed an electronic system for collecting and processing the data necessary to evaluate performance. This was done upon the order of the Council of Civil Service and with the assistance of the World Bank. Upon the initiative of the RA Government another performance evaluation system was developed, too, that is being tested at the staff of the RA Government and the RA Ministry of Economy. Yet the new performance evaluation systems have not been introduced as yet.

The establishment of the general system in accordance with the indicators above calls for the development of qualitative indicators of performance evaluation (including methods of measuring quality, nature, contribution, etc.), which also requires knowledge and skills. It is impossible to solve this problem by the efforts of Civil Service Council only, it also requires financial assistance from outside.

Priority 4: To improve the merit-based remuneration system for civil servants.

In 2007 the RA Law “On Remunerating Civil Servants” was amended, according to which the base salary (the part independent of the years in service) of all civil servants was raised, yet this was not linked to the new evaluation system and did not ensure the differentiation of remuneration of civil servants on the basis of criteria specified.

The introduction of a new system of merit-based remuneration of civil servants was late because no rational performance evaluation system was adopted.

Priority 5: To improve the Ethical Code of the civil servants and its compliance.

Since the draft law “On Public Service” has not been adopted yet, no ethical code has been put into circulation, no sub legal normative acts have been developed, ensuring the compliance with ethical rules.

Despite this, in terms of ethical code improvement certain progress has been recorded owing to draft law “On Public Services”. Before that the Ethical Code of Civil Servants was not stipulated by law, and was only approved by the Council of Civil Service (resolution of No.13 of May 13, 2002). The establishment of ethical norms as a law:

- will reinforce their mandatory implementation as will stress their legal, normative nature, regulated by the law;

- will allow overcoming the unilateralist that exists in several codes of ethics in force. Thus, for example, “the civil servant, out of duty, should avoid other business contacts with people in conflict with state authorities”.

At the same time the draft has some unclear definitions. In particular, the notion of “legal policy”, mentioned in Clause 1 of Part 1 of Article 22, the criteria of “public interest” are also uncertain.

Priority 6: To ensure incessant renewal of job descriptions for civil service.

This is an incessant and permanent function of civil service system that does not call for specific timeframes, unless required by the newly adopted piece of legislation. Overall, changes were introduced in over 4,300 job descriptions.

Priority 7: To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

Instead of a radical change of the specialized legislation a more general decision was made - to develop a draft law “On Civil Service” with an expanded domain of regulation, including also civil service. Yet the adoption of the law was late, for this reason some of the institutional changes aimed at harmonization with the EU countries cannot as yet be implemented.

Certain steps were taken to exchange experience with the EU member countries.

Overall, in the domain of civil service throughout the reporting period the required priorities of ENP Action Plan can be qualified as “partially in line”.

The implementation of the majority of requirements is largely related to the draft law “On Public Service”. The delay in adoption of the draft to a certain extent is conditioned by active discussions, related to its comprehensive nature, since the domain of its regulation includes most crucial relations not only in terms of civil services, but also state and municipal administration.

In the opinion, of the vast majority of experts in civil service, with the adoption of the law “On Public Service” many of the problems of this sphere will be resolved or preconditions will be in place to solve many issues that are in cause-and-effect relationship.

FREEDOM OF SPEECH,
MEDIA AND INFORMATION

The ENP EU/Armenia Action Plan contains the following requirement: “Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” (Section 3 “Priorities for Action”, Priority Area 2).

Section 4 “General Objectives and Actions” also considers this sector. Clause 4.6.3 “Information Society and Media” of Sub-Section 4.1 “Political Dialogue and Reform” of Section 4 “General Objectives and Actions” says:

“- elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-Signatures), e-Government, e-Health, e-Learning, e-Culture;

- work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;

- work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;

- switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.”

The current report "Implementation of the European Neighborhood Policy in 2007” by the Committee of European Communities, section regarding Armenia, reads as follows:

“Measures have been taken to approximate the legislation on freedom of speech to the international standards: the amendments made to the RA Law “On Television and Radio” were aimed at ensuring balance in the National Commission on Television and Radio. Until the year 2013 the National Commission will be supervised by the President, after which the number of Commission members elected by the National Assembly will be equal to the number of members appointed by the President. The board members of the Council of Public Television and Radio Company are appointed only by the President. In July 2007 the National Assembly turned down two draft laws imposing restrictions on programs of international broadcasters. Permanent absence of independence of the regulatory bodies and insufficient informational pluralism still remain causes of concern. The RA Law “On Freedom of Information” is not fully applied yet, namely with regard to recording, classification and storage of information. During the presidential election campaign, a number of broadcasters were exposed to tax inspection, which gave grounds to suspect deliberate pressure exerted on them.

According to the provisions added to the Criminal Code of Armenia in April 2007, hindering the professional activity of journalists is persecuted. But self-censorship, violence and pressure on journalists are still practiced. Libel and insult have been partially decriminalized. Still, libel and "insulting a government representative" are punished also by imprisonment."

Having analyzed fulfillment of the obligations specified in the ENP EU/Armenia Action Plan, Yerevan Press Club (YPC) came to the following conclusions.

Broadcasting Legislation and Practice

On February 26, 2007 the National Assembly of Armenia adopted the RA Laws "On Introducing Amendments to the RA Law 'On Television and Radio'" and "On Introducing Amendments and Addition to the RA Law 'Regulations of the National Commission on Television and Radio'". But, as it has recently become traditional, the Laws were discussed and adopted hastily, through rapid procedure.

The argument that the need to bring the legislation into accord with the amended Constitution called for a rapid procedure does not hold water. Over a year had elapsed since the adoption of the amendments to the Constitution, and both the governmental and the parliamentary structures had enough time to hold discussions, hearings, to study the proposals submitted, to get expert evaluation. Moreover, in September 2006 the Government put into circulation a more comprehensive draft law that was rejected by the National Assembly, due to the efforts of the civil society and journalist community. Thus, the Government had plenty of time to discuss the draft law with the interested organizations since it was just the shortened version of the previous one.

After adoption of the above-mentioned Laws, the YPC made a statement, which covered an opinion regarding these Laws. Namely, it was stated that: "The amendments to the broadcasting legislation (...) do not reflect even the positive stipulations of the amended Constitution. Firstly, the proportion of the members of the regulatory body (the National Commission on Television and Radio), appointed by the President and elected by the Parliament, as provided for by the Main Law, will, following the amendments, only be reached in 2011 (...). Secondly, the amendments do not ensure the public and political diversity in NCTR composition: in accordance with the procedures proposed, the decision about the appointment of NCTR members from NA will be made by the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President. In other words, the regulatory body, like before, will be formed solely by the political forces at power, and in this regard the amended legislation does not introduce any significant novelty. Thirdly, like before, the involvement of the public in NCTR formation and the transparency of its decision-making is not ensured." The YPC also stated that remaining subdivision into the paid (that is, the full-time NCTR members - the chairman and the vice chairman) and the unpaid members conditions huge gap in their competence and violates the principle of collegiate decision-making. And finally, according to YPC statement: "The expansion of the NCTR competence and inclusion of the public broadcaster into it, as stipulated by the amended Constitution, did not entail the description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio in broadcasting legislation."

Above two years have passed since amending the above-mentioned Laws. In April 2007 the tenure of 3 NCTR members expired. According to the law, two persons were to be appointed to this body (the number of the NCTR members changed from 9 to 8). On April

7, 2007 the President of Armenia appointed one National Commission member (Grigor Amalian was reappointed as a member of the NCTR and later on as its Chairman), though the National Assembly should have been the first to elect NCTR member, since the amendments to the Law read as follows: “In case of expiry of the National Commission members’ tenure or early termination of their powers, the vacancies shall be filled first by the National Assembly and then by the President of the Republic.” Still, pursuant to the same amendment: “If one party appointing (electing) a member to the National Commission fails to appoint (elect) its member, this will not deprive the other party appointing (electing) a member to the National Commission of its right to fill in its vacancy.” As of December 31, 2008 the National Commission had not appointed its member, moreover, it did not include this issue on the agenda of its sessions. The tenure of three of the remaining 6 NCTR members expires in 2009 (thus, according to the above-mentioned principle of succession, two of them shall be elected by the National Assembly and one - by the RA President). The tenure of the other three members expires in 2011 (accordingly, two members shall be appointed by the President, one - by the NA) and if the NA remains disinterested in this issue, the amendments made to the Constitution and the laws will lose their significance and the activity of the NCTR will be rendered less efficient.

On June 27, 2007 at the extraordinary session of the RA NA the Draft Laws “On Introducing Amendment to the RA Law 'On Television and Radio'” and “On Introducing an Addition to the RA Law ‘On State Duty’”, initiated by the RA Government, were brought up for consideration. They were immediately called by experts draft laws on stopping the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty in Armenia. The first draft law stipulated prohibition of the activities of other broadcasters on the frequencies held by the Public TV and Radio Company. The second one specified a state duty of 70,000 AMD for “each issuance of a program cycle of the national editorial office or a service of a foreign media by the TV and Radio companies of the Republic of Armenia”. Naturally, adoption of these laws would put an end to broadcasting of Armenian Service of Radio Free Europe/Radio Liberty by the Public Radio of Armenia. Broadcasting of such programs by private companies would become unprofitable.

What issues, vital for the country and the society, are these two draft laws to solve that they had to be necessarily considered at an extraordinary session, instead of being included into the agenda of the ordinary session, following all the procedures that the law provides for? The draft authors have not presented any convincing arguments as to the urgency of their adoption at this very moment.

In this case again, for many times already has the Government hastily submitted draft media-related laws to the National Assembly - without consulting the civil society, media representatives, experts, even without the opinion of the appropriate parliamentary commission. These draft laws did not solve any vital problem for the country and the society, therefore, it is not clear why it was necessary to consider them at an extraordinary session. The draft authors did not present any convincing arguments as to the urgency of their adoption at that very moment.

These draft laws caused a wave of protest since, as it was mentioned in the statement of a number of NGOs, membering in Partnership for Open Society initiative, “analysis of the draft laws, presented to the NA, shows that they are primarily directed against the only broadcast medium out of the control of the RA authorities - the Armenian Service of Radio Free Europe/Radio Liberty, because their adoption in essence will stop the broadcasting of the programs of the Service on Armenian radio waves”.

On July 3, 2007 the draft laws were not adopted due to lack of quorum: 65 deputies took part in the voting, whereas 66 votes were necessary for quorum. Nevertheless, since September 1 the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty on the Public Radio of Armenia were stopped by the initiative of the Council of Public TV and Radio Company. On July 6 the Council of Public TV and Radio Company resolved to stop airing the programs of local and foreign broadcasters on the public TV and radio from August 9. This decision affected not only Radio Liberty: in August the broadcasts of "Tsayg" TV company of Gyumri on the 6th VHF that the TV company had been using jointly with "Shirak" public TV was stopped. The same is true for the program of "Mir" Interstate TV and Radio Company on the Public Radio of Armenia. The broadcasts of the Radio Liberty Armenian Service is made on the frequencies of "ArRadioIntercontinental". This private radio company is aired in Yerevan and in some other regions of Armenia. According to the representatives of the Armenian Service of Radio Liberty, changing the broadcasting company resulted in a significant reduction of the potential audience.

In the years 2007-2008, an example of governmental pressure on media was the campaign against "GALA" TV company of Gyumri. On October 22, 2007 Vahan Khachatrian, the owner of "CHAP" LLC - founder of "GALA" - made a statement regarding the attempts of various power agencies to exert pressure on TV company. The document stressed the infallibility of the TV channel's stance and the readiness to prevent any attempt of intervention into its editorial policy. The need to make such announcement was caused by the fact that after broadcasting by the company of the speech of RA First President Levon Ter-Petrosian at an event, dedicated to Armenia's Independence Day, September 21, different state bodies tried to exert pressure on "GALA", demanding to stop broadcasting speeches of the opposition representatives. A week after the statement of Vahan Khachatrian, the RA State Tax Service started check-up at "CHAP" LLC. Upon the end of the audit the RA State Tax Service reported the violations revealed. In particular, this referred to concealed amounts of TV advertising. Through a motion of the tax officers on December 3, 2007 the property and finance of "CHAP" were taken into custody. On December 17 the court hearings of the suit of the Gyumri Tax Inspection versus the founder of "GALA", "CHAP" LLC, started and were interrupted on December 18 after the court accepted the counter-claim of "CHAP" demanding to abolish the act on the results of audit. On March 19, 2008 the RA Administrative Court obliged "CHAP" LLC to pay into the state budget tax debts and fines, exceeding the amount of 25 million drams (more than $ 81,000). The overall amount that "GALA" founder was to pay including the litigation and the execution expenses came to 26 million 899 thousand AMD (about $ 90,000). From March 19 to March 25, 2008 there was an unprecedented action for Armenia in Gyumri - a telethon in support of "GALA" TV company. Further on, the fundraising was made all over Armenia and abroad. As a result, more than 26 million AMD were raised and used for payment of the tax liabilities.

At that time and afterwards different governmental agencies tried to influence "GALA" TV company. The same authorities pressed on advertisers to discontinue cooperation with "GALA" TV company. As a result, almost no commercials were aired by "GALA" TV company from the end of 2007 until summer of 2008. Besides, in the same period of time a dispute started between the Gyumri municipality and the "GALA" founder, "CHAP" LLC. The Gyumri municipality addressed the court demanding that "CHAP" LLC be obliged to stop the use of the city TV tower. The dispute was settled on October 31, 2008, when RA Court of Cassation abolished the ruling of court of general jurisdiction of Shirak region made in favor of the Gyumri municipality.

The next amendments to the RA Law “On Television and Radio” were made in November 2007, just before the presidential elections. Article 11 of the Law was given a new edition. The Article referred to the activities of TV and radio companies during the period of elections and referenda. The amendments were made to bring the Article into compliance with the RA Electoral Code, regarding pre-election promotion and its coverage in the media. But the amendments did not cover the issue of regulating the activity of media in the period since the announcement of the election date till the start of pre-election promotion. The obvious political bias of most of the TV channels, recorded by the YPC monitoring in October-December 2007, showed the need for such regulation.

The legislation stipulated that the National Commission on Television and Radio must control the compliance of television and radio companies with the procedure of pre-election promotion defined in the RA Electoral Code, and the right to address the court in case of detecting violations. Though the local and international monitoring reports specified cases of violation of the law, the NCTR did not record any violation.

Speaking about amendment to the RA Law “On Television and Radio” it should be mentioned that in August 2008 the RA Government hastily, without any preliminary discussion and acceptable justification, presented to the National Assembly another draft law on introducing an amendment to the Broadcast Law: “Not to announce broadcast licensing competitions till July 20, 2010. The TV companies, whose licenses expire before January 21, 2011, can request prolongation of the license from the National Commission. The license will thus be prolonged for the period requested, but for no longer than January 21, 2011.” The need to introduce such a provision is substantiated by the Government by the expected transition from analogue to digital broadcasting in Armenia.

The draft law was approved at the Government session on August 28, 2008, but was made public only on September 8, the day the session of the parliament was opened. The draft law was promptly put on the agenda, discussed, approved in the first hearing on September 10, and in the evening of the same day finally adopted at the extraordinary session. The civil society and experts regarded this amendment to be aimed at depriving the “A1+” TV company of the opportunity to take part in broadcast licensing competitions for 2 more years.

On September 9, 2008 Yerevan Press Club and its partner organizations released a statement. “This initiative of the Government has nothing to do with either the protection of the broadcasters, consumers, state or “with ensuring equal opportunities and prevention of market upheavals” (as noted in the governmental justification), but is only an attempt to get rid of the broadcast licensing competitions as of an unnecessary headache. The adoption of such laws will result in a situation when we shall enter the era of digital broadcasting with low-quality broadcaster that does not meet the public demand and international standards, is monopolized and hence is easy to control”, the statement stressed in particular.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, also expressed his concern regarding the adopted amendment. In his letter of September 26 to RA President Serge Sargsian, Miklos Haraszti pointed out: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.” In the opinion of Miklos Haraszti, moratorium on licensing meant that Armenia would not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of “A1+” TV company. OSCE Representative also reminded that in April 2008 the Parliamentary

Assembly of the Council of Europe, in its turn, also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow “A1+” to apply for a new license. “I hope that, for the sake of pluralism, the RA Government will review the amendments with the active participation of all relevant civil society and media stakeholders”, Haraszti wrote.

At the end of 2008 a package of amendments to broadcast legislation, developed by a group of deputies, was submitted to the consideration of the National Assembly. The Standing Commission of NA on Science, Education, Culture, Youth issues and Sport put up the package for public discussion.

Yerevan Press Club presented its Conclusion on the issue:

“Having considered the package of draft laws “On Introducing Amendments and Additions to the RA Law 'On Television and Radio'”, “On Introducing Amendments and Additions to the RA Law ‘Regulations of the National Commission on Television and Radio'” and “On Introducing Amendments and Additions to the RA Law ‘Regulations of the RA National Assembly '” put up for discussion by the National Assembly of Armenia, Yerevan Press Club is of the following opinion:

The package does not consider the principal fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. It does not take into account the proposals made by the journalist community and the civil society as well as the obligations towards international organizations undertaken by Armenia:

a) In particular, the draft laws do not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Item 8.3 of PACE Resolution 1609 “Functioning of Democratic Institutions in Armenia” (April 17, 2008): “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account.” Earlier, in July 26, 2006, the OSCE Representative on Freedom of the Media Miklos Haraszti mentioned in his report on the state of media freedom in Armenia: “(...) Legislative changes should not be limited to a ‘half Presidential - half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.” If mechanisms providing for social and political diversity are not developed, then, as Miklos Haraszti stated in the report, the government control over these bodies would not ease, particularly in such time periods when the President and the parliamentary majority represent the same political force.

b) The draft laws do not consider the issue of ensuring transparency in the decision making process of the NCTR. Inadequate transparency in decision making was mentioned in the judgment of the European Court of Human Rights on the case of the founder of “A1+” TV company, “Meltex” LLC, and its President Mesrop Movsesian versus Republic of Armenia (known as the case of “A1+”). In its decision the European Court recalled the guidelines adopted by the Council of Europe Committee of Ministers in the domain of broadcasting regulation, which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that “all decisions taken (...) by the regulatory authorities (...) be (...) duly reasoned”. The judgment

also quoted the PACE Resolution on Armenia of January 27, 2004, which concluded that "the vagueness of the law in force had resulted in (NCTR) being given outright discretionary powers". In the opinion of the European Court, the licensing procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. This was noted also by Miklos Haraszti, who recommended the need for such amendments in his abovementioned report of the RA Law "On Television and Radio" that would be clear about broadcast licensing competition procedures: "The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks."

c) Though the amended Constitution stipulates that the National Commission on Television and Radio should be the regulatory body for both private and public broadcasters, the draft laws do not define precisely the relation between the NCTR and the Council of Public TV and Radio Company, the mechanisms of regulating the public broadcasting, liability forms in case of violations, etc.

d) And finally, the draft laws do not eliminate the negative consequences of the amendment of September 10, 2008 to the RA Law "On Television and Radio". The amendment renders impossible the implementation of practical measures ensuing from the judgment of the European Court of Human Rights on the case of "A1+" TV company, which is emphasized in the recommendations of international organizations. Namely, PACE Resolution 1620 (June 25, 2008) noted: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights concerning the denial of broadcasting license to 'A1+', calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on March 26, 2008 and with the case law of the European Court of Human Rights."

Ignoring the above-mentioned basic issues renders meaningless the amendments to the broadcast legislation. The amendments do not provide for significant reforms and are just formal and superficial."

The situation connected with application of the RA Law "On Freedom of Information" has almost remained unchanged. The absence of two legally stipulated procedures - the procedure of registration, classification and archiving of the information processed by the owner of the information or imparted for him, as well as the procedure of providing duplicates (copies) of information by state institutions and organizations, local self-administration bodies creates certain obstacles. In autumn 2008 the RA Ministry of Justice developed a draft law "On Freedom of Imparting Information". In the opinion of experts from several non-governmental organizations (in particular, the Freedom of Information Center), this draft law is even regressive as compared with the acting Law.

Amendment of the Criminal Code of Armenia

The section regarding Armenia in the current report "Implementation of the European Neighborhood Policy in 2007" by the Committee of European Communities says: "The new provisions included in the RA Criminal Code in April 2007 stipulate that impeding the legitimate professional activities of journalists is persecuted (...)". Meanwhile the RA Criminal Code has long had Article 164 "Impeding the Legitimate Professional Activities of

a Journalist", which was amended on June 1, 2006. Reformatory labor was removed from the list of sanctions specified in the Part 1 and Part 2 of the Article.

Decriminalization of libel and insult has often been discussed, and the international institutions recommend to abolish Articles 135 ("Libel"), 136 ("Insult") and 318 ("Insult of Representative of Power") of the RA Criminal Code. There was progress in this respect in 2008: on May 19, 2008 the RA National Assembly nullified Article 318.

State of Emergency (March 1-20, 2008) and Media

On March 1, 2008 a state of emergency was introduced in Yerevan by the Decree of the RA President Robert Kocharian. Subclause 4 of Clause 4 of the Decree stipulates that "the media publications on state and inner political issues can be made exclusively within official information, released by state bodies". Such definition was in fact used to exert 20-day censorship in Armenia. While censorship was not listed among the restrictions, imposed by the Decree, moreover, according to Article 4 of the RA Law "On Mass Communication", it is actually prohibited, these days not only in Yerevan, but also all over the country factual pre-emptive censorship was practiced.

Due to this the publication of a number of national newspapers was banned because of their content. Some others, facing illegal obstacles, refused working, because they were unable to voice opposition and critical viewpoints, while the publication of opinions, discrediting and insulting for the opposition, often even aggressive, in other newspapers was in no way restricted. The media report that the pre-emptive censorship is practiced by people introducing themselves as officers of National Security Service. The Decree was directly followed by blocking of several news web sites that did not even have time to make any report on the situation. Such actions were completely illegal, and imposing restrictions with no grounds, under the circumstances, could be qualified as a violation of the presumption of innocence. Here, too, political discrimination was manifest, as only those sites were blocked that had previously disseminated criticism of the country authorities.

Meanwhile, in the broadcasting, fully controlled by authorities, there were numerous violations of the legality and the emergency rule. In particular, a number of media, violating the Subclause 4 of Clause 4 of the Decree, published and broadcast not only official information, but also presenting political propaganda, most of which was one-sided, discrediting and insulting for the opposition. The most prominent example of such unacceptable coverage was shown by the First Channel of the Public Television of Armenia that not only neglected the clause of the Decree, but also broke Article 28 of the RA Law "On Television and Radio": "The prevalence of a political stance (...) in the programs broadcast by public TV (...) is prohibited." The National Commission on Television and Radio, which, according to the Law, is an independent regulator and is also "to oversee the activities of TV and radio companies" (RA Law "On Television and Radio", Article 37, Part 1), failed to perform one of its main functions and did not prevent the violation of the Decree provisions not only by the PTA First Channel, but also the majority of private broadcasters. Violations of the relevant Decree provision were recorded also in a number of print media, with no response ensuing from the RA Ministry of Justice. The Ministry, within its competence, had to take steps to eliminate the violations.

On March 13 the Decree on the state of emergency was amended. In particular, Subclause 4 of Clause 4, referring to the media, was re-defined: "The media are prohibited from publishing or disseminating information on state and inner political issues, which is

deliberately untrue or destabilizing, or appeals to take part in events held with no prior notice (illegally), as well as publication or dissemination of such information or appeals in any other way or form." Yet, under the conditions of selective law enforcement and illegal actions that the media sphere encountered lately, this definition rendered media quite vulnerable. After the amendment of the Decree, a number of newspapers were still not allowed to print; the Internet-sites were still blocked until the state of emergency was lifted on March 21, 2008.

In 2008, the Parliamentary Assembly of the Council of Europe addressed the situation in Armenia twice: in its Resolution 1609 (2008) "The Functioning of Democratic Institutions in Armenia" (April 17, 2008), and Resolution 1620 (2008) "The Implementation by Armenia of Assembly Resolution 1609 (2008)" (June 25, 2008). Besides, on June 17, 2008 the European Court of Human Rights released its judgment on the case of the founder of "A1+" TV company, "Meltex" LLC, and its President Mesrop Movsesian versus Republic of Armenia. In particular, the European Court ruled that the right of the applicant to freely impart information and ideas, stipulated in Article 10 of the European Convention of Human Rights and Fundamental Freedoms was violated.

ELIMINATION OF TORTURE

The ENP EU/Armenia Action Plan contains the following provisions regarding elimination of torture, other inhuman or degrading treatment or punishment:

- further reform of the penitentiary system in line with the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions;

- closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society (Section 3 “Priorities for Action”, Priority area 2, Specific Actions);

- ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Section 4 “General Objectives and Actions”, Sub-Section 4.1 “Political Dialogue and Reform”).

Resolution No. 927-n of the RA Government of July 19, 2007 ratified the list of priorities and actions envisaged by ENP EU/Armenia Action Plan to be implemented in 2007. Clauses 12 and 13 stipulated:

“ - further reform of the penitentiary system (take measures aimed at facilitation of public control over the conditions in prisons and places of temporary detention),

- reform of the police (cooperate with OSCE and the Council of Europe in order to eliminate torture, other mistreatments and corruption)”.

The Republic of Armenia has acceded to the Universal Declaration on Human Rights, the International Pact on Civil and Political Rights (1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1993), the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols 1 and 2 (2002), the European Convention of Human Rights and Fundamental Freedoms (2001).

Torture and degrading treatment are prohibited by the RA Constitution (Articles 17, 12). The RA Criminal Code adopted in 2003 specified the respective punishment for torture (Article 119).

In May 2006 the RA ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for establishment of a national observation mechanism (national mechanism) in closed systems (penitentiaries, places of detention, police departments, psychiatric clinics, etc.).

On April 8, 2008 the National Assembly of Armenia made an amendment to the RA Law “On RA Human Rights Defender”, according to which the Defender is the national mechanism specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law does not provide for civil society involvement in the national mechanism. Thus, involvement of the civil society depends on the discretion of the Human Rights Defender.

About a year has passed after approval of the amendment, but nothing has been done either to establish the framework of the mechanism or to introduce it.

Based on the requirements of Article 47 of the RA Law “On Living Conditions of Prisoners and Inmates”, on May 14, 2004 a Public Monitoring Group in the Detention Centers was established under the Criminal Executive Service of the RA Ministry of Justice. In accordance with the “Regulations on Activity of the Public Monitoring Group in the Detention Centers of the Criminal Executive Service of the RA Ministry of Justice”, this Group is the supervisory body responsible for the issues of protection of the rights and freedoms of people in places of detention. Pursuant to the Regulations, the Group members have the right to visit freely the penitentiaries, to read various documents (if the prisoners’ consent is available - also their personal cases and correspondence, except confidential documents), to check the situation inside the institution, and to meet with prisoners.

Both the Public Monitoring Group (in 2005) and the European Committee for Prevention of Torture (CPT) mentioned in their reports the bad physical treatment of the prison staff to prisoners (striking the handcuffed prisoners with hands and feet, hitting with clubs).

The level of medical service in prisons is inadequate. In particular, the injuries suffered by prisoners in the result of ill treatment are not properly recorded in the relevant registers; the prisoners' requests for examination by a forensic doctor called from outside their place of detention are refused. No information is provided to the Procuracy about physical abuse and special measures used towards prisoners.

The biggest concern is caused by the situation in police departments and other investigating bodies. Numerous complaints are presented with regard to unlawful detention of people in police departments, abuse and violence. Violence in police departments is mainly aimed at obtaining a confession or testimony against third persons. The procedures of bringing people to the police department and arresting them are not observed, interrogations are often conducted unattended by the lawyer. The public is informed about cruel treatment in police departments only at times of political tension, when the active representatives of the opposition are brought to police departments, or in cases with fatal outcome.

To analyze the situation with torture and inhuman treatment, a reference should be made the CPT report. The latest CPT report on the situation in Armenia was published in 2006. Still, all concerns and recommendations mentioned in this report are actual for 2008 as well (the CPT visited Armenia in 2008, in the post-election period, but the report has not been published yet).

For example:

- The practice of detainment of criminal suspects for more than four days has remained unaltered since 2006. In particular, after the events in March 2008 there were multiple cases of detainment of people in police departments for a period exceeding four days.

- The term of transporting the people to places intended for preliminary confinement, i.e. not later than within 3 days, is not observed mainly because of wrong arrangement of the work of the escorting police officers. Besides, there are frequent and long-lasting transitions. All this increases the risk of inhuman treatment.

- The reports specify that the people arrested by the police are constantly exposed to inhuman treatment and unlawful actions.

There is no progress with regard to this either. Here is an example:

"On May 12, 2007, according to the official information, Levon Gulian, who was brought to the police department, jumped out of the window and died. A criminal case was filed based on Part 1 of Article 110 of the RA Criminal Code. The preliminary investigation was conducted by the Procuracy of Yerevan. On December 12, 2007 the case was taken over by the senior investigator on high importance cases of the Special Investigative Service of Armenia. On March 12, 2008 G. Petrosian, the senior investigator on high importance cases of the Special Investigative Service of Armenia, made a decision to terminate inspection of the case due to absence of corpus delicti. On March 26, 2008 the complaint presented by the legal successor of the victim was rejected as groundless by decision of Z. Tadevosian, the senior prosecutor of the General Procuracy. The legal successor's lawyers appealed against the decision of the Procuracy to the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan. The court revoked the decision of the Procuracy and made a resolution to recommence investigation of the case. On July 21, 2008 the RA Criminal Court of Appeal ratified the resolution of June 6, 2008 of the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan, according to which the decision to terminate inspection of the fact of Levon Gulian's death in the yard of the police administrative building was considered unjustified and unlawful. The preliminary investigation of the case recommenced on August 16, 2008. The courts had mentioned in their decisions that the preliminary investigation had not been comprehensive, integral or impartial; there had been numerous violations of the law, the required measures aimed at detecting the truth had not been taken, the representatives of the victim's legal successor were not invited to take part in implementation of inspection activities, the unlawful actions of some police officers were not assessed properly. Though several months have passed after recommencement of investigation, the behavior of the preliminary investigation body implies that the Special Investigative Service of Armenia is not in a hurry to fulfill the requirements stipulated by the court resolutions. In particular, other versions of Levon Gulian's death are still ignored. No one has been interrogated except two police officers, no expert examination has been conducted with a manikin, and no one is a suspect or an accused in the case."

- At any stage of detainment by the police, the arrested persons can present a complaint to the judge with regard to inhuman treatment by the police. The judge should make a written record on the complaint, make a decision on conducting a medical examination, and follow up performance of investigation. But the medical examination of the arrested people is often perfunctory and is conducted mainly in the presence of the representatives of the law enforcement bodies. No proper control is ensured by the Procuracy over the claims of the arrested with regard to such injuries, which are later on detected during the medical examination.

There has been no progress in this respect. The results of medical examination of the arrested, as well as their claims about the suffered injuries, are recorded in the relevant registers of criminal executive bodies in the presence of the escorting police officer, which holds the arrested back from telling the truth.

- The arrested are not offered the opportunity to inform their relatives about their situation starting from the very moment of detainment.

There has been no progress in this respect either.

- The arrested are often deprived of the right to use the lawyer's services from the very beginning.

This practice also continues, especially after the events that occurred on March 1, 2008.

During its visit in 2006, the CPT mission received a number of reliable statements about inhuman treatment of the arrested by police officers. Almost all statements were presented by persons (including women and the under-aged) detained in preliminary confinement places.

According to the report: “The statements about inhuman treatment mainly refer to slaps in the face, cuffs, kicks, hitting with rubber and wooden clubs, chair legs. Some statements referred to suffocation with plastic packs as a fact of inhuman treatment. Sometimes, the inhuman treatment was so cruel that it could be considered as torture.”

Almost all statements referred to inhuman treatment by operating officers (less frequently - by investigators and senior police officers) during preliminary interrogations. That was done for the purpose of extorting confession, evidence and other information. Thereafter, the CPT mission talked to several persons (including women and children), who stated that they had been exposed to unacceptable psychological pressure aimed at getting a confession of committed crime. This was accompanied with insults, abuse and threats of physical power or sexual violence to those people or their relatives and friends.

At court sessions no notice is taken of the defendants’ statements that the prejudicial testimonies had been exerted from them by violence. No public officer in Armenia has ever been punished for the use of violence or torture. This is also mentioned in the CPT report.

At the beginning of the visit in 2006, the RA General Procuracy informed the CPT mission that there had been no record of complaints against officers of law enforcement institutions for inhuman treatment. Such a situation would be doubtful with regard to the law enforcement system of any country. At the same time, the Armenian police failed to provide the CPT mission with any information regarding complaints on inhuman behavior, due to the obvious absence of statistics.

To rectify the situation it is necessary:

1. To introduce changes to the court procedural practice, including:

- To apply the relevant provisions of the criminal legislation, pursuant to which, in case of availability of the defendant’s statement about torture, the court should immediately demand investigation;

- To renounce the practice of considering the defendant’s confession as the principal proof of the defendant’s guilt.

2. To apply towards police officers the punishment for tortures envisaged by the criminal legislation.

3. In accordance with the procedure specified in Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to declare that Armenia acknowledges the power of the UN Committee Against Torture to accept and review the personal statements of individuals who consider that the requirements of the Convention have been violated.

4. To reform the criminal legislation, including:

- To amend and supplement the Criminal Procedural Code with provisions regarding interrogation of the suspect, accused, and witness, in order to establish the comprehensive procedure of interrogation by police officers.

5. To organize training for police officers and to check the professional level and knowledge of the international standards while appointing new officers.

6. To conduct proper medical examination starting from the moment of bringing the arrested persons to the penitentiaries and to obtain explanation regarding injuries in the absence of the escorting policeman.

7. To provide for guarantees of independence of the medical staff in the penitentiaries. To consider the possibility of the medical staff reporting to the RA Ministry of Public Health.

8. To introduce legal provisions on establishing a national mechanism, stipulated in Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prescribing the involvement of civil society in it.

FUNCTIONING OF THE ELECTORAL SYSTEM

The ENP EU/Armenia Action Plan contains the following provision regarding this sector: "Ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (Section 3 "Priorities for Action", Priority area 1, Specific Actions).

The elections to the RA National Assembly and the elections of the RA President were held in 2007 and 2008 accordingly.

The parliamentary elections of 2007 were qualified by the international observers as "generally complying with the obligations undertaken towards the OSCE and CoE and with other international standards"[32]; the US State Department stated that they were "significantly improved, though not fully consistent with the international standards"; and the local observers said that "the elections were accompanied by large-scale profound violations". At the same time, the OSCE/ODIHR observers mentioned that there were still unsolved principal problems related to the Electoral Code and implementation thereof, in particular, regulation of the pre-election propaganda, counting of ballots, tabulation of results, the work of electoral commissions, and examination of complaints.

The final report of the international observers' mission on the parliamentary elections of 2007 in Armenia, contained the following recommendations:

- to overcome the discrepancies between the Electoral Code and other pieces of legislation;

- to amend the provisions of the Electoral Code regulating the appeal procedure, by setting the mandatory requirement of calling a meeting of the electoral commission of any level for consideration of any written complaint and making the relevant written decision by the commission;

- to provide for the opportunity of challenging the verdict made by the court of primary jurisdiction with regard to an election dispute;

- to prescribe to the Central Electoral Commission (CEC) and territorial electoral commissions to report to the Procuracy and other authorized bodies regarding all significant violations, including the violations that might affect the election results;

- to place the ballot boxes in electoral districts so that the electors could vote facing the members of the electoral commission;

- to record cases of voting with the help of another person in the register of the district electoral commission and to put down the names of the voter and his/her assistant;

- to specify that a person can assist only one voter;

[32] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

- to put down the initial data (including the number of the received ballot papers and voting envelopes) in the minutes of the district electoral commission prior to commencement of the election process;

- to specify the mandatory requirement to keep the voting results posted up in an "easily observable place" of district electoral commission for a period of seven days following the date of voting[33].

After making these recommendations and until the elections of the RA President in 2008, the Electoral Code was amended and supplemented twice (on November 16, 2007 and December 18, 2007), but the above-mentioned recommendations were not covered by the amendments, and the Code was not brought into compliance with the requirements of the Venice Commission[34].

The elections of the RA President were held on February 19, 2008, during which, according to the local observers, the already vested usage of administrative and financial resources, bribing of the electors, inadequate consideration by the Central Electoral Commission, courts, and law enforcement bodies of cases regarding electoral violations, grew even more extensive.

In the report (February 20, 2008) on their preliminary findings and conclusions with regard to the presidential election of 2008, the international observers stated: "Generally, the election complied with the obligations undertaken by Armenia towards the OSCE, CoE and with other internationally accepted standards", "the authorities have improved the legislative mechanisms, but they were not implemented because of lack of sufficient political will". This opinion of the observers' mission was disputed by some deputies at the spring session of PACE.

In its post-electoral interim report (February 20 - March 3, 2008) OSCE/ODIHR stated: "The final opinion regarding the election depends on the process of final counting and tabulation of votes and examination of disputes". John Prescott, the Head of the Temporary Commission of PACE Observers of the Presidential Elections, qualified the post-electoral situation and the events of March 1, 2008 as "the consequence of lack of the voters' confidence in the electoral process and legitimacy of its results."

In the final report on the presidential elections, OSCE/ODIHR observers stated: "Though in the pre-election process and on the election day the elections generally complied with the obligations undertaken towards the OSCE and with other internationally accepted standards, serious problems in the part of fulfillment of certain obligations arose in the post-electoral period. Thus, the criteria essential for conducting democratic elections were not sufficiently respected and the whole election process was devalued. In particular, lack of reporting and transparency was revealed, and the procedures of presenting complaints and appeals were not fully efficient".[35]

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[33] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

[34] The "Code of the Best Electoral Practice" and "Guidelines and Explanatory Report on the Code of the Best Electoral Practice" adopted during 52nd session of the Commission of the Council of Europe "Democracy through Law" (Venice Commission) on July 5-6 and October 18-19, 2002 accordingly.

[35] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

The international observers, PACE, OSCE/ODIHR and the Venice Commission again demanded to conduct detailed investigation of the violations made in the electoral process and to punish the persons guilty of the violations. Besides, they recommended making further amendments of the Electoral Code in order to secure the following:

- efficient examination of election disputes;

- making a justified decision by the Central Electoral Commission regarding every complaint; the decision shall clearly specify the steps of examination of the complaint, the results thereof, and the grounds for rejection of the complaint;

- mandatory registration of all complaints received by territorial electoral commissions, their examination only at official sittings, and transparency, by means of securing information awareness for all the persons authorized to be present at the sitting, and providing them with the opportunity to attend;

- extending the term for presenting applications for recount of votes from 14:00 to 18:00 p.m.;

- recount of ballot papers in every occasion of receiving such an application or official justification of refusal to recalculate the ballots by the decision of the territorial electoral commission;

- extension of the term defined for summarizing the election results, announcement of the final results of elections only upon expiry of the term set for consideration of all complaints;

- equal opportunities for all bodies authorized to appoint members to the territorial and district electoral commissions, their representation among the leading three members of the mentioned commissions;

- more clear definition of the legal status of decisions taken by territorial electoral commissions;

- the obligation of the police to announce periodically the number of citizens, who had requested the right to vote in places of their temporary residence;

- usage of the common procedure of entering the election results in the electronic network by all district electoral commissions;

- classification of electoral violations into criminal and administrative violations and precise definition of the procedure of their examination by criminal and administrative courts, accordingly.[36]

It is noteworthy that no legislative amendment is required for implementation of the majority of the above-mentioned recommendations. It would be sufficient to improve the law enforcement practice and to secure mutually complementary activity of state bodies in the electoral process, in order to exercise the voting rights of the citizens.

Steps to reform the legislation and improve the law enforcement practice, undertaken within the timeframes of this research, are listed.

[36] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

Improvement of the Legislation

By decision of the Chairman of the National Assembly of Armenia, a special commission was established for preparation of amendments to the Electoral Code. Not only the ruling authorities, but also representatives of other political parties (including the National Democratic Union, "Orinats Yerkir") were involved in the work of the commission (in cooperation with the Venice Commission). But only a few meetings of the commission have been by now called and it seems to have terminated its activity.

Changes in the Law Enforcement Practice

In spite of the received complaints, the CEC has not taken any measure to protect the voting right. It displayed just a formal approach and did not comply with the accepted international norms of examination of complaints.

According to the CEC, the Central Electoral Commission has taken decisions regarding 57 applications and has provided 8 official clarifications[37].

On February 18, 2008 letter No. 01-D/65-94, signed by the CEC Chairman, was addressed to Ruben Torosian, the proxy of the presidential candidate Levon Ter-Petrosian, notifying about rejection of all 33 claims presented by him.

By letter No. 06-D/414 of May 26, 2008 Ruben Torosian was notified that in accordance with Clause 7 of Article 40 of the RA Electoral Code, the CEC considered some of his claims at CEC meetings.

Courts have rejected about 20 claims regarding the activity or inaction of the CEC. Referring to the procedural norms and taking advantage of the omissions in laws, the courts did not secure protection of the violated voting rights of the citizens. The administrative court rejected all claims regarding violations of voting rights. Moreover, all court hearings for those cases were assigned within terms though allowed by the law but still unreasonable, because even if the verdicts had been made in favor of the claimants, they would have been senseless, as it would be already impossible to restore the violated voting rights.

Thus, on February 22, 2008 and March 3, 2008 claims were presented to the RA Administrative Court, with a demand to declare the CEC actions illegitimate for failure to consider the claims presented to it. The court verdict was announced on August 1, 2008 and the claim was rejected.

The hearings for the case "Ruben Torosian versus the Public TV and Radio Company", accepted for processing on February 1, 2008, were held on May 6, 2008.

On March 4, 2008 a claim was presented to the RA Administrative Court with a demand to declare the CEC actions illegitimate for violation of the procedure of summarization of the election results. The Administrative Court announced its verdict only on August 1, 2008. The claim was rejected.

[37] The CEC analysis of violations of the Electoral Code of Armenia, committed during the presidential election on February 19, 2008, page 5.

The election for the local self-government bodies commenced in May 2008. No legislative amendment or organizational change was effected before the election. No change was made with regard to the following:

- the management staff of electoral commissions;

- the procedures of counting of votes, preparation of minutes, tabulation of the voting results.

According to the report of mission of observers of Helsinki Committee of Armenia, which were based in the communities of Yerevan[38]:

1. At several polling stations placement of the voting booths did not comply with the procedure established by the law, though those stations had every opportunity to place the voting booths properly.

2. Unauthorized persons were present at the polling stations - police officers dressed in uniform, some of whom even took part in counting of votes.

3. There were incidents of group voting, open voting, attempts of voting with someone else's passport, voting without passports, as well as throwing a pack of ballots into the ballot boxes, repeated and prompted voting.

4. There were cases of violence and pressure on authorized persons and observers.

5. In several cases, the work of the commission chairmen and members was careless and disorganized.

All these elections were won by the representatives of the acting authorities or the candidates supported by them. Administrative and financial resources had decisive impact on the results of elections. Usage of administrative resources and bribing of the electorate is getting to be a coordinated process in Armenia.

Structural changes are required to ensure functioning of elections as the most important institution of democracy. In particular, the first-priority measures are:

- precise definition of the procedures of claim examination and voting rights' protection, and elimination of contradictions;

- improvement of the level of independence of the bodies responsible for protection of the voting rights (first of all - the RA Administrative Court).

[38] Reports on elections to the local self-government bodies of Nork-Marash, Davitashen, Malatia-Sebastia, Avan communities of Yerevan held on May 18, 2008, and of Arabkir community of Yerevan held on September 7, 2008.

FINANCING OF PARTIES

The ENP EU/Armenia Action Plan, Section 4 "General Objectives and Actions", Sub-Section 4 "Political Dialogue and Reform", Clause 4.1.1 "Strengthening the Stability and Effectiveness of Institutions Guaranteeing Democracy and the Rule of Law" contains the requirement to "establish clear and transparent rules on party financing".

Financing of parties is regulated by Articles 24, 25, 27, and 28 of the RA Law "On Parties"[39]. Article 24 of the Law specifies the types of funds possessed by parties: membership fees, donations, financing from the state budget, income received from civil and legal transactions and other income not prohibited by the law. Article 25 regulates the procedure of making donations to parties. In particular, Clause 2 of the Article specifies the list of legal entities and individuals not allowed to make donations. In case of getting donations from the entities on the list, except anonymous donators, the parties have to return the amount to the donator within two weeks; donations made by anonymous donators should be transferred to the state budget within the same time period. Article 27 regulates the financing of parties, specifying in particular the volume of financing, the parties entitled to such financing and the volume of it[40], allocation of the funds among parties that are members of an election alliance, as well as grounds for termination of state financing. And finally, Article 28 of the Law regulates the procedure and terms of financial reporting by parties. According to this Article, a party should provide the authorized state body (in this case - the RA Ministry of Justice) with the annual report on the funds received and spent during the reporting year. The report should be presented by March 25 of the year following the reporting year. The same deadline is defined for publication of the financial report of the party in media. This Article also specifies to whom and how the financial report should be presented, what shall be reflected in it, as well as refers to the necessity of implementation of financial supervision.

Financing of parties is closely connected with financing of election campaigns. According to Article 25 of the RA Electoral Code, parties are allowed to make personal, optional contributions to the election fund established for financing of the election campaign. This gives the parties the opportunity to finance their election campaigns (if they take part in the election to the National Assembly by the proportional election procedure), the election campaigns of presidential or deputy candidates (by the majority procedure), as well as the election campaigns of their candidates for the position of head or member of the community council. According to Article 79 of the Electoral Code, a party can make a contribution to the election fund of its presidential candidate for the amount not to exceed 30.000-fold of the minimum salary (AMD 1000), i.e. maximum AMD 30 million[41]. Similar restrictions are specified for contributions to the election funds of the parties or the election funds of the candidate(s) nominated or supported by them. According to Article 112 of the Electoral Code, a party may contribute to its election fund (or the election fund of its block

[39] This Law was adopted on July 3, 2002 and was enforced on November 15, 2002. Official Bulletin of the Republic of Armenia, No.34 (209), August 15, 2002.

[40] According to Article 27 of the Law, financing form the state budget can be provided only to those parties (blocks of parties) which have received at least 3% of the sum of the number of inaccuracies and the total number of votes given in favor of the voting lists of all parties by the proportional election procedure at the time of the latest election to the National Assembly. These funds are allocated among the parties (block of parties) proportionate to the votes received by them.

[41] Pursuant to the same Article, the amount of expenditures form the election fund shall not exceed AMD 70 million.

of parties) an amount not to exceed AMD 2 million, and to the fund of a deputy candidate by the majority procedure - the maximum amount of AMD 150,000[42], as a legal entity.

The requirements specified in the above-mentioned legal acts secure sufficient transparency in financing of parties, provided that they will be fulfilled properly. Still, we regret to note that up today civil society institutions and media have not been paying adequate attention to the financial reports presented by parties, though, as it is evidenced by the international experience, they might contain important information. At the same time, to this day no publications have been made by media to attempt and analyze the financial reports by a certain party. The Ministry of Justice - the state body authorized to receive such reports - has never officially reported about any occasion of falsification of such reports, i.e. non-reliability of the presented data. It is difficult to say whether that means that the Armenian parties provide all the required data diligently and fairly, or the reports are simply left unchecked.

As to the contributions to the election funds made by the parties, monitoring of financing of the parliamentary election in 2007 and the presidential election in 2008 conducted by Transparency International Anti-Corruption Center (TIACC) did not reveal significant violations. The parties, which made contributions to the election funds, provided the Central Electoral Commission with the required evidencing documents. But the situation is different with regard to expenditures from the election funds. During both elections, considerable difference was recorded between the declared and actual expenditures revealed by monitoring[43].

A number of provisions of the Electoral Code and the RA Law “On Parties” permit the parties to evade the above-mentioned restrictions regarding the contributions made from their own funds. In particular, the Electoral Code allows for making of contributions by individuals, without providing for mechanisms of preventing the practice widespread in many countries - when the party gives cash to its members who transfer these amounts to the election fund of the party as individual contribution. Since the principal target of the monitoring program implemented by TIACC was to check expenditures from election funds, this issue was not considered by the organization.

A more profound problem is that it is impossible to check timely and thoroughly the actual expenditures made by the parties during election campaigns, since, as it was mentioned above, pursuant to the Law “On Parties”, the parties present only the annual financial report, due by March 25 of the year following the reporting year. If elections are held in the reporting year, especially when the elections are scheduled for the beginning of the year, the falsifications revealed in the result of analysis of the financial report or monitoring cannot be used as the ground for invalidation of the election results. With regard to this, it might be a probable solution to set a requirement to open the account for the election fund as a supplementary account of the party’s principal bank account. Besides, all parties will have to present a quarterly financial report for the period of voting, as well as for two quarters preceding the date of voting.

[42] The same Article specifies that in case of a party (party bloc) the amount of expenditures from the election fund shall not exceed AMD 60 million, and in case of a candidate nominated by the majority procedure - AMD 5 million.
[43] See details on www.transparency.am

FIGHT AGAINST CORRUPTION

ENP Measures and Their Implementation

The ENP EU/Armenia Action Plan contains the requirement to:

- establish administrative courts;

- review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of the civil society and business representatives in monitoring implementation (during 2006);

- evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006)[44]. (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

ENP, Section 4, "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform", Clause "Fight Against Corruption" specifies 8 anti-corruption measures[45]:

1. Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005;

2. Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption and, once ratified, the OECD (Organization of Economic Cooperation and Development - ***Ed. Note***) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

3. Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including development of Code of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on September 19, 2001;

4. Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations;

5. Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

6. Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

[44] See the report section on the civil service.
[45] Almost all of the mentioned measures are specified also in the international anti-corruption convention and the recommendations of GRECO and OECD.

7. Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption;

8. Ensure the implementation of procedures to implement the Code of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

In 2008 the RA Government did not publish any information regarding measures aimed at implementation of the ENP EU/Armenia Action Plan; while in the list of priorities and measures to be implemented in 2007[46] the Government included only two actions:

- Clause 4.1 - review during 2006 the progress made in the implementation of the National Anti-Corruption Strategy and develop new measures (responsible bodies - RA Ministry of Justice and RA State Tax Service);

- Clause 4.2 - develop and enforce specific anti-corruption measures for the law enforcement agencies (the responsible bodies are not specified).

The mentioned clauses are of general character and it is not clear why other measures were not included in the list, especially those, for which the specified term of implementation expired at the end of the year 2006 (for example, the measure related to the UN Convention against Corruption) .

Clause 4.1 fully repeated the relevant provision of Priority 1 of Section 3 of the ENP Action Plan, though without the words “ensure active participation of the civil society and business representatives in monitoring implementation”. Since throughout 2007-2008 no reports or official statements as to the necessity of such monitoring or similar actions appeared, one can hardly judge whether the clause has been implemented. As to participation of the civil society, it should be noted that though several NGOs, in various sectors, implemented anti-corruption projects (mostly, donor-funded), such as traffic police, consumer rights, education, election, etc., this cannot be considered as comprehensive monitoring envisaged under the action plan of the Anti-Corruption Strategy.

Clause 4.2 is the shortened version of the relevant provision of Clause 4.1.1 of Section 4 “Democracy and the Rule of Law, Human Rights and Fundamental Freedoms” of the ENP Action Plan. It does not specify which precise measures should be developed and for which agencies exactly. As no official information has been published with regard to this either, it would be difficult to say whether the RA Government has implemented this measure.

The analysis of implementation of the above-mentioned 8 measures of the Action Plan is given below.

Measure 1

Though the RA Law “On Principles of Administration and Administrative Proceedings” was enforced on January 1, 2005[47], administrative courts were established only on January 1, 2008[48]. The administrative courts examine social disputes on legal relations, one party to which is the local self-government body or the relevant public officers, and the other party -

[46] See the Appendix of the RA Government Ruling No. 927 of July 19, 2007.
[47] Official Bulletin of the Republic of Armenia, No. 18 (317), March 31, 2004.
[48] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.

the citizens. The principal peculiarity is the specific distribution of the burden of proof, according to which: "A state or local self-government body (a public officer) who approved the disputed legal act or committed the disputed action or has not implemented an action, which, according to the claimant's statement, should have been done by him, bears the burden of proving the actual circumstances underlying his decision, action, or inaction" (Clause 3 of Article 26 of the RA Administrative Procedural Code[49]).

One of the fundamental principles for administrative courts is the principle of precedent defined by the law, which is supposed to preclude arbitrary decisions.

The RA Administrative Court is composed of 15 judges, who are much more overburdened as compared with other judges. According to the Chairman of the Administrative Court Tigran Mukuchian, there is always a great number of disputed payment orders: only in the part of the traffic police the monthly quantity of such payment orders reaches 5-6 thousand. Pursuant to the same source, as of August 1, 2008 the Administrative Court had announced 2,288 verdicts, made thousands of decisions, issued even more payment instructions, etc. 90 complaints were received (3.9% of the total number of cases) of which 35 complaints from individuals and 55 from state bodies. 60-65% of 2,288 verdicts referred to entrepreneurs, with relation to whom administrative acts had been issued by tax or customs' authorities. Besides the above-mentioned cases related to the traffic police, there were many disputes with the mayor's office, the local self-government bodies, the state register and the cadastre. Tigran Mukuchian stated that 60-65% of 2,288 cases were solved in favor of the citizens. For several occasions, the Administrative Court announced "open days" and distributed the RA Law "On Principles of Administration and Administrative Proceedings" and the comments on it for free.

In the absence of statistical data or analytical findings, it is difficult to draw a conclusion as to whether the first year of activity of the administrative court has favored adequate prosecution and conviction of bribery and corruption-related offences. In experts' opinion, unlike cases related to economic activity, with regard to other cases the administrative court announced its verdicts mainly in favor of the state bodies, e.g., appeals against the decision of Yerevan Municipality on prohibition of assemblies, rallies, marches or demonstrations. (Thus, pursuant to the data provided by the Armenian National Congress of, only 1 of the presented 50 claims regarding prohibition of meetings and demonstrations was satisfied completely.)

Measure 2

Definition of bribery and corruption specified in the RA Criminal Code[50] (Articles 311 and 312) generally complies with the international standards. As to classification of corruption-related offences, within the scopes of "Istanbul Anti-Corruption Action Plan" developed by the OECD, it became necessary to specify the corruption-related offences, and in 2004 first 22 and then 59 Articles of the Criminal Code were outlined. According to the statement of Garegin Ashrafian, Head of the Procuracy Department for Fight Against Corruption and Organized Crime, taking into account the international experience, this number was reduced to 22. Later on, new types of offences were included in this category. At present, the total number of corruption-related offences, specified in the Criminal Code, is 31.

In 2008 the RA Criminal Code was supplemented with several new articles, in particular, Article 311.1, which refers to receiving illegal remuneration by public officers, Article 311.2,

[49] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[50] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2003.

related to usage of real or alleged influence for lucrative purposes, and Article 312.1 - offering illegal remuneration to a public officer, who is not a state official[51]. According to the same source, the list was prepared on the basis of the following criteria: a) availability of a certain status or duties in the public or private sector; b) violation of duties related to the public or private status; c) goal to score some unlawful advantage.

Since December 2008, information regarding 31 types of corruption-related offences and data on disclosure and conviction for specific criminal cases (since October 2008) is posted on the website of the RA Procuracy[52]. At the same time, the Procuracy does not provide separate statistics on these 31 types of corruption-related offences. Therefore, it is difficult to understand whether the existing definition and classification secure adequate prosecution and conviction of corruption-related offences.

Measure 3

Code of Ethics has been developed and enforced for judges (see Chapter 12 of the Criminal Code[53]), prosecutors (see Order No. 17 of the RA General Prosecutor of May 30, 2007[54]), and the police (see the RA Law "On Adoption of the Code of Conduct of Police"[55]). As to the border service, no information could be gathered in this regard, since the National Security Service did not respond to the researcher's request for an interview.

"Comments on the Code of Ethics of the Judge" were published as a separate booklet in 2007. According to the statement of the First Deputy to the Head of the Forensic Department of the RA, Secretary of the Council of Court Chairman Misak Martirosian, the Commission on Ethics under the Council of Justice considered 9 cases related to the Code of Ethics of Judges in 2007, and 3 issues were considered as of September 2008 (7 more issues were planned for consideration). The Commission on Ethics works mainly with complaints presented by citizens. If the Commission on Ethics is of the opinion that the judge has to be exposed to disciplinary sanctions, the documents should be handed over to the Disciplinary Commission. In 2007, three of the nine issues were handed over for consideration by the Disciplinary Commission.

In case of violating the Code of Ethics of the Prosecutor, the prosecutors shall bear disciplinary liability in accordance with Clause 3 of Article 46 of the RA Law "On Procuracy"[56]. The RA General Prosecutor is the guarantor of observance of the Code of Ethics. The Chairman of the Commission on Ethics of the Procuracy is one of the Deputies to the General Prosecutor. According to the data provided by Garegin Ashrafian, the Head of the Department of Fight Against Corruption and Organized Crime of the Procuracy, only one meeting of the Commission was held in 2007-2008. The meeting considered the issue of violation of the Code of Ethics by a prosecutor from a territorial department of Erebuni and Nubarashen communities of the RA Procuracy. The Commission made a decision to dismiss the prosecutor.

According to the statement of the Deputy Head of the RA Police Gevorg Mherian, a different approach is applied at the police: they have a Council, which considers various problems, including ethical issues. The Council Chairman is the Head of the RA Police,

[51] Official Bulletin of the Republic of Armenia, No. 33 (623), June 4, 2008.
[52] http://www.genproc.am/main/am/189/ ¨ http://www.genproc.am/main/am/193/
[53] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2008.
[54] http://www.genproc.am/main/am/23/2153
[55] Official Bulletin of the Republic of Armenia, No. 29 (401), May 18, 2005.
[56] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

and the members are: the management staff of the police, heads and deputy heads of the principal departments. Scheduled meetings of the Council are called once every six months. Extraordinary meetings can also be summoned, if required. Any violation of ethical norms is considered by the Board and a decision is taken whether disciplinary sanctions need to be applied or not. In the past, the complaints mainly referred to the work of the visa and passport departments and the traffic police. According to the statement of the Deputy Head of the Police, significant changes are being effected at present and the number of complaints has decreased. Thus, in the past they got about 100 daily phone calls with complaints on the work of the visa and passport departments, while in 2008 there was only one call a day on the average.

Measure 4

The Law "On Declaration of Assets and Income by High-Level State Officials of the Republic of Armenia" was adopted on January 1, 2008. It replaced the RA Law "On Declaration of Assets and Income by Individuals". Article 5 of the Law specifies the requirement of presenting such declarations by all employees of state and self-government bodies, irrespective of their salary rate. Pursuant to the Law, the deadline for submission of declarations for 2007 was April 15, 2008. Chapter 8 of the Law specifies more serious sanctions for submission of false declarations than before. But enforcement of the Law was postponed for a year[57].

According to the statement of the First Deputy Head of the RA State Income Committee Aharon Chilingarian, the total number of declarations presented according to the previous law was about 50.000. As to the statistics of 2007, no information was published regarding the number of public officers who failed to present declarations or presented false declarations, or regarding the applied sanctions.

Measure 5

The opinion mentioned in the report of GRECO experts regarding fulfillment of the relevant obligations by Armenia[58] is generally realistic. Still, there are drawbacks left out by the GRECO experts. First, the RA Government did not take measures to conduct studies and gather statistics and presented as accomplished the programs and measures implemented by non-government organizations (international organizations and NGOs). Moreover, the RA Procuracy did not and still does not have a separate website on corruption. Only in December 2008 a separate page about corruption was opened on the website www.genproc.am. Secondly, none of the state bodies (police, tax and customs' authorities) mentioned in Clause 13 of the GRECO experts' report publishes separate information on its website regarding disclosed cases of corruption.

With regard to the appropriate GRECO Recommendation (see Clause 14 of the experts' report) it is mentioned that a number of state bodies (Police, Procuracy, Ministry of Justice and National Statistical Service of Armenia) have jointly developed the system of acquisition of statistical data on corruption-related offences. These data are published on the website of the National Statistical Service (www.armstat.am). It is specified that there are 59 types of corruption-related offences, and the RA Criminal Code envisages different sanctions for such offences. It should be noted that as of that date (the first report was presented on September 27, 2007 and the second one - on May 5, 2008) the number of corruption-related offences was reduced to 22 (see above - analysis of Measure 2) and the

[57] Official Bulletin of the Republic of Armenia, No. 2 (592), January 9, 2008.
[58] http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp

National Statistical Service has never provided separate information on corruption-related offences. Clause 16 of the experts' report refers to installation of hot lines in a number of state bodies, but these hot lines never had any specific anti-corruption designation.

Similar assessment was given to implementation of GRECO Recommendation 3, although it is not clear (as it was mentioned by GRECO experts) whether the new Law "On Public Procuracy", enforced in May 2007, has increased the prosecutors' independence. The same can be stated also with regard to GRECO Recommendation 8 since it is obscure (as it was mentioned in the comments of GRECO experts) what kind of training courses exactly were conducted at the Police Training Center. GRECO Recommendation 14 was assessed as completely fulfilled, but it cannot be construed from the Government report, how many suspicious transactions were reported to the Procuracy by the Financial Monitoring Center of the Central Bank of Armenia. Moreover, no information is available as to whether any investigation was conducted with regard to these cases.

Measure 6

The analysis of Measure 1 contains a reference to ensuring the possibility of court appeals against administrative acts, including through establishment of administrative courts in 2006.

Measure 7

The current salary of judges is insufficient to ensure service with dignity in order to reduce corruption. The salary of judges in courts of original jurisdiction, Court of Appeal and Court of Cassation was increased in accordance with the Judicial Code enforced on April 7, 2007 (see Article 75 of Chapter 11)[59], but only by 15-30%, which cannot ensure service with dignity. At present, a newly appointed judge receives salary of AMD 220,000. On November 27, 2008 the National Assembly approved amendments to the RA Law "On Remuneration Rate of High-Level State Officials of Legislative, Executive and Judicial Power". According to the amendments, the salaries of judges will be doubled in the period from January 1 to December 31, 2009[60].

Measure 8

As to ensuring implementation of procedures aimed at fulfillment of requirements of the Code of Ethics of judges and prosecutors, including introduction of effective systems of supervision over observance of the Code of Ethics by judges and prosecutors, there is no information available, besides the information presented for Measure 7 above.

Description of the General Situation

Since the Anti-Corruption Strategy was actually completed at the end of 2006, in September 2007 the Chairman of the Monitoring Committee, Assistant to the President of Armenia, Gevorg Mherian declared that a new strategy should be developed[61]. Terms of reference on development of the new strategy were approved at the end of 2007 and the group of experts started the relevant work in 2008. A number of non-governmental organizations were requested to give an opinion regarding four chapters of the strategy.

[59] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[60] "Hayastani Hanrapetutiun" daily, December 1, 2008.
[61] "Hayastani Hanrapetutiun" daily, September 8, 2007.

These chapters were posted on the website of the RA Government - www.gov.am - in October 2008.

In September 2007 the RA Government presented a report on implementation of GRECO Recommendations. The assessment of GRECO experts for the first and the second stage was announced in June 2008[62]. According to the assessment, Armenia had fully implemented 7 Recommendations, satisfactorily - 5, partially - 9, and entirely failed to implement 3 Recommendations.

OECD expert opinion on implementation of obligations undertaken by Armenia within the scopes of "Istanbul Anti-Corruption Action Plan"[63] was published at the end of 2007. In this case, only 1 of the 24 recommendations is implemented fully, 8 are implemented basically, 11 - partially, and 4 recommendations are not implemented.

According to the information provided by the RA Ministry of Foreign Affairs, at the beginning of 2008 the RA Government presented a self-appraisal report to the Secretariat of the UN Convention against Corruption, which was a mandatory requirement for the countries acceded to the Convention[64].

The evaluation report on the progress of Armenia in 2007 within the scopes of ENP Action Plan was published in April 2008[65]. Along with a number of positive steps (e.g. legislative and procedural amendments aimed at decrease of corruption, as well as availability of the Code of Ethics for judges, prosecutors, and the police, increase of judges' salary and establishment of a special investigative service), it is mentioned that the issue of effective application of the anti-corruption legislation and policy has not been solved yet.

Numerous anti-corruption legislative amendments and by-laws were approved and/or enforced in 2007-2008, as well as a number of anti-corruption measures were implemented. See below several of these measures:

- Due to the amendments to the RA Constitution[66], the Supervisory Chamber obtained independent status (was removed from the structure of the National Assembly). In 2008 the Supervisory Chamber revealed grave violations and abuse[67] in the sectors of town planning, agriculture, urban heating and gasification, state procurement, apartment allocations, etc. According to the data posted on the website of the Procuracy[68], in the result of the above-mentioned disclosures, only two criminal cases were filed by the end of 2008.

- In accordance with the Law "On the Procuracy"[69], the RA General Prosecutor is appointed to this position and gets dismissed by the National Assembly, a new system of qualification testing and remuneration is introduced, and the Procuracy loses the power to conduct investigation, which is now vested with the police, the National Security Service, the Ministry of Defense, the tax and customs' authorities.

[62] www.coe.int/greco
[63] www.oecd.org/corruption/acn
[64] The report is not accessible to public.
[65] http://ec.europa.eu/world/enp/documents_en.htm
[66] RA Constitution, Article 83.4.
[67] "Hayastani Hanrapetutiun" daily, September 18, November 6 and December 11, 2008.
[68] http://www.genproc.am/main/am/185/
[69] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

There is a Department of Fight Against Corruption and Organized Crime in the Public Procuracy, which is responsible for prosecutor's control and procedural management over corruption cases. The department supervises those cases, which are investigated by the central investigating agencies of the country. In some regions, this is the responsibility of separate investigation bodies and prosecutors. The principal function of the department is the consideration of complaints received from individuals and requesting additional documents with relation to them. In case of revealing evidence of offence, the documents shall be delivered to the respective investigating bodies.

In 2008 the Procuracy conducted cluster meetings in Yerevan and the regions and considered the issues of prevention and disclosure of corruption-related offences and the specifics of their investigation. The meetings were attended by the representatives of law enforcement bodies, tax and customs services, other interested organizations, and journalists.

- A new system of justice was established on the basis of the amended Court Code[70] and the Law "On Administrative Proceedings"[71], which resulted in establishment of administrative courts, introduction of a new system of appointment and remuneration of judges and court chairmen, functioning of the court department (service), registrars, Code of Ethics of the Judge, court school, etc.

- The RA Law "On Operative and Investigation Activities"[72] specifies new types of operative and investigation activity, as well as control and inspection mechanisms for this activity.

- In accordance with the RA Law "On Special Investigative Service"[73], a new body was established to investigate those criminal cases, which involve high-level state officers, representatives of law enforcement bodies and persons engaged in election process. Pursuant to the information provided by official sources, during the first half of 2008 the Special Investigative Service examined 29 criminal cases, 13 of which were against 14 state officials[74]. The criminal cases were basically brought against officials of the lower and middle level.

- The RA Laws "On Organization and Conducting Audits in the Republic of Armenia"[75], "On Registration of Organizations and Individuals and Taking them off the Tax Register"[76], the amendments and supplements to the Laws "On Trade and Services", "On Usage of Cash Machines", "On State Duty" "On Taxes", "On Licensing", approved in 2008, and a number of other Armenian laws[77] are intended for fighting shadow income in the private sector and minimizing the corruption risks of the tax field. As of September 29, 2008 the Tax Inspection conducted inspections in 23 big shops and revealed violations in all of them, connected with usage of cash machines[78]. 9 supermarkets were temporarily shut down by the tax service, for a period of 5-10 days.

[70] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[71] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[72] Official Bulletin of the Republic of Armenia, No. 59 (583), November 28, 2007.
[73] Official Bulletin of the Republic of Armenia, No. 61 (585), December 5, 2007.
[74] "Hayastani Hanrapetutiun" daily, August 5, 2008.
[75] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[76] Official Bulletin of the Republic of Armenia, No. 54(578), November 7, 2007.
[77] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[78] "Hayastani Hanrapetutiun" daily, September 29, 2008.

- The regulations of passport departments have been simplified and streamlined. Sample forms of 7 different applications have been printed and provided to all passport departments. The individual only has to fill in his/her name and sign the application. The phone number of the Deputy Head of Police is also posted up in passport departments, which enables the people to call him in case of complaints. The lists of documents required to receive or change the passport, compile a case about loss of passport, etc. are also posted up on the walls of passport department offices.

The terms and conditions of issuing passports to the under-aged, as well as the list of the required documents were amended by the RA Government Resolution No. 823 of July 31, 2008[79]. The time constraints were removed and a simplified procedure was introduced: anyone may receive a passport for his/her child with validity period of three years and may change the passport at any time. Exit visas are also provided without any restriction.

- The traffic police reform has started. An off-budget fund has been established and 30% of it is transferred to the salary fund of the traffic police officers. Improvement of collection of administrative penalties is underway. This will give the opportunity to increase the salary of the traffic police officers up to AMD 200-250 thousand by the middle of 2009. In general, financing of the police has increased by 35 percent.

- Finally, in 2008 a chapter named “Corruption” was included in the textbook “Social Science” of comprehensive schools. It contains the definition of corruption, information regarding its forms, causes and methods of fighting against it.

Within the same period, reforms were effected also in other sectors, e.g. the tax service, but this report is intended to present only the steps related to the anti-corruption measures implemented or planned within the scopes of the ENP Action Plan.

As to foreign organizations’ opinion regarding the level of corruption in Armenia, pursuant to the Index of Corruption Perception (ICI) of Transparency International[80], in 2007 and 2008 Armenia was still among the most corrupt countries, the index of which is below 3 (by “1-10” scale, where “1” means “a fully corrupt country”, and “10” - “a country with no corruption at all”). During the last five years, the situation with corruption perception in the country remained unchanged: in 2008, 2007, 2006, 2005 and 2004 the ICI in Armenia was 2.9, 3.0, 2.9, 2.9 and 3.1, respectively.

According to the data of the World Corruption Barometer of Transparency International[81], 52% of the people who took part in the poll in 2007, were of the opinion that during the next 3 years the level of corruption in the country would “increase considerably” or “increase moderately”. As to the anti-corruption measures taken by the Government, only 25% of those questioned considered such measures “effective to a certain extent” or “effective”.

The data published by Freedom House in 2007 and 2008[82] evidence that the index of corruption in Armenia remained on the same level as in the previous years - 5.75 (by “1-7” scale, where “1” means “with no corruption at all” and “7” means “fully corrupt”).

[79] Official Bulletin of the Republic of Armenia, No. 51 (641), August 13, 2008.
[80] http://www.transparency.org/policy_research/surveys_indices/cpi
[81] http://www.transparency.org/policy_research/surveys_indices/gcb/2007
[82] http://www.freedomhouse.hu/nit.html

According to the World Poll of Gallup[83] held in 14 former Soviet countries, 50% of the people questioned in Armenia were of the opinion that at present the level of corruption is higher than in the Soviet times.

Global Integrity Index of Corruption in Armenia in 2007 was 58 (by "0-100 scale"), which, according to 23 anti-corruption criteria, corresponds to the rating "extremely weak"[84]. It is noteworthy that one of the management criteria of the World Bank, "control on corruption", was also rated rather low in 2007 - 30 scores of 100[85].

Based on the reports of the local and international organizations regarding the elections of 2007-2008[86] and numerous publications in the press, it can be concluded that political corruption in Armenia considerably increased during this period: abuse of administrative, informational, financial and other resources, bribing of electors, etc.

[83] http://www.gallup.com/poll/101767/Pereceptions-Corruption-Widespread-Former-Soviet-Nations.aspx
[84] http://report.globalintegrity.org/Armenia/2007
[85] http://info.worldbank.org/governance/wg/sc_chart.asp
[86] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php

YEREVAN PRESS CLUB

OPEN SOCIETY INSTITUTE HUMAN RIGHTS AND GOVERNANCE GRANTS PROGRAM

OPEN SOCIETY INSTITUTE ASSISTANCE FOUNDATION-ARMENIA

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

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FOREWORD

The Partnership and Cooperation Agreement (PCA, signed in 1996 and in force since 1999) between European Union and Armenia serves as the legal framework for bilateral relations. Since 2004, Armenia and the other South Caucasus states have been part of the European Neighbourhood Policy (launched by the European Union, following its enlargement), encouraging closer ties between Armenia and the EU. An ENP Action Plan for Armenia was published on March 2, 2005, "highlighting areas in which bilateral cooperation could feasibly and valuably be strengthened". The Plan sets "jointly defined priorities in selected areas for the next five years". In November 2005, formal consultations on the Action Plan were opened in Yerevan and as of 2008 are ongoing.

The EU-Armenia relations play an important role in the strengthening and development of democracy in Armenia. The present research aimed to determine whether the reforms, envisaged by the bilateral documents EU-Armenia, are implemented consistently.

Priority Areas 1 and 2 of the Action Plan for Armenia were taken as a basis for the monitoring.

Thus, **Priority Area 1** calls for strengthening of democratic structures, of the rule of law, including reform of the judiciary, and combat of fraud and corruption. **Priority Area 2** calls for strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).

The study was undertaken by Yerevan Press Club under the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Governance Grant Program of Open Society Institute. Support for researching into certain sections of the project and the preparation of this report was also provided by the Open Society Institute Assistance Foundation-Armenia.

Sections of this report were developed by YPC and its partner NGOs - Committee to Protect Freedom of Expression, Helsinki Committee of Armenia, Right and Information Center, Transparency International Anticorruption Center, Communities Finance Officers Association, Collaboration for Democracy Center, as well as individual experts candidate of economic sciences David Tumanian, sociologist Vardan Gevorgian, Doctor of Law Hrayr Ghukasian and Doctor of Law Lilit Simonian.

EXECUTIVE SUMMARY

RA HUMAN RIGHTS DEFENDER INSTITUTE. The cooperation of the RA Human Rights Defender and the state bodies is somewhat hindered. This is mainly manifest in shape of occasional controversies with RA Government, National Assembly and law enforcement bodies. In the first case the difficulties deal with the funding of the Defender's Institute, in the second one - the issue of his mandate revision, and in the third case is the matter of principal divergences in situation assessment. Besides, the RA Law "On RA Human Rights Defender" does not stipulate the involvement of NGOs and civil society in the nomination of the candidate for the post of the RA Human Rights Defender and his election. Besides, the human rights NGOs are unable to address the Defender as a third party. Overall, the cooperation with the civil society institutes is duly developed. With regard to ensuring easy access the need to set up regional representations of the ombudsman is emphasized.

FREEDOM OF ASSEMBLY. While RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" is seen by the Council of Europe to be largely compliant with the European standards, yet it is more of a restrictive than regulatory nature. It is the law enforcement practice that is the most concerning. The competent body with no substantial justification impedes and prohibits assemblies, particularly, marches. The practice of challenging in court is unsatisfactory, too, as it does not ensure fair trial and proportionality, in accordance with Articles 6 and 11 of the European Convention of Human Rights.

RIGHTS OF ETHNIC MINORITIES. None of the ethnic minority groups in Armenia is the main population of any territorial unit of the country. They all are dispersed all over Armenia. No international document expressed serious concern with the rights of ethnic minorities in Armenia. This is due to the fact that ethnic minorities in Armenia do not come out with political demands. They refrain from being actively involved in domestic policy. Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

LOCAL SELF-GOVERNMENT. The requirements on local self-government in the European Neighborhood Policy EU/Armenia Action Plan remain almost unfulfilled in 2007-2008. Certain steps were made only starting from autumn 2008. Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan". The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions. Overall, the institute of local self-government is not substantial in many communities.

LEGAL AND JUDICIAL SYSTEM. The reforms of judicial and legal system that resulted in a number of amendments made in legislative acts and law in force, only partially correspond to the spirit and content of commitments stipulated by ENP EU/Armenia Action Plan. Moreover, if one looks back and analyzes the developments of February-March 2008, one can conclude that most of the amendments made follow a certain pattern and aim to ensure the achievement of certain timeserving objectives. Hence, the reforms in legal and judicial system have not improved most of the existing definiteness, and sometimes have raised new problems that require complex and consistent solutions.

CIVIL SERVICE. With regard to civil service in Armenia the priorities of ENP EU/Armenia Action Plan can be assessed as “partly fulfilled”. The realization of the majority of steps is to a certain extent related to the draft law “On Public Service”. The delay in the adoption of this draft was due to debates regarding its comprehensiveness. Its regulation domain covers not only the civil service, but also all legal relations for all kinds and levels of state and communal administration. In the opinion of most civil service experts, after the adoption of the law “On Public Service” many problems will be resolved or preconditions will be set to solve issues that are in cause and effect relationship.

FREEDOM OF SPEECH, MEDIA AND INFORMATION. Despite the amendments to RA Law “On Television and Radio”, the requirement of ENP EU/Armenia Action Plan - “ensure the independence of media by strengthening the independent regulatory body for the public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” - is not in fact fulfilled. The National Commission on Television and Radio has failed to become an independent regulator. According to amendment made in the Broadcast Law on September 10, 2008, broadcast licensing competitions were frozen for two years. The amendment was assessed by independent experts as a deprivation of the right to take part in broadcast licensing competitions for independent broadcasters that are not subject to governmental control. During the state of emergency announced in Yerevan on March 1-20, 2008, for the first time factual preliminary censorship was exercised not only in Yerevan but also all over the country. Meanwhile the restrictions, introduced by the Decree on State of Emergency, did not stipulate censorship, which is prohibited by the RA Constitution and the RA Law “On Mass Communication”.

ELIMINATION OF TORTURE. Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Armenia ratified in May 2006, stipulated the establishment of national monitoring mechanism in closed systems (penitentiaries, police stations, psychiatric clinics, etc.). Both the Public Monitoring Group in the Detention Centers of the RA Ministry of Justice (in 2005) and the Council of Europe Committee to Prevent Torture in their reports note the degrading treatment of prisoners by prisons’ representatives. The situation is particularly alarming in police stations and other investigatory bodies. The complaints of illegal detention, violence and terror in police stations are numerous. The violence in police stations was practiced mostly to gain confessions or testimony against other people.

ELECTORAL SYSTEM. By ENP EU/Armenia Action Plan Armenia undertook the commitment to ensure the electoral framework in full compliance with OSCE commitments and other international standards for democratic elections. Yet this obligation remains unfulfilled. Amendments to Electoral Code have not included the recommendations of the OSCE and Venice Commission. The Central Electoral Commission was quite formalistic in addressing the complaints received. The courts did not ensure judicial protection of violated electoral rights in any of the more than 20 complaints received with regard to CEC’s actions or inaction. Overall, the international observers, when assessing both the parliamentary elections of 2007 and the presidential elections of 2008, particularly, the post-election situation in 2008, noted the lack of necessary political will and public trust towards elections and their results.

FINANCING OF PARTIES. The satisfactory level of party funding could have been ensured, had the appropriate legal acts been applied properly. Yet the monitoring of election campaigns during parliamentary elections of 2007 and presidential elections of 2008, showed that the expenditures for campaigning do not correspond to those, officially quoted by parties and candidates as their elections funds. The competent state body, the

Ministry of Justice, that receives the financial reports of the parties, never mentioned any cases of fraud, i.e., discrepancy between the information in the reports and the reality. It is hard to say whether this is a consequence of conscientious and honest financial reporting by parties or their reports are simply never audited.

FIGHT AGAINST CORRUPTION. In 2007-2008 in Armenia numerous legal and sublegal acts with anti-corruption trends were adopted and/or enforced, and a number of anti-corruption initiatives were implemented. Yet, the international and local experts believe that the level of corruption in Armenia is still quite high and the anticorruption reforms are of little effect. Thus, in 2007-2008, according to Index of Corruption Perception of Transparency International, Armenia remains in the list of most corrupt countries. According to the World Corruption Barometer of Transparency International, in 2007, 52% of respondents of Armenian survey believed that within upcoming 3 years the corruption level in the country "would grow substantially" or would "grow moderately". In 2007 and 2008 the data of "Freedom House" showed that the corruption index of the country remained the same as during the previous years, while in 2007 the Global Integrity Index of Corruption in Armenia was "extremely weak". One of the World Bank's criteria of good governance, "control on corruption", in 2007 was also assessed quite low. Proceeding from the reports of local and international organizations regarding elections 2007-2008 and numerous press reports, one can conclude that during this period in Armenia the political corruption level has enhanced, such as the abuse of administrative, communication, financial and other resources, election bribes. The increase of political corruption in Armenia is becoming a source of political and social crises.

ACTIVITIES OF THE HUMAN RIGHTS DEFENDER INSTITUTE

The European Neighborhood Policy EU/Armenia Action Plan[1] makes the following note regarding this area: “Develop the Human Rights Ombudsman institution in accordance with the Paris Principles based on UN General Assembly Resolution 48/134 of December 1993” (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Preface

The UN Economic and Social Council (ECOSOC) stressed in the Resolution adopted in 1960, that with regard to the protection and endorsement of human rights a crucial role is played by national institutions that should independently reflect the universal ambition to stand for human rights on the national level. These institutions are competent to engage in activities to attain certain universal goals on national level. In 1991 this Resolution became the basis for the Paris Principles, approved on the Global Human Rights Conference, held in Vienna in 1993 and ratified by the UN General Assembly in 1993[2].

The Paris Principles stipulate the minimal criteria for the foundation and effective activities of the national human rights ombudsman that this institute should be guided with. These criteria allow assessing the structure, the legal basis of establishment, independence from executive and legislative branches of power, guarantees of securing diversity, the competence, partnering with other structures, mission and objectives, awareness-raising activities with regard to human rights, etc.

Human Rights Defender Institute in Armenia

Armenia was the last of South Caucasus countries to have a human rights defender (ombudsman), even though preparations for this started as early as in 1990. This process was accelerated by the country’s accession to the Council of Europe and its commitments in this regard. The draft law on the RA Human Rights Defender was developed on the basis of a similar law of the Russian Federation on Human Rights Commissary. In December 2002 the RA National Assembly adopted the law in the first reading, after which the document was sent for the international expert review. On October 21, 2003 the law was adopted finally, it was enforced on January 1, 2004. The law stipulates the procedure for electing the Human Rights Defender and his dismissal, his competence, terms of service and guarantees.[3]

It should be noted that in 2007 the UN International Coordination Committee for National Institutions dealing with human rights endorsement and protection granted the RA Human Rights Defender the highest A status. This means the Armenian ombudsman corresponds to Paris Principles and enables him to take part in the sessions of UN Human Rights Council.

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[1] http://ec.europa.eu/world/enp/documents_en.htm#2

[2] Human Rights Defender’s Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 20.

[3] Article 1 of the RA Law "On RA Human Rights Defender".

Despite the high status, the RA Law "On RA Human Rights Defender" needs development and improvement. The analysis of the law herein is based on Paris Principles, the survey on Human Rights Defender[4]. Also, a comparative analysis with laws of other countries is made, where the provisions are more specific, distinct, clear and in harmony with Paris Principles.

Scope of Action

According to Paris Principles, the ombudsman must have as broad scope of action as possible. Article 2 of the RA Law "On RA Human Rights Defender" defines the main activities of the ombudsman, enabling him only "to protect the rights and liberties, violated by state bodies, bodies of local self-government and officials" (spelt also in the RA Constitution[5]). Meanwhile, the Paris Principles call for a more broad scope for an ombudsman, enabling him not only "to protect the violated rights and freedoms", but also contribute to the development and advancement of human rights and fundamental freedoms. The ombudsman must be more active. According to Paris Principles, the national institute of ombudsman in the absence of complaints-appeals from individuals should be competent to initiate research, to make official inquires, demand clarifications from state and local self-government bodies. Clause 3 of Article 11 of the Law entitles the Defender to imitate discussions if there are reports of mass violations or the issue is of exceptional importance for the society or is related to the protection of certain persons, yet this norm is envisaged for *emergency* and *exceptional* cases, when the violations are already *committed*.

In accordance with Paris Principles, the mission of the national ombudsman can be seen in the promotion and endorsement or development of human rights and fundamental freedoms. The protection includes the consideration of complaints, legal consultancy, dispute resolution, etc. The endorsement or development process includes quite a broad scope of action, from the promotion of respective laws and international agreements, promotion of human rights to awareness-raising activities in education and other institutions, with vulnerable groups of the society[6]. In essence, the RA Law stipulates protection of human rights and fundamental freedoms, but not the activities with regard to their endorsement, progress and development. Only by Clauses 3 and 4 of Article 7 of the Law the Defender is entitled to be present at the sessions of the Government and other state bodies, the RA National Assembly and to raise issues, if the discussion agenda relates to human rights and fundamental freedoms. According to Paris Principles, the law on ombudsman must distinctly specify that the ombudsman must, *upon his initiative and systematically,* monitor the correspondence of local laws to the international documents on human rights and fundamental freedoms and, if necessary to make appropriate proposals; to control resolutions, legal acts, adopted by state bodies and local self-government so as for them not to go against human rights and fundamental freedoms, and if necessary, to take steps to achieve their abolition (this competence is only stipulated by Clause 1 of Article 15 of the Law only after the consideration of complaints).

Presently the main functions of the RA Human Rights Defender's Office are the independent monitoring of public administration and consideration of citizens' complaints

[4] In October-November the Helsinki Committee of Armenia administered an expert interview at the ombudsman's institute itself.
[5] Article 83.1 of the RA Constitution.
[6] Taking the Paris Principles into Asia. A study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines. Hugo Stokke, Chr. Michelsen Institute Report, page 2.

against state bodies[7]. The research of Helsinki Committee of Armenia showed that experts have much appreciation for the ombudsman's efforts in legislative reforms. The experts emphasized the fact that it is upon the proposal of the ombudsman that some laws ("On State Pension" and "On Alienation of Property for the Needs of Society and State") were amended. With regard to violation of the right of property of the Northern Avenue residents, proceeding from the statement of the ombudsman the RA Constitutional Court recognized that the resolution No.1151 of the RA Government of August 1, 2002 regarding the construction in Kentron community of Yerevan, as well as Article 218 of the Civil Code and Article 104, 106 and 108 of Land Code run counter the RA Main Law. Nevertheless, in the human rights domain a number of issues were noted, related to state bodies, the police and difficulties in terms of cooperation with civil sector. On March 1, 2008 the Head of the Criminal Investigation Division of Kanaker-Zeytun Police Department A. Abrahamian impeded the activities of the Defender, prohibiting his entry to the police station, refused to provide information, as well as was disrespectful, violating thus a number of provisions of the Law, including Article 12, according to which the Defender must have unimpeded access to state institutions, including military units, prisons, detention centers, etc. Besides, while on duty the Defender enjoys the right of being immediately admitted by state bodies and local self-government, received by their officials, the management of penitentiaries[8].

On July 19, 2007 the Government adopted Resolution No.927, according to which the draft laws related to human rights and fundamental freedoms, before being submitted to the sessions of the Government, are sent to the ombudsman for an opinion. While steps are taken to regulate the legislation and harmonize the laws, legal acts and resolutions with the international agreements, ratified by Armenia, there is still a number of laws that contradict the norms and principles of human rights and fundamental freedoms. These laws were never submitted for the Defender's opinion, such as the RA Laws "On Investigating Activities" and "On Holding Assemblies, Rallies, Marches and Demonstrations".

In accordance with the Paris Principles the ombudsman must also contribute to the ratification and application of international treaties, to cooperate with the UN and other international and local structures that operate in human rights domain. According to the research above, the international cooperation of the Defender is expressed mostly in joint experience exchange projects, training, awareness raising. Under a memorandum signed with the Helsinki school some staff of the ombudsman's office have regular training. In partnership with UN awareness campaigns are waged, leaflets and posters are published and disseminated. Under UN Development Program, "Empowerment of Human Rights Defender Institute", the office develops information materials, holds training courses, plans a TV program on vital human rights issues in Armenia. With the assistance of international organizations the Human Rights Defender's office now has a library. To implement legal reforms the Defender appeals for international support, too.

The Paris Principles make a particular emphasis on the ombudsman's activities on awareness raising, media relation and coverage of ombudsman's activities, involvement in curricula development. The RA Law "On RA Human Rights Defender" does not refer to these provisions at all. Currently the real activities of the Defender's office are substantial not only in terms of human rights protection, but also in awareness raising. Awareness raising with regard to human rights is initiated by the Defender through meetings and focus

[7] Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 3.
[8] http://ombuds.am/main/am/9/16/0/36

group discussions, material dissemination. Meetings are held both in office and out of it - universities, schools, senior residences, etc. The Defender pays regular visits to regions, too. The office activities are regularly covered by media, in the annual report. With regard to awareness raising the ombudsman's staff pointed out two major issues: lack of representatives in the regions and the lack of funds for developing information materials.

As the survey showed, these activities are in fact implemented by the ombudsman's office, while not being stipulated by the law. In other words, the Law does not give the legal framework for such activities, thus restricting the mandate of the Defender. That is, the Law does not reflect the issues of awareness and coverage, as required by Paris Principles at all. The Paris Principles also call for the Defender's office to hold human rights training for the police, the representatives of judicial system and other state bodies, vulnerable and special needs groups of the society, at schools, universities, etc.

Election of Defender

Specifications are also necessary in the clause of the Law referring to the election of the Defender. Thus, Clause 1 of Article 3 does not define any professional criteria and gives only a general overview that fully coincides with the requirements posed to a member of parliament, while the mandates for these two positions are quite different in nature. Thus, for example, Article 2 of the Poland's Law "On Representative of Citizens' Rights", apart from stipulating the requirement of being a citizen and enjoying public respect, the ombudsman must also have legal knowledge and professional experience[9]. While the Paris Principles do not single out the legal knowledge, they emphasize expertise in human rights. The Armenian Law refers to the need of legal or special expertise indirectly. Thus, according to Clause 1 of Article 7, "The Defender is competent to give the applicant its recommendations or consultations for challenging resolutions, court rulings or sentence justification", and according to Subclause of Clause 1 of Article 12, the Defender is entitled to "have access to cases on criminal, civil, administrative, disciplinary, economic and other law infringements that have their sentences, rulings and resolutions enforces, as well as the materials that were a basis for refusing institution of proceedings". These functions cannot be performed by the Defender unless he has adequate legal expertise or professional experience. Clause 2 of Article 3 of the Law does not provide for case when more than one candidate is nominated and gains sufficient number of votes, or if none of them gains sufficient number of votes. No provision is made regarding the number of nominations and elections of the same candidate, either. Similar laws of Georgia and Poland envisage only two terms of service for the same candidate[10]. The Paris Principles call for the ombudsman election provisions to contain the following clauses: terms of service, re-election terms, dismissal terms, etc.[11] It is also preferable for the ombudsman to be elected at least for five years' term and have a change to be re-elected for the same term[12].

The Law does not require the legislature to involve representatives of civil society, human rights and other organizations, educational institutions, religious groups to nominate candidates, as well as hold consultations on electing and appointing the Defender, to ensure transparency and confirm his real independence[13]. The law does not regulate the procedure for nomination and election of candidates, either (through open calls for

[9] National Ombudsmans, Code of Legal Provisions, Biuro Rzecznika Praw Obywatelskich, Warsaw, 1999, page 279.
[10] Ibid, pp. 129, 280.
[11] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, page 16.
[12] Ibid.
[13] Ibid.

applications, competitions, etc.). The Paris Principles emphasize the transparency of Defender's election and involvement of all groups of the society in the election process.

Clause 2 of Article 4 of the Law imposes certain restrictions on ombudsman being engaged in other activities. In particular, the ombudsman is prohibited from membering in parties but not from involvement in the activities or assisting any party (such as taking part in sessions or campaigns), which cannot guarantee his independence, impartiality and objectivity.

The norms of early dismissal of the Defender do not provide for the cases of permanent failure to implement his duties of violation of the oath made. Meanwhile, Article 7 of similar law in Poland stipulates that the ombudsman can be dismissed early if he violates his oath[14].

Human Rights Defender as a Mechanism of Independent Monitoring

Paris Principles call for the establishment of special centers adjacent to ombudsman to protect vulnerable groups of society (children, women, the disabled, etc.). The monitoring of compliance with the UN Convention of the Rights of Children is made by ombudsman, yet the Law in force does not contain either provisions or regulating mechanisms. According to research administered, the RA Human Rights Defender has neither a section nor a special children's center - a fact that gained the attention of the Council of Europe[15].

On April 8, 2008 the RA Law "On RA Human Rights Defender" was addended by Article 6.1, referring to the activities of the Defender in international law: "The Defender is the independent national mechanism for prevention, as defined by the Optional Protocol to UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment. The comment on this norm is presented in Chapter 8 of this publication. Yet it is necessary to note that this amendment was not accompanied by any regulatory provision.

Consideration of Complaints

As to the complaints to be considered by the ombudsman (Article 7), it should be noted that the amendment, made on June 1 2006, certainly restricted the Defender's mandate in the judicial. The amendment contradicts the principles of the right to fair trial, prescribed in international documents and RA Constitution. Moreover, if one takes into account that post-Soviet countries are in transition, and the judicial system so far is imperfect, the Defender should be entitled to be present at court sessions (as stipulated by, say, Article 9 of a similar law of Ukraine)[16]. The interview with the ombudsman's office staff revealed that they are occasionally present at court sessions, yet this is not envisaged by the RA Law "On RA Human Rights Defender".

According to Paris Principles, the ombudsman must be entitled to appeal to court on behalf of those who cannot go to court themselves for certain reasons (children, the disabled, convicts, etc.)[17].

[14] National Ombudsmans, p. 281.
[15] Table of Treaty Body Recommendations Relating to National Human Rights Institutions, CRC/C/15/Add.119, 24 February 2000, 23rd Session, COs Europe.
[16] Institute of Ombudsman: evolution of traditions and modern practice (comparative analysis), A. Sungurov, Saint-Petersburg Humanitarian Political Science Center "Strategia", 2005, p. 179.
[17] Institute of Ombudsman: evolution of traditions and modern practice, p.179; Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 10.

The Law does not stipulate the mandate of human rights organizations to address the defender on behalf of third persons, either. The Paris Principles also stipulate close cooperation between the Defender and human rights NGOs. In the case of Armenia such cooperation is particularly important because the Defender does not have regional offices, yet can become acceptable to the people in the regions through local NGOs.

In the course of research one of the respondents noted that the representatives of the Defender must be entitled to suspend proceedings in case of the restoration of rights infringed, which is not envisaged by the law in force.

Ensuring Accessibility

Clause 3 of Article 23 of the Law stipulates that in regions regional offices of the Human Rights Defender *can be* established. As noted above, in accordance with Paris Principles the national ombudsman's institute must be accessible and available for *all groups* of society, and geographic location must not be an impediment for addressing the Defender. Steps are to be taken to establish regional offices or to launch partnership with local NGOs. Apart from this, the offices of the Defender must be accessible for people with special needs, i.e., be duly equipped[18]. According to the research noted above, the national ombudsman's institute has no regional offices or representatives, yet there is the practice of regular visits for awareness raising. The out-of-schedule visits to the regions are made only when an urgent complaint is received. Reasons for the lack of representatives in the regions include the need for office space, furniture and communications, as well as staff.

According to the annual report of the Defender in 2007, most of the complaints (65.8%) are received from residents of Yerevan, while the proportion of these received from the regions is very small (6.8%). Such huge difference is due also to remoteness of location.

Defender's Report

During the period of January 1 - September 30, 2008 the Defender received more than 2845 complaints, 907 of which were in writing. Throughout this period the Defender was addressed by 4096 people[19]. The complaints were mostly directed against the Special Investigative Service (311), Yerevan municipality (293) and the RA Police (222). In the opinion of one of the respondents, it is mostly conditioned by the situation after presidential elections-2008, with regard to which an extraordinary report was made by the Defender.

In accordance with Clause 1 Article 17 of the Law the Defender submits a report on his activities and human rights and fundamental freedoms to the country's President, the legislative, executive and judicial power. According to Paris Principles this is a mandatory component of the ombudsman's activities. In 2008 the Defender presented his report for the previous year, which described the Defender's activities, the human rights and fundamental freedoms situation, the results of complaint consideration, the list of state bodies that made infringements, etc.

In accordance with Clause 2 of the same Article the Defender has the competence of making an extraordinary report on certain issues of public significance or rough human

[18] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, page 22.
[19] Data provided by the RA Human Rights Defender.

rights infringements, as well as in cases of mass failure to eliminate the infringements. In 2008 the Defender made an extraordinary public report on presidential elections of February 19, 2008, post-election situation and events of March 1. This step was somewhat inadequately received by the authorities, in particular, the former RA President; moreover, the General Procuracy and the Ministry of Justice presented their objection, the whole point of which was that the Defender exceeded his mandate[20]. According to the Paris Principles, the ombudsman's mandate includes the issuance of an annual report and, if necessary, issuance of an extraordinary report. The Paris Principles also stipulate that the reports presented by the ombudsman and the infringements they contain must be discussed by the Parliament to be resolved[21] - a fact that is not taken into account by the RA Law "On Human Rights Defender".

The research administered reveals that there are certain problems in cooperation with state bodies. Difficulties were mainly noted in interacting with the Government, the National Assembly and the Police. In the former case difficulties were related to financial issues, in the latter - to the problem of mandate review.

In accordance with the Paris Principles the ombudsman's report must also contain a financial report to ensure public accountability and transparency, also stipulated by the Law, but not reflected in the report for 2007.

Defender's Office

According to Clause 1 of Article 23 of the Law the Defender recruits his staff to implement his activities, yet no procedure is prescribed and no reference to other provisions of the Law is made. The staff of the RA Human Rights Defender includes a secretariat, correspondence department, and a legal service that includes groups for rights of the military, protection of criminal procedural, social, economic, civil and cultural rights. The separate subdivisions are the information and public relations department and international relations department[22]. As follows from the data obtained, the currently existing of the Defender's staff and its statutes will soon be renewed. The draft has already been developed by the Defender and submitted for the approval.

The new structure and statutes call for the introduction of job descriptions, specifying the areas of competence of the staff members, as well as the hierarchy of positions, staff modifications aimed at optimizing the staff. The staff lacks the following professionals: lawyers, experts on international relations, journalists. As the staff members say themselves, the lawyers are particularly necessary.

In accordance with the Paris Principles, the ombudsman forms a staff (as stipulated by the Law), and he must act with sufficient transparency. A special procedure should be used for recruitment.

Yet it should be noted that there is no distinct recruitment procedure. The Defender's staff is quite closed for new staff members. No announcements are published if there are vacancies. The recruitment is made by the Defender through informal interviews. The most significant criterion in recruitment is the experience of dealing with the potential candidate

[20] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, pp. 12, 16.
[21] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, p. 28.
[22] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 4.

in the past. Yet this method contradicts the recruitment transparency, as required by Paris Principles.

According to Paris Principles, to effectively evolve their activities the Ombudsman's staff must be very qualified. They must also be constantly trained[23]. Overall, the staff noted the importance of the trainings, in particular, on human rights and public relations, yet preference is given to experience exchange with experts from other developing countries and practical job placements at some international institutions. It should be noted that the Head of staff assessed the role of training courses as quite low, since all such courses are detached from Armenian reality.

According to Amnesty International, the national ombudsman institutes must create opportunities for recruitment of such vulnerable groups as people with disabilities, women, ethnic minorities who, being well aware of the problems of their groups, may be neglected or underestimated by state bodies[24]. It should be noted that the Defender's staff is quite representative: it includes, refugees, people with disabilities, representatives of ethnic minorities.

Clause 4 of Article 23 of the RA Law "On RA Human Rights Defender" stipulates that the staff of the Defender are employed on short-term contractual basis. Yet this contradicts the norms of International Labor Organization, according to which the short-term contracts are signed with the specific project staff. Such contracts allow the employer to break the contract upon the end of its term with no substantial justification. It should also be noted that short-term contracts are quite demotivating. The contract is signed for a year, yet after its expiration the employer is not reevaluated or tested, the contracts are automatically prolonged.

Immunity

According to Clause 5 of Article 23 of the Law when on duty the staff of the Defender is immune, which is in accordance with Paris Principles. In June 2008 the RA Ministry of Justice proposed an amendment to the Law depriving the ombudsman's staff of immunity[25]. The Paris Principles establish the right of the ombudsman's staff to enjoy immunity that would ensure their implementation of their professional duty as well as guarantee the independence of the ombudsman's staff. This proposal was criticized as well as disapproved by the Venice Commission[26].

Partnership with Civil Society, NGOs and Expert Council

Paris Principles attach importance to the broad involvement of civil society in the institute of ombudsman and the establishment of the Expert Council which is also a guarantee for the development and endorsement of human rights and fundamental freedoms, as well as for the guarantee of diversity[27]. Meanwhile, Article 26 of the Law leaves the issue to the discretion of the Ombudsman. The reality is as follows. Overall, as the respondents say,

[23] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 14.
[24] Ibid, p. 6.
[25] http://ombuds.am/main/am/9/27/1765/
[26] Ibid.
[27] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 32.

the cooperation with the institutes of civil society is still at a low level, in particular, with the NGOs. Nevertheless, in the annual report of the Defender in 2007 the cooperation with the NGOS was quite highly assessed[28]. A relatively positive assessment was given to cooperation with media, too, mostly realized through press-conferences held 4 times a year. In special cases the Defender summons an extraordinary press-conference.

According to the Law, for consultations the Defender can set up an Expert Council. The interview with the key staff revealed that such a Council has already been established upon the initiative of the Defender, its members being representatives of NGOs. The number of the Council members is constant and does not exceed 20. The sessions of the Council are held two or three times a year. The Council is not seen as very effective, which is conditioned by the NGO sector in Armenia being underdeveloped.

Funding of the Human Rights Defender Institute

According to Article 24 of the Law the Defender and his staff implement their activities with funding from state budget. According to the statement of the Head of the Office, the funding of the national ombudsman is stable. Yet the budget allocated to the Defender and his staff is occasionally reduced with no substantiation by the National Assembly and Government, which runs contrary to Clause 4 of the same Article. It should be noted that the budget categories are generally acceptable, yet the amounts allocated are constantly reduced. In the opinion of the Head of the staff and other staff members of the Defender, the low pays are a reason for staff turnover. This situation does not reflect either the Law provisions or the Paris Principles, according to which the state should contribute and establish financially favorable conditions for effective activities of the ombudsman. Because of financial issues a number of problems arise with regard to Defender's activities, contrary to Paris Principles. Moreover, in the interviews it appeared that Clause 1 of Article 21 of the Law is violated, according to which the salary of the Defender must be equal to the salary of the Chairman of the RA Constitutional Court, and this is in compliance with the Paris Principles, yet far from reality.

Conclusion

The RA Law "On RA Human Rights Defender" and its practical application were subject to analysis. It is very important for all provisions of the Law to be implemented in practice and the Law be amended and improved. The Law is the basis and the guarantee for the Defender's activities, the more harmonious it is with Paris Principles, the more effective the activities of the ombudsman in the country will be.

- The Law must provide not only for the activities of the Defender in the human rights protection, but also their endorsement and awareness raising.

- The Law must stipulate a specific procedure for the nomination and election of the Defender, with the civil society being involved in the process.

- Being a mechanism that monitoring the implementation of the UN Convention on Children's Rights, the Human Rights Defender institute must provide for a children's center establishment.

[28] Annual report of RA Human Rights Defender, pp. 46-48.

- The Law must provide for a broader group of potential applicants, including human rights NGOs in it.

- The right to monitor trials should be prescribed by the Law.

- To ensure transparency of the Defender institute vacant positions must be publicly advertised, a distinct formal procedure should developed for recruitment, and the contracts should be signed for longer term.

- To ensure easy access for all citizens, regional representations of the Defenders must be made obligatory.

- The Defender must meet Expert Council member as well as other human rights and other NGOs more often, establishing a closer contact with them.

- The state must ensure appropriate funding for effective activities of the Defender.

- The law must be distinct in stipulating that the report of the Defender should be debated at the National Assembly and resolutions must be sought to eliminate the human rights violations noted in the report.

FREEDOM OF ASSEMBLY

In the ENP EU/Armenia Action Plan it is noted: "Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations". (Section 3 "Priorities for Action", Priority Area 2, Specific Actions).

At the same time, Clause 10 of the RA Government's resolution of July 19, 2007 regarding the implementation of ENP EU/Armenia Action Plan deals not with the amendment of the law, but rather with law enforcement, i.e., no improvement of the law is envisaged.

The RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" has contradictions to the RA Constitution.

1. The first controversy is the name of the Law itself. According to Article 29 of the RA Constitution, "everyone has a right to peaceful unarmed assembly". The concept of "assembly" as provided for by the Constitution in the title of the Law was transformed into 4 notions - "assemblies", "rallies", "marches" and "demonstrations".

2. According to Article 43 of the RA Constitution, the fundamental human rights and freedoms that include freedom of assembly can be restricted by the Law only, "if it is necessary to protect in a democratic state national security, public order, to prevent crime, protect public health and morals, constitutional rights and freedoms, dignity and reputation of other individuals". The remaining restrictions, listed in Clause 1 of Article 1 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", are definitely different from those provided for by the Constitution.

3. It follows from the last sentence of Clause 1 of Article 1 that the police and the state bodies may also restrict the realization of these rights. Meanwhile, Part 2 of Article 29 of the RA Constitution make a comprehensive list of the categories of individuals that can be restricted from exercising fundamental rights and freedoms, and by law only: servicemen in the Armed Forces, the Police, national security bodies, prosecuting agencies, as well as judges and members of the Constitutional Court.

4. According to Clause 2 of Article 5 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", "a public event can be organized and conducted in one or several kinds, as stipulated by this Law". Article 2 of the Law lists these kinds: assembly, rally, demonstration, march, spontaneous public event and others that include festivities, ceremonies, cultural and sports events. This conveys that the right to assembly may be restricted if held in a form, other than those listed in the law.

5. According to Clause 6 of Article 5 of the Law, "mass public event cannot start, if none of its organizers have come". This conveys that if the organizers of the event have failed to be present at it, its other participants may be deprived of the right to realize their constitutional right.

At 60th session of the Venice Commission (Venice, October 8-9, 2004) an opinion was voiced that the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" does not correspond to the demand that the laws on right to assembly must only be restricted through defining legal grounds for acceptable intervention of state bodies. Apart from this, the Law stipulated undue reasons for restricting the conductance of events. In its

Resolution 1405(2004) the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to amend the Law no later than March 2005 for it to be compliant with the standards of the Council of Europe and ensure the freedom of assembly in practice. The authorities developed a draft law on introducing amendments to the Law, consisting of 11 clauses. It was assessed by the experts of OSCE/ODIHR and Venice Commission whose conclusions coincided. Both expert bodies thought the draft submitted did have certain positive shifts, but at the same time there remain serious restrictions, and recommended that further steps be taken to improve the law. In comparison with the Law, adopted on April 28 2004, the prevailing part of the amendments proposed by the draft was seen by the Venice Commission (Strasbourg, February 8, 2005, Opinion 290/2004 CDL (2005)018) as amendments of editorial nature, not requiring substantial change and not influencing the rights and responsibilities of public event participants. The Venice Commission reaffirmed its opinion on the need to bring the Law in compliance with the requirements of the European Convention of Human Rights and Fundamental Freedoms, adopted at its 60th session (CDL(2004)42).

On October 4 2005 the RA National Assembly, having taken into account the recommendations of OSCE/ODIHR and Venice Commission, made certain amendments to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations". Yet, a number of recommendations were ignored. In particular Articles 7 and 9 keep the restrictions, qualified by the international experts as unacceptable.

Throughout 2005-2007 the bids to hold rallies, submitted to Yerevan municipality by both opposition parties and non-governmental organizations, were repeatedly declined on the basis of Clause 2 of Article 12 of the Law as “on the same day, at the same time and in the same place another event is being held”. Yet in the majority of cases no other event was held, or hastily some cultural event or a show for children and adolescents was staged.

On February 20, 2008 after the Central Electoral Commission announced the preliminary results of the presidential elections, the supporters of candidate Levon Ter-Petrosian, refusing to acknowledge the election results, started a termless sit-in protest action. The action was accompanied by crowded rallies and marches. In the early morning of March 1 the police violently dispersed the protesters. Thousands of opposition supporters gathered in the vicinity of Myasnikian monument. In a clash of protesters and the police in the early morning of March 2 ten people died, many were injured.

On March 1, 2008 by a decree of the RA President in Yerevan emergency rule was introduced for 20 days, during this period holding assemblies was prohibited. On March 17 the RA National Assembly introduced amendments to the Law that, contrary to positive expectations, made assemblies questionable.

Thus, Clause 3 of Part 4 of Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was narrated in new edition, according to which the competent body can prohibit holding public events, if it has reliable information that the events are “aimed at violent overthrow of constitutional regime, incitement of national, race, religious hatred. Endorsement of violence or war or can result in mass disorder or crime, harm the national security, public order, health and morals of the society, can infringe constitutional rights and freedoms of other citizens”. The new edition also says: "The information may be considered reliable, if the Police or the National Security Service at the RA Government have given their official assessment of it. The same procedure applies for the assessment by the same bodies of discontinuation of these restrictions”.

Moreover, the list of the terms entitling a competent body to prohibit the event has been expanded. Besides, the Law does not clarify where this information is available to the applicant and the public, whether it can be challenged. Whenever an application for an unwanted rally is submitted, this norm allows getting all the necessary “reliable information” from the competent body.

According to Part 6, inserted in this Article, if the events have resulted in mass disorder with casualties, the competent body can prohibit holding mass public events until the crime is investigated and the perpetrators are identified. This provision of the Law means that if during an event and as a result of mass disorder casualties occurred, holding say environmental rallies can be prohibited. Besides, this provision in essence gives the local self-government structures the mandate to introduce emergency rule, which runs contrary to the RA Constitution and international norms.

Part 1 of Article 10 of the Law has also been amended, omitting a provision that allowed to hold mass public event if it grew spontaneously from a non-mass public event.

The same Article was amended once again, stipulating a timeframe of at least five working days to notify the competent body about holding a mass public event (this timeframe earlier was three working days). At the same time, in Part 1 of Article 12 of the Law the term of notification consideration was prolonged: "The competent body considers the notification within 72 hours after its receipt, in the succession of receipt”. The notifications used to be considered the next day after their receipt by the competent body.

Clause 3 of Part 1 of Article 13, according to which the competent body can prohibit any public event on the grounds, stipulated by Article 9 (described above). This practically means a possibility to prohibit any event.

Thus, the Republic of Armenia not only failed to comply with its commitment to reform the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, but also, with its restrictive amendments, introduced on March 17, 2008, made a serious retreat from democratic principles.

After March 17, 2008 dozens of bids, submitted to Yerevan municipality by the opposition parties and non-governmental organizations, were declined on the basis of restrictions in Article 9 of the Law. Thus on May 6, 2008 the Helsinki Committee of Armenia made an application to Yerevan municipality to hold a march in commemoration of Levon Gulian, dead in the RA Police, on May 12. The notification was declined by the Yerevan municipality proceeding from Clause 6 of Article 9 of the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. The response from the municipality was received by the organization on May 13 only, yet on May 12 the Police impeded the march.

On March 28, 2008 in a joint conclusion 474/2008 of the Venice Commission and OSCE/ODIHR the adopted amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” were strongly criticized and qualified as inappropriate. It was recommended to abolish some of the provisions of the Law, as well as introduce amendments enabling challenging decisions in court in certain cases.

On April 15, 2008 by the results of a discussion at the National Assembly of the Law “On Amending the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” with the involvements of Finola Flanagan, Simona Granata-Menghini (Venice Commission), Denis Petini, Niel Jarmani (OSCE/ODIHR), RA NA Chairman Tigran

Torosian, RA Minister of Justice Gevorg Danielian, RA President's Assistant Gevorg Mherian and the RA NA Chairman's Councilor David Melkonian, the parties reached an agreement that a new draft of five clauses will be developed and submitted to Venice Commission and OSCE/ODIHR before April 25, 2008.

Further on, on the basis of the conclusion of international experts this draft must be introduced to the NA agenda.

It was proposed:

- to amend Clause 3 of Part 4 of Article 9 of the Law, according to which the security threats must be immediate (see above), as well as stipulate that the official conclusion of the Police or National Security Service must be justified;

- to exclude Clause 6 of the same Article, to provide for a possibility to challenge the ban on the event in the court in Article 9;

- to add the clause on the commitment to consider the notification within 72 hours into Part 8, Article 12, as recorded in Part 1 of the same Article;

- to restore the possibility to hold a spontaneous public event without a notification lasting not more than 6 hours with regard to a specific phenomenon or event.

In Clause 12.3 of the Resolution of the Parliamentary Assembly of the Council of Europe 1609 "Functioning of Democratic Institutions in Armenia" of April 17, 2008 it was noted: "The amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect."

On June 11, 2008 the Parliament of Armenia adopted another law on introducing amendments to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations". The following amendments were made:

1. Clause 3 of Part 4 of Article 9 was amended to include immediate threat of violence or real danger (see above);

2. Part 6 of Article 9 is abolished.

3. Possibility to challenge events in court is stipulated. In Clause 3 of Part 4 of Article 9 it was stipulated that the official assessment of the Police or the National Security Service must be justified.

4. In Part 8 of Article 12 a clause on considering the notification submitted within 72 hours is added, recorded in Part 1 of the same Article.

5. Article 2 is addended with a definition of "spontaneous public event".

6. It follows from Clause 1 of Article 10 that no notification is necessary for a spontaneous public event.

7. Article 9 is addended by Part 6.1, according to which no spontaneous public event can last more than six hours. Any subsequent event on the same occasion cannot be

considered spontaneous and must be held in accordance with the defined procedure of notification.

Despite the fact that the recommendations of the Venice Commission and OSCE/ODIHR were mostly realized (except for one), the Law did not come back to its previous version. Some restrictions introduced on March 17, remain in force. In Clause 4.1 of Resolution 1620 of June 25, 2008 the PACE welcomed the amendment of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" in accordance with the standards of the Council of Europe, stating in this regard the assumed commitments are fulfilled. At the same time, in Clause 4.2 the PACE confirmed its requirement that the freedom of assembly in Armenia must be guaranteed in practice. For the reason PACE insists, the Resolution noted, that the Armenian authorities, according to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" guaranteed that no unjustified restrictions be applied with regard to opposition events, in particular, in terms of rally venues.

Despite this, dozens of bids by opposition forces were declined by Yerevan municipality on the basis of Article 9. In the second half of 2008 the representatives of the opposition challenged the bans of the Yerevan municipality with the Administrative Court over 40 times. In the vast majority of cases the opposition suits were not secured. There were two exceptions to this: on September 3 the Administrative Court allowed the conductance of "Dashnaktsutiun" party's rally, then a part of the ruling coalition, and on September 8 the suit of the Armenian National Congress was partly secured - the rally was allowed but not the march initially planned. Contrary to the municipal bans, the opposition held 4 rallies that went in peace - on June 20, July 4, August 1 and September 26, 2008.

Conclusion

While the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" was acknowledged by the Council of Europe as corresponding to the European criteria, it is of more restrictive than regulatory nature. This is true in particular of Article 9. The greatest concern is caused by its practical application. The competent body with no serious justification impedes the conductance of rallies and marches, in particular. The practice of challenging the bans with the court is not satisfactory either, as the court does not ensure the principles of fair trial and proportional punishment, stipulated in Articles 6 and 11 of the European Convention of Human Rights, respectively.

Recommendations

1. To amend the Law "On Holding Assemblies, Rallies, Marches and Demonstrations". To revise Article 9, in particular, abolish Clause 3 of Part 1.4

2. To make the procedure for court challenges more effective

3. To commit the competent body (Yerevan municipality) to placing all the bids for holding assemblies on the web site.

RESPECT FOR THE RIGHTS OF ETHNIC MINORITIES

The ENP EU/Armenia Action Plan notes: "(...) Ensure respect for the rights of persons belonging to national minorities" (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

According to 2001 census, ethnic minorities are 2.2% of the total population of Armenia. There are 11 ethnic communities in Armenia: Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian and German. The biggest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), Kurds (1,519). The greatest part of these communities was formed in the first half of the 19th century. Apart from Yezidis, other communities are concentrated in cities, mostly in Yerevan.

None of the ethnic minority groups dominates any of the territorial units of Armenia. They all are dispersed all over the country. Upon its accession to the Council of Europe Armenia did not assume any special commitment with regard to ethnic minorities. No international document voiced any serious concern with regard to the rights of national minorities. This is due to the fact that ethnic minorities of Armenia make no political demands.

Individual complaints are occasionally received - with regard to pasture use, property, unfair trial, yet such complaints are characteristic of the whole population of Armenia and are not directly related to ethnic discrimination.

During the meetings with representatives of ethnic minorities discontent was mostly heard with regard to lack of funds for more active cultural life, notwithstanding the fact that the RA Government does allocate certain amounts to this effect.

The tense political situation in the country that affected various social groups after the presidential elections of February 2008 does not seem to have directly affected the minorities. Ethnic minorities refrain from being actively involved in domestic politics.

Ethnic minorities are represented in local self-government. In the National Assembly of Armenia there is a deputy of Greek descent, one of the leaders of a ruling party, the Republican Party of Armenia. The biggest community, the Yezidis, is not represented at the parliament, yet they were present in the election party lists of several parties. The absence of Yezidis in the parliament may be explained by the lack of organization within the community. Meanwhile, the correctly organized campaigning can enable Yezidis to have several MPs.

Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

According to Article 14.1 of the RA Constitution: "Everyone shall be equal before the law. 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 ".

Besides, Article 41 of the Constitution says: "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."

Article 1 of the RA Law “On Language” guarantees free use of minority languages in the Republic of Armenia, and Article 2 - a right to be educated in the mother tongue. According to Article 4 of the RA Law “On Language” in official documents, stationery, stamps of ethnic minority organization they can use their mother tongue along with the state language. Article 8 of the RA Law “On Basis of Legislation on Culture” provides that the state “contributes and assists establishment of such conditions that will return the cultural identity of various national minorities”. Article 15 of the RA Criminal Proceedings Code guarantees a state-funded translator’s services to the participant in a trial that do not speak Armenian.

There is no Law on national and ethnic minorities, despite the appeals made by NGOs and political parties since 2003 regarding the need to adopt one. Throughout at least five years various legislative initiatives kept being developed, yet none of the drafts was adopted as a basis for a law.

In 2008 to ensure the rights of ethnic minorities, a number of steps were taken in Armenia[29]:

- The RA Ministry of Culture developed a concept of protecting, retaining and developing the non-material cultural heritage, in which a lot of significance is attached to the issues of protecting and developing the culture of ethnic minorities.

- The volume and the duration of broadcasting in Assyrian and Greek languages on Public Radio of Armenia was increased.

- With state funding, the medieval Jewish cemetery on the bank of Eghegis river was renovated.

- The RA Ministry of Culture organized a republican festival of culture of ethnic minorities.

- The budget of Ministry of Culture has a separate line for funding publication of literary works by ethnic minority writers.

- The expert group of the Council of Europe monitored the process of implementation of European Charter of Regional Languages. Within the monitoring a scientific conference was held, giving floor to discussion of legal and cultural aspects of the problem.

[29] Information is provided by the Department of National Minorities and Religion at the RA Government.

LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.

REFORMS OF LEGAL AND JUDICIAL SYSTEM

The ENP EU/Armenia Action Plan stipulates the following steps to be taken in this domain:

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly (during 2006);

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;

- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006);

- Improve the legal and particularly free legal aid system by improving and , strengthening the system of advocates and develop a school of professional practice for young graduates in law;

- Establish administrative courts (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Current Situation

Amendments made to the RA Constitution on November 27, 2005 launched the implementation of the second stage of the legal and judicial reform. The amendment of the Main Law was aimed to improve the existing legal system, within the concept set as a basis for 1995 Constitution and condition by the principle of separation of powers.

The general analysis of the amendments made to the Constitution in 2005 allows stating the following:

- the institute of the Constitutional Court gained more detailed regulation and became more democratic;

- the legal status of the Court of Cassation was changed;

- additional guarantees for the independence of judges were recorded;

- the limits of constitutional basis for justice were expanded and some of the fundamental principles were prescribed in greater detail;

- the procedure for the formation and activities of the Council of Justice was reconsidered, etc.

Main Objectives

Despite the fact that after the Constitutional reform a number of new legislative acts were adopted and numerous amendments to the laws in force were made, the issue of how compliant the legislative amendments are to the spirit and content of commitments, stipulated by ENP EU/Armenia Action Plan, remains open.

Moreover, looking in retrospect and analyzing the developments of February-March, 2008, one can conclude that most of the amendments were aimed at specific practical targets.

Judicial Power

Current Situation

The primary objective of the reforms was the establishment of unified, full-fledged and independent judicial power, and this consideration lay at the heart of the whole concept of judicial and legal system. This concept was realized through the Judicial Code, adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resolved a number of important and crucial issues. In particular, for the first time the relations, linked to organization and activities of the judicial, were for the first time regulated in a systemic form. Previously these were regulated by separate law - the RA Laws "On the Council of Justice", "On Trials", "On Legal Status of the Judge". Specialized - criminal, civil - courts and the Administrative Court was set up. The role and the significance of the Court of Cassation in the judicial system of Armenia changed; presently its main function is to ensure uniformity of law application and to contribute to the development of the law. Self-regulation bodies for the judicial power were formed, too - the General Conference of the RA Judges and the Council of Court Chairmen, a school has been establish to train judge candidates (Court School), that is to ensure the competence and appropriate training for future judges.

Main Issues

At the same time the legal and judicial reform in general and the Judicial Code in particular did not solve the most important of the urgent issues - creation of real independence guarantees and the practical application. The steps directed at strengthening the independence of the judicial system did not ensure the real independence of certain judges. As a result, within the de jure independent judicial system there are de facto dependent judges, which are illustrated by examples on both legislative and practical level.

Thus, one of the main guarantees for ensuring the independence of judicial system and the judges was to be the Council of Justice, entitled with a new status by the Constitution. Yet the analysis of the legislation shows this body, and hence, the whole judicial system, remains under the influence of the RA President.

This can be proved by several vivid examples:

- According to the Law, the Council of Justice is competent to make up the lists of candidate judges, yet this list is ratified by a decree of the country's President (Part 4 of Article 117 of the RA Judicial Code).

- The lists of promotion of judges of special primary courts and courts of appeals are also made up by the Council of Justice through a secret ballot, yet the President of the country leaves the candidates he finds acceptable on this lies, too and adds new candidates to the list within ten days. If the list is not addended it is considered to be declined (Part 9 of Article 137 and Part 8 of Article 138 of the RA Judicial Code).

- A similar mechanism is stipulated for filling in vacancies on the courts of general jurisdiction. Upon the consent of the candidate the Chairman of the RA Court of Cassation presents his candidacy to the Council of Justice. Unless the procedures stipulated by the Code are violated, the Council of Justice gives a positive opinion through an open ballot. In the case of a positive opinion, the candidacy is presented to the President of the country. If the President fails to appoint the judge this candidacy is considered rejected, it is excluded from the candidate judge list and a nomination to the vacancy is made anew (Parts 9 and 10 of Article 123 of the RA Judicial Code).

It is not surprising that the judges appointed by the abovementioned procedure mostly came up with verdicts of guilty on the criminal cases instituted on the events of February-March 2008, and the 1-2 verdicts of non guilty can be considered a negligible exception. Therefore, one of the conclusions of PACE Resolution 1609 - "despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process" - may be considered fully compliant with the reality.

Another example is the statistics of detention on the cases above - the motions on detainment and its prolongation filed by prosecutors and investigators were almost 100% secured. In Resolution 1609 it was also noted that the courts did not display critical approach to the need for preliminary detainment, did not duly consider the arguments of the defense attorneys, which does not meet the requirements of the European Convention of Human Rights and Fundamental Freedoms and once again raises questions regarding the independence of the judicial.

Procuracy

Current Situation

The constitutional reform was aimed at creating not only an independent judicial, but also a procuracy, independent from all branches of power. The system was supposed to be profoundly changed, as shown in the new RA Law "On Procuracy", adopted on February 22, 2007.

In the new Law "On Procuracy" the following was defined: main principles of procuracy organization and activity; the new procedure for appointing the RA General Prosecutor (upon a proposal of the RA President is appointed by the National Assembly for six years, and can be dismissed by the National Assembly - in the cases specified by the law - with a majority of votes); the structure and the system of the procuracy; the procedure and the conditions of prosecutor's subordination, their appointment and dismissal; immunity, material and social guarantees of prosecutor's activities. Yet the main accomplishment of the Law was certainly the separation from the procuracy of the criminal investigation function, as a result of which this body at the pre-trial investigation had to predominantly concentrate its efforts on the implementation of the control over the legitimacy of the investigation and preliminary examination.

Main Issues

Nevertheless, the developments showed there was no real intention to free the procuracy from investigative functions. Through consistent legislative amendment the procuracy not only restored the former positions, but also gained new privileges.

The first step was the adoption of the RA Law “On Special Investigative Service”. This Law established the new formally independent body in charge of investigating criminal cases. The head of the service is appointed by the RA President upon a proposal from the General Prosecutor.

Appropriate amendments were made to the RA Criminal Proceedings Code, too. According to the amendments the Special Investigative Service was to undertake the preliminary investigation on Articles 149, 150, 154.1, 154.2 of the RA Criminal Code on the cases dealing with the involvement in a crime of the leadership of the legislative, executive and judicial branches of power, of people on special state service, abusing their official positions, as well as dealing with elections.

Besides, a separate provision was made to the effect that the RA General Prosecutor can transfer those criminal cases from other investigative bodies to the Special Investigative Services that involve accomplicity or crime of the officials above as well as the cases in which these individuals are victims (Part 6 of Article 190 of the RA Criminal Proceedings Code).

Further on it became clear that all the loud cases on the events of February-March 2008 under various pretexts were concentrated in the Special Investigative Service, with the whole complex of legislative “innovations” used “successfully” by the RA Procuracy for a total control and investigation in the right direction, in both individual cases and against certain defendants. In fact the previous mandate of the procuracy was restored, with no serious commitments and responsibility.

Access to Justice

Current Situation

The solution of issues related to access to justice, in particular, the establishment of effective mechanisms to ensure free legal aid is a logical component of the whole legal and judicial reform process. The experience of the structures, established at the first stage of the legal and judicial reforms, their benchmarking against the world experience and the study of the legal practice showed that the free legal aid as a way to ensure access to justice is only possible through structural change. It is to this effect that the draft law “On State-Funded Legal Aid” was developed, with the support of Open Society Institute, and submitted to public debate.

Main Issues

Yet another solution was preferred in the course of the legal and judicial reform. In particular, through the RA Chamber of Advocates man attempt was made to regulate a whole domain of public relations outside legal framework by one amendment only, introduced to the RA Law “On Bar”.

This prospect is characterized by a whole number of negative characteristics. First of all, specific criteria of determining inability to pay are lacking, as well as the effective mechanisms for proving the necessary aid. This will have complicated and very negative consequences for the beneficiaries involved.

Besides, the real number of the public attorney of the Public Attorney Office (34, 7 of them working part-time) cannot objectively ensuring free legal aid to vulnerable social groups, in particular in the regions.

Finally, this initiative, being insufficient and completely ineffective, can be presented as an example of state implementation of the commitments to ENP.

Solutions Proposed

Analysis of the problems above allows concluding that the legal and judicial reforms have not corrected most of the existing shortcomings, and in some cases also created new problems, allowing complex and consistent approach. In this regard it is necessary, in particular:

1. To make complex amendments in the RA Judicial Code, aimed at ensuring real independence of judges;

2. To amend the RA Criminal Proceedings Code and the RA Law “On Special Investigative Service” so as to de facto excludes the investigation of criminal cases by the procuracy, as well as the total control of the RA General Prosecutor over the Special Investigative Service;

3. To take productive steps to have adopted by the RA National Assembly the draft law “On State-Funded Legal Aid”, currently in circulation, and have appropriate amendments made in other legal acts.

CIVIL SERVICE DOMAIN

The ENP EU/Armenia Action Plan stipulates the following regarding the civil service reform:

- Establish a unified and transparent system of recruitment for civil servants and develop incentives to promote public integrity through the establishment of merit-based payment structures. Promote the improvement of coherent civil service policy mechanisms and strengthen administrative capacity;

- Promote a merit-based system of payment for civil servants and introduce a rational system of evaluation of work performed;

- Support the improvement of civil service system activities and institutions (job advertisement/selection, appraisal, civil service passports etc.) and bring them in line with European standards;

- Support the improvement of educational and training programs for civil servants (in particular those related to computer and management skills, foreign languages, ethics code etc) in accordance with European standards;

- Establish a coordination network between the relevant authorities of civil service systems of EU Member States and Armenia, to ensure harmonization of legislation (and other relevant activities) and exchange of best practices and data (Section 4 "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform").

In Section 5 of the RA Government Resolution No. 927 of July 19, 2007 on the implementation of ENP EU/Armenia Action Plan, the following priorities are defined:

1. To improve the RA civil service and mechanisms for having a unified policy;

2. To create a single list of professions pertaining to the public administration in Armenia;

3. To develop and introduce a rational system of performance evaluation for the civil servants;

4. To improve the merit-based remuneration system for civil servants;

5. To improve the Ethical Code of the civil servants and its compliance;

6. To ensure incessant renewal of job descriptions for civil service;

7. To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

The reform process in this domain received much attention in the Armenia section of the current report "Implementation of the European Neighborhood Policy in 2007", presented by the Committee of European Communities in Brussels in April 2008. "While no comprehensive evaluation was made of the civil service, nevertheless, steps were taken to improve the system, with particular emphasis made on ethical code, anti-corruption

measures and employment procedures. The process of defining a unified legal norm of civil servants has not been completed yet", - the report noted in particular.

The present research aims to disclose the situation in terms of implementation of priorities above, the results, the reasons that impede their full-fledged and effective implementation.

To obtain information, the following methods were used in the course of the research: document research, in-depth interview or focus group discussion.

Thus, the first method was used to study the following legal, methodological and information documents: the RA Law "On Civil Service" , the RA Law "On Remuneration of Civil Servants"; the draft law "On Introducing Amendments to the RA Law 'On Civil Service' " (July 21, 2008); draft law "On Public Service"; resolutions, current reports, information from the RA Council of Civil Service, etc.

In-depth interviews were administered (personal and group) with the deputy chairman of the RA Council of Civil Service and the Council staff - the heads of subdivisions engaged in the research issues and individual experts. A special questionnaire was developed for in-depth interviews.

The interview participants were offered to give a quantitative and qualitative assessment of the process of the implementation of priorities for 2007-2008 and its results. To this effect we developed certain quantitative and qualitative indicators.

In particular, in terms of quantity the experts were offered to assess the implementation of each of the 2007 priorities by a three-unit scale, where 1 stands for "fully implemented", 2 - for "partially implemented" and 3 - for "nothing is done".

To make a qualitative assessment the experts were offered:

1. To list all steps taken to implement the priority during the reporting period;

2. To describe the rationale, the principles of the abovementioned steps, the criteria of their implementation, changes made, their direction, nature, etc.;

3. To present the reasons, for which the steps planned were not taken or were not fully implemented.

Priority 1: To improve the RA Civil Service and mechanisms for having a unified policy.

The following steps were taken:

To ensure transparency all the agencies have public information departments set up, in which job descriptions have been developed for 55 out of 80 civil servants. The Procedure for Freedom of Information and Provision of Information in Civil Service is being discussed currently. Training of all staff of public information departments was made. Proceeding from the positions in civil service, in the first (special) departments of all agencies the list of staff having access to secret information has been developed, with the level of acceptable access to such information being defined.

All agencies have unified departments of human resource management.

Aiming to overcome corruption in public administration, income statements have become mandatory for all civil servants - in the first years after civil service system was introduced not all classes of civil servants had such an obligation. Notably, the statement of incomes is a necessary but insufficient condition to overcome corruption in public administration.

The draft law “On Public Service” stipulates the introduction of the following new institutes: to expand the Code of Ethics of Civil Servants; the information institute; the notion of conflict of interest; the notion of gifts to officials at duty (in particular, types and cost of the permissible gifts to officials, the circle of interlinked individuals, etc. should be regulated - this requirement is also made by GRECO).

In terms of ensuring unified recruitment mechanisms as well as their examination, a pilot management information system has been developed with the assistance of the Yerevan Institute of Mathematical Machines to hold competitions. It is expected that this system will be used throughout administrative system. Today all human resources management departments perform 90% of their functions through electronic management systems.

By a unanimous opinion of experts, all measures taken to realize priority 1 either have already been taken or are being taken.

The failure to implement some of the recommendations of the priority is due to the fact that the RA Law "On Public Service” has not been adopted yet.

Priority 2: To create a single list of professions pertaining to the public administration in Armenia.

The following steps were taken:

The RA Government has approved a list of positions. While this list, in accordance with the market demands, is being reviewed every year, it still does not include all the diversity of professions necessary in public administration.

After the formation of civil service system a unified list of professions in public administration was to be developed. To this effect the following steps were made:

- the need to create a unified list of professions in administrative system was justified;

- the professions, necessary for various subdivisions, were subdivided into groups;

- the task of specifying requirements for special education for experts in various subdivisions was defined to finalize job descriptions (thus, for example it was hard to define the education background necessary for a HR manager, etc.);

- in the development of a single system of professions, the real requirements of the market and analysis of data on actual basic education of civil servants, employed in public administration from 1960-1970s, archive check-up of the data reliability, as well as the development of mechanisms to ensure effective application.

The problems, related to the implementation of this priority, require knowledge, its solution is impossible through the efforts of the Council of Civil Service, therefore, with no additional funding the single list of professions for public administration is impossible to develop.

In the opinion of experts, this priority was assessed as mostly unfulfilled.

Priority 3: To develop and introduce a rational system of performance evaluation for the civil servants.

The following steps were taken:

Upon the initiative of the RA Government it was proposed to develop a new system, according to which as a main performance evaluation criterion the following indicators are taken:

- volume of work;

- time of implementation;

- quality (compliance with the established quality norms);

- contribution (share or value in the working programs of the subdivision);

- nature (mechanical, semi-mechanical, creative, etc).

In 2007 the Yerevan Institute of Mathematical Machines developed an electronic system for collecting and processing the data necessary to evaluate performance. This was done upon the order of the Council of Civil Service and with the assistance of the World Bank. Upon the initiative of the RA Government another performance evaluation system was developed, too, that is being tested at the staff of the RA Government and the RA Ministry of Economy. Yet the new performance evaluation systems have not been introduced as yet.

The establishment of the general system in accordance with the indicators above calls for the development of qualitative indicators of performance evaluation (including methods of measuring quality, nature, contribution, etc.), which also requires knowledge and skills. It is impossible to solve this problem by the efforts of Civil Service Council only, it also requires financial assistance from outside.

Priority 4: To improve the merit-based remuneration system for civil servants.

In 2007 the RA Law “On Remunerating Civil Servants” was amended, according to which the base salary (the part independent of the years in service) of all civil servants was raised, yet this was not linked to the new evaluation system and did not ensure the differentiation of remuneration of civil servants on the basis of criteria specified.

The introduction of a new system of merit-based remuneration of civil servants was late because no rational performance evaluation system was adopted.

Priority 5: To improve the Ethical Code of the civil servants and its compliance.

Since the draft law “On Public Service” has not been adopted yet, no ethical code has been put into circulation, no sub legal normative acts have been developed, ensuring the compliance with ethical rules.

Despite this, in terms of ethical code improvement certain progress has been recorded owing to draft law “On Public Services”. Before that the Ethical Code of Civil Servants was not stipulated by law, and was only approved by the Council of Civil Service (resolution of No.13 of May 13, 2002). The establishment of ethical norms as a law:

- will reinforce their mandatory implementation as will stress their legal, normative nature, regulated by the law;

- will allow overcoming the unilateralist that exists in several codes of ethics in force. Thus, for example, “the civil servant, out of duty, should avoid other business contacts with people in conflict with state authorities”.

At the same time the draft has some unclear definitions. In particular, the notion of “legal policy”, mentioned in Clause 1 of Part 1 of Article 22, the criteria of “public interest” are also uncertain.

Priority 6: To ensure incessant renewal of job descriptions for civil service.

This is an incessant and permanent function of civil service system that does not call for specific timeframes, unless required by the newly adopted piece of legislation. Overall, changes were introduced in over 4,300 job descriptions.

Priority 7: To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

Instead of a radical change of the specialized legislation a more general decision was made - to develop a draft law “On Civil Service” with an expanded domain of regulation, including also civil service. Yet the adoption of the law was late, for this reason some of the institutional changes aimed at harmonization with the EU countries cannot as yet be implemented.

Certain steps were taken to exchange experience with the EU member countries.

Overall, in the domain of civil service throughout the reporting period the required priorities of ENP Action Plan can be qualified as “partially in line”.

The implementation of the majority of requirements is largely related to the draft law “On Public Service”. The delay in adoption of the draft to a certain extent is conditioned by active discussions, related to its comprehensive nature, since the domain of its regulation includes most crucial relations not only in terms of civil services, but also state and municipal administration.

In the opinion, of the vast majority of experts in civil service, with the adoption of the law “On Public Service” many of the problems of this sphere will be resolved or preconditions will be in place to solve many issues that are in cause-and-effect relationship.

FREEDOM OF SPEECH,
MEDIA AND INFORMATION

The ENP EU/Armenia Action Plan contains the following requirement: “Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” (Section 3 “Priorities for Action”, Priority Area 2).

Section 4 “General Objectives and Actions” also considers this sector. Clause 4.6.3 “Information Society and Media” of Sub-Section 4.1 “Political Dialogue and Reform” of Section 4 “General Objectives and Actions” says:

“- elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-Signatures), e-Government, e-Health, e-Learning, e-Culture;

- work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;

- work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;

- switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.”

The current report "Implementation of the European Neighborhood Policy in 2007” by the Committee of European Communities, section regarding Armenia, reads as follows:

“Measures have been taken to approximate the legislation on freedom of speech to the international standards: the amendments made to the RA Law “On Television and Radio” were aimed at ensuring balance in the National Commission on Television and Radio. Until the year 2013 the National Commission will be supervised by the President, after which the number of Commission members elected by the National Assembly will be equal to the number of members appointed by the President. The board members of the Council of Public Television and Radio Company are appointed only by the President. In July 2007 the National Assembly turned down two draft laws imposing restrictions on programs of international broadcasters. Permanent absence of independence of the regulatory bodies and insufficient informational pluralism still remain causes of concern. The RA Law “On Freedom of Information” is not fully applied yet, namely with regard to recording, classification and storage of information. During the presidential election campaign, a number of broadcasters were exposed to tax inspection, which gave grounds to suspect deliberate pressure exerted on them.

According to the provisions added to the Criminal Code of Armenia in April 2007, hindering the professional activity of journalists is persecuted. But self-censorship, violence and pressure on journalists are still practiced. Libel and insult have been partially decriminalized. Still, libel and "insulting a government representative" are punished also by imprisonment."

Having analyzed fulfillment of the obligations specified in the ENP EU/Armenia Action Plan, Yerevan Press Club (YPC) came to the following conclusions.

Broadcasting Legislation and Practice

On February 26, 2007 the National Assembly of Armenia adopted the RA Laws "On Introducing Amendments to the RA Law 'On Television and Radio'" and "On Introducing Amendments and Addition to the RA Law 'Regulations of the National Commission on Television and Radio'". But, as it has recently become traditional, the Laws were discussed and adopted hastily, through rapid procedure.

The argument that the need to bring the legislation into accord with the amended Constitution called for a rapid procedure does not hold water. Over a year had elapsed since the adoption of the amendments to the Constitution, and both the governmental and the parliamentary structures had enough time to hold discussions, hearings, to study the proposals submitted, to get expert evaluation. Moreover, in September 2006 the Government put into circulation a more comprehensive draft law that was rejected by the National Assembly, due to the efforts of the civil society and journalist community. Thus, the Government had plenty of time to discuss the draft law with the interested organizations since it was just the shortened version of the previous one.

After adoption of the above-mentioned Laws, the YPC made a statement, which covered an opinion regarding these Laws. Namely, it was stated that: "The amendments to the broadcasting legislation (...) do not reflect even the positive stipulations of the amended Constitution. Firstly, the proportion of the members of the regulatory body (the National Commission on Television and Radio), appointed by the President and elected by the Parliament, as provided for by the Main Law, will, following the amendments, only be reached in 2011 (...). Secondly, the amendments do not ensure the public and political diversity in NCTR composition: in accordance with the procedures proposed, the decision about the appointment of NCTR members from NA will be made by the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President. In other words, the regulatory body, like before, will be formed solely by the political forces at power, and in this regard the amended legislation does not introduce any significant novelty. Thirdly, like before, the involvement of the public in NCTR formation and the transparency of its decision-making is not ensured." The YPC also stated that remaining subdivision into the paid (that is, the full-time NCTR members - the chairman and the vice chairman) and the unpaid members conditions huge gap in their competence and violates the principle of collegiate decision-making. And finally, according to YPC statement: "The expansion of the NCTR competence and inclusion of the public broadcaster into it, as stipulated by the amended Constitution, did not entail the description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio in broadcasting legislation."

Above two years have passed since amending the above-mentioned Laws. In April 2007 the tenure of 3 NCTR members expired. According to the law, two persons were to be appointed to this body (the number of the NCTR members changed from 9 to 8). On April

7, 2007 the President of Armenia appointed one National Commission member (Grigor Amalian was reappointed as a member of the NCTR and later on as its Chairman), though the National Assembly should have been the first to elect NCTR member, since the amendments to the Law read as follows: “In case of expiry of the National Commission members’ tenure or early termination of their powers, the vacancies shall be filled first by the National Assembly and then by the President of the Republic.” Still, pursuant to the same amendment: “If one party appointing (electing) a member to the National Commission fails to appoint (elect) its member, this will not deprive the other party appointing (electing) a member to the National Commission of its right to fill in its vacancy.” As of December 31, 2008 the National Commission had not appointed its member, moreover, it did not include this issue on the agenda of its sessions. The tenure of three of the remaining 6 NCTR members expires in 2009 (thus, according to the above-mentioned principle of succession, two of them shall be elected by the National Assembly and one - by the RA President). The tenure of the other three members expires in 2011 (accordingly, two members shall be appointed by the President, one - by the NA) and if the NA remains disinterested in this issue, the amendments made to the Constitution and the laws will lose their significance and the activity of the NCTR will be rendered less efficient.

On June 27, 2007 at the extraordinary session of the RA NA the Draft Laws “On Introducing Amendment to the RA Law 'On Television and Radio'” and “On Introducing an Addition to the RA Law ‘On State Duty’”, initiated by the RA Government, were brought up for consideration. They were immediately called by experts draft laws on stopping the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty in Armenia. The first draft law stipulated prohibition of the activities of other broadcasters on the frequencies held by the Public TV and Radio Company. The second one specified a state duty of 70,000 AMD for “each issuance of a program cycle of the national editorial office or a service of a foreign media by the TV and Radio companies of the Republic of Armenia”. Naturally, adoption of these laws would put an end to broadcasting of Armenian Service of Radio Free Europe/Radio Liberty by the Public Radio of Armenia. Broadcasting of such programs by private companies would become unprofitable.

What issues, vital for the country and the society, are these two draft laws to solve that they had to be necessarily considered at an extraordinary session, instead of being included into the agenda of the ordinary session, following all the procedures that the law provides for? The draft authors have not presented any convincing arguments as to the urgency of their adoption at this very moment.

In this case again, for many times already has the Government hastily submitted draft media-related laws to the National Assembly - without consulting the civil society, media representatives, experts, even without the opinion of the appropriate parliamentary commission. These draft laws did not solve any vital problem for the country and the society, therefore, it is not clear why it was necessary to consider them at an extraordinary session. The draft authors did not present any convincing arguments as to the urgency of their adoption at that very moment.

These draft laws caused a wave of protest since, as it was mentioned in the statement of a number of NGOs, membering in Partnership for Open Society initiative, “analysis of the draft laws, presented to the NA, shows that they are primarily directed against the only broadcast medium out of the control of the RA authorities - the Armenian Service of Radio Free Europe/Radio Liberty, because their adoption in essence will stop the broadcasting of the programs of the Service on Armenian radio waves”.

On July 3, 2007 the draft laws were not adopted due to lack of quorum: 65 deputies took part in the voting, whereas 66 votes were necessary for quorum. Nevertheless, since September 1 the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty on the Public Radio of Armenia were stopped by the initiative of the Council of Public TV and Radio Company. On July 6 the Council of Public TV and Radio Company resolved to stop airing the programs of local and foreign broadcasters on the public TV and radio from August 9. This decision affected not only Radio Liberty: in August the broadcasts of "Tsayg" TV company of Gyumri on the 6th VHF that the TV company had been using jointly with "Shirak" public TV was stopped. The same is true for the program of "Mir" Interstate TV and Radio Company on the Public Radio of Armenia. The broadcasts of the Radio Liberty Armenian Service is made on the frequencies of "ArRadioIntercontinental". This private radio company is aired in Yerevan and in some other regions of Armenia. According to the representatives of the Armenian Service of Radio Liberty, changing the broadcasting company resulted in a significant reduction of the potential audience.

In the years 2007-2008, an example of governmental pressure on media was the campaign against "GALA" TV company of Gyumri. On October 22, 2007 Vahan Khachatrian, the owner of "CHAP" LLC - founder of "GALA" - made a statement regarding the attempts of various power agencies to exert pressure on TV company. The document stressed the infallibility of the TV channel's stance and the readiness to prevent any attempt of intervention into its editorial policy. The need to make such announcement was caused by the fact that after broadcasting by the company of the speech of RA First President Levon Ter-Petrosian at an event, dedicated to Armenia's Independence Day, September 21, different state bodies tried to exert pressure on "GALA", demanding to stop broadcasting speeches of the opposition representatives. A week after the statement of Vahan Khachatrian, the RA State Tax Service started check-up at "CHAP" LLC. Upon the end of the audit the RA State Tax Service reported the violations revealed. In particular, this referred to concealed amounts of TV advertising. Through a motion of the tax officers on December 3, 2007 the property and finance of "CHAP" were taken into custody. On December 17 the court hearings of the suit of the Gyumri Tax Inspection versus the founder of "GALA", "CHAP" LLC, started and were interrupted on December 18 after the court accepted the counter-claim of "CHAP" demanding to abolish the act on the results of audit. On March 19, 2008 the RA Administrative Court obliged "CHAP" LLC to pay into the state budget tax debts and fines, exceeding the amount of 25 million drams (more than $ 81,000). The overall amount that "GALA" founder was to pay including the litigation and the execution expenses came to 26 million 899 thousand AMD (about $ 90,000). From March 19 to March 25, 2008 there was an unprecedented action for Armenia in Gyumri - a telethon in support of "GALA" TV company. Further on, the fundraising was made all over Armenia and abroad. As a result, more than 26 million AMD were raised and used for payment of the tax liabilities.

At that time and afterwards different governmental agencies tried to influence "GALA" TV company. The same authorities pressed on advertisers to discontinue cooperation with "GALA" TV company. As a result, almost no commercials were aired by "GALA" TV company from the end of 2007 until summer of 2008. Besides, in the same period of time a dispute started between the Gyumri municipality and the "GALA" founder, "CHAP" LLC. The Gyumri municipality addressed the court demanding that "CHAP" LLC be obliged to stop the use of the city TV tower. The dispute was settled on October 31, 2008, when RA Court of Cassation abolished the ruling of court of general jurisdiction of Shirak region made in favor of the Gyumri municipality.

The next amendments to the RA Law “On Television and Radio” were made in November 2007, just before the presidential elections. Article 11 of the Law was given a new edition. The Article referred to the activities of TV and radio companies during the period of elections and referenda. The amendments were made to bring the Article into compliance with the RA Electoral Code, regarding pre-election promotion and its coverage in the media. But the amendments did not cover the issue of regulating the activity of media in the period since the announcement of the election date till the start of pre-election promotion. The obvious political bias of most of the TV channels, recorded by the YPC monitoring in October-December 2007, showed the need for such regulation.

The legislation stipulated that the National Commission on Television and Radio must control the compliance of television and radio companies with the procedure of pre-election promotion defined in the RA Electoral Code, and the right to address the court in case of detecting violations. Though the local and international monitoring reports specified cases of violation of the law, the NCTR did not record any violation.

Speaking about amendment to the RA Law “On Television and Radio” it should be mentioned that in August 2008 the RA Government hastily, without any preliminary discussion and acceptable justification, presented to the National Assembly another draft law on introducing an amendment to the Broadcast Law: “Not to announce broadcast licensing competitions till July 20, 2010. The TV companies, whose licenses expire before January 21, 2011, can request prolongation of the license from the National Commission. The license will thus be prolonged for the period requested, but for no longer than January 21, 2011.” The need to introduce such a provision is substantiated by the Government by the expected transition from analogue to digital broadcasting in Armenia.

The draft law was approved at the Government session on August 28, 2008, but was made public only on September 8, the day the session of the parliament was opened. The draft law was promptly put on the agenda, discussed, approved in the first hearing on September 10, and in the evening of the same day finally adopted at the extraordinary session. The civil society and experts regarded this amendment to be aimed at depriving the “A1+” TV company of the opportunity to take part in broadcast licensing competitions for 2 more years.

On September 9, 2008 Yerevan Press Club and its partner organizations released a statement. “This initiative of the Government has nothing to do with either the protection of the broadcasters, consumers, state or “with ensuring equal opportunities and prevention of market upheavals” (as noted in the governmental justification), but is only an attempt to get rid of the broadcast licensing competitions as of an unnecessary headache. The adoption of such laws will result in a situation when we shall enter the era of digital broadcasting with low-quality broadcaster that does not meet the public demand and international standards, is monopolized and hence is easy to control”, the statement stressed in particular.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, also expressed his concern regarding the adopted amendment. In his letter of September 26 to RA President Serge Sargsian, Miklos Haraszti pointed out: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.” In the opinion of Miklos Haraszti, moratorium on licensing meant that Armenia would not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of “A1+” TV company. OSCE Representative also reminded that in April 2008 the Parliamentary

Assembly of the Council of Europe, in its turn, also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow “A1+” to apply for a new license. “I hope that, for the sake of pluralism, the RA Government will review the amendments with the active participation of all relevant civil society and media stakeholders”, Haraszti wrote.

At the end of 2008 a package of amendments to broadcast legislation, developed by a group of deputies, was submitted to the consideration of the National Assembly. The Standing Commission of NA on Science, Education, Culture, Youth issues and Sport put up the package for public discussion.

Yerevan Press Club presented its Conclusion on the issue:

“Having considered the package of draft laws “On Introducing Amendments and Additions to the RA Law 'On Television and Radio'”, “On Introducing Amendments and Additions to the RA Law ‘Regulations of the National Commission on Television and Radio'” and “On Introducing Amendments and Additions to the RA Law ‘Regulations of the RA National Assembly '” put up for discussion by the National Assembly of Armenia, Yerevan Press Club is of the following opinion:

The package does not consider the principal fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. It does not take into account the proposals made by the journalist community and the civil society as well as the obligations towards international organizations undertaken by Armenia:

a) In particular, the draft laws do not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Item 8.3 of PACE Resolution 1609 “Functioning of Democratic Institutions in Armenia” (April 17, 2008): “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account.” Earlier, in July 26, 2006, the OSCE Representative on Freedom of the Media Miklos Haraszti mentioned in his report on the state of media freedom in Armenia: “(...) Legislative changes should not be limited to a ‘half Presidential - half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.” If mechanisms providing for social and political diversity are not developed, then, as Miklos Haraszti stated in the report, the government control over these bodies would not ease, particularly in such time periods when the President and the parliamentary majority represent the same political force.

b) The draft laws do not consider the issue of ensuring transparency in the decision making process of the NCTR. Inadequate transparency in decision making was mentioned in the judgment of the European Court of Human Rights on the case of the founder of “A1+” TV company, “Meltex” LLC, and its President Mesrop Movsesian versus Republic of Armenia (known as the case of “A1+”). In its decision the European Court recalled the guidelines adopted by the Council of Europe Committee of Ministers in the domain of broadcasting regulation, which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that “all decisions taken (...) by the regulatory authorities (...) be (...) duly reasoned”. The judgment

also quoted the PACE Resolution on Armenia of January 27, 2004, which concluded that "the vagueness of the law in force had resulted in (NCTR) being given outright discretionary powers". In the opinion of the European Court, the licensing procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. This was noted also by Miklos Haraszti, who recommended the need for such amendments in his abovementioned report of the RA Law "On Television and Radio" that would be clear about broadcast licensing competition procedures: "The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks."

c) Though the amended Constitution stipulates that the National Commission on Television and Radio should be the regulatory body for both private and public broadcasters, the draft laws do not define precisely the relation between the NCTR and the Council of Public TV and Radio Company, the mechanisms of regulating the public broadcasting, liability forms in case of violations, etc.

d) And finally, the draft laws do not eliminate the negative consequences of the amendment of September 10, 2008 to the RA Law "On Television and Radio". The amendment renders impossible the implementation of practical measures ensuing from the judgment of the European Court of Human Rights on the case of "A1+" TV company, which is emphasized in the recommendations of international organizations. Namely, PACE Resolution 1620 (June 25, 2008) noted: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights concerning the denial of broadcasting license to 'A1+', calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on March 26, 2008 and with the case law of the European Court of Human Rights."

Ignoring the above-mentioned basic issues renders meaningless the amendments to the broadcast legislation. The amendments do not provide for significant reforms and are just formal and superficial."

The situation connected with application of the RA Law "On Freedom of Information" has almost remained unchanged. The absence of two legally stipulated procedures - the procedure of registration, classification and archiving of the information processed by the owner of the information or imparted for him, as well as the procedure of providing duplicates (copies) of information by state institutions and organizations, local self-administration bodies creates certain obstacles. In autumn 2008 the RA Ministry of Justice developed a draft law "On Freedom of Imparting Information". In the opinion of experts from several non-governmental organizations (in particular, the Freedom of Information Center), this draft law is even regressive as compared with the acting Law.

Amendment of the Criminal Code of Armenia

The section regarding Armenia in the current report "Implementation of the European Neighborhood Policy in 2007" by the Committee of European Communities says: "The new provisions included in the RA Criminal Code in April 2007 stipulate that impeding the legitimate professional activities of journalists is persecuted (...)". Meanwhile the RA Criminal Code has long had Article 164 "Impeding the Legitimate Professional Activities of

a Journalist", which was amended on June 1, 2006. Reformatory labor was removed from the list of sanctions specified in the Part 1 and Part 2 of the Article.

Decriminalization of libel and insult has often been discussed, and the international institutions recommend to abolish Articles 135 ("Libel"), 136 ("Insult") and 318 ("Insult of Representative of Power") of the RA Criminal Code. There was progress in this respect in 2008: on May 19, 2008 the RA National Assembly nullified Article 318.

State of Emergency (March 1-20, 2008) and Media

On March 1, 2008 a state of emergency was introduced in Yerevan by the Decree of the RA President Robert Kocharian. Subclause 4 of Clause 4 of the Decree stipulates that "the media publications on state and inner political issues can be made exclusively within official information, released by state bodies". Such definition was in fact used to exert 20-day censorship in Armenia. While censorship was not listed among the restrictions, imposed by the Decree, moreover, according to Article 4 of the RA Law "On Mass Communication", it is actually prohibited, these days not only in Yerevan, but also all over the country factual pre-emptive censorship was practiced.

Due to this the publication of a number of national newspapers was banned because of their content. Some others, facing illegal obstacles, refused working, because they were unable to voice opposition and critical viewpoints, while the publication of opinions, discrediting and insulting for the opposition, often even aggressive, in other newspapers was in no way restricted. The media report that the pre-emptive censorship is practiced by people introducing themselves as officers of National Security Service. The Decree was directly followed by blocking of several news web sites that did not even have time to make any report on the situation. Such actions were completely illegal, and imposing restrictions with no grounds, under the circumstances, could be qualified as a violation of the presumption of innocence. Here, too, political discrimination was manifest, as only those sites were blocked that had previously disseminated criticism of the country authorities.

Meanwhile, in the broadcasting, fully controlled by authorities, there were numerous violations of the legality and the emergency rule. In particular, a number of media, violating the Subclause 4 of Clause 4 of the Decree, published and broadcast not only official information, but also presenting political propaganda, most of which was one-sided, discrediting and insulting for the opposition. The most prominent example of such unacceptable coverage was shown by the First Channel of the Public Television of Armenia that not only neglected the clause of the Decree, but also broke Article 28 of the RA Law "On Television and Radio": "The prevalence of a political stance (...) in the programs broadcast by public TV (...) is prohibited." The National Commission on Television and Radio, which, according to the Law, is an independent regulator and is also "to oversee the activities of TV and radio companies" (RA Law "On Television and Radio", Article 37, Part 1), failed to perform one of its main functions and did not prevent the violation of the Decree provisions not only by the PTA First Channel, but also the majority of private broadcasters. Violations of the relevant Decree provision were recorded also in a number of print media, with no response ensuing from the RA Ministry of Justice. The Ministry, within its competence, had to take steps to eliminate the violations.

On March 13 the Decree on the state of emergency was amended. In particular, Subclause 4 of Clause 4, referring to the media, was re-defined: "The media are prohibited from publishing or disseminating information on state and inner political issues, which is

deliberately untrue or destabilizing, or appeals to take part in events held with no prior notice (illegally), as well as publication or dissemination of such information or appeals in any other way or form." Yet, under the conditions of selective law enforcement and illegal actions that the media sphere encountered lately, this definition rendered media quite vulnerable. After the amendment of the Decree, a number of newspapers were still not allowed to print; the Internet-sites were still blocked until the state of emergency was lifted on March 21, 2008.

In 2008, the Parliamentary Assembly of the Council of Europe addressed the situation in Armenia twice: in its Resolution 1609 (2008) "The Functioning of Democratic Institutions in Armenia" (April 17, 2008), and Resolution 1620 (2008) "The Implementation by Armenia of Assembly Resolution 1609 (2008)" (June 25, 2008). Besides, on June 17, 2008 the European Court of Human Rights released its judgment on the case of the founder of "A1+" TV company, "Meltex" LLC, and its President Mesrop Movsesian versus Republic of Armenia. In particular, the European Court ruled that the right of the applicant to freely impart information and ideas, stipulated in Article 10 of the European Convention of Human Rights and Fundamental Freedoms was violated.

ELIMINATION OF TORTURE

The ENP EU/Armenia Action Plan contains the following provisions regarding elimination of torture, other inhuman or degrading treatment or punishment:

- further reform of the penitentiary system in line with the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions;

- closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society (Section 3 “Priorities for Action”, Priority area 2, Specific Actions);

- ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Section 4 “General Objectives and Actions”, Sub-Section 4.1 “Political Dialogue and Reform”).

Resolution No. 927-n of the RA Government of July 19, 2007 ratified the list of priorities and actions envisaged by ENP EU/Armenia Action Plan to be implemented in 2007. Clauses 12 and 13 stipulated:

“ - further reform of the penitentiary system (take measures aimed at facilitation of public control over the conditions in prisons and places of temporary detention),

- reform of the police (cooperate with OSCE and the Council of Europe in order to eliminate torture, other mistreatments and corruption)”.

The Republic of Armenia has acceded to the Universal Declaration on Human Rights, the International Pact on Civil and Political Rights (1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1993), the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols 1 and 2 (2002), the European Convention of Human Rights and Fundamental Freedoms (2001).

Torture and degrading treatment are prohibited by the RA Constitution (Articles 17, 12). The RA Criminal Code adopted in 2003 specified the respective punishment for torture (Article 119).

In May 2006 the RA ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for establishment of a national observation mechanism (national mechanism) in closed systems (penitentiaries, places of detention, police departments, psychiatric clinics, etc.).

On April 8, 2008 the National Assembly of Armenia made an amendment to the RA Law “On RA Human Rights Defender”, according to which the Defender is the national mechanism specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law does not provide for civil society involvement in the national mechanism. Thus, involvement of the civil society depends on the discretion of the Human Rights Defender.

About a year has passed after approval of the amendment, but nothing has been done either to establish the framework of the mechanism or to introduce it.

Based on the requirements of Article 47 of the RA Law “On Living Conditions of Prisoners and Inmates”, on May 14, 2004 a Public Monitoring Group in the Detention Centers was established under the Criminal Executive Service of the RA Ministry of Justice. In accordance with the “Regulations on Activity of the Public Monitoring Group in the Detention Centers of the Criminal Executive Service of the RA Ministry of Justice”, this Group is the supervisory body responsible for the issues of protection of the rights and freedoms of people in places of detention. Pursuant to the Regulations, the Group members have the right to visit freely the penitentiaries, to read various documents (if the prisoners’ consent is available - also their personal cases and correspondence, except confidential documents), to check the situation inside the institution, and to meet with prisoners.

Both the Public Monitoring Group (in 2005) and the European Committee for Prevention of Torture (CPT) mentioned in their reports the bad physical treatment of the prison staff to prisoners (striking the handcuffed prisoners with hands and feet, hitting with clubs).

The level of medical service in prisons is inadequate. In particular, the injuries suffered by prisoners in the result of ill treatment are not properly recorded in the relevant registers; the prisoners' requests for examination by a forensic doctor called from outside their place of detention are refused. No information is provided to the Procuracy about physical abuse and special measures used towards prisoners.

The biggest concern is caused by the situation in police departments and other investigating bodies. Numerous complaints are presented with regard to unlawful detention of people in police departments, abuse and violence. Violence in police departments is mainly aimed at obtaining a confession or testimony against third persons. The procedures of bringing people to the police department and arresting them are not observed, interrogations are often conducted unattended by the lawyer. The public is informed about cruel treatment in police departments only at times of political tension, when the active representatives of the opposition are brought to police departments, or in cases with fatal outcome.

To analyze the situation with torture and inhuman treatment, a reference should be made the CPT report. The latest CPT report on the situation in Armenia was published in 2006. Still, all concerns and recommendations mentioned in this report are actual for 2008 as well (the CPT visited Armenia in 2008, in the post-election period, but the report has not been published yet).

For example:

- The practice of detainment of criminal suspects for more than four days has remained unaltered since 2006. In particular, after the events in March 2008 there were multiple cases of detainment of people in police departments for a period exceeding four days.

- The term of transporting the people to places intended for preliminary confinement, i.e. not later than within 3 days, is not observed mainly because of wrong arrangement of the work of the escorting police officers. Besides, there are frequent and long-lasting transitions. All this increases the risk of inhuman treatment.

- The reports specify that the people arrested by the police are constantly exposed to inhuman treatment and unlawful actions.

There is no progress with regard to this either. Here is an example:

"On May 12, 2007, according to the official information, Levon Gulian, who was brought to the police department, jumped out of the window and died. A criminal case was filed based on Part 1 of Article 110 of the RA Criminal Code. The preliminary investigation was conducted by the Procuracy of Yerevan. On December 12, 2007 the case was taken over by the senior investigator on high importance cases of the Special Investigative Service of Armenia. On March 12, 2008 G. Petrosian, the senior investigator on high importance cases of the Special Investigative Service of Armenia, made a decision to terminate inspection of the case due to absence of corpus delicti. On March 26, 2008 the complaint presented by the legal successor of the victim was rejected as groundless by decision of Z. Tadevosian, the senior prosecutor of the General Procuracy. The legal successor's lawyers appealed against the decision of the Procuracy to the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan. The court revoked the decision of the Procuracy and made a resolution to recommence investigation of the case. On July 21, 2008 the RA Criminal Court of Appeal ratified the resolution of June 6, 2008 of the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan, according to which the decision to terminate inspection of the fact of Levon Gulian's death in the yard of the police administrative building was considered unjustified and unlawful. The preliminary investigation of the case recommenced on August 16, 2008. The courts had mentioned in their decisions that the preliminary investigation had not been comprehensive, integral or impartial; there had been numerous violations of the law, the required measures aimed at detecting the truth had not been taken, the representatives of the victim's legal successor were not invited to take part in implementation of inspection activities, the unlawful actions of some police officers were not assessed properly. Though several months have passed after recommencement of investigation, the behavior of the preliminary investigation body implies that the Special Investigative Service of Armenia is not in a hurry to fulfill the requirements stipulated by the court resolutions. In particular, other versions of Levon Gulian's death are still ignored. No one has been interrogated except two police officers, no expert examination has been conducted with a manikin, and no one is a suspect or an accused in the case."

- At any stage of detainment by the police, the arrested persons can present a complaint to the judge with regard to inhuman treatment by the police. The judge should make a written record on the complaint, make a decision on conducting a medical examination, and follow up performance of investigation. But the medical examination of the arrested people is often perfunctory and is conducted mainly in the presence of the representatives of the law enforcement bodies. No proper control is ensured by the Procuracy over the claims of the arrested with regard to such injuries, which are later on detected during the medical examination.

There has been no progress in this respect. The results of medical examination of the arrested, as well as their claims about the suffered injuries, are recorded in the relevant registers of criminal executive bodies in the presence of the escorting police officer, which holds the arrested back from telling the truth.

- The arrested are not offered the opportunity to inform their relatives about their situation starting from the very moment of detainment.

There has been no progress in this respect either.

- The arrested are often deprived of the right to use the lawyer's services from the very beginning.

This practice also continues, especially after the events that occurred on March 1, 2008.

During its visit in 2006, the CPT mission received a number of reliable statements about inhuman treatment of the arrested by police officers. Almost all statements were presented by persons (including women and the under-aged) detained in preliminary confinement places.

According to the report: “The statements about inhuman treatment mainly refer to slaps in the face, cuffs, kicks, hitting with rubber and wooden clubs, chair legs. Some statements referred to suffocation with plastic packs as a fact of inhuman treatment. Sometimes, the inhuman treatment was so cruel that it could be considered as torture.”

Almost all statements referred to inhuman treatment by operating officers (less frequently - by investigators and senior police officers) during preliminary interrogations. That was done for the purpose of extorting confession, evidence and other information. Thereafter, the CPT mission talked to several persons (including women and children), who stated that they had been exposed to unacceptable psychological pressure aimed at getting a confession of committed crime. This was accompanied with insults, abuse and threats of physical power or sexual violence to those people or their relatives and friends.

At court sessions no notice is taken of the defendants’ statements that the prejudicial testimonies had been exerted from them by violence. No public officer in Armenia has ever been punished for the use of violence or torture. This is also mentioned in the CPT report.

At the beginning of the visit in 2006, the RA General Procuracy informed the CPT mission that there had been no record of complaints against officers of law enforcement institutions for inhuman treatment. Such a situation would be doubtful with regard to the law enforcement system of any country. At the same time, the Armenian police failed to provide the CPT mission with any information regarding complaints on inhuman behavior, due to the obvious absence of statistics.

To rectify the situation it is necessary:

1. To introduce changes to the court procedural practice, including:

- To apply the relevant provisions of the criminal legislation, pursuant to which, in case of availability of the defendant’s statement about torture, the court should immediately demand investigation;

- To renounce the practice of considering the defendant’s confession as the principal proof of the defendant’s guilt.

2. To apply towards police officers the punishment for tortures envisaged by the criminal legislation.

3. In accordance with the procedure specified in Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to declare that Armenia acknowledges the power of the UN Committee Against Torture to accept and review the personal statements of individuals who consider that the requirements of the Convention have been violated.

4. To reform the criminal legislation, including:

- To amend and supplement the Criminal Procedural Code with provisions regarding interrogation of the suspect, accused, and witness, in order to establish the comprehensive procedure of interrogation by police officers.

5. To organize training for police officers and to check the professional level and knowledge of the international standards while appointing new officers.

6. To conduct proper medical examination starting from the moment of bringing the arrested persons to the penitentiaries and to obtain explanation regarding injuries in the absence of the escorting policeman.

7. To provide for guarantees of independence of the medical staff in the penitentiaries. To consider the possibility of the medical staff reporting to the RA Ministry of Public Health.

8. To introduce legal provisions on establishing a national mechanism, stipulated in Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prescribing the involvement of civil society in it.

FUNCTIONING OF THE ELECTORAL SYSTEM

The ENP EU/Armenia Action Plan contains the following provision regarding this sector: "Ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (Section 3 "Priorities for Action", Priority area 1, Specific Actions).

The elections to the RA National Assembly and the elections of the RA President were held in 2007 and 2008 accordingly.

The parliamentary elections of 2007 were qualified by the international observers as "generally complying with the obligations undertaken towards the OSCE and CoE and with other international standards"[32]; the US State Department stated that they were "significantly improved, though not fully consistent with the international standards"; and the local observers said that "the elections were accompanied by large-scale profound violations". At the same time, the OSCE/ODIHR observers mentioned that there were still unsolved principal problems related to the Electoral Code and implementation thereof, in particular, regulation of the pre-election propaganda, counting of ballots, tabulation of results, the work of electoral commissions, and examination of complaints.

The final report of the international observers' mission on the parliamentary elections of 2007 in Armenia, contained the following recommendations:

- to overcome the discrepancies between the Electoral Code and other pieces of legislation;

- to amend the provisions of the Electoral Code regulating the appeal procedure, by setting the mandatory requirement of calling a meeting of the electoral commission of any level for consideration of any written complaint and making the relevant written decision by the commission;

- to provide for the opportunity of challenging the verdict made by the court of primary jurisdiction with regard to an election dispute;

- to prescribe to the Central Electoral Commission (CEC) and territorial electoral commissions to report to the Procuracy and other authorized bodies regarding all significant violations, including the violations that might affect the election results;

- to place the ballot boxes in electoral districts so that the electors could vote facing the members of the electoral commission;

- to record cases of voting with the help of another person in the register of the district electoral commission and to put down the names of the voter and his/her assistant;

- to specify that a person can assist only one voter;

[32] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

- to put down the initial data (including the number of the received ballot papers and voting envelopes) in the minutes of the district electoral commission prior to commencement of the election process;

- to specify the mandatory requirement to keep the voting results posted up in an "easily observable place" of district electoral commission for a period of seven days following the date of voting[33].

After making these recommendations and until the elections of the RA President in 2008, the Electoral Code was amended and supplemented twice (on November 16, 2007 and December 18, 2007), but the above-mentioned recommendations were not covered by the amendments, and the Code was not brought into compliance with the requirements of the Venice Commission[34].

The elections of the RA President were held on February 19, 2008, during which, according to the local observers, the already vested usage of administrative and financial resources, bribing of the electors, inadequate consideration by the Central Electoral Commission, courts, and law enforcement bodies of cases regarding electoral violations, grew even more extensive.

In the report (February 20, 2008) on their preliminary findings and conclusions with regard to the presidential election of 2008, the international observers stated: "Generally, the election complied with the obligations undertaken by Armenia towards the OSCE, CoE and with other internationally accepted standards", "the authorities have improved the legislative mechanisms, but they were not implemented because of lack of sufficient political will". This opinion of the observers' mission was disputed by some deputies at the spring session of PACE.

In its post-electoral interim report (February 20 - March 3, 2008) OSCE/ODIHR stated: "The final opinion regarding the election depends on the process of final counting and tabulation of votes and examination of disputes". John Prescott, the Head of the Temporary Commission of PACE Observers of the Presidential Elections, qualified the post-electoral situation and the events of March 1, 2008 as "the consequence of lack of the voters' confidence in the electoral process and legitimacy of its results."

In the final report on the presidential elections, OSCE/ODIHR observers stated: "Though in the pre-election process and on the election day the elections generally complied with the obligations undertaken towards the OSCE and with other internationally accepted standards, serious problems in the part of fulfillment of certain obligations arose in the post-electoral period. Thus, the criteria essential for conducting democratic elections were not sufficiently respected and the whole election process was devalued. In particular, lack of reporting and transparency was revealed, and the procedures of presenting complaints and appeals were not fully efficient".[35]

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[33] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

[34] The "Code of the Best Electoral Practice" and "Guidelines and Explanatory Report on the Code of the Best Electoral Practice" adopted during 52nd session of the Commission of the Council of Europe "Democracy through Law" (Venice Commission) on July 5-6 and October 18-19, 2002 accordingly.

[35] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

The international observers, PACE, OSCE/ODIHR and the Venice Commission again demanded to conduct detailed investigation of the violations made in the electoral process and to punish the persons guilty of the violations. Besides, they recommended making further amendments of the Electoral Code in order to secure the following:

- efficient examination of election disputes;

- making a justified decision by the Central Electoral Commission regarding every complaint; the decision shall clearly specify the steps of examination of the complaint, the results thereof, and the grounds for rejection of the complaint;

- mandatory registration of all complaints received by territorial electoral commissions, their examination only at official sittings, and transparency, by means of securing information awareness for all the persons authorized to be present at the sitting, and providing them with the opportunity to attend;

- extending the term for presenting applications for recount of votes from 14:00 to 18:00 p.m.;

- recount of ballot papers in every occasion of receiving such an application or official justification of refusal to recalculate the ballots by the decision of the territorial electoral commission;

- extension of the term defined for summarizing the election results, announcement of the final results of elections only upon expiry of the term set for consideration of all complaints;

- equal opportunities for all bodies authorized to appoint members to the territorial and district electoral commissions, their representation among the leading three members of the mentioned commissions;

- more clear definition of the legal status of decisions taken by territorial electoral commissions;

- the obligation of the police to announce periodically the number of citizens, who had requested the right to vote in places of their temporary residence;

- usage of the common procedure of entering the election results in the electronic network by all district electoral commissions;

- classification of electoral violations into criminal and administrative violations and precise definition of the procedure of their examination by criminal and administrative courts, accordingly.[36]

It is noteworthy that no legislative amendment is required for implementation of the majority of the above-mentioned recommendations. It would be sufficient to improve the law enforcement practice and to secure mutually complementary activity of state bodies in the electoral process, in order to exercise the voting rights of the citizens.

Steps to reform the legislation and improve the law enforcement practice, undertaken within the timeframes of this research, are listed.

[36] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

Improvement of the Legislation

By decision of the Chairman of the National Assembly of Armenia, a special commission was established for preparation of amendments to the Electoral Code. Not only the ruling authorities, but also representatives of other political parties (including the National Democratic Union, "Orinats Yerkir") were involved in the work of the commission (in cooperation with the Venice Commission). But only a few meetings of the commission have been by now called and it seems to have terminated its activity.

Changes in the Law Enforcement Practice

In spite of the received complaints, the CEC has not taken any measure to protect the voting right. It displayed just a formal approach and did not comply with the accepted international norms of examination of complaints.

According to the CEC, the Central Electoral Commission has taken decisions regarding 57 applications and has provided 8 official clarifications[37].

On February 18, 2008 letter No. 01-D/65-94, signed by the CEC Chairman, was addressed to Ruben Torosian, the proxy of the presidential candidate Levon Ter-Petrosian, notifying about rejection of all 33 claims presented by him.

By letter No. 06-D/414 of May 26, 2008 Ruben Torosian was notified that in accordance with Clause 7 of Article 40 of the RA Electoral Code, the CEC considered some of his claims at CEC meetings.

Courts have rejected about 20 claims regarding the activity or inaction of the CEC. Referring to the procedural norms and taking advantage of the omissions in laws, the courts did not secure protection of the violated voting rights of the citizens. The administrative court rejected all claims regarding violations of voting rights. Moreover, all court hearings for those cases were assigned within terms though allowed by the law but still unreasonable, because even if the verdicts had been made in favor of the claimants, they would have been senseless, as it would be already impossible to restore the violated voting rights.

Thus, on February 22, 2008 and March 3, 2008 claims were presented to the RA Administrative Court, with a demand to declare the CEC actions illegitimate for failure to consider the claims presented to it. The court verdict was announced on August 1, 2008 and the claim was rejected.

The hearings for the case "Ruben Torosian versus the Public TV and Radio Company", accepted for processing on February 1, 2008, were held on May 6, 2008.

On March 4, 2008 a claim was presented to the RA Administrative Court with a demand to declare the CEC actions illegitimate for violation of the procedure of summarization of the election results. The Administrative Court announced its verdict only on August 1, 2008. The claim was rejected.

[37] The CEC analysis of violations of the Electoral Code of Armenia, committed during the presidential election on February 19, 2008, page 5.

The election for the local self-government bodies commenced in May 2008. No legislative amendment or organizational change was effected before the election. No change was made with regard to the following:

- the management staff of electoral commissions;

- the procedures of counting of votes, preparation of minutes, tabulation of the voting results.

According to the report of mission of observers of Helsinki Committee of Armenia, which were based in the communities of Yerevan[38]:

1. At several polling stations placement of the voting booths did not comply with the procedure established by the law, though those stations had every opportunity to place the voting booths properly.

2. Unauthorized persons were present at the polling stations - police officers dressed in uniform, some of whom even took part in counting of votes.

3. There were incidents of group voting, open voting, attempts of voting with someone else's passport, voting without passports, as well as throwing a pack of ballots into the ballot boxes, repeated and prompted voting.

4. There were cases of violence and pressure on authorized persons and observers.

5. In several cases, the work of the commission chairmen and members was careless and disorganized.

All these elections were won by the representatives of the acting authorities or the candidates supported by them. Administrative and financial resources had decisive impact on the results of elections. Usage of administrative resources and bribing of the electorate is getting to be a coordinated process in Armenia.

Structural changes are required to ensure functioning of elections as the most important institution of democracy. In particular, the first-priority measures are:

- precise definition of the procedures of claim examination and voting rights' protection, and elimination of contradictions;

- improvement of the level of independence of the bodies responsible for protection of the voting rights (first of all - the RA Administrative Court).

[38] Reports on elections to the local self-government bodies of Nork-Marash, Davitashen, Malatia-Sebastia, Avan communities of Yerevan held on May 18, 2008, and of Arabkir community of Yerevan held on September 7, 2008.

FINANCING OF PARTIES

The ENP EU/Armenia Action Plan, Section 4 "General Objectives and Actions", Sub-Section 4 "Political Dialogue and Reform", Clause 4.1.1 "Strengthening the Stability and Effectiveness of Institutions Guaranteeing Democracy and the Rule of Law" contains the requirement to "establish clear and transparent rules on party financing".

Financing of parties is regulated by Articles 24, 25, 27, and 28 of the RA Law "On Parties"[39]. Article 24 of the Law specifies the types of funds possessed by parties: membership fees, donations, financing from the state budget, income received from civil and legal transactions and other income not prohibited by the law. Article 25 regulates the procedure of making donations to parties. In particular, Clause 2 of the Article specifies the list of legal entities and individuals not allowed to make donations. In case of getting donations from the entities on the list, except anonymous donators, the parties have to return the amount to the donator within two weeks; donations made by anonymous donators should be transferred to the state budget within the same time period. Article 27 regulates the financing of parties, specifying in particular the volume of financing, the parties entitled to such financing and the volume of it[40], allocation of the funds among parties that are members of an election alliance, as well as grounds for termination of state financing. And finally, Article 28 of the Law regulates the procedure and terms of financial reporting by parties. According to this Article, a party should provide the authorized state body (in this case - the RA Ministry of Justice) with the annual report on the funds received and spent during the reporting year. The report should be presented by March 25 of the year following the reporting year. The same deadline is defined for publication of the financial report of the party in media. This Article also specifies to whom and how the financial report should be presented, what shall be reflected in it, as well as refers to the necessity of implementation of financial supervision.

Financing of parties is closely connected with financing of election campaigns. According to Article 25 of the RA Electoral Code, parties are allowed to make personal, optional contributions to the election fund established for financing of the election campaign. This gives the parties the opportunity to finance their election campaigns (if they take part in the election to the National Assembly by the proportional election procedure), the election campaigns of presidential or deputy candidates (by the majority procedure), as well as the election campaigns of their candidates for the position of head or member of the community council. According to Article 79 of the Electoral Code, a party can make a contribution to the election fund of its presidential candidate for the amount not to exceed 30.000-fold of the minimum salary (AMD 1000), i.e. maximum AMD 30 million[41]. Similar restrictions are specified for contributions to the election funds of the parties or the election funds of the candidate(s) nominated or supported by them. According to Article 112 of the Electoral Code, a party may contribute to its election fund (or the election fund of its block

[39] This Law was adopted on July 3, 2002 and was enforced on November 15, 2002. Official Bulletin of the Republic of Armenia, No.34 (209), August 15, 2002.

[40] According to Article 27 of the Law, financing form the state budget can be provided only to those parties (blocks of parties) which have received at least 3% of the sum of the number of inaccuracies and the total number of votes given in favor of the voting lists of all parties by the proportional election procedure at the time of the latest election to the National Assembly. These funds are allocated among the parties (block of parties) proportionate to the votes received by them.

[41] Pursuant to the same Article, the amount of expenditures form the election fund shall not exceed AMD 70 million.

of parties) an amount not to exceed AMD 2 million, and to the fund of a deputy candidate by the majority procedure - the maximum amount of AMD 150,000[42], as a legal entity.

The requirements specified in the above-mentioned legal acts secure sufficient transparency in financing of parties, provided that they will be fulfilled properly. Still, we regret to note that up today civil society institutions and media have not been paying adequate attention to the financial reports presented by parties, though, as it is evidenced by the international experience, they might contain important information. At the same time, to this day no publications have been made by media to attempt and analyze the financial reports by a certain party. The Ministry of Justice - the state body authorized to receive such reports - has never officially reported about any occasion of falsification of such reports, i.e. non-reliability of the presented data. It is difficult to say whether that means that the Armenian parties provide all the required data diligently and fairly, or the reports are simply left unchecked.

As to the contributions to the election funds made by the parties, monitoring of financing of the parliamentary election in 2007 and the presidential election in 2008 conducted by Transparency International Anti-Corruption Center (TIACC) did not reveal significant violations. The parties, which made contributions to the election funds, provided the Central Electoral Commission with the required evidencing documents. But the situation is different with regard to expenditures from the election funds. During both elections, considerable difference was recorded between the declared and actual expenditures revealed by monitoring[43].

A number of provisions of the Electoral Code and the RA Law “On Parties” permit the parties to evade the above-mentioned restrictions regarding the contributions made from their own funds. In particular, the Electoral Code allows for making of contributions by individuals, without providing for mechanisms of preventing the practice widespread in many countries - when the party gives cash to its members who transfer these amounts to the election fund of the party as individual contribution. Since the principal target of the monitoring program implemented by TIACC was to check expenditures from election funds, this issue was not considered by the organization.

A more profound problem is that it is impossible to check timely and thoroughly the actual expenditures made by the parties during election campaigns, since, as it was mentioned above, pursuant to the Law “On Parties”, the parties present only the annual financial report, due by March 25 of the year following the reporting year. If elections are held in the reporting year, especially when the elections are scheduled for the beginning of the year, the falsifications revealed in the result of analysis of the financial report or monitoring cannot be used as the ground for invalidation of the election results. With regard to this, it might be a probable solution to set a requirement to open the account for the election fund as a supplementary account of the party’s principal bank account. Besides, all parties will have to present a quarterly financial report for the period of voting, as well as for two quarters preceding the date of voting.

[42] The same Article specifies that in case of a party (party bloc) the amount of expenditures from the election fund shall not exceed AMD 60 million, and in case of a candidate nominated by the majority procedure - AMD 5 million.
[43] See details on www.transparency.am

FIGHT AGAINST CORRUPTION

ENP Measures and Their Implementation

The ENP EU/Armenia Action Plan contains the requirement to:

- establish administrative courts;

- review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of the civil society and business representatives in monitoring implementation (during 2006);

- evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006)[44]. (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

ENP, Section 4, "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform", Clause "Fight Against Corruption" specifies 8 anti-corruption measures[45]:

1. Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005;

2. Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption and, once ratified, the OECD (Organization of Economic Cooperation and Development - ***Ed. Note***) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

3. Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including development of Code of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on September 19, 2001;

4. Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations;

5. Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

6. Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

[44] See the report section on the civil service.
[45] Almost all of the mentioned measures are specified also in the international anti-corruption convention and the recommendations of GRECO and OECD.

7. Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption;

8. Ensure the implementation of procedures to implement the Code of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

In 2008 the RA Government did not publish any information regarding measures aimed at implementation of the ENP EU/Armenia Action Plan; while in the list of priorities and measures to be implemented in 2007[46] the Government included only two actions:

- Clause 4.1 - review during 2006 the progress made in the implementation of the National Anti-Corruption Strategy and develop new measures (responsible bodies - RA Ministry of Justice and RA State Tax Service);

- Clause 4.2 - develop and enforce specific anti-corruption measures for the law enforcement agencies (the responsible bodies are not specified).

The mentioned clauses are of general character and it is not clear why other measures were not included in the list, especially those, for which the specified term of implementation expired at the end of the year 2006 (for example, the measure related to the UN Convention against Corruption) .

Clause 4.1 fully repeated the relevant provision of Priority 1 of Section 3 of the ENP Action Plan, though without the words “ensure active participation of the civil society and business representatives in monitoring implementation”. Since throughout 2007-2008 no reports or official statements as to the necessity of such monitoring or similar actions appeared, one can hardly judge whether the clause has been implemented. As to participation of the civil society, it should be noted that though several NGOs, in various sectors, implemented anti-corruption projects (mostly, donor-funded), such as traffic police, consumer rights, education, election, etc., this cannot be considered as comprehensive monitoring envisaged under the action plan of the Anti-Corruption Strategy.

Clause 4.2 is the shortened version of the relevant provision of Clause 4.1.1 of Section 4 “Democracy and the Rule of Law, Human Rights and Fundamental Freedoms” of the ENP Action Plan. It does not specify which precise measures should be developed and for which agencies exactly. As no official information has been published with regard to this either, it would be difficult to say whether the RA Government has implemented this measure.

The analysis of implementation of the above-mentioned 8 measures of the Action Plan is given below.

Measure 1

Though the RA Law “On Principles of Administration and Administrative Proceedings” was enforced on January 1, 2005[47], administrative courts were established only on January 1, 2008[48]. The administrative courts examine social disputes on legal relations, one party to which is the local self-government body or the relevant public officers, and the other party -

[46] See the Appendix of the RA Government Ruling No. 927 of July 19, 2007.
[47] Official Bulletin of the Republic of Armenia, No. 18 (317), March 31, 2004.
[48] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.

the citizens. The principal peculiarity is the specific distribution of the burden of proof, according to which: "A state or local self-government body (a public officer) who approved the disputed legal act or committed the disputed action or has not implemented an action, which, according to the claimant's statement, should have been done by him, bears the burden of proving the actual circumstances underlying his decision, action, or inaction" (Clause 3 of Article 26 of the RA Administrative Procedural Code[49]).

One of the fundamental principles for administrative courts is the principle of precedent defined by the law, which is supposed to preclude arbitrary decisions.

The RA Administrative Court is composed of 15 judges, who are much more overburdened as compared with other judges. According to the Chairman of the Administrative Court Tigran Mukuchian, there is always a great number of disputed payment orders: only in the part of the traffic police the monthly quantity of such payment orders reaches 5-6 thousand. Pursuant to the same source, as of August 1, 2008 the Administrative Court had announced 2,288 verdicts, made thousands of decisions, issued even more payment instructions, etc. 90 complaints were received (3.9% of the total number of cases) of which 35 complaints from individuals and 55 from state bodies. 60-65% of 2,288 verdicts referred to entrepreneurs, with relation to whom administrative acts had been issued by tax or customs' authorities. Besides the above-mentioned cases related to the traffic police, there were many disputes with the mayor's office, the local self-government bodies, the state register and the cadastre. Tigran Mukuchian stated that 60-65% of 2,288 cases were solved in favor of the citizens. For several occasions, the Administrative Court announced "open days" and distributed the RA Law "On Principles of Administration and Administrative Proceedings" and the comments on it for free.

In the absence of statistical data or analytical findings, it is difficult to draw a conclusion as to whether the first year of activity of the administrative court has favored adequate prosecution and conviction of bribery and corruption-related offences. In experts' opinion, unlike cases related to economic activity, with regard to other cases the administrative court announced its verdicts mainly in favor of the state bodies, e.g., appeals against the decision of Yerevan Municipality on prohibition of assemblies, rallies, marches or demonstrations. (Thus, pursuant to the data provided by the Armenian National Congress of, only 1 of the presented 50 claims regarding prohibition of meetings and demonstrations was satisfied completely.)

Measure 2

Definition of bribery and corruption specified in the RA Criminal Code[50] (Articles 311 and 312) generally complies with the international standards. As to classification of corruption-related offences, within the scopes of "Istanbul Anti-Corruption Action Plan" developed by the OECD, it became necessary to specify the corruption-related offences, and in 2004 first 22 and then 59 Articles of the Criminal Code were outlined. According to the statement of Garegin Ashrafian, Head of the Procuracy Department for Fight Against Corruption and Organized Crime, taking into account the international experience, this number was reduced to 22. Later on, new types of offences were included in this category. At present, the total number of corruption-related offences, specified in the Criminal Code, is 31.

In 2008 the RA Criminal Code was supplemented with several new articles, in particular, Article 311.1, which refers to receiving illegal remuneration by public officers, Article 311.2,

[49] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[50] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2003.

related to usage of real or alleged influence for lucrative purposes, and Article 312.1 - offering illegal remuneration to a public officer, who is not a state official[51]. According to the same source, the list was prepared on the basis of the following criteria: a) availability of a certain status or duties in the public or private sector; b) violation of duties related to the public or private status; c) goal to score some unlawful advantage.

Since December 2008, information regarding 31 types of corruption-related offences and data on disclosure and conviction for specific criminal cases (since October 2008) is posted on the website of the RA Procuracy[52]. At the same time, the Procuracy does not provide separate statistics on these 31 types of corruption-related offences. Therefore, it is difficult to understand whether the existing definition and classification secure adequate prosecution and conviction of corruption-related offences.

Measure 3

Code of Ethics has been developed and enforced for judges (see Chapter 12 of the Criminal Code[53]), prosecutors (see Order No. 17 of the RA General Prosecutor of May 30, 2007[54]), and the police (see the RA Law "On Adoption of the Code of Conduct of Police"[55]). As to the border service, no information could be gathered in this regard, since the National Security Service did not respond to the researcher's request for an interview.

"Comments on the Code of Ethics of the Judge" were published as a separate booklet in 2007. According to the statement of the First Deputy to the Head of the Forensic Department of the RA, Secretary of the Council of Court Chairman Misak Martirosian, the Commission on Ethics under the Council of Justice considered 9 cases related to the Code of Ethics of Judges in 2007, and 3 issues were considered as of September 2008 (7 more issues were planned for consideration). The Commission on Ethics works mainly with complaints presented by citizens. If the Commission on Ethics is of the opinion that the judge has to be exposed to disciplinary sanctions, the documents should be handed over to the Disciplinary Commission. In 2007, three of the nine issues were handed over for consideration by the Disciplinary Commission.

In case of violating the Code of Ethics of the Prosecutor, the prosecutors shall bear disciplinary liability in accordance with Clause 3 of Article 46 of the RA Law "On Procuracy"[56]. The RA General Prosecutor is the guarantor of observance of the Code of Ethics. The Chairman of the Commission on Ethics of the Procuracy is one of the Deputies to the General Prosecutor. According to the data provided by Garegin Ashrafian, the Head of the Department of Fight Against Corruption and Organized Crime of the Procuracy, only one meeting of the Commission was held in 2007-2008. The meeting considered the issue of violation of the Code of Ethics by a prosecutor from a territorial department of Erebuni and Nubarashen communities of the RA Procuracy. The Commission made a decision to dismiss the prosecutor.

According to the statement of the Deputy Head of the RA Police Gevorg Mherian, a different approach is applied at the police: they have a Council, which considers various problems, including ethical issues. The Council Chairman is the Head of the RA Police,

[51] Official Bulletin of the Republic of Armenia, No. 33 (623), June 4, 2008.
[52] http://www.genproc.am/main/am/189/ ¨ http://www.genproc.am/main/am/193/
[53] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2008.
[54] http://www.genproc.am/main/am/23/2153
[55] Official Bulletin of the Republic of Armenia, No. 29 (401), May 18, 2005.
[56] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

and the members are: the management staff of the police, heads and deputy heads of the principal departments. Scheduled meetings of the Council are called once every six months. Extraordinary meetings can also be summoned, if required. Any violation of ethical norms is considered by the Board and a decision is taken whether disciplinary sanctions need to be applied or not. In the past, the complaints mainly referred to the work of the visa and passport departments and the traffic police. According to the statement of the Deputy Head of the Police, significant changes are being effected at present and the number of complaints has decreased. Thus, in the past they got about 100 daily phone calls with complaints on the work of the visa and passport departments, while in 2008 there was only one call a day on the average.

Measure 4

The Law "On Declaration of Assets and Income by High-Level State Officials of the Republic of Armenia" was adopted on January 1, 2008. It replaced the RA Law "On Declaration of Assets and Income by Individuals". Article 5 of the Law specifies the requirement of presenting such declarations by all employees of state and self-government bodies, irrespective of their salary rate. Pursuant to the Law, the deadline for submission of declarations for 2007 was April 15, 2008. Chapter 8 of the Law specifies more serious sanctions for submission of false declarations than before. But enforcement of the Law was postponed for a year[57].

According to the statement of the First Deputy Head of the RA State Income Committee Aharon Chilingarian, the total number of declarations presented according to the previous law was about 50.000. As to the statistics of 2007, no information was published regarding the number of public officers who failed to present declarations or presented false declarations, or regarding the applied sanctions.

Measure 5

The opinion mentioned in the report of GRECO experts regarding fulfillment of the relevant obligations by Armenia[58] is generally realistic. Still, there are drawbacks left out by the GRECO experts. First, the RA Government did not take measures to conduct studies and gather statistics and presented as accomplished the programs and measures implemented by non-government organizations (international organizations and NGOs). Moreover, the RA Procuracy did not and still does not have a separate website on corruption. Only in December 2008 a separate page about corruption was opened on the website www.genproc.am. Secondly, none of the state bodies (police, tax and customs' authorities) mentioned in Clause 13 of the GRECO experts' report publishes separate information on its website regarding disclosed cases of corruption.

With regard to the appropriate GRECO Recommendation (see Clause 14 of the experts' report) it is mentioned that a number of state bodies (Police, Procuracy, Ministry of Justice and National Statistical Service of Armenia) have jointly developed the system of acquisition of statistical data on corruption-related offences. These data are published on the website of the National Statistical Service (www.armstat.am). It is specified that there are 59 types of corruption-related offences, and the RA Criminal Code envisages different sanctions for such offences. It should be noted that as of that date (the first report was presented on September 27, 2007 and the second one - on May 5, 2008) the number of corruption-related offences was reduced to 22 (see above - analysis of Measure 2) and the

[57] Official Bulletin of the Republic of Armenia, No. 2 (592), January 9, 2008.
[58] http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp

National Statistical Service has never provided separate information on corruption-related offences. Clause 16 of the experts' report refers to installation of hot lines in a number of state bodies, but these hot lines never had any specific anti-corruption designation.

Similar assessment was given to implementation of GRECO Recommendation 3, although it is not clear (as it was mentioned by GRECO experts) whether the new Law "On Public Procuracy", enforced in May 2007, has increased the prosecutors' independence. The same can be stated also with regard to GRECO Recommendation 8 since it is obscure (as it was mentioned in the comments of GRECO experts) what kind of training courses exactly were conducted at the Police Training Center. GRECO Recommendation 14 was assessed as completely fulfilled, but it cannot be construed from the Government report, how many suspicious transactions were reported to the Procuracy by the Financial Monitoring Center of the Central Bank of Armenia. Moreover, no information is available as to whether any investigation was conducted with regard to these cases.

Measure 6

The analysis of Measure 1 contains a reference to ensuring the possibility of court appeals against administrative acts, including through establishment of administrative courts in 2006.

Measure 7

The current salary of judges is insufficient to ensure service with dignity in order to reduce corruption. The salary of judges in courts of original jurisdiction, Court of Appeal and Court of Cassation was increased in accordance with the Judicial Code enforced on April 7, 2007 (see Article 75 of Chapter 11)[59], but only by 15-30%, which cannot ensure service with dignity. At present, a newly appointed judge receives salary of AMD 220,000. On November 27, 2008 the National Assembly approved amendments to the RA Law "On Remuneration Rate of High-Level State Officials of Legislative, Executive and Judicial Power". According to the amendments, the salaries of judges will be doubled in the period from January 1 to December 31, 2009[60].

Measure 8

As to ensuring implementation of procedures aimed at fulfillment of requirements of the Code of Ethics of judges and prosecutors, including introduction of effective systems of supervision over observance of the Code of Ethics by judges and prosecutors, there is no information available, besides the information presented for Measure 7 above.

Description of the General Situation

Since the Anti-Corruption Strategy was actually completed at the end of 2006, in September 2007 the Chairman of the Monitoring Committee, Assistant to the President of Armenia, Gevorg Mherian declared that a new strategy should be developed[61]. Terms of reference on development of the new strategy were approved at the end of 2007 and the group of experts started the relevant work in 2008. A number of non-governmental organizations were requested to give an opinion regarding four chapters of the strategy.

[59] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[60] "Hayastani Hanrapetutiun" daily, December 1, 2008.
[61] "Hayastani Hanrapetutiun" daily, September 8, 2007.

These chapters were posted on the website of the RA Government - www.gov.am - in October 2008.

In September 2007 the RA Government presented a report on implementation of GRECO Recommendations. The assessment of GRECO experts for the first and the second stage was announced in June 2008[62]. According to the assessment, Armenia had fully implemented 7 Recommendations, satisfactorily - 5, partially - 9, and entirely failed to implement 3 Recommendations.

OECD expert opinion on implementation of obligations undertaken by Armenia within the scopes of "Istanbul Anti-Corruption Action Plan"[63] was published at the end of 2007. In this case, only 1 of the 24 recommendations is implemented fully, 8 are implemented basically, 11 - partially, and 4 recommendations are not implemented.

According to the information provided by the RA Ministry of Foreign Affairs, at the beginning of 2008 the RA Government presented a self-appraisal report to the Secretariat of the UN Convention against Corruption, which was a mandatory requirement for the countries acceded to the Convention[64].

The evaluation report on the progress of Armenia in 2007 within the scopes of ENP Action Plan was published in April 2008[65]. Along with a number of positive steps (e.g. legislative and procedural amendments aimed at decrease of corruption, as well as availability of the Code of Ethics for judges, prosecutors, and the police, increase of judges' salary and establishment of a special investigative service), it is mentioned that the issue of effective application of the anti-corruption legislation and policy has not been solved yet.

Numerous anti-corruption legislative amendments and by-laws were approved and/or enforced in 2007-2008, as well as a number of anti-corruption measures were implemented. See below several of these measures:

- Due to the amendments to the RA Constitution[66], the Supervisory Chamber obtained independent status (was removed from the structure of the National Assembly). In 2008 the Supervisory Chamber revealed grave violations and abuse[67] in the sectors of town planning, agriculture, urban heating and gasification, state procurement, apartment allocations, etc. According to the data posted on the website of the Procuracy[68], in the result of the above-mentioned disclosures, only two criminal cases were filed by the end of 2008.

- In accordance with the Law "On the Procuracy"[69], the RA General Prosecutor is appointed to this position and gets dismissed by the National Assembly, a new system of qualification testing and remuneration is introduced, and the Procuracy loses the power to conduct investigation, which is now vested with the police, the National Security Service, the Ministry of Defense, the tax and customs' authorities.

[62] www.coe.int/greco
[63] www.oecd.org/corruption/acn
[64] The report is not accessible to public.
[65] http://ec.europa.eu/world/enp/documents_en.htm
[66] RA Constitution, Article 83.4.
[67] "Hayastani Hanrapetutiun" daily, September 18, November 6 and December 11, 2008.
[68] http://www.genproc.am/main/am/185/
[69] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

There is a Department of Fight Against Corruption and Organized Crime in the Public Procuracy, which is responsible for prosecutor's control and procedural management over corruption cases. The department supervises those cases, which are investigated by the central investigating agencies of the country. In some regions, this is the responsibility of separate investigation bodies and prosecutors. The principal function of the department is the consideration of complaints received from individuals and requesting additional documents with relation to them. In case of revealing evidence of offence, the documents shall be delivered to the respective investigating bodies.

In 2008 the Procuracy conducted cluster meetings in Yerevan and the regions and considered the issues of prevention and disclosure of corruption-related offences and the specifics of their investigation. The meetings were attended by the representatives of law enforcement bodies, tax and customs services, other interested organizations, and journalists.

- A new system of justice was established on the basis of the amended Court Code[70] and the Law "On Administrative Proceedings"[71], which resulted in establishment of administrative courts, introduction of a new system of appointment and remuneration of judges and court chairmen, functioning of the court department (service), registrars, Code of Ethics of the Judge, court school, etc.

- The RA Law "On Operative and Investigation Activities"[72] specifies new types of operative and investigation activity, as well as control and inspection mechanisms for this activity.

- In accordance with the RA Law "On Special Investigative Service"[73], a new body was established to investigate those criminal cases, which involve high-level state officers, representatives of law enforcement bodies and persons engaged in election process. Pursuant to the information provided by official sources, during the first half of 2008 the Special Investigative Service examined 29 criminal cases, 13 of which were against 14 state officials[74]. The criminal cases were basically brought against officials of the lower and middle level.

- The RA Laws "On Organization and Conducting Audits in the Republic of Armenia"[75], "On Registration of Organizations and Individuals and Taking them off the Tax Register"[76], the amendments and supplements to the Laws "On Trade and Services", "On Usage of Cash Machines", "On State Duty" "On Taxes", "On Licensing", approved in 2008, and a number of other Armenian laws[77] are intended for fighting shadow income in the private sector and minimizing the corruption risks of the tax field. As of September 29, 2008 the Tax Inspection conducted inspections in 23 big shops and revealed violations in all of them, connected with usage of cash machines[78]. 9 supermarkets were temporarily shut down by the tax service, for a period of 5-10 days.

[70] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[71] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[72] Official Bulletin of the Republic of Armenia, No. 59 (583), November 28, 2007.
[73] Official Bulletin of the Republic of Armenia, No. 61 (585), December 5, 2007.
[74] "Hayastani Hanrapetutiun" daily, August 5, 2008.
[75] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[76] Official Bulletin of the Republic of Armenia, No. 54(578), November 7, 2007.
[77] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[78] "Hayastani Hanrapetutiun" daily, September 29, 2008.

- The regulations of passport departments have been simplified and streamlined. Sample forms of 7 different applications have been printed and provided to all passport departments. The individual only has to fill in his/her name and sign the application. The phone number of the Deputy Head of Police is also posted up in passport departments, which enables the people to call him in case of complaints. The lists of documents required to receive or change the passport, compile a case about loss of passport, etc. are also posted up on the walls of passport department offices.

The terms and conditions of issuing passports to the under-aged, as well as the list of the required documents were amended by the RA Government Resolution No. 823 of July 31, 2008[79]. The time constraints were removed and a simplified procedure was introduced: anyone may receive a passport for his/her child with validity period of three years and may change the passport at any time. Exit visas are also provided without any restriction.

- The traffic police reform has started. An off-budget fund has been established and 30% of it is transferred to the salary fund of the traffic police officers. Improvement of collection of administrative penalties is underway. This will give the opportunity to increase the salary of the traffic police officers up to AMD 200-250 thousand by the middle of 2009. In general, financing of the police has increased by 35 percent.

- Finally, in 2008 a chapter named “Corruption” was included in the textbook “Social Science” of comprehensive schools. It contains the definition of corruption, information regarding its forms, causes and methods of fighting against it.

Within the same period, reforms were effected also in other sectors, e.g. the tax service, but this report is intended to present only the steps related to the anti-corruption measures implemented or planned within the scopes of the ENP Action Plan.

As to foreign organizations’ opinion regarding the level of corruption in Armenia, pursuant to the Index of Corruption Perception (ICI) of Transparency International[80], in 2007 and 2008 Armenia was still among the most corrupt countries, the index of which is below 3 (by “1-10” scale, where “1” means “a fully corrupt country”, and “10” - “a country with no corruption at all”). During the last five years, the situation with corruption perception in the country remained unchanged: in 2008, 2007, 2006, 2005 and 2004 the ICI in Armenia was 2.9, 3.0, 2.9, 2.9 and 3.1, respectively.

According to the data of the World Corruption Barometer of Transparency International[81], 52% of the people who took part in the poll in 2007, were of the opinion that during the next 3 years the level of corruption in the country would “increase considerably” or “increase moderately”. As to the anti-corruption measures taken by the Government, only 25% of those questioned considered such measures “effective to a certain extent” or “effective”.

The data published by Freedom House in 2007 and 2008[82] evidence that the index of corruption in Armenia remained on the same level as in the previous years - 5.75 (by “1-7” scale, where “1” means “with no corruption at all” and “7” means “fully corrupt”).

[79] Official Bulletin of the Republic of Armenia, No. 51 (641), August 13, 2008.
[80] http://www.transparency.org/policy_research/surveys_indices/cpi
[81] http://www.transparency.org/policy_research/surveys_indices/gcb/2007
[82] http://www.freedomhouse.hu/nit.html

According to the World Poll of Gallup[83] held in 14 former Soviet countries, 50% of the people questioned in Armenia were of the opinion that at present the level of corruption is higher than in the Soviet times.

Global Integrity Index of Corruption in Armenia in 2007 was 58 (by "0-100 scale"), which, according to 23 anti-corruption criteria, corresponds to the rating "extremely weak"[84]. It is noteworthy that one of the management criteria of the World Bank, "control on corruption", was also rated rather low in 2007 - 30 scores of 100[85].

Based on the reports of the local and international organizations regarding the elections of 2007-2008[86] and numerous publications in the press, it can be concluded that political corruption in Armenia considerably increased during this period: abuse of administrative, informational, financial and other resources, bribing of electors, etc.

[83] http://www.gallup.com/poll/101767/Pereceptions-Corruption-Widespread-Former-Soviet-Nations.aspx
[84] http://report.globalintegrity.org/Armenia/2007
[85] http://info.worldbank.org/governance/wg/sc_chart.asp
[86] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php

YEREVAN PRESS CLUB

OPEN SOCIETY INSTITUTE HUMAN RIGHTS AND GOVERNANCE GRANTS PROGRAM

OPEN SOCIETY INSTITUTE ASSISTANCE FOUNDATION-ARMENIA

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

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FOREWORD

The Partnership and Cooperation Agreement (PCA, signed in 1996 and in force since 1999) between European Union and Armenia serves as the legal framework for bilateral relations. Since 2004, Armenia and the other South Caucasus states have been part of the European Neighbourhood Policy (launched by the European Union, following its enlargement), encouraging closer ties between Armenia and the EU. An ENP Action Plan for Armenia was published on March 2, 2005, "highlighting areas in which bilateral cooperation could feasibly and valuably be strengthened". The Plan sets "jointly defined priorities in selected areas for the next five years". In November 2005, formal consultations on the Action Plan were opened in Yerevan and as of 2008 are ongoing.

The EU-Armenia relations play an important role in the strengthening and development of democracy in Armenia. The present research aimed to determine whether the reforms, envisaged by the bilateral documents EU-Armenia, are implemented consistently.

Priority Areas 1 and 2 of the Action Plan for Armenia were taken as a basis for the monitoring.

Thus, **Priority Area 1** calls for strengthening of democratic structures, of the rule of law, including reform of the judiciary, and combat of fraud and corruption. **Priority Area 2** calls for strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).

The study was undertaken by Yerevan Press Club under the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Governance Grant Program of Open Society Institute. Support for researching into certain sections of the project and the preparation of this report was also provided by the Open Society Institute Assistance Foundation-Armenia.

Sections of this report were developed by YPC and its partner NGOs - Committee to Protect Freedom of Expression, Helsinki Committee of Armenia, Right and Information Center, Transparency International Anticorruption Center, Communities Finance Officers Association, Collaboration for Democracy Center, as well as individual experts candidate of economic sciences David Tumanian, sociologist Vardan Gevorgian, Doctor of Law Hrayr Ghukasian and Doctor of Law Lilit Simonian.

EXECUTIVE SUMMARY

RA HUMAN RIGHTS DEFENDER INSTITUTE. The cooperation of the RA Human Rights Defender and the state bodies is somewhat hindered. This is mainly manifest in shape of occasional controversies with RA Government, National Assembly and law enforcement bodies. In the first case the difficulties deal with the funding of the Defender's Institute, in the second one - the issue of his mandate revision, and in the third case is the matter of principal divergences in situation assessment. Besides, the RA Law "On RA Human Rights Defender" does not stipulate the involvement of NGOs and civil society in the nomination of the candidate for the post of the RA Human Rights Defender and his election. Besides, the human rights NGOs are unable to address the Defender as a third party. Overall, the cooperation with the civil society institutes is duly developed. With regard to ensuring easy access the need to set up regional representations of the ombudsman is emphasized.

FREEDOM OF ASSEMBLY. While RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" is seen by the Council of Europe to be largely compliant with the European standards, yet it is more of a restrictive than regulatory nature. It is the law enforcement practice that is the most concerning. The competent body with no substantial justification impedes and prohibits assemblies, particularly, marches. The practice of challenging in court is unsatisfactory, too, as it does not ensure fair trial and proportionality, in accordance with Articles 6 and 11 of the European Convention of Human Rights.

RIGHTS OF ETHNIC MINORITIES. None of the ethnic minority groups in Armenia is the main population of any territorial unit of the country. They all are dispersed all over Armenia. No international document expressed serious concern with the rights of ethnic minorities in Armenia. This is due to the fact that ethnic minorities in Armenia do not come out with political demands. They refrain from being actively involved in domestic policy. Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

LOCAL SELF-GOVERNMENT. The requirements on local self-government in the European Neighborhood Policy EU/Armenia Action Plan remain almost unfulfilled in 2007-2008. Certain steps were made only starting from autumn 2008. Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan". The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions. Overall, the institute of local self-government is not substantial in many communities.

LEGAL AND JUDICIAL SYSTEM. The reforms of judicial and legal system that resulted in a number of amendments made in legislative acts and law in force, only partially correspond to the spirit and content of commitments stipulated by ENP EU/Armenia Action Plan. Moreover, if one looks back and analyzes the developments of February-March 2008, one can conclude that most of the amendments made follow a certain pattern and aim to ensure the achievement of certain timeserving objectives. Hence, the reforms in legal and judicial system have not improved most of the existing definiteness, and sometimes have raised new problems that require complex and consistent solutions.

CIVIL SERVICE. With regard to civil service in Armenia the priorities of ENP EU/Armenia Action Plan can be assessed as “partly fulfilled”. The realization of the majority of steps is to a certain extent related to the draft law “On Public Service”. The delay in the adoption of this draft was due to debates regarding its comprehensiveness. Its regulation domain covers not only the civil service, but also all legal relations for all kinds and levels of state and communal administration. In the opinion of most civil service experts, after the adoption of the law “On Public Service” many problems will be resolved or preconditions will be set to solve issues that are in cause and effect relationship.

FREEDOM OF SPEECH, MEDIA AND INFORMATION. Despite the amendments to RA Law “On Television and Radio”, the requirement of ENP EU/Armenia Action Plan - “ensure the independence of media by strengthening the independent regulatory body for the public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” - is not in fact fulfilled. The National Commission on Television and Radio has failed to become an independent regulator. According to amendment made in the Broadcast Law on September 10, 2008, broadcast licensing competitions were frozen for two years. The amendment was assessed by independent experts as a deprivation of the right to take part in broadcast licensing competitions for independent broadcasters that are not subject to governmental control. During the state of emergency announced in Yerevan on March 1-20, 2008, for the first time factual preliminary censorship was exercised not only in Yerevan but also all over the country. Meanwhile the restrictions, introduced by the Decree on State of Emergency, did not stipulate censorship, which is prohibited by the RA Constitution and the RA Law “On Mass Communication”.

ELIMINATION OF TORTURE. Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Armenia ratified in May 2006, stipulated the establishment of national monitoring mechanism in closed systems (penitentiaries, police stations, psychiatric clinics, etc.). Both the Public Monitoring Group in the Detention Centers of the RA Ministry of Justice (in 2005) and the Council of Europe Committee to Prevent Torture in their reports note the degrading treatment of prisoners by prisons’ representatives. The situation is particularly alarming in police stations and other investigatory bodies. The complaints of illegal detention, violence and terror in police stations are numerous. The violence in police stations was practiced mostly to gain confessions or testimony against other people.

ELECTORAL SYSTEM. By ENP EU/Armenia Action Plan Armenia undertook the commitment to ensure the electoral framework in full compliance with OSCE commitments and other international standards for democratic elections. Yet this obligation remains unfulfilled. Amendments to Electoral Code have not included the recommendations of the OSCE and Venice Commission. The Central Electoral Commission was quite formalistic in addressing the complaints received. The courts did not ensure judicial protection of violated electoral rights in any of the more than 20 complaints received with regard to CEC’s actions or inaction. Overall, the international observers, when assessing both the parliamentary elections of 2007 and the presidential elections of 2008, particularly, the post-election situation in 2008, noted the lack of necessary political will and public trust towards elections and their results.

FINANCING OF PARTIES. The satisfactory level of party funding could have been ensured, had the appropriate legal acts been applied properly. Yet the monitoring of election campaigns during parliamentary elections of 2007 and presidential elections of 2008, showed that the expenditures for campaigning do not correspond to those, officially quoted by parties and candidates as their elections funds. The competent state body, the

Ministry of Justice, that receives the financial reports of the parties, never mentioned any cases of fraud, i.e., discrepancy between the information in the reports and the reality. It is hard to say whether this is a consequence of conscientious and honest financial reporting by parties or their reports are simply never audited.

FIGHT AGAINST CORRUPTION. In 2007-2008 in Armenia numerous legal and sublegal acts with anti-corruption trends were adopted and/or enforced, and a number of anti-corruption initiatives were implemented. Yet, the international and local experts believe that the level of corruption in Armenia is still quite high and the anticorruption reforms are of little effect. Thus, in 2007-2008, according to Index of Corruption Perception of Transparency International, Armenia remains in the list of most corrupt countries. According to the World Corruption Barometer of Transparency International, in 2007, 52% of respondents of Armenian survey believed that within upcoming 3 years the corruption level in the country "would grow substantially" or would "grow moderately". In 2007 and 2008 the data of "Freedom House" showed that the corruption index of the country remained the same as during the previous years, while in 2007 the Global Integrity Index of Corruption in Armenia was "extremely weak". One of the World Bank's criteria of good governance, "control on corruption", in 2007 was also assessed quite low. Proceeding from the reports of local and international organizations regarding elections 2007-2008 and numerous press reports, one can conclude that during this period in Armenia the political corruption level has enhanced, such as the abuse of administrative, communication, financial and other resources, election bribes. The increase of political corruption in Armenia is becoming a source of political and social crises.

ACTIVITIES OF THE HUMAN RIGHTS DEFENDER INSTITUTE

The European Neighborhood Policy EU/Armenia Action Plan[1] makes the following note regarding this area: “Develop the Human Rights Ombudsman institution in accordance with the Paris Principles based on UN General Assembly Resolution 48/134 of December 1993” (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Preface

The UN Economic and Social Council (ECOSOC) stressed in the Resolution adopted in 1960, that with regard to the protection and endorsement of human rights a crucial role is played by national institutions that should independently reflect the universal ambition to stand for human rights on the national level. These institutions are competent to engage in activities to attain certain universal goals on national level. In 1991 this Resolution became the basis for the Paris Principles, approved on the Global Human Rights Conference, held in Vienna in 1993 and ratified by the UN General Assembly in 1993[2].

The Paris Principles stipulate the minimal criteria for the foundation and effective activities of the national human rights ombudsman that this institute should be guided with. These criteria allow assessing the structure, the legal basis of establishment, independence from executive and legislative branches of power, guarantees of securing diversity, the competence, partnering with other structures, mission and objectives, awareness-raising activities with regard to human rights, etc.

Human Rights Defender Institute in Armenia

Armenia was the last of South Caucasus countries to have a human rights defender (ombudsman), even though preparations for this started as early as in 1990. This process was accelerated by the country’s accession to the Council of Europe and its commitments in this regard. The draft law on the RA Human Rights Defender was developed on the basis of a similar law of the Russian Federation on Human Rights Commissary. In December 2002 the RA National Assembly adopted the law in the first reading, after which the document was sent for the international expert review. On October 21, 2003 the law was adopted finally, it was enforced on January 1, 2004. The law stipulates the procedure for electing the Human Rights Defender and his dismissal, his competence, terms of service and guarantees.[3]

It should be noted that in 2007 the UN International Coordination Committee for National Institutions dealing with human rights endorsement and protection granted the RA Human Rights Defender the highest A status. This means the Armenian ombudsman corresponds to Paris Principles and enables him to take part in the sessions of UN Human Rights Council.

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[1] http://ec.europa.eu/world/enp/documents_en.htm#2

[2] Human Rights Defender’s Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 20.

[3] Article 1 of the RA Law "On RA Human Rights Defender".

Despite the high status, the RA Law "On RA Human Rights Defender" needs development and improvement. The analysis of the law herein is based on Paris Principles, the survey on Human Rights Defender[4]. Also, a comparative analysis with laws of other countries is made, where the provisions are more specific, distinct, clear and in harmony with Paris Principles.

Scope of Action

According to Paris Principles, the ombudsman must have as broad scope of action as possible. Article 2 of the RA Law "On RA Human Rights Defender" defines the main activities of the ombudsman, enabling him only "to protect the rights and liberties, violated by state bodies, bodies of local self-government and officials" (spelt also in the RA Constitution[5]). Meanwhile, the Paris Principles call for a more broad scope for an ombudsman, enabling him not only "to protect the violated rights and freedoms", but also contribute to the development and advancement of human rights and fundamental freedoms. The ombudsman must be more active. According to Paris Principles, the national institute of ombudsman in the absence of complaints-appeals from individuals should be competent to initiate research, to make official inquires, demand clarifications from state and local self-government bodies. Clause 3 of Article 11 of the Law entitles the Defender to imitate discussions if there are reports of mass violations or the issue is of exceptional importance for the society or is related to the protection of certain persons, yet this norm is envisaged for *emergency* and *exceptional* cases, when the violations are already *committed*.

In accordance with Paris Principles, the mission of the national ombudsman can be seen in the promotion and endorsement or development of human rights and fundamental freedoms. The protection includes the consideration of complaints, legal consultancy, dispute resolution, etc. The endorsement or development process includes quite a broad scope of action, from the promotion of respective laws and international agreements, promotion of human rights to awareness-raising activities in education and other institutions, with vulnerable groups of the society[6]. In essence, the RA Law stipulates protection of human rights and fundamental freedoms, but not the activities with regard to their endorsement, progress and development. Only by Clauses 3 and 4 of Article 7 of the Law the Defender is entitled to be present at the sessions of the Government and other state bodies, the RA National Assembly and to raise issues, if the discussion agenda relates to human rights and fundamental freedoms. According to Paris Principles, the law on ombudsman must distinctly specify that the ombudsman must, *upon his initiative and systematically,* monitor the correspondence of local laws to the international documents on human rights and fundamental freedoms and, if necessary to make appropriate proposals; to control resolutions, legal acts, adopted by state bodies and local self-government so as for them not to go against human rights and fundamental freedoms, and if necessary, to take steps to achieve their abolition (this competence is only stipulated by Clause 1 of Article 15 of the Law only after the consideration of complaints).

Presently the main functions of the RA Human Rights Defender's Office are the independent monitoring of public administration and consideration of citizens' complaints

[4] In October-November the Helsinki Committee of Armenia administered an expert interview at the ombudsman's institute itself.
[5] Article 83.1 of the RA Constitution.
[6] Taking the Paris Principles into Asia. A study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines. Hugo Stokke, Chr. Michelsen Institute Report, page 2.

against state bodies[7]. The research of Helsinki Committee of Armenia showed that experts have much appreciation for the ombudsman's efforts in legislative reforms. The experts emphasized the fact that it is upon the proposal of the ombudsman that some laws ("On State Pension" and "On Alienation of Property for the Needs of Society and State") were amended. With regard to violation of the right of property of the Northern Avenue residents, proceeding from the statement of the ombudsman the RA Constitutional Court recognized that the resolution No.1151 of the RA Government of August 1, 2002 regarding the construction in Kentron community of Yerevan, as well as Article 218 of the Civil Code and Article 104, 106 and 108 of Land Code run counter the RA Main Law. Nevertheless, in the human rights domain a number of issues were noted, related to state bodies, the police and difficulties in terms of cooperation with civil sector. On March 1, 2008 the Head of the Criminal Investigation Division of Kanaker-Zeytun Police Department A. Abrahamian impeded the activities of the Defender, prohibiting his entry to the police station, refused to provide information, as well as was disrespectful, violating thus a number of provisions of the Law, including Article 12, according to which the Defender must have unimpeded access to state institutions, including military units, prisons, detention centers, etc. Besides, while on duty the Defender enjoys the right of being immediately admitted by state bodies and local self-government, received by their officials, the management of penitentiaries[8].

On July 19, 2007 the Government adopted Resolution No.927, according to which the draft laws related to human rights and fundamental freedoms, before being submitted to the sessions of the Government, are sent to the ombudsman for an opinion. While steps are taken to regulate the legislation and harmonize the laws, legal acts and resolutions with the international agreements, ratified by Armenia, there is still a number of laws that contradict the norms and principles of human rights and fundamental freedoms. These laws were never submitted for the Defender's opinion, such as the RA Laws "On Investigating Activities" and "On Holding Assemblies, Rallies, Marches and Demonstrations".

In accordance with the Paris Principles the ombudsman must also contribute to the ratification and application of international treaties, to cooperate with the UN and other international and local structures that operate in human rights domain. According to the research above, the international cooperation of the Defender is expressed mostly in joint experience exchange projects, training, awareness raising. Under a memorandum signed with the Helsinki school some staff of the ombudsman's office have regular training. In partnership with UN awareness campaigns are waged, leaflets and posters are published and disseminated. Under UN Development Program, "Empowerment of Human Rights Defender Institute", the office develops information materials, holds training courses, plans a TV program on vital human rights issues in Armenia. With the assistance of international organizations the Human Rights Defender's office now has a library. To implement legal reforms the Defender appeals for international support, too.

The Paris Principles make a particular emphasis on the ombudsman's activities on awareness raising, media relation and coverage of ombudsman's activities, involvement in curricula development. The RA Law "On RA Human Rights Defender" does not refer to these provisions at all. Currently the real activities of the Defender's office are substantial not only in terms of human rights protection, but also in awareness raising. Awareness raising with regard to human rights is initiated by the Defender through meetings and focus

[7] Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 3.
[8] http://ombuds.am/main/am/9/16/0/36

group discussions, material dissemination. Meetings are held both in office and out of it - universities, schools, senior residences, etc. The Defender pays regular visits to regions, too. The office activities are regularly covered by media, in the annual report. With regard to awareness raising the ombudsman's staff pointed out two major issues: lack of representatives in the regions and the lack of funds for developing information materials.

As the survey showed, these activities are in fact implemented by the ombudsman's office, while not being stipulated by the law. In other words, the Law does not give the legal framework for such activities, thus restricting the mandate of the Defender. That is, the Law does not reflect the issues of awareness and coverage, as required by Paris Principles at all. The Paris Principles also call for the Defender's office to hold human rights training for the police, the representatives of judicial system and other state bodies, vulnerable and special needs groups of the society, at schools, universities, etc.

Election of Defender

Specifications are also necessary in the clause of the Law referring to the election of the Defender. Thus, Clause 1 of Article 3 does not define any professional criteria and gives only a general overview that fully coincides with the requirements posed to a member of parliament, while the mandates for these two positions are quite different in nature. Thus, for example, Article 2 of the Poland's Law "On Representative of Citizens' Rights", apart from stipulating the requirement of being a citizen and enjoying public respect, the ombudsman must also have legal knowledge and professional experience[9]. While the Paris Principles do not single out the legal knowledge, they emphasize expertise in human rights. The Armenian Law refers to the need of legal or special expertise indirectly. Thus, according to Clause 1 of Article 7, "The Defender is competent to give the applicant its recommendations or consultations for challenging resolutions, court rulings or sentence justification", and according to Subclause of Clause 1 of Article 12, the Defender is entitled to "have access to cases on criminal, civil, administrative, disciplinary, economic and other law infringements that have their sentences, rulings and resolutions enforces, as well as the materials that were a basis for refusing institution of proceedings". These functions cannot be performed by the Defender unless he has adequate legal expertise or professional experience. Clause 2 of Article 3 of the Law does not provide for case when more than one candidate is nominated and gains sufficient number of votes, or if none of them gains sufficient number of votes. No provision is made regarding the number of nominations and elections of the same candidate, either. Similar laws of Georgia and Poland envisage only two terms of service for the same candidate[10]. The Paris Principles call for the ombudsman election provisions to contain the following clauses: terms of service, re-election terms, dismissal terms, etc.[11] It is also preferable for the ombudsman to be elected at least for five years' term and have a change to be re-elected for the same term[12].

The Law does not require the legislature to involve representatives of civil society, human rights and other organizations, educational institutions, religious groups to nominate candidates, as well as hold consultations on electing and appointing the Defender, to ensure transparency and confirm his real independence[13]. The law does not regulate the procedure for nomination and election of candidates, either (through open calls for

[9] National Ombudsmans, Code of Legal Provisions, Biuro Rzecznika Praw Obywatelskich, Warsaw, 1999, page 279.
[10] Ibid, pp. 129, 280.
[11] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, page 16.
[12] Ibid.
[13] Ibid.

applications, competitions, etc.). The Paris Principles emphasize the transparency of Defender's election and involvement of all groups of the society in the election process.

Clause 2 of Article 4 of the Law imposes certain restrictions on ombudsman being engaged in other activities. In particular, the ombudsman is prohibited from membering in parties but not from involvement in the activities or assisting any party (such as taking part in sessions or campaigns), which cannot guarantee his independence, impartiality and objectivity.

The norms of early dismissal of the Defender do not provide for the cases of permanent failure to implement his duties of violation of the oath made. Meanwhile, Article 7 of similar law in Poland stipulates that the ombudsman can be dismissed early if he violates his oath[14].

Human Rights Defender as a Mechanism of Independent Monitoring

Paris Principles call for the establishment of special centers adjacent to ombudsman to protect vulnerable groups of society (children, women, the disabled, etc.). The monitoring of compliance with the UN Convention of the Rights of Children is made by ombudsman, yet the Law in force does not contain either provisions or regulating mechanisms. According to research administered, the RA Human Rights Defender has neither a section nor a special children's center - a fact that gained the attention of the Council of Europe[15].

On April 8, 2008 the RA Law "On RA Human Rights Defender" was addended by Article 6.1, referring to the activities of the Defender in international law: "The Defender is the independent national mechanism for prevention, as defined by the Optional Protocol to UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment. The comment on this norm is presented in Chapter 8 of this publication. Yet it is necessary to note that this amendment was not accompanied by any regulatory provision.

Consideration of Complaints

As to the complaints to be considered by the ombudsman (Article 7), it should be noted that the amendment, made on June 1 2006, certainly restricted the Defender's mandate in the judicial. The amendment contradicts the principles of the right to fair trial, prescribed in international documents and RA Constitution. Moreover, if one takes into account that post-Soviet countries are in transition, and the judicial system so far is imperfect, the Defender should be entitled to be present at court sessions (as stipulated by, say, Article 9 of a similar law of Ukraine)[16]. The interview with the ombudsman's office staff revealed that they are occasionally present at court sessions, yet this is not envisaged by the RA Law "On RA Human Rights Defender".

According to Paris Principles, the ombudsman must be entitled to appeal to court on behalf of those who cannot go to court themselves for certain reasons (children, the disabled, convicts, etc.)[17].

[14] National Ombudsmans, p. 281.
[15] Table of Treaty Body Recommendations Relating to National Human Rights Institutions, CRC/C/15/Add.119, 24 February 2000, 23rd Session, COs Europe.
[16] Institute of Ombudsman: evolution of traditions and modern practice (comparative analysis), A. Sungurov, Saint-Petersburg Humanitarian Political Science Center "Strategia", 2005, p. 179.
[17] Institute of Ombudsman: evolution of traditions and modern practice, p.179; Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 10.

The Law does not stipulate the mandate of human rights organizations to address the defender on behalf of third persons, either. The Paris Principles also stipulate close cooperation between the Defender and human rights NGOs. In the case of Armenia such cooperation is particularly important because the Defender does not have regional offices, yet can become acceptable to the people in the regions through local NGOs.

In the course of research one of the respondents noted that the representatives of the Defender must be entitled to suspend proceedings in case of the restoration of rights infringed, which is not envisaged by the law in force.

Ensuring Accessibility

Clause 3 of Article 23 of the Law stipulates that in regions regional offices of the Human Rights Defender *can be* established. As noted above, in accordance with Paris Principles the national ombudsman's institute must be accessible and available for *all groups* of society, and geographic location must not be an impediment for addressing the Defender. Steps are to be taken to establish regional offices or to launch partnership with local NGOs. Apart from this, the offices of the Defender must be accessible for people with special needs, i.e., be duly equipped[18]. According to the research noted above, the national ombudsman's institute has no regional offices or representatives, yet there is the practice of regular visits for awareness raising. The out-of-schedule visits to the regions are made only when an urgent complaint is received. Reasons for the lack of representatives in the regions include the need for office space, furniture and communications, as well as staff.

According to the annual report of the Defender in 2007, most of the complaints (65.8%) are received from residents of Yerevan, while the proportion of these received from the regions is very small (6.8%). Such huge difference is due also to remoteness of location.

Defender's Report

During the period of January 1 - September 30, 2008 the Defender received more than 2845 complaints, 907 of which were in writing. Throughout this period the Defender was addressed by 4096 people[19]. The complaints were mostly directed against the Special Investigative Service (311), Yerevan municipality (293) and the RA Police (222). In the opinion of one of the respondents, it is mostly conditioned by the situation after presidential elections-2008, with regard to which an extraordinary report was made by the Defender.

In accordance with Clause 1 Article 17 of the Law the Defender submits a report on his activities and human rights and fundamental freedoms to the country's President, the legislative, executive and judicial power. According to Paris Principles this is a mandatory component of the ombudsman's activities. In 2008 the Defender presented his report for the previous year, which described the Defender's activities, the human rights and fundamental freedoms situation, the results of complaint consideration, the list of state bodies that made infringements, etc.

In accordance with Clause 2 of the same Article the Defender has the competence of making an extraordinary report on certain issues of public significance or rough human

[18] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, page 22.
[19] Data provided by the RA Human Rights Defender.

rights infringements, as well as in cases of mass failure to eliminate the infringements. In 2008 the Defender made an extraordinary public report on presidential elections of February 19, 2008, post-election situation and events of March 1. This step was somewhat inadequately received by the authorities, in particular, the former RA President; moreover, the General Procuracy and the Ministry of Justice presented their objection, the whole point of which was that the Defender exceeded his mandate[20]. According to the Paris Principles, the ombudsman's mandate includes the issuance of an annual report and, if necessary, issuance of an extraordinary report. The Paris Principles also stipulate that the reports presented by the ombudsman and the infringements they contain must be discussed by the Parliament to be resolved[21] - a fact that is not taken into account by the RA Law "On Human Rights Defender".

The research administered reveals that there are certain problems in cooperation with state bodies. Difficulties were mainly noted in interacting with the Government, the National Assembly and the Police. In the former case difficulties were related to financial issues, in the latter - to the problem of mandate review.

In accordance with the Paris Principles the ombudsman's report must also contain a financial report to ensure public accountability and transparency, also stipulated by the Law, but not reflected in the report for 2007.

Defender's Office

According to Clause 1 of Article 23 of the Law the Defender recruits his staff to implement his activities, yet no procedure is prescribed and no reference to other provisions of the Law is made. The staff of the RA Human Rights Defender includes a secretariat, correspondence department, and a legal service that includes groups for rights of the military, protection of criminal procedural, social, economic, civil and cultural rights. The separate subdivisions are the information and public relations department and international relations department[22]. As follows from the data obtained, the currently existing of the Defender's staff and its statutes will soon be renewed. The draft has already been developed by the Defender and submitted for the approval.

The new structure and statutes call for the introduction of job descriptions, specifying the areas of competence of the staff members, as well as the hierarchy of positions, staff modifications aimed at optimizing the staff. The staff lacks the following professionals: lawyers, experts on international relations, journalists. As the staff members say themselves, the lawyers are particularly necessary.

In accordance with the Paris Principles, the ombudsman forms a staff (as stipulated by the Law), and he must act with sufficient transparency. A special procedure should be used for recruitment.

Yet it should be noted that there is no distinct recruitment procedure. The Defender's staff is quite closed for new staff members. No announcements are published if there are vacancies. The recruitment is made by the Defender through informal interviews. The most significant criterion in recruitment is the experience of dealing with the potential candidate

[20] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, pp. 12, 16.
[21] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, p. 28.
[22] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 4.

in the past. Yet this method contradicts the recruitment transparency, as required by Paris Principles.

According to Paris Principles, to effectively evolve their activities the Ombudsman's staff must be very qualified. They must also be constantly trained[23]. Overall, the staff noted the importance of the trainings, in particular, on human rights and public relations, yet preference is given to experience exchange with experts from other developing countries and practical job placements at some international institutions. It should be noted that the Head of staff assessed the role of training courses as quite low, since all such courses are detached from Armenian reality.

According to Amnesty International, the national ombudsman institutes must create opportunities for recruitment of such vulnerable groups as people with disabilities, women, ethnic minorities who, being well aware of the problems of their groups, may be neglected or underestimated by state bodies[24]. It should be noted that the Defender's staff is quite representative: it includes, refugees, people with disabilities, representatives of ethnic minorities.

Clause 4 of Article 23 of the RA Law "On RA Human Rights Defender" stipulates that the staff of the Defender are employed on short-term contractual basis. Yet this contradicts the norms of International Labor Organization, according to which the short-term contracts are signed with the specific project staff. Such contracts allow the employer to break the contract upon the end of its term with no substantial justification. It should also be noted that short-term contracts are quite demotivating. The contract is signed for a year, yet after its expiration the employer is not reevaluated or tested, the contracts are automatically prolonged.

Immunity

According to Clause 5 of Article 23 of the Law when on duty the staff of the Defender is immune, which is in accordance with Paris Principles. In June 2008 the RA Ministry of Justice proposed an amendment to the Law depriving the ombudsman's staff of immunity[25]. The Paris Principles establish the right of the ombudsman's staff to enjoy immunity that would ensure their implementation of their professional duty as well as guarantee the independence of the ombudsman's staff. This proposal was criticized as well as disapproved by the Venice Commission[26].

Partnership with Civil Society, NGOs and Expert Council

Paris Principles attach importance to the broad involvement of civil society in the institute of ombudsman and the establishment of the Expert Council which is also a guarantee for the development and endorsement of human rights and fundamental freedoms, as well as for the guarantee of diversity[27]. Meanwhile, Article 26 of the Law leaves the issue to the discretion of the Ombudsman. The reality is as follows. Overall, as the respondents say,

[23] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 14.
[24] Ibid, p. 6.
[25] http://ombuds.am/main/am/9/27/1765/
[26] Ibid.
[27] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 32.

the cooperation with the institutes of civil society is still at a low level, in particular, with the NGOs. Nevertheless, in the annual report of the Defender in 2007 the cooperation with the NGOS was quite highly assessed[28]. A relatively positive assessment was given to cooperation with media, too, mostly realized through press-conferences held 4 times a year. In special cases the Defender summons an extraordinary press-conference.

According to the Law, for consultations the Defender can set up an Expert Council. The interview with the key staff revealed that such a Council has already been established upon the initiative of the Defender, its members being representatives of NGOs. The number of the Council members is constant and does not exceed 20. The sessions of the Council are held two or three times a year. The Council is not seen as very effective, which is conditioned by the NGO sector in Armenia being underdeveloped.

Funding of the Human Rights Defender Institute

According to Article 24 of the Law the Defender and his staff implement their activities with funding from state budget. According to the statement of the Head of the Office, the funding of the national ombudsman is stable. Yet the budget allocated to the Defender and his staff is occasionally reduced with no substantiation by the National Assembly and Government, which runs contrary to Clause 4 of the same Article. It should be noted that the budget categories are generally acceptable, yet the amounts allocated are constantly reduced. In the opinion of the Head of the staff and other staff members of the Defender, the low pays are a reason for staff turnover. This situation does not reflect either the Law provisions or the Paris Principles, according to which the state should contribute and establish financially favorable conditions for effective activities of the ombudsman. Because of financial issues a number of problems arise with regard to Defender's activities, contrary to Paris Principles. Moreover, in the interviews it appeared that Clause 1 of Article 21 of the Law is violated, according to which the salary of the Defender must be equal to the salary of the Chairman of the RA Constitutional Court, and this is in compliance with the Paris Principles, yet far from reality.

Conclusion

The RA Law "On RA Human Rights Defender" and its practical application were subject to analysis. It is very important for all provisions of the Law to be implemented in practice and the Law be amended and improved. The Law is the basis and the guarantee for the Defender's activities, the more harmonious it is with Paris Principles, the more effective the activities of the ombudsman in the country will be.

- The Law must provide not only for the activities of the Defender in the human rights protection, but also their endorsement and awareness raising.

- The Law must stipulate a specific procedure for the nomination and election of the Defender, with the civil society being involved in the process.

- Being a mechanism that monitoring the implementation of the UN Convention on Children's Rights, the Human Rights Defender institute must provide for a children's center establishment.

[28] Annual report of RA Human Rights Defender, pp. 46-48.

- The Law must provide for a broader group of potential applicants, including human rights NGOs in it.

- The right to monitor trials should be prescribed by the Law.

- To ensure transparency of the Defender institute vacant positions must be publicly advertised, a distinct formal procedure should developed for recruitment, and the contracts should be signed for longer term.

- To ensure easy access for all citizens, regional representations of the Defenders must be made obligatory.

- The Defender must meet Expert Council member as well as other human rights and other NGOs more often, establishing a closer contact with them.

- The state must ensure appropriate funding for effective activities of the Defender.

- The law must be distinct in stipulating that the report of the Defender should be debated at the National Assembly and resolutions must be sought to eliminate the human rights violations noted in the report.

FREEDOM OF ASSEMBLY

In the ENP EU/Armenia Action Plan it is noted: "Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations". (Section 3 "Priorities for Action", Priority Area 2, Specific Actions).

At the same time, Clause 10 of the RA Government's resolution of July 19, 2007 regarding the implementation of ENP EU/Armenia Action Plan deals not with the amendment of the law, but rather with law enforcement, i.e., no improvement of the law is envisaged.

The RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" has contradictions to the RA Constitution.

1. The first controversy is the name of the Law itself. According to Article 29 of the RA Constitution, "everyone has a right to peaceful unarmed assembly". The concept of "assembly" as provided for by the Constitution in the title of the Law was transformed into 4 notions - "assemblies", "rallies", "marches" and "demonstrations".

2. According to Article 43 of the RA Constitution, the fundamental human rights and freedoms that include freedom of assembly can be restricted by the Law only, "if it is necessary to protect in a democratic state national security, public order, to prevent crime, protect public health and morals, constitutional rights and freedoms, dignity and reputation of other individuals". The remaining restrictions, listed in Clause 1 of Article 1 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", are definitely different from those provided for by the Constitution.

3. It follows from the last sentence of Clause 1 of Article 1 that the police and the state bodies may also restrict the realization of these rights. Meanwhile, Part 2 of Article 29 of the RA Constitution make a comprehensive list of the categories of individuals that can be restricted from exercising fundamental rights and freedoms, and by law only: servicemen in the Armed Forces, the Police, national security bodies, prosecuting agencies, as well as judges and members of the Constitutional Court.

4. According to Clause 2 of Article 5 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", "a public event can be organized and conducted in one or several kinds, as stipulated by this Law". Article 2 of the Law lists these kinds: assembly, rally, demonstration, march, spontaneous public event and others that include festivities, ceremonies, cultural and sports events. This conveys that the right to assembly may be restricted if held in a form, other than those listed in the law.

5. According to Clause 6 of Article 5 of the Law, "mass public event cannot start, if none of its organizers have come". This conveys that if the organizers of the event have failed to be present at it, its other participants may be deprived of the right to realize their constitutional right.

At 60th session of the Venice Commission (Venice, October 8-9, 2004) an opinion was voiced that the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" does not correspond to the demand that the laws on right to assembly must only be restricted through defining legal grounds for acceptable intervention of state bodies. Apart from this, the Law stipulated undue reasons for restricting the conductance of events. In its

Resolution 1405(2004) the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to amend the Law no later than March 2005 for it to be compliant with the standards of the Council of Europe and ensure the freedom of assembly in practice. The authorities developed a draft law on introducing amendments to the Law, consisting of 11 clauses. It was assessed by the experts of OSCE/ODIHR and Venice Commission whose conclusions coincided. Both expert bodies thought the draft submitted did have certain positive shifts, but at the same time there remain serious restrictions, and recommended that further steps be taken to improve the law. In comparison with the Law, adopted on April 28 2004, the prevailing part of the amendments proposed by the draft was seen by the Venice Commission (Strasbourg, February 8, 2005, Opinion 290/2004 CDL (2005)018) as amendments of editorial nature, not requiring substantial change and not influencing the rights and responsibilities of public event participants. The Venice Commission reaffirmed its opinion on the need to bring the Law in compliance with the requirements of the European Convention of Human Rights and Fundamental Freedoms, adopted at its 60th session (CDL(2004)42).

On October 4 2005 the RA National Assembly, having taken into account the recommendations of OSCE/ODIHR and Venice Commission, made certain amendments to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations". Yet, a number of recommendations were ignored. In particular Articles 7 and 9 keep the restrictions, qualified by the international experts as unacceptable.

Throughout 2005-2007 the bids to hold rallies, submitted to Yerevan municipality by both opposition parties and non-governmental organizations, were repeatedly declined on the basis of Clause 2 of Article 12 of the Law as “on the same day, at the same time and in the same place another event is being held”. Yet in the majority of cases no other event was held, or hastily some cultural event or a show for children and adolescents was staged.

On February 20, 2008 after the Central Electoral Commission announced the preliminary results of the presidential elections, the supporters of candidate Levon Ter-Petrosian, refusing to acknowledge the election results, started a termless sit-in protest action. The action was accompanied by crowded rallies and marches. In the early morning of March 1 the police violently dispersed the protesters. Thousands of opposition supporters gathered in the vicinity of Myasnikian monument. In a clash of protesters and the police in the early morning of March 2 ten people died, many were injured.

On March 1, 2008 by a decree of the RA President in Yerevan emergency rule was introduced for 20 days, during this period holding assemblies was prohibited. On March 17 the RA National Assembly introduced amendments to the Law that, contrary to positive expectations, made assemblies questionable.

Thus, Clause 3 of Part 4 of Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was narrated in new edition, according to which the competent body can prohibit holding public events, if it has reliable information that the events are “aimed at violent overthrow of constitutional regime, incitement of national, race, religious hatred. Endorsement of violence or war or can result in mass disorder or crime, harm the national security, public order, health and morals of the society, can infringe constitutional rights and freedoms of other citizens”. The new edition also says: "The information may be considered reliable, if the Police or the National Security Service at the RA Government have given their official assessment of it. The same procedure applies for the assessment by the same bodies of discontinuation of these restrictions”.

Moreover, the list of the terms entitling a competent body to prohibit the event has been expanded. Besides, the Law does not clarify where this information is available to the applicant and the public, whether it can be challenged. Whenever an application for an unwanted rally is submitted, this norm allows getting all the necessary “reliable information” from the competent body.

According to Part 6, inserted in this Article, if the events have resulted in mass disorder with casualties, the competent body can prohibit holding mass public events until the crime is investigated and the perpetrators are identified. This provision of the Law means that if during an event and as a result of mass disorder casualties occurred, holding say environmental rallies can be prohibited. Besides, this provision in essence gives the local self-government structures the mandate to introduce emergency rule, which runs contrary to the RA Constitution and international norms.

Part 1 of Article 10 of the Law has also been amended, omitting a provision that allowed to hold mass public event if it grew spontaneously from a non-mass public event.

The same Article was amended once again, stipulating a timeframe of at least five working days to notify the competent body about holding a mass public event (this timeframe earlier was three working days). At the same time, in Part 1 of Article 12 of the Law the term of notification consideration was prolonged: "The competent body considers the notification within 72 hours after its receipt, in the succession of receipt”. The notifications used to be considered the next day after their receipt by the competent body.

Clause 3 of Part 1 of Article 13, according to which the competent body can prohibit any public event on the grounds, stipulated by Article 9 (described above). This practically means a possibility to prohibit any event.

Thus, the Republic of Armenia not only failed to comply with its commitment to reform the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, but also, with its restrictive amendments, introduced on March 17, 2008, made a serious retreat from democratic principles.

After March 17, 2008 dozens of bids, submitted to Yerevan municipality by the opposition parties and non-governmental organizations, were declined on the basis of restrictions in Article 9 of the Law. Thus on May 6, 2008 the Helsinki Committee of Armenia made an application to Yerevan municipality to hold a march in commemoration of Levon Gulian, dead in the RA Police, on May 12. The notification was declined by the Yerevan municipality proceeding from Clause 6 of Article 9 of the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. The response from the municipality was received by the organization on May 13 only, yet on May 12 the Police impeded the march.

On March 28, 2008 in a joint conclusion 474/2008 of the Venice Commission and OSCE/ODIHR the adopted amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” were strongly criticized and qualified as inappropriate. It was recommended to abolish some of the provisions of the Law, as well as introduce amendments enabling challenging decisions in court in certain cases.

On April 15, 2008 by the results of a discussion at the National Assembly of the Law “On Amending the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” with the involvements of Finola Flanagan, Simona Granata-Menghini (Venice Commission), Denis Petini, Niel Jarmani (OSCE/ODIHR), RA NA Chairman Tigran

Torosian, RA Minister of Justice Gevorg Danielian, RA President's Assistant Gevorg Mherian and the RA NA Chairman's Councilor David Melkonian, the parties reached an agreement that a new draft of five clauses will be developed and submitted to Venice Commission and OSCE/ODIHR before April 25, 2008.

Further on, on the basis of the conclusion of international experts this draft must be introduced to the NA agenda.

It was proposed:

- to amend Clause 3 of Part 4 of Article 9 of the Law, according to which the security threats must be immediate (see above), as well as stipulate that the official conclusion of the Police or National Security Service must be justified;

- to exclude Clause 6 of the same Article, to provide for a possibility to challenge the ban on the event in the court in Article 9;

- to add the clause on the commitment to consider the notification within 72 hours into Part 8, Article 12, as recorded in Part 1 of the same Article;

- to restore the possibility to hold a spontaneous public event without a notification lasting not more than 6 hours with regard to a specific phenomenon or event.

In Clause 12.3 of the Resolution of the Parliamentary Assembly of the Council of Europe 1609 "Functioning of Democratic Institutions in Armenia" of April 17, 2008 it was noted: "The amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect."

On June 11, 2008 the Parliament of Armenia adopted another law on introducing amendments to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations". The following amendments were made:

1. Clause 3 of Part 4 of Article 9 was amended to include immediate threat of violence or real danger (see above);

2. Part 6 of Article 9 is abolished.

3. Possibility to challenge events in court is stipulated. In Clause 3 of Part 4 of Article 9 it was stipulated that the official assessment of the Police or the National Security Service must be justified.

4. In Part 8 of Article 12 a clause on considering the notification submitted within 72 hours is added, recorded in Part 1 of the same Article.

5. Article 2 is addended with a definition of "spontaneous public event".

6. It follows from Clause 1 of Article 10 that no notification is necessary for a spontaneous public event.

7. Article 9 is addended by Part 6.1, according to which no spontaneous public event can last more than six hours. Any subsequent event on the same occasion cannot be

considered spontaneous and must be held in accordance with the defined procedure of notification.

Despite the fact that the recommendations of the Venice Commission and OSCE/ODIHR were mostly realized (except for one), the Law did not come back to its previous version. Some restrictions introduced on March 17, remain in force. In Clause 4.1 of Resolution 1620 of June 25, 2008 the PACE welcomed the amendment of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" in accordance with the standards of the Council of Europe, stating in this regard the assumed commitments are fulfilled. At the same time, in Clause 4.2 the PACE confirmed its requirement that the freedom of assembly in Armenia must be guaranteed in practice. For the reason PACE insists, the Resolution noted, that the Armenian authorities, according to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" guaranteed that no unjustified restrictions be applied with regard to opposition events, in particular, in terms of rally venues.

Despite this, dozens of bids by opposition forces were declined by Yerevan municipality on the basis of Article 9. In the second half of 2008 the representatives of the opposition challenged the bans of the Yerevan municipality with the Administrative Court over 40 times. In the vast majority of cases the opposition suits were not secured. There were two exceptions to this: on September 3 the Administrative Court allowed the conductance of "Dashnaktsutiun" party's rally, then a part of the ruling coalition, and on September 8 the suit of the Armenian National Congress was partly secured - the rally was allowed but not the march initially planned. Contrary to the municipal bans, the opposition held 4 rallies that went in peace - on June 20, July 4, August 1 and September 26, 2008.

Conclusion

While the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" was acknowledged by the Council of Europe as corresponding to the European criteria, it is of more restrictive than regulatory nature. This is true in particular of Article 9. The greatest concern is caused by its practical application. The competent body with no serious justification impedes the conductance of rallies and marches, in particular. The practice of challenging the bans with the court is not satisfactory either, as the court does not ensure the principles of fair trial and proportional punishment, stipulated in Articles 6 and 11 of the European Convention of Human Rights, respectively.

Recommendations

1. To amend the Law "On Holding Assemblies, Rallies, Marches and Demonstrations". To revise Article 9, in particular, abolish Clause 3 of Part 1.4

2. To make the procedure for court challenges more effective

3. To commit the competent body (Yerevan municipality) to placing all the bids for holding assemblies on the web site.

RESPECT FOR THE RIGHTS OF ETHNIC MINORITIES

The ENP EU/Armenia Action Plan notes: "(...) Ensure respect for the rights of persons belonging to national minorities" (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

According to 2001 census, ethnic minorities are 2.2% of the total population of Armenia. There are 11 ethnic communities in Armenia: Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian and German. The biggest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), Kurds (1,519). The greatest part of these communities was formed in the first half of the 19th century. Apart from Yezidis, other communities are concentrated in cities, mostly in Yerevan.

None of the ethnic minority groups dominates any of the territorial units of Armenia. They all are dispersed all over the country. Upon its accession to the Council of Europe Armenia did not assume any special commitment with regard to ethnic minorities. No international document voiced any serious concern with regard to the rights of national minorities. This is due to the fact that ethnic minorities of Armenia make no political demands.

Individual complaints are occasionally received - with regard to pasture use, property, unfair trial, yet such complaints are characteristic of the whole population of Armenia and are not directly related to ethnic discrimination.

During the meetings with representatives of ethnic minorities discontent was mostly heard with regard to lack of funds for more active cultural life, notwithstanding the fact that the RA Government does allocate certain amounts to this effect.

The tense political situation in the country that affected various social groups after the presidential elections of February 2008 does not seem to have directly affected the minorities. Ethnic minorities refrain from being actively involved in domestic politics.

Ethnic minorities are represented in local self-government. In the National Assembly of Armenia there is a deputy of Greek descent, one of the leaders of a ruling party, the Republican Party of Armenia. The biggest community, the Yezidis, is not represented at the parliament, yet they were present in the election party lists of several parties. The absence of Yezidis in the parliament may be explained by the lack of organization within the community. Meanwhile, the correctly organized campaigning can enable Yezidis to have several MPs.

Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

According to Article 14.1 of the RA Constitution: "Everyone shall be equal before the law. 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 ".

Besides, Article 41 of the Constitution says: "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."

Article 1 of the RA Law “On Language” guarantees free use of minority languages in the Republic of Armenia, and Article 2 - a right to be educated in the mother tongue. According to Article 4 of the RA Law “On Language” in official documents, stationery, stamps of ethnic minority organization they can use their mother tongue along with the state language. Article 8 of the RA Law “On Basis of Legislation on Culture” provides that the state “contributes and assists establishment of such conditions that will return the cultural identity of various national minorities”. Article 15 of the RA Criminal Proceedings Code guarantees a state-funded translator’s services to the participant in a trial that do not speak Armenian.

There is no Law on national and ethnic minorities, despite the appeals made by NGOs and political parties since 2003 regarding the need to adopt one. Throughout at least five years various legislative initiatives kept being developed, yet none of the drafts was adopted as a basis for a law.

In 2008 to ensure the rights of ethnic minorities, a number of steps were taken in Armenia[29]:

- The RA Ministry of Culture developed a concept of protecting, retaining and developing the non-material cultural heritage, in which a lot of significance is attached to the issues of protecting and developing the culture of ethnic minorities.

- The volume and the duration of broadcasting in Assyrian and Greek languages on Public Radio of Armenia was increased.

- With state funding, the medieval Jewish cemetery on the bank of Eghegis river was renovated.

- The RA Ministry of Culture organized a republican festival of culture of ethnic minorities.

- The budget of Ministry of Culture has a separate line for funding publication of literary works by ethnic minority writers.

- The expert group of the Council of Europe monitored the process of implementation of European Charter of Regional Languages. Within the monitoring a scientific conference was held, giving floor to discussion of legal and cultural aspects of the problem.

[29] Information is provided by the Department of National Minorities and Religion at the RA Government.

LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.

REFORMS OF LEGAL AND JUDICIAL SYSTEM

The ENP EU/Armenia Action Plan stipulates the following steps to be taken in this domain:

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly (during 2006);

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;

- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006);

- Improve the legal and particularly free legal aid system by improving and , strengthening the system of advocates and develop a school of professional practice for young graduates in law;

- Establish administrative courts (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Current Situation

Amendments made to the RA Constitution on November 27, 2005 launched the implementation of the second stage of the legal and judicial reform. The amendment of the Main Law was aimed to improve the existing legal system, within the concept set as a basis for 1995 Constitution and condition by the principle of separation of powers.

The general analysis of the amendments made to the Constitution in 2005 allows stating the following:

- the institute of the Constitutional Court gained more detailed regulation and became more democratic;

- the legal status of the Court of Cassation was changed;

- additional guarantees for the independence of judges were recorded;

- the limits of constitutional basis for justice were expanded and some of the fundamental principles were prescribed in greater detail;

- the procedure for the formation and activities of the Council of Justice was reconsidered, etc.

Main Objectives

Despite the fact that after the Constitutional reform a number of new legislative acts were adopted and numerous amendments to the laws in force were made, the issue of how compliant the legislative amendments are to the spirit and content of commitments, stipulated by ENP EU/Armenia Action Plan, remains open.

Moreover, looking in retrospect and analyzing the developments of February-March, 2008, one can conclude that most of the amendments were aimed at specific practical targets.

Judicial Power

Current Situation

The primary objective of the reforms was the establishment of unified, full-fledged and independent judicial power, and this consideration lay at the heart of the whole concept of judicial and legal system. This concept was realized through the Judicial Code, adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resolved a number of important and crucial issues. In particular, for the first time the relations, linked to organization and activities of the judicial, were for the first time regulated in a systemic form. Previously these were regulated by separate law - the RA Laws "On the Council of Justice", "On Trials", "On Legal Status of the Judge". Specialized - criminal, civil - courts and the Administrative Court was set up. The role and the significance of the Court of Cassation in the judicial system of Armenia changed; presently its main function is to ensure uniformity of law application and to contribute to the development of the law. Self-regulation bodies for the judicial power were formed, too - the General Conference of the RA Judges and the Council of Court Chairmen, a school has been establish to train judge candidates (Court School), that is to ensure the competence and appropriate training for future judges.

Main Issues

At the same time the legal and judicial reform in general and the Judicial Code in particular did not solve the most important of the urgent issues - creation of real independence guarantees and the practical application. The steps directed at strengthening the independence of the judicial system did not ensure the real independence of certain judges. As a result, within the de jure independent judicial system there are de facto dependent judges, which are illustrated by examples on both legislative and practical level.

Thus, one of the main guarantees for ensuring the independence of judicial system and the judges was to be the Council of Justice, entitled with a new status by the Constitution. Yet the analysis of the legislation shows this body, and hence, the whole judicial system, remains under the influence of the RA President.

This can be proved by several vivid examples:

- According to the Law, the Council of Justice is competent to make up the lists of candidate judges, yet this list is ratified by a decree of the country's President (Part 4 of Article 117 of the RA Judicial Code).

- The lists of promotion of judges of special primary courts and courts of appeals are also made up by the Council of Justice through a secret ballot, yet the President of the country leaves the candidates he finds acceptable on this lies, too and adds new candidates to the list within ten days. If the list is not addended it is considered to be declined (Part 9 of Article 137 and Part 8 of Article 138 of the RA Judicial Code).

- A similar mechanism is stipulated for filling in vacancies on the courts of general jurisdiction. Upon the consent of the candidate the Chairman of the RA Court of Cassation presents his candidacy to the Council of Justice. Unless the procedures stipulated by the Code are violated, the Council of Justice gives a positive opinion through an open ballot. In the case of a positive opinion, the candidacy is presented to the President of the country. If the President fails to appoint the judge this candidacy is considered rejected, it is excluded from the candidate judge list and a nomination to the vacancy is made anew (Parts 9 and 10 of Article 123 of the RA Judicial Code).

It is not surprising that the judges appointed by the abovementioned procedure mostly came up with verdicts of guilty on the criminal cases instituted on the events of February-March 2008, and the 1-2 verdicts of non guilty can be considered a negligible exception. Therefore, one of the conclusions of PACE Resolution 1609 - "despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process" - may be considered fully compliant with the reality.

Another example is the statistics of detention on the cases above - the motions on detainment and its prolongation filed by prosecutors and investigators were almost 100% secured. In Resolution 1609 it was also noted that the courts did not display critical approach to the need for preliminary detainment, did not duly consider the arguments of the defense attorneys, which does not meet the requirements of the European Convention of Human Rights and Fundamental Freedoms and once again raises questions regarding the independence of the judicial.

Procuracy

Current Situation

The constitutional reform was aimed at creating not only an independent judicial, but also a procuracy, independent from all branches of power. The system was supposed to be profoundly changed, as shown in the new RA Law "On Procuracy", adopted on February 22, 2007.

In the new Law "On Procuracy" the following was defined: main principles of procuracy organization and activity; the new procedure for appointing the RA General Prosecutor (upon a proposal of the RA President is appointed by the National Assembly for six years, and can be dismissed by the National Assembly - in the cases specified by the law - with a majority of votes); the structure and the system of the procuracy; the procedure and the conditions of prosecutor's subordination, their appointment and dismissal; immunity, material and social guarantees of prosecutor's activities. Yet the main accomplishment of the Law was certainly the separation from the procuracy of the criminal investigation function, as a result of which this body at the pre-trial investigation had to predominantly concentrate its efforts on the implementation of the control over the legitimacy of the investigation and preliminary examination.

Main Issues

Nevertheless, the developments showed there was no real intention to free the procuracy from investigative functions. Through consistent legislative amendment the procuracy not only restored the former positions, but also gained new privileges.

The first step was the adoption of the RA Law “On Special Investigative Service”. This Law established the new formally independent body in charge of investigating criminal cases. The head of the service is appointed by the RA President upon a proposal from the General Prosecutor.

Appropriate amendments were made to the RA Criminal Proceedings Code, too. According to the amendments the Special Investigative Service was to undertake the preliminary investigation on Articles 149, 150, 154.1, 154.2 of the RA Criminal Code on the cases dealing with the involvement in a crime of the leadership of the legislative, executive and judicial branches of power, of people on special state service, abusing their official positions, as well as dealing with elections.

Besides, a separate provision was made to the effect that the RA General Prosecutor can transfer those criminal cases from other investigative bodies to the Special Investigative Services that involve accomplicity or crime of the officials above as well as the cases in which these individuals are victims (Part 6 of Article 190 of the RA Criminal Proceedings Code).

Further on it became clear that all the loud cases on the events of February-March 2008 under various pretexts were concentrated in the Special Investigative Service, with the whole complex of legislative “innovations” used “successfully” by the RA Procuracy for a total control and investigation in the right direction, in both individual cases and against certain defendants. In fact the previous mandate of the procuracy was restored, with no serious commitments and responsibility.

Access to Justice

Current Situation

The solution of issues related to access to justice, in particular, the establishment of effective mechanisms to ensure free legal aid is a logical component of the whole legal and judicial reform process. The experience of the structures, established at the first stage of the legal and judicial reforms, their benchmarking against the world experience and the study of the legal practice showed that the free legal aid as a way to ensure access to justice is only possible through structural change. It is to this effect that the draft law “On State-Funded Legal Aid” was developed, with the support of Open Society Institute, and submitted to public debate.

Main Issues

Yet another solution was preferred in the course of the legal and judicial reform. In particular, through the RA Chamber of Advocates man attempt was made to regulate a whole domain of public relations outside legal framework by one amendment only, introduced to the RA Law “On Bar”.

This prospect is characterized by a whole number of negative characteristics. First of all, specific criteria of determining inability to pay are lacking, as well as the effective mechanisms for proving the necessary aid. This will have complicated and very negative consequences for the beneficiaries involved.

Besides, the real number of the public attorney of the Public Attorney Office (34, 7 of them working part-time) cannot objectively ensuring free legal aid to vulnerable social groups, in particular in the regions.

Finally, this initiative, being insufficient and completely ineffective, can be presented as an example of state implementation of the commitments to ENP.

Solutions Proposed

Analysis of the problems above allows concluding that the legal and judicial reforms have not corrected most of the existing shortcomings, and in some cases also created new problems, allowing complex and consistent approach. In this regard it is necessary, in particular:

1. To make complex amendments in the RA Judicial Code, aimed at ensuring real independence of judges;

2. To amend the RA Criminal Proceedings Code and the RA Law “On Special Investigative Service” so as to de facto excludes the investigation of criminal cases by the procuracy, as well as the total control of the RA General Prosecutor over the Special Investigative Service;

3. To take productive steps to have adopted by the RA National Assembly the draft law “On State-Funded Legal Aid”, currently in circulation, and have appropriate amendments made in other legal acts.

CIVIL SERVICE DOMAIN

The ENP EU/Armenia Action Plan stipulates the following regarding the civil service reform:

- Establish a unified and transparent system of recruitment for civil servants and develop incentives to promote public integrity through the establishment of merit-based payment structures. Promote the improvement of coherent civil service policy mechanisms and strengthen administrative capacity;

- Promote a merit-based system of payment for civil servants and introduce a rational system of evaluation of work performed;

- Support the improvement of civil service system activities and institutions (job advertisement/selection, appraisal, civil service passports etc.) and bring them in line with European standards;

- Support the improvement of educational and training programs for civil servants (in particular those related to computer and management skills, foreign languages, ethics code etc) in accordance with European standards;

- Establish a coordination network between the relevant authorities of civil service systems of EU Member States and Armenia, to ensure harmonization of legislation (and other relevant activities) and exchange of best practices and data (Section 4 "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform").

In Section 5 of the RA Government Resolution No. 927 of July 19, 2007 on the implementation of ENP EU/Armenia Action Plan, the following priorities are defined:

1. To improve the RA civil service and mechanisms for having a unified policy;

2. To create a single list of professions pertaining to the public administration in Armenia;

3. To develop and introduce a rational system of performance evaluation for the civil servants;

4. To improve the merit-based remuneration system for civil servants;

5. To improve the Ethical Code of the civil servants and its compliance;

6. To ensure incessant renewal of job descriptions for civil service;

7. To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

The reform process in this domain received much attention in the Armenia section of the current report "Implementation of the European Neighborhood Policy in 2007", presented by the Committee of European Communities in Brussels in April 2008. "While no comprehensive evaluation was made of the civil service, nevertheless, steps were taken to improve the system, with particular emphasis made on ethical code, anti-corruption

measures and employment procedures. The process of defining a unified legal norm of civil servants has not been completed yet", - the report noted in particular.

The present research aims to disclose the situation in terms of implementation of priorities above, the results, the reasons that impede their full-fledged and effective implementation.

To obtain information, the following methods were used in the course of the research: document research, in-depth interview or focus group discussion.

Thus, the first method was used to study the following legal, methodological and information documents: the RA Law "On Civil Service" , the RA Law "On Remuneration of Civil Servants"; the draft law "On Introducing Amendments to the RA Law 'On Civil Service' " (July 21, 2008); draft law "On Public Service"; resolutions, current reports, information from the RA Council of Civil Service, etc.

In-depth interviews were administered (personal and group) with the deputy chairman of the RA Council of Civil Service and the Council staff - the heads of subdivisions engaged in the research issues and individual experts. A special questionnaire was developed for in-depth interviews.

The interview participants were offered to give a quantitative and qualitative assessment of the process of the implementation of priorities for 2007-2008 and its results. To this effect we developed certain quantitative and qualitative indicators.

In particular, in terms of quantity the experts were offered to assess the implementation of each of the 2007 priorities by a three-unit scale, where 1 stands for "fully implemented", 2 - for "partially implemented" and 3 - for "nothing is done".

To make a qualitative assessment the experts were offered:

1. To list all steps taken to implement the priority during the reporting period;

2. To describe the rationale, the principles of the abovementioned steps, the criteria of their implementation, changes made, their direction, nature, etc.;

3. To present the reasons, for which the steps planned were not taken or were not fully implemented.

Priority 1: To improve the RA Civil Service and mechanisms for having a unified policy.

The following steps were taken:

To ensure transparency all the agencies have public information departments set up, in which job descriptions have been developed for 55 out of 80 civil servants. The Procedure for Freedom of Information and Provision of Information in Civil Service is being discussed currently. Training of all staff of public information departments was made. Proceeding from the positions in civil service, in the first (special) departments of all agencies the list of staff having access to secret information has been developed, with the level of acceptable access to such information being defined.

All agencies have unified departments of human resource management.

Aiming to overcome corruption in public administration, income statements have become mandatory for all civil servants - in the first years after civil service system was introduced not all classes of civil servants had such an obligation. Notably, the statement of incomes is a necessary but insufficient condition to overcome corruption in public administration.

The draft law “On Public Service” stipulates the introduction of the following new institutes: to expand the Code of Ethics of Civil Servants; the information institute; the notion of conflict of interest; the notion of gifts to officials at duty (in particular, types and cost of the permissible gifts to officials, the circle of interlinked individuals, etc. should be regulated - this requirement is also made by GRECO).

In terms of ensuring unified recruitment mechanisms as well as their examination, a pilot management information system has been developed with the assistance of the Yerevan Institute of Mathematical Machines to hold competitions. It is expected that this system will be used throughout administrative system. Today all human resources management departments perform 90% of their functions through electronic management systems.

By a unanimous opinion of experts, all measures taken to realize priority 1 either have already been taken or are being taken.

The failure to implement some of the recommendations of the priority is due to the fact that the RA Law "On Public Service” has not been adopted yet.

Priority 2: To create a single list of professions pertaining to the public administration in Armenia.

The following steps were taken:

The RA Government has approved a list of positions. While this list, in accordance with the market demands, is being reviewed every year, it still does not include all the diversity of professions necessary in public administration.

After the formation of civil service system a unified list of professions in public administration was to be developed. To this effect the following steps were made:

- the need to create a unified list of professions in administrative system was justified;

- the professions, necessary for various subdivisions, were subdivided into groups;

- the task of specifying requirements for special education for experts in various subdivisions was defined to finalize job descriptions (thus, for example it was hard to define the education background necessary for a HR manager, etc.);

- in the development of a single system of professions, the real requirements of the market and analysis of data on actual basic education of civil servants, employed in public administration from 1960-1970s, archive check-up of the data reliability, as well as the development of mechanisms to ensure effective application.

The problems, related to the implementation of this priority, require knowledge, its solution is impossible through the efforts of the Council of Civil Service, therefore, with no additional funding the single list of professions for public administration is impossible to develop.

In the opinion of experts, this priority was assessed as mostly unfulfilled.

Priority 3: To develop and introduce a rational system of performance evaluation for the civil servants.

The following steps were taken:

Upon the initiative of the RA Government it was proposed to develop a new system, according to which as a main performance evaluation criterion the following indicators are taken:

- volume of work;

- time of implementation;

- quality (compliance with the established quality norms);

- contribution (share or value in the working programs of the subdivision);

- nature (mechanical, semi-mechanical, creative, etc).

In 2007 the Yerevan Institute of Mathematical Machines developed an electronic system for collecting and processing the data necessary to evaluate performance. This was done upon the order of the Council of Civil Service and with the assistance of the World Bank. Upon the initiative of the RA Government another performance evaluation system was developed, too, that is being tested at the staff of the RA Government and the RA Ministry of Economy. Yet the new performance evaluation systems have not been introduced as yet.

The establishment of the general system in accordance with the indicators above calls for the development of qualitative indicators of performance evaluation (including methods of measuring quality, nature, contribution, etc.), which also requires knowledge and skills. It is impossible to solve this problem by the efforts of Civil Service Council only, it also requires financial assistance from outside.

Priority 4: To improve the merit-based remuneration system for civil servants.

In 2007 the RA Law “On Remunerating Civil Servants” was amended, according to which the base salary (the part independent of the years in service) of all civil servants was raised, yet this was not linked to the new evaluation system and did not ensure the differentiation of remuneration of civil servants on the basis of criteria specified.

The introduction of a new system of merit-based remuneration of civil servants was late because no rational performance evaluation system was adopted.

Priority 5: To improve the Ethical Code of the civil servants and its compliance.

Since the draft law “On Public Service” has not been adopted yet, no ethical code has been put into circulation, no sub legal normative acts have been developed, ensuring the compliance with ethical rules.

Despite this, in terms of ethical code improvement certain progress has been recorded owing to draft law “On Public Services”. Before that the Ethical Code of Civil Servants was not stipulated by law, and was only approved by the Council of Civil Service (resolution of No.13 of May 13, 2002). The establishment of ethical norms as a law:

- will reinforce their mandatory implementation as will stress their legal, normative nature, regulated by the law;

- will allow overcoming the unilateralist that exists in several codes of ethics in force. Thus, for example, “the civil servant, out of duty, should avoid other business contacts with people in conflict with state authorities”.

At the same time the draft has some unclear definitions. In particular, the notion of “legal policy”, mentioned in Clause 1 of Part 1 of Article 22, the criteria of “public interest” are also uncertain.

Priority 6: To ensure incessant renewal of job descriptions for civil service.

This is an incessant and permanent function of civil service system that does not call for specific timeframes, unless required by the newly adopted piece of legislation. Overall, changes were introduced in over 4,300 job descriptions.

Priority 7: To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

Instead of a radical change of the specialized legislation a more general decision was made - to develop a draft law “On Civil Service” with an expanded domain of regulation, including also civil service. Yet the adoption of the law was late, for this reason some of the institutional changes aimed at harmonization with the EU countries cannot as yet be implemented.

Certain steps were taken to exchange experience with the EU member countries.

Overall, in the domain of civil service throughout the reporting period the required priorities of ENP Action Plan can be qualified as “partially in line”.

The implementation of the majority of requirements is largely related to the draft law “On Public Service”. The delay in adoption of the draft to a certain extent is conditioned by active discussions, related to its comprehensive nature, since the domain of its regulation includes most crucial relations not only in terms of civil services, but also state and municipal administration.

In the opinion, of the vast majority of experts in civil service, with the adoption of the law “On Public Service” many of the problems of this sphere will be resolved or preconditions will be in place to solve many issues that are in cause-and-effect relationship.

FREEDOM OF SPEECH,
MEDIA AND INFORMATION

The ENP EU/Armenia Action Plan contains the following requirement: “Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” (Section 3 “Priorities for Action”, Priority Area 2).

Section 4 “General Objectives and Actions” also considers this sector. Clause 4.6.3 “Information Society and Media” of Sub-Section 4.1 “Political Dialogue and Reform” of Section 4 “General Objectives and Actions” says:

“- elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-Signatures), e-Government, e-Health, e-Learning, e-Culture;

- work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;

- work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;

- switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.”

The current report "Implementation of the European Neighborhood Policy in 2007” by the Committee of European Communities, section regarding Armenia, reads as follows:

“Measures have been taken to approximate the legislation on freedom of speech to the international standards: the amendments made to the RA Law “On Television and Radio” were aimed at ensuring balance in the National Commission on Television and Radio. Until the year 2013 the National Commission will be supervised by the President, after which the number of Commission members elected by the National Assembly will be equal to the number of members appointed by the President. The board members of the Council of Public Television and Radio Company are appointed only by the President. In July 2007 the National Assembly turned down two draft laws imposing restrictions on programs of international broadcasters. Permanent absence of independence of the regulatory bodies and insufficient informational pluralism still remain causes of concern. The RA Law “On Freedom of Information” is not fully applied yet, namely with regard to recording, classification and storage of information. During the presidential election campaign, a number of broadcasters were exposed to tax inspection, which gave grounds to suspect deliberate pressure exerted on them.

According to the provisions added to the Criminal Code of Armenia in April 2007, hindering the professional activity of journalists is persecuted. But self-censorship, violence and pressure on journalists are still practiced. Libel and insult have been partially decriminalized. Still, libel and "insulting a government representative" are punished also by imprisonment."

Having analyzed fulfillment of the obligations specified in the ENP EU/Armenia Action Plan, Yerevan Press Club (YPC) came to the following conclusions.

Broadcasting Legislation and Practice

On February 26, 2007 the National Assembly of Armenia adopted the RA Laws "On Introducing Amendments to the RA Law 'On Television and Radio'" and "On Introducing Amendments and Addition to the RA Law 'Regulations of the National Commission on Television and Radio'". But, as it has recently become traditional, the Laws were discussed and adopted hastily, through rapid procedure.

The argument that the need to bring the legislation into accord with the amended Constitution called for a rapid procedure does not hold water. Over a year had elapsed since the adoption of the amendments to the Constitution, and both the governmental and the parliamentary structures had enough time to hold discussions, hearings, to study the proposals submitted, to get expert evaluation. Moreover, in September 2006 the Government put into circulation a more comprehensive draft law that was rejected by the National Assembly, due to the efforts of the civil society and journalist community. Thus, the Government had plenty of time to discuss the draft law with the interested organizations since it was just the shortened version of the previous one.

After adoption of the above-mentioned Laws, the YPC made a statement, which covered an opinion regarding these Laws. Namely, it was stated that: "The amendments to the broadcasting legislation (...) do not reflect even the positive stipulations of the amended Constitution. Firstly, the proportion of the members of the regulatory body (the National Commission on Television and Radio), appointed by the President and elected by the Parliament, as provided for by the Main Law, will, following the amendments, only be reached in 2011 (...). Secondly, the amendments do not ensure the public and political diversity in NCTR composition: in accordance with the procedures proposed, the decision about the appointment of NCTR members from NA will be made by the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President. In other words, the regulatory body, like before, will be formed solely by the political forces at power, and in this regard the amended legislation does not introduce any significant novelty. Thirdly, like before, the involvement of the public in NCTR formation and the transparency of its decision-making is not ensured." The YPC also stated that remaining subdivision into the paid (that is, the full-time NCTR members - the chairman and the vice chairman) and the unpaid members conditions huge gap in their competence and violates the principle of collegiate decision-making. And finally, according to YPC statement: "The expansion of the NCTR competence and inclusion of the public broadcaster into it, as stipulated by the amended Constitution, did not entail the description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio in broadcasting legislation."

Above two years have passed since amending the above-mentioned Laws. In April 2007 the tenure of 3 NCTR members expired. According to the law, two persons were to be appointed to this body (the number of the NCTR members changed from 9 to 8). On April

7, 2007 the President of Armenia appointed one National Commission member (Grigor Amalian was reappointed as a member of the NCTR and later on as its Chairman), though the National Assembly should have been the first to elect NCTR member, since the amendments to the Law read as follows: “In case of expiry of the National Commission members’ tenure or early termination of their powers, the vacancies shall be filled first by the National Assembly and then by the President of the Republic.” Still, pursuant to the same amendment: “If one party appointing (electing) a member to the National Commission fails to appoint (elect) its member, this will not deprive the other party appointing (electing) a member to the National Commission of its right to fill in its vacancy.” As of December 31, 2008 the National Commission had not appointed its member, moreover, it did not include this issue on the agenda of its sessions. The tenure of three of the remaining 6 NCTR members expires in 2009 (thus, according to the above-mentioned principle of succession, two of them shall be elected by the National Assembly and one - by the RA President). The tenure of the other three members expires in 2011 (accordingly, two members shall be appointed by the President, one - by the NA) and if the NA remains disinterested in this issue, the amendments made to the Constitution and the laws will lose their significance and the activity of the NCTR will be rendered less efficient.

On June 27, 2007 at the extraordinary session of the RA NA the Draft Laws “On Introducing Amendment to the RA Law 'On Television and Radio'” and “On Introducing an Addition to the RA Law ‘On State Duty’”, initiated by the RA Government, were brought up for consideration. They were immediately called by experts draft laws on stopping the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty in Armenia. The first draft law stipulated prohibition of the activities of other broadcasters on the frequencies held by the Public TV and Radio Company. The second one specified a state duty of 70,000 AMD for “each issuance of a program cycle of the national editorial office or a service of a foreign media by the TV and Radio companies of the Republic of Armenia”. Naturally, adoption of these laws would put an end to broadcasting of Armenian Service of Radio Free Europe/Radio Liberty by the Public Radio of Armenia. Broadcasting of such programs by private companies would become unprofitable.

What issues, vital for the country and the society, are these two draft laws to solve that they had to be necessarily considered at an extraordinary session, instead of being included into the agenda of the ordinary session, following all the procedures that the law provides for? The draft authors have not presented any convincing arguments as to the urgency of their adoption at this very moment.

In this case again, for many times already has the Government hastily submitted draft media-related laws to the National Assembly - without consulting the civil society, media representatives, experts, even without the opinion of the appropriate parliamentary commission. These draft laws did not solve any vital problem for the country and the society, therefore, it is not clear why it was necessary to consider them at an extraordinary session. The draft authors did not present any convincing arguments as to the urgency of their adoption at that very moment.

These draft laws caused a wave of protest since, as it was mentioned in the statement of a number of NGOs, membering in Partnership for Open Society initiative, “analysis of the draft laws, presented to the NA, shows that they are primarily directed against the only broadcast medium out of the control of the RA authorities - the Armenian Service of Radio Free Europe/Radio Liberty, because their adoption in essence will stop the broadcasting of the programs of the Service on Armenian radio waves”.

On July 3, 2007 the draft laws were not adopted due to lack of quorum: 65 deputies took part in the voting, whereas 66 votes were necessary for quorum. Nevertheless, since September 1 the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty on the Public Radio of Armenia were stopped by the initiative of the Council of Public TV and Radio Company. On July 6 the Council of Public TV and Radio Company resolved to stop airing the programs of local and foreign broadcasters on the public TV and radio from August 9. This decision affected not only Radio Liberty: in August the broadcasts of "Tsayg" TV company of Gyumri on the 6th VHF that the TV company had been using jointly with "Shirak" public TV was stopped. The same is true for the program of "Mir" Interstate TV and Radio Company on the Public Radio of Armenia. The broadcasts of the Radio Liberty Armenian Service is made on the frequencies of "ArRadioIntercontinental". This private radio company is aired in Yerevan and in some other regions of Armenia. According to the representatives of the Armenian Service of Radio Liberty, changing the broadcasting company resulted in a significant reduction of the potential audience.

In the years 2007-2008, an example of governmental pressure on media was the campaign against "GALA" TV company of Gyumri. On October 22, 2007 Vahan Khachatrian, the owner of "CHAP" LLC - founder of "GALA" - made a statement regarding the attempts of various power agencies to exert pressure on TV company. The document stressed the infallibility of the TV channel's stance and the readiness to prevent any attempt of intervention into its editorial policy. The need to make such announcement was caused by the fact that after broadcasting by the company of the speech of RA First President Levon Ter-Petrosian at an event, dedicated to Armenia's Independence Day, September 21, different state bodies tried to exert pressure on "GALA", demanding to stop broadcasting speeches of the opposition representatives. A week after the statement of Vahan Khachatrian, the RA State Tax Service started check-up at "CHAP" LLC. Upon the end of the audit the RA State Tax Service reported the violations revealed. In particular, this referred to concealed amounts of TV advertising. Through a motion of the tax officers on December 3, 2007 the property and finance of "CHAP" were taken into custody. On December 17 the court hearings of the suit of the Gyumri Tax Inspection versus the founder of "GALA", "CHAP" LLC, started and were interrupted on December 18 after the court accepted the counter-claim of "CHAP" demanding to abolish the act on the results of audit. On March 19, 2008 the RA Administrative Court obliged "CHAP" LLC to pay into the state budget tax debts and fines, exceeding the amount of 25 million drams (more than $ 81,000). The overall amount that "GALA" founder was to pay including the litigation and the execution expenses came to 26 million 899 thousand AMD (about $ 90,000). From March 19 to March 25, 2008 there was an unprecedented action for Armenia in Gyumri - a telethon in support of "GALA" TV company. Further on, the fundraising was made all over Armenia and abroad. As a result, more than 26 million AMD were raised and used for payment of the tax liabilities.

At that time and afterwards different governmental agencies tried to influence "GALA" TV company. The same authorities pressed on advertisers to discontinue cooperation with "GALA" TV company. As a result, almost no commercials were aired by "GALA" TV company from the end of 2007 until summer of 2008. Besides, in the same period of time a dispute started between the Gyumri municipality and the "GALA" founder, "CHAP" LLC. The Gyumri municipality addressed the court demanding that "CHAP" LLC be obliged to stop the use of the city TV tower. The dispute was settled on October 31, 2008, when RA Court of Cassation abolished the ruling of court of general jurisdiction of Shirak region made in favor of the Gyumri municipality.

The next amendments to the RA Law “On Television and Radio” were made in November 2007, just before the presidential elections. Article 11 of the Law was given a new edition. The Article referred to the activities of TV and radio companies during the period of elections and referenda. The amendments were made to bring the Article into compliance with the RA Electoral Code, regarding pre-election promotion and its coverage in the media. But the amendments did not cover the issue of regulating the activity of media in the period since the announcement of the election date till the start of pre-election promotion. The obvious political bias of most of the TV channels, recorded by the YPC monitoring in October-December 2007, showed the need for such regulation.

The legislation stipulated that the National Commission on Television and Radio must control the compliance of television and radio companies with the procedure of pre-election promotion defined in the RA Electoral Code, and the right to address the court in case of detecting violations. Though the local and international monitoring reports specified cases of violation of the law, the NCTR did not record any violation.

Speaking about amendment to the RA Law “On Television and Radio” it should be mentioned that in August 2008 the RA Government hastily, without any preliminary discussion and acceptable justification, presented to the National Assembly another draft law on introducing an amendment to the Broadcast Law: “Not to announce broadcast licensing competitions till July 20, 2010. The TV companies, whose licenses expire before January 21, 2011, can request prolongation of the license from the National Commission. The license will thus be prolonged for the period requested, but for no longer than January 21, 2011.” The need to introduce such a provision is substantiated by the Government by the expected transition from analogue to digital broadcasting in Armenia.

The draft law was approved at the Government session on August 28, 2008, but was made public only on September 8, the day the session of the parliament was opened. The draft law was promptly put on the agenda, discussed, approved in the first hearing on September 10, and in the evening of the same day finally adopted at the extraordinary session. The civil society and experts regarded this amendment to be aimed at depriving the “A1+” TV company of the opportunity to take part in broadcast licensing competitions for 2 more years.

On September 9, 2008 Yerevan Press Club and its partner organizations released a statement. “This initiative of the Government has nothing to do with either the protection of the broadcasters, consumers, state or “with ensuring equal opportunities and prevention of market upheavals” (as noted in the governmental justification), but is only an attempt to get rid of the broadcast licensing competitions as of an unnecessary headache. The adoption of such laws will result in a situation when we shall enter the era of digital broadcasting with low-quality broadcaster that does not meet the public demand and international standards, is monopolized and hence is easy to control”, the statement stressed in particular.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, also expressed his concern regarding the adopted amendment. In his letter of September 26 to RA President Serge Sargsian, Miklos Haraszti pointed out: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.” In the opinion of Miklos Haraszti, moratorium on licensing meant that Armenia would not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of “A1+” TV company. OSCE Representative also reminded that in April 2008 the Parliamentary

Assembly of the Council of Europe, in its turn, also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow “A1+” to apply for a new license. “I hope that, for the sake of pluralism, the RA Government will review the amendments with the active participation of all relevant civil society and media stakeholders”, Haraszti wrote.

At the end of 2008 a package of amendments to broadcast legislation, developed by a group of deputies, was submitted to the consideration of the National Assembly. The Standing Commission of NA on Science, Education, Culture, Youth issues and Sport put up the package for public discussion.

Yerevan Press Club presented its Conclusion on the issue:

“Having considered the package of draft laws “On Introducing Amendments and Additions to the RA Law 'On Television and Radio'”, “On Introducing Amendments and Additions to the RA Law ‘Regulations of the National Commission on Television and Radio'” and “On Introducing Amendments and Additions to the RA Law ‘Regulations of the RA National Assembly '” put up for discussion by the National Assembly of Armenia, Yerevan Press Club is of the following opinion:

The package does not consider the principal fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. It does not take into account the proposals made by the journalist community and the civil society as well as the obligations towards international organizations undertaken by Armenia:

a) In particular, the draft laws do not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Item 8.3 of PACE Resolution 1609 “Functioning of Democratic Institutions in Armenia” (April 17, 2008): “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account.” Earlier, in July 26, 2006, the OSCE Representative on Freedom of the Media Miklos Haraszti mentioned in his report on the state of media freedom in Armenia: “(...) Legislative changes should not be limited to a ‘half Presidential - half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.” If mechanisms providing for social and political diversity are not developed, then, as Miklos Haraszti stated in the report, the government control over these bodies would not ease, particularly in such time periods when the President and the parliamentary majority represent the same political force.

b) The draft laws do not consider the issue of ensuring transparency in the decision making process of the NCTR. Inadequate transparency in decision making was mentioned in the judgment of the European Court of Human Rights on the case of the founder of “A1+” TV company, “Meltex” LLC, and its President Mesrop Movsesian versus Republic of Armenia (known as the case of “A1+”). In its decision the European Court recalled the guidelines adopted by the Council of Europe Committee of Ministers in the domain of broadcasting regulation, which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that “all decisions taken (...) by the regulatory authorities (...) be (...) duly reasoned”. The judgment

also quoted the PACE Resolution on Armenia of January 27, 2004, which concluded that "the vagueness of the law in force had resulted in (NCTR) being given outright discretionary powers". In the opinion of the European Court, the licensing procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. This was noted also by Miklos Haraszti, who recommended the need for such amendments in his abovementioned report of the RA Law "On Television and Radio" that would be clear about broadcast licensing competition procedures: "The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks."

c) Though the amended Constitution stipulates that the National Commission on Television and Radio should be the regulatory body for both private and public broadcasters, the draft laws do not define precisely the relation between the NCTR and the Council of Public TV and Radio Company, the mechanisms of regulating the public broadcasting, liability forms in case of violations, etc.

d) And finally, the draft laws do not eliminate the negative consequences of the amendment of September 10, 2008 to the RA Law "On Television and Radio". The amendment renders impossible the implementation of practical measures ensuing from the judgment of the European Court of Human Rights on the case of "A1+" TV company, which is emphasized in the recommendations of international organizations. Namely, PACE Resolution 1620 (June 25, 2008) noted: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights concerning the denial of broadcasting license to 'A1+', calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on March 26, 2008 and with the case law of the European Court of Human Rights."

Ignoring the above-mentioned basic issues renders meaningless the amendments to the broadcast legislation. The amendments do not provide for significant reforms and are just formal and superficial."

The situation connected with application of the RA Law "On Freedom of Information" has almost remained unchanged. The absence of two legally stipulated procedures - the procedure of registration, classification and archiving of the information processed by the owner of the information or imparted for him, as well as the procedure of providing duplicates (copies) of information by state institutions and organizations, local self-administration bodies creates certain obstacles. In autumn 2008 the RA Ministry of Justice developed a draft law "On Freedom of Imparting Information". In the opinion of experts from several non-governmental organizations (in particular, the Freedom of Information Center), this draft law is even regressive as compared with the acting Law.

Amendment of the Criminal Code of Armenia

The section regarding Armenia in the current report "Implementation of the European Neighborhood Policy in 2007" by the Committee of European Communities says: "The new provisions included in the RA Criminal Code in April 2007 stipulate that impeding the legitimate professional activities of journalists is persecuted (...)". Meanwhile the RA Criminal Code has long had Article 164 "Impeding the Legitimate Professional Activities of

a Journalist", which was amended on June 1, 2006. Reformatory labor was removed from the list of sanctions specified in the Part 1 and Part 2 of the Article.

Decriminalization of libel and insult has often been discussed, and the international institutions recommend to abolish Articles 135 ("Libel"), 136 ("Insult") and 318 ("Insult of Representative of Power") of the RA Criminal Code. There was progress in this respect in 2008: on May 19, 2008 the RA National Assembly nullified Article 318.

State of Emergency (March 1-20, 2008) and Media

On March 1, 2008 a state of emergency was introduced in Yerevan by the Decree of the RA President Robert Kocharian. Subclause 4 of Clause 4 of the Decree stipulates that "the media publications on state and inner political issues can be made exclusively within official information, released by state bodies". Such definition was in fact used to exert 20-day censorship in Armenia. While censorship was not listed among the restrictions, imposed by the Decree, moreover, according to Article 4 of the RA Law "On Mass Communication", it is actually prohibited, these days not only in Yerevan, but also all over the country factual pre-emptive censorship was practiced.

Due to this the publication of a number of national newspapers was banned because of their content. Some others, facing illegal obstacles, refused working, because they were unable to voice opposition and critical viewpoints, while the publication of opinions, discrediting and insulting for the opposition, often even aggressive, in other newspapers was in no way restricted. The media report that the pre-emptive censorship is practiced by people introducing themselves as officers of National Security Service. The Decree was directly followed by blocking of several news web sites that did not even have time to make any report on the situation. Such actions were completely illegal, and imposing restrictions with no grounds, under the circumstances, could be qualified as a violation of the presumption of innocence. Here, too, political discrimination was manifest, as only those sites were blocked that had previously disseminated criticism of the country authorities.

Meanwhile, in the broadcasting, fully controlled by authorities, there were numerous violations of the legality and the emergency rule. In particular, a number of media, violating the Subclause 4 of Clause 4 of the Decree, published and broadcast not only official information, but also presenting political propaganda, most of which was one-sided, discrediting and insulting for the opposition. The most prominent example of such unacceptable coverage was shown by the First Channel of the Public Television of Armenia that not only neglected the clause of the Decree, but also broke Article 28 of the RA Law "On Television and Radio": "The prevalence of a political stance (...) in the programs broadcast by public TV (...) is prohibited." The National Commission on Television and Radio, which, according to the Law, is an independent regulator and is also "to oversee the activities of TV and radio companies" (RA Law "On Television and Radio", Article 37, Part 1), failed to perform one of its main functions and did not prevent the violation of the Decree provisions not only by the PTA First Channel, but also the majority of private broadcasters. Violations of the relevant Decree provision were recorded also in a number of print media, with no response ensuing from the RA Ministry of Justice. The Ministry, within its competence, had to take steps to eliminate the violations.

On March 13 the Decree on the state of emergency was amended. In particular, Subclause 4 of Clause 4, referring to the media, was re-defined: "The media are prohibited from publishing or disseminating information on state and inner political issues, which is

deliberately untrue or destabilizing, or appeals to take part in events held with no prior notice (illegally), as well as publication or dissemination of such information or appeals in any other way or form." Yet, under the conditions of selective law enforcement and illegal actions that the media sphere encountered lately, this definition rendered media quite vulnerable. After the amendment of the Decree, a number of newspapers were still not allowed to print; the Internet-sites were still blocked until the state of emergency was lifted on March 21, 2008.

In 2008, the Parliamentary Assembly of the Council of Europe addressed the situation in Armenia twice: in its Resolution 1609 (2008) "The Functioning of Democratic Institutions in Armenia" (April 17, 2008), and Resolution 1620 (2008) "The Implementation by Armenia of Assembly Resolution 1609 (2008)" (June 25, 2008). Besides, on June 17, 2008 the European Court of Human Rights released its judgment on the case of the founder of "A1+" TV company, "Meltex" LLC, and its President Mesrop Movsesian versus Republic of Armenia. In particular, the European Court ruled that the right of the applicant to freely impart information and ideas, stipulated in Article 10 of the European Convention of Human Rights and Fundamental Freedoms was violated.

ELIMINATION OF TORTURE

The ENP EU/Armenia Action Plan contains the following provisions regarding elimination of torture, other inhuman or degrading treatment or punishment:

- further reform of the penitentiary system in line with the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions;

- closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society (Section 3 “Priorities for Action”, Priority area 2, Specific Actions);

- ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Section 4 “General Objectives and Actions”, Sub-Section 4.1 “Political Dialogue and Reform”).

Resolution No. 927-n of the RA Government of July 19, 2007 ratified the list of priorities and actions envisaged by ENP EU/Armenia Action Plan to be implemented in 2007. Clauses 12 and 13 stipulated:

“ - further reform of the penitentiary system (take measures aimed at facilitation of public control over the conditions in prisons and places of temporary detention),

- reform of the police (cooperate with OSCE and the Council of Europe in order to eliminate torture, other mistreatments and corruption)”.

The Republic of Armenia has acceded to the Universal Declaration on Human Rights, the International Pact on Civil and Political Rights (1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1993), the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols 1 and 2 (2002), the European Convention of Human Rights and Fundamental Freedoms (2001).

Torture and degrading treatment are prohibited by the RA Constitution (Articles 17, 12). The RA Criminal Code adopted in 2003 specified the respective punishment for torture (Article 119).

In May 2006 the RA ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for establishment of a national observation mechanism (national mechanism) in closed systems (penitentiaries, places of detention, police departments, psychiatric clinics, etc.).

On April 8, 2008 the National Assembly of Armenia made an amendment to the RA Law “On RA Human Rights Defender”, according to which the Defender is the national mechanism specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law does not provide for civil society involvement in the national mechanism. Thus, involvement of the civil society depends on the discretion of the Human Rights Defender.

About a year has passed after approval of the amendment, but nothing has been done either to establish the framework of the mechanism or to introduce it.

Based on the requirements of Article 47 of the RA Law “On Living Conditions of Prisoners and Inmates”, on May 14, 2004 a Public Monitoring Group in the Detention Centers was established under the Criminal Executive Service of the RA Ministry of Justice. In accordance with the “Regulations on Activity of the Public Monitoring Group in the Detention Centers of the Criminal Executive Service of the RA Ministry of Justice”, this Group is the supervisory body responsible for the issues of protection of the rights and freedoms of people in places of detention. Pursuant to the Regulations, the Group members have the right to visit freely the penitentiaries, to read various documents (if the prisoners’ consent is available - also their personal cases and correspondence, except confidential documents), to check the situation inside the institution, and to meet with prisoners.

Both the Public Monitoring Group (in 2005) and the European Committee for Prevention of Torture (CPT) mentioned in their reports the bad physical treatment of the prison staff to prisoners (striking the handcuffed prisoners with hands and feet, hitting with clubs).

The level of medical service in prisons is inadequate. In particular, the injuries suffered by prisoners in the result of ill treatment are not properly recorded in the relevant registers; the prisoners' requests for examination by a forensic doctor called from outside their place of detention are refused. No information is provided to the Procuracy about physical abuse and special measures used towards prisoners.

The biggest concern is caused by the situation in police departments and other investigating bodies. Numerous complaints are presented with regard to unlawful detention of people in police departments, abuse and violence. Violence in police departments is mainly aimed at obtaining a confession or testimony against third persons. The procedures of bringing people to the police department and arresting them are not observed, interrogations are often conducted unattended by the lawyer. The public is informed about cruel treatment in police departments only at times of political tension, when the active representatives of the opposition are brought to police departments, or in cases with fatal outcome.

To analyze the situation with torture and inhuman treatment, a reference should be made the CPT report. The latest CPT report on the situation in Armenia was published in 2006. Still, all concerns and recommendations mentioned in this report are actual for 2008 as well (the CPT visited Armenia in 2008, in the post-election period, but the report has not been published yet).

For example:

- The practice of detainment of criminal suspects for more than four days has remained unaltered since 2006. In particular, after the events in March 2008 there were multiple cases of detainment of people in police departments for a period exceeding four days.

- The term of transporting the people to places intended for preliminary confinement, i.e. not later than within 3 days, is not observed mainly because of wrong arrangement of the work of the escorting police officers. Besides, there are frequent and long-lasting transitions. All this increases the risk of inhuman treatment.

- The reports specify that the people arrested by the police are constantly exposed to inhuman treatment and unlawful actions.

There is no progress with regard to this either. Here is an example:

"On May 12, 2007, according to the official information, Levon Gulian, who was brought to the police department, jumped out of the window and died. A criminal case was filed based on Part 1 of Article 110 of the RA Criminal Code. The preliminary investigation was conducted by the Procuracy of Yerevan. On December 12, 2007 the case was taken over by the senior investigator on high importance cases of the Special Investigative Service of Armenia. On March 12, 2008 G. Petrosian, the senior investigator on high importance cases of the Special Investigative Service of Armenia, made a decision to terminate inspection of the case due to absence of corpus delicti. On March 26, 2008 the complaint presented by the legal successor of the victim was rejected as groundless by decision of Z. Tadevosian, the senior prosecutor of the General Procuracy. The legal successor's lawyers appealed against the decision of the Procuracy to the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan. The court revoked the decision of the Procuracy and made a resolution to recommence investigation of the case. On July 21, 2008 the RA Criminal Court of Appeal ratified the resolution of June 6, 2008 of the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan, according to which the decision to terminate inspection of the fact of Levon Gulian's death in the yard of the police administrative building was considered unjustified and unlawful. The preliminary investigation of the case recommenced on August 16, 2008. The courts had mentioned in their decisions that the preliminary investigation had not been comprehensive, integral or impartial; there had been numerous violations of the law, the required measures aimed at detecting the truth had not been taken, the representatives of the victim's legal successor were not invited to take part in implementation of inspection activities, the unlawful actions of some police officers were not assessed properly. Though several months have passed after recommencement of investigation, the behavior of the preliminary investigation body implies that the Special Investigative Service of Armenia is not in a hurry to fulfill the requirements stipulated by the court resolutions. In particular, other versions of Levon Gulian's death are still ignored. No one has been interrogated except two police officers, no expert examination has been conducted with a manikin, and no one is a suspect or an accused in the case."

- At any stage of detainment by the police, the arrested persons can present a complaint to the judge with regard to inhuman treatment by the police. The judge should make a written record on the complaint, make a decision on conducting a medical examination, and follow up performance of investigation. But the medical examination of the arrested people is often perfunctory and is conducted mainly in the presence of the representatives of the law enforcement bodies. No proper control is ensured by the Procuracy over the claims of the arrested with regard to such injuries, which are later on detected during the medical examination.

There has been no progress in this respect. The results of medical examination of the arrested, as well as their claims about the suffered injuries, are recorded in the relevant registers of criminal executive bodies in the presence of the escorting police officer, which holds the arrested back from telling the truth.

- The arrested are not offered the opportunity to inform their relatives about their situation starting from the very moment of detainment.

There has been no progress in this respect either.

- The arrested are often deprived of the right to use the lawyer's services from the very beginning.

This practice also continues, especially after the events that occurred on March 1, 2008.

During its visit in 2006, the CPT mission received a number of reliable statements about inhuman treatment of the arrested by police officers. Almost all statements were presented by persons (including women and the under-aged) detained in preliminary confinement places.

According to the report: “The statements about inhuman treatment mainly refer to slaps in the face, cuffs, kicks, hitting with rubber and wooden clubs, chair legs. Some statements referred to suffocation with plastic packs as a fact of inhuman treatment. Sometimes, the inhuman treatment was so cruel that it could be considered as torture.”

Almost all statements referred to inhuman treatment by operating officers (less frequently - by investigators and senior police officers) during preliminary interrogations. That was done for the purpose of extorting confession, evidence and other information. Thereafter, the CPT mission talked to several persons (including women and children), who stated that they had been exposed to unacceptable psychological pressure aimed at getting a confession of committed crime. This was accompanied with insults, abuse and threats of physical power or sexual violence to those people or their relatives and friends.

At court sessions no notice is taken of the defendants’ statements that the prejudicial testimonies had been exerted from them by violence. No public officer in Armenia has ever been punished for the use of violence or torture. This is also mentioned in the CPT report.

At the beginning of the visit in 2006, the RA General Procuracy informed the CPT mission that there had been no record of complaints against officers of law enforcement institutions for inhuman treatment. Such a situation would be doubtful with regard to the law enforcement system of any country. At the same time, the Armenian police failed to provide the CPT mission with any information regarding complaints on inhuman behavior, due to the obvious absence of statistics.

To rectify the situation it is necessary:

1. To introduce changes to the court procedural practice, including:

- To apply the relevant provisions of the criminal legislation, pursuant to which, in case of availability of the defendant’s statement about torture, the court should immediately demand investigation;

- To renounce the practice of considering the defendant’s confession as the principal proof of the defendant’s guilt.

2. To apply towards police officers the punishment for tortures envisaged by the criminal legislation.

3. In accordance with the procedure specified in Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to declare that Armenia acknowledges the power of the UN Committee Against Torture to accept and review the personal statements of individuals who consider that the requirements of the Convention have been violated.

4. To reform the criminal legislation, including:

- To amend and supplement the Criminal Procedural Code with provisions regarding interrogation of the suspect, accused, and witness, in order to establish the comprehensive procedure of interrogation by police officers.

5. To organize training for police officers and to check the professional level and knowledge of the international standards while appointing new officers.

6. To conduct proper medical examination starting from the moment of bringing the arrested persons to the penitentiaries and to obtain explanation regarding injuries in the absence of the escorting policeman.

7. To provide for guarantees of independence of the medical staff in the penitentiaries. To consider the possibility of the medical staff reporting to the RA Ministry of Public Health.

8. To introduce legal provisions on establishing a national mechanism, stipulated in Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prescribing the involvement of civil society in it.

FUNCTIONING OF THE ELECTORAL SYSTEM

The ENP EU/Armenia Action Plan contains the following provision regarding this sector: "Ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (Section 3 "Priorities for Action", Priority area 1, Specific Actions).

The elections to the RA National Assembly and the elections of the RA President were held in 2007 and 2008 accordingly.

The parliamentary elections of 2007 were qualified by the international observers as "generally complying with the obligations undertaken towards the OSCE and CoE and with other international standards"[32]; the US State Department stated that they were "significantly improved, though not fully consistent with the international standards"; and the local observers said that "the elections were accompanied by large-scale profound violations". At the same time, the OSCE/ODIHR observers mentioned that there were still unsolved principal problems related to the Electoral Code and implementation thereof, in particular, regulation of the pre-election propaganda, counting of ballots, tabulation of results, the work of electoral commissions, and examination of complaints.

The final report of the international observers' mission on the parliamentary elections of 2007 in Armenia, contained the following recommendations:

- to overcome the discrepancies between the Electoral Code and other pieces of legislation;

- to amend the provisions of the Electoral Code regulating the appeal procedure, by setting the mandatory requirement of calling a meeting of the electoral commission of any level for consideration of any written complaint and making the relevant written decision by the commission;

- to provide for the opportunity of challenging the verdict made by the court of primary jurisdiction with regard to an election dispute;

- to prescribe to the Central Electoral Commission (CEC) and territorial electoral commissions to report to the Procuracy and other authorized bodies regarding all significant violations, including the violations that might affect the election results;

- to place the ballot boxes in electoral districts so that the electors could vote facing the members of the electoral commission;

- to record cases of voting with the help of another person in the register of the district electoral commission and to put down the names of the voter and his/her assistant;

- to specify that a person can assist only one voter;

[32] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

- to put down the initial data (including the number of the received ballot papers and voting envelopes) in the minutes of the district electoral commission prior to commencement of the election process;

- to specify the mandatory requirement to keep the voting results posted up in an "easily observable place" of district electoral commission for a period of seven days following the date of voting[33].

After making these recommendations and until the elections of the RA President in 2008, the Electoral Code was amended and supplemented twice (on November 16, 2007 and December 18, 2007), but the above-mentioned recommendations were not covered by the amendments, and the Code was not brought into compliance with the requirements of the Venice Commission[34].

The elections of the RA President were held on February 19, 2008, during which, according to the local observers, the already vested usage of administrative and financial resources, bribing of the electors, inadequate consideration by the Central Electoral Commission, courts, and law enforcement bodies of cases regarding electoral violations, grew even more extensive.

In the report (February 20, 2008) on their preliminary findings and conclusions with regard to the presidential election of 2008, the international observers stated: "Generally, the election complied with the obligations undertaken by Armenia towards the OSCE, CoE and with other internationally accepted standards", "the authorities have improved the legislative mechanisms, but they were not implemented because of lack of sufficient political will". This opinion of the observers' mission was disputed by some deputies at the spring session of PACE.

In its post-electoral interim report (February 20 - March 3, 2008) OSCE/ODIHR stated: "The final opinion regarding the election depends on the process of final counting and tabulation of votes and examination of disputes". John Prescott, the Head of the Temporary Commission of PACE Observers of the Presidential Elections, qualified the post-electoral situation and the events of March 1, 2008 as "the consequence of lack of the voters' confidence in the electoral process and legitimacy of its results."

In the final report on the presidential elections, OSCE/ODIHR observers stated: "Though in the pre-election process and on the election day the elections generally complied with the obligations undertaken towards the OSCE and with other internationally accepted standards, serious problems in the part of fulfillment of certain obligations arose in the post-electoral period. Thus, the criteria essential for conducting democratic elections were not sufficiently respected and the whole election process was devalued. In particular, lack of reporting and transparency was revealed, and the procedures of presenting complaints and appeals were not fully efficient".[35]

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[33] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

[34] The "Code of the Best Electoral Practice" and "Guidelines and Explanatory Report on the Code of the Best Electoral Practice" adopted during 52nd session of the Commission of the Council of Europe "Democracy through Law" (Venice Commission) on July 5-6 and October 18-19, 2002 accordingly.

[35] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

The international observers, PACE, OSCE/ODIHR and the Venice Commission again demanded to conduct detailed investigation of the violations made in the electoral process and to punish the persons guilty of the violations. Besides, they recommended making further amendments of the Electoral Code in order to secure the following:

- efficient examination of election disputes;

- making a justified decision by the Central Electoral Commission regarding every complaint; the decision shall clearly specify the steps of examination of the complaint, the results thereof, and the grounds for rejection of the complaint;

- mandatory registration of all complaints received by territorial electoral commissions, their examination only at official sittings, and transparency, by means of securing information awareness for all the persons authorized to be present at the sitting, and providing them with the opportunity to attend;

- extending the term for presenting applications for recount of votes from 14:00 to 18:00 p.m.;

- recount of ballot papers in every occasion of receiving such an application or official justification of refusal to recalculate the ballots by the decision of the territorial electoral commission;

- extension of the term defined for summarizing the election results, announcement of the final results of elections only upon expiry of the term set for consideration of all complaints;

- equal opportunities for all bodies authorized to appoint members to the territorial and district electoral commissions, their representation among the leading three members of the mentioned commissions;

- more clear definition of the legal status of decisions taken by territorial electoral commissions;

- the obligation of the police to announce periodically the number of citizens, who had requested the right to vote in places of their temporary residence;

- usage of the common procedure of entering the election results in the electronic network by all district electoral commissions;

- classification of electoral violations into criminal and administrative violations and precise definition of the procedure of their examination by criminal and administrative courts, accordingly.[36]

It is noteworthy that no legislative amendment is required for implementation of the majority of the above-mentioned recommendations. It would be sufficient to improve the law enforcement practice and to secure mutually complementary activity of state bodies in the electoral process, in order to exercise the voting rights of the citizens.

Steps to reform the legislation and improve the law enforcement practice, undertaken within the timeframes of this research, are listed.

[36] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

Improvement of the Legislation

By decision of the Chairman of the National Assembly of Armenia, a special commission was established for preparation of amendments to the Electoral Code. Not only the ruling authorities, but also representatives of other political parties (including the National Democratic Union, "Orinats Yerkir") were involved in the work of the commission (in cooperation with the Venice Commission). But only a few meetings of the commission have been by now called and it seems to have terminated its activity.

Changes in the Law Enforcement Practice

In spite of the received complaints, the CEC has not taken any measure to protect the voting right. It displayed just a formal approach and did not comply with the accepted international norms of examination of complaints.

According to the CEC, the Central Electoral Commission has taken decisions regarding 57 applications and has provided 8 official clarifications[37].

On February 18, 2008 letter No. 01-D/65-94, signed by the CEC Chairman, was addressed to Ruben Torosian, the proxy of the presidential candidate Levon Ter-Petrosian, notifying about rejection of all 33 claims presented by him.

By letter No. 06-D/414 of May 26, 2008 Ruben Torosian was notified that in accordance with Clause 7 of Article 40 of the RA Electoral Code, the CEC considered some of his claims at CEC meetings.

Courts have rejected about 20 claims regarding the activity or inaction of the CEC. Referring to the procedural norms and taking advantage of the omissions in laws, the courts did not secure protection of the violated voting rights of the citizens. The administrative court rejected all claims regarding violations of voting rights. Moreover, all court hearings for those cases were assigned within terms though allowed by the law but still unreasonable, because even if the verdicts had been made in favor of the claimants, they would have been senseless, as it would be already impossible to restore the violated voting rights.

Thus, on February 22, 2008 and March 3, 2008 claims were presented to the RA Administrative Court, with a demand to declare the CEC actions illegitimate for failure to consider the claims presented to it. The court verdict was announced on August 1, 2008 and the claim was rejected.

The hearings for the case "Ruben Torosian versus the Public TV and Radio Company", accepted for processing on February 1, 2008, were held on May 6, 2008.

On March 4, 2008 a claim was presented to the RA Administrative Court with a demand to declare the CEC actions illegitimate for violation of the procedure of summarization of the election results. The Administrative Court announced its verdict only on August 1, 2008. The claim was rejected.

[37] The CEC analysis of violations of the Electoral Code of Armenia, committed during the presidential election on February 19, 2008, page 5.

The election for the local self-government bodies commenced in May 2008. No legislative amendment or organizational change was effected before the election. No change was made with regard to the following:

- the management staff of electoral commissions;

- the procedures of counting of votes, preparation of minutes, tabulation of the voting results.

According to the report of mission of observers of Helsinki Committee of Armenia, which were based in the communities of Yerevan[38]:

1. At several polling stations placement of the voting booths did not comply with the procedure established by the law, though those stations had every opportunity to place the voting booths properly.

2. Unauthorized persons were present at the polling stations - police officers dressed in uniform, some of whom even took part in counting of votes.

3. There were incidents of group voting, open voting, attempts of voting with someone else's passport, voting without passports, as well as throwing a pack of ballots into the ballot boxes, repeated and prompted voting.

4. There were cases of violence and pressure on authorized persons and observers.

5. In several cases, the work of the commission chairmen and members was careless and disorganized.

All these elections were won by the representatives of the acting authorities or the candidates supported by them. Administrative and financial resources had decisive impact on the results of elections. Usage of administrative resources and bribing of the electorate is getting to be a coordinated process in Armenia.

Structural changes are required to ensure functioning of elections as the most important institution of democracy. In particular, the first-priority measures are:

- precise definition of the procedures of claim examination and voting rights' protection, and elimination of contradictions;

- improvement of the level of independence of the bodies responsible for protection of the voting rights (first of all - the RA Administrative Court).

[38] Reports on elections to the local self-government bodies of Nork-Marash, Davitashen, Malatia-Sebastia, Avan communities of Yerevan held on May 18, 2008, and of Arabkir community of Yerevan held on September 7, 2008.

FINANCING OF PARTIES

The ENP EU/Armenia Action Plan, Section 4 "General Objectives and Actions", Sub-Section 4 "Political Dialogue and Reform", Clause 4.1.1 "Strengthening the Stability and Effectiveness of Institutions Guaranteeing Democracy and the Rule of Law" contains the requirement to "establish clear and transparent rules on party financing".

Financing of parties is regulated by Articles 24, 25, 27, and 28 of the RA Law "On Parties"[39]. Article 24 of the Law specifies the types of funds possessed by parties: membership fees, donations, financing from the state budget, income received from civil and legal transactions and other income not prohibited by the law. Article 25 regulates the procedure of making donations to parties. In particular, Clause 2 of the Article specifies the list of legal entities and individuals not allowed to make donations. In case of getting donations from the entities on the list, except anonymous donators, the parties have to return the amount to the donator within two weeks; donations made by anonymous donators should be transferred to the state budget within the same time period. Article 27 regulates the financing of parties, specifying in particular the volume of financing, the parties entitled to such financing and the volume of it[40], allocation of the funds among parties that are members of an election alliance, as well as grounds for termination of state financing. And finally, Article 28 of the Law regulates the procedure and terms of financial reporting by parties. According to this Article, a party should provide the authorized state body (in this case - the RA Ministry of Justice) with the annual report on the funds received and spent during the reporting year. The report should be presented by March 25 of the year following the reporting year. The same deadline is defined for publication of the financial report of the party in media. This Article also specifies to whom and how the financial report should be presented, what shall be reflected in it, as well as refers to the necessity of implementation of financial supervision.

Financing of parties is closely connected with financing of election campaigns. According to Article 25 of the RA Electoral Code, parties are allowed to make personal, optional contributions to the election fund established for financing of the election campaign. This gives the parties the opportunity to finance their election campaigns (if they take part in the election to the National Assembly by the proportional election procedure), the election campaigns of presidential or deputy candidates (by the majority procedure), as well as the election campaigns of their candidates for the position of head or member of the community council. According to Article 79 of the Electoral Code, a party can make a contribution to the election fund of its presidential candidate for the amount not to exceed 30.000-fold of the minimum salary (AMD 1000), i.e. maximum AMD 30 million[41]. Similar restrictions are specified for contributions to the election funds of the parties or the election funds of the candidate(s) nominated or supported by them. According to Article 112 of the Electoral Code, a party may contribute to its election fund (or the election fund of its block

[39] This Law was adopted on July 3, 2002 and was enforced on November 15, 2002. Official Bulletin of the Republic of Armenia, No.34 (209), August 15, 2002.

[40] According to Article 27 of the Law, financing form the state budget can be provided only to those parties (blocks of parties) which have received at least 3% of the sum of the number of inaccuracies and the total number of votes given in favor of the voting lists of all parties by the proportional election procedure at the time of the latest election to the National Assembly. These funds are allocated among the parties (block of parties) proportionate to the votes received by them.

[41] Pursuant to the same Article, the amount of expenditures form the election fund shall not exceed AMD 70 million.

of parties) an amount not to exceed AMD 2 million, and to the fund of a deputy candidate by the majority procedure - the maximum amount of AMD 150,000[42], as a legal entity.

The requirements specified in the above-mentioned legal acts secure sufficient transparency in financing of parties, provided that they will be fulfilled properly. Still, we regret to note that up today civil society institutions and media have not been paying adequate attention to the financial reports presented by parties, though, as it is evidenced by the international experience, they might contain important information. At the same time, to this day no publications have been made by media to attempt and analyze the financial reports by a certain party. The Ministry of Justice - the state body authorized to receive such reports - has never officially reported about any occasion of falsification of such reports, i.e. non-reliability of the presented data. It is difficult to say whether that means that the Armenian parties provide all the required data diligently and fairly, or the reports are simply left unchecked.

As to the contributions to the election funds made by the parties, monitoring of financing of the parliamentary election in 2007 and the presidential election in 2008 conducted by Transparency International Anti-Corruption Center (TIACC) did not reveal significant violations. The parties, which made contributions to the election funds, provided the Central Electoral Commission with the required evidencing documents. But the situation is different with regard to expenditures from the election funds. During both elections, considerable difference was recorded between the declared and actual expenditures revealed by monitoring[43].

A number of provisions of the Electoral Code and the RA Law “On Parties” permit the parties to evade the above-mentioned restrictions regarding the contributions made from their own funds. In particular, the Electoral Code allows for making of contributions by individuals, without providing for mechanisms of preventing the practice widespread in many countries - when the party gives cash to its members who transfer these amounts to the election fund of the party as individual contribution. Since the principal target of the monitoring program implemented by TIACC was to check expenditures from election funds, this issue was not considered by the organization.

A more profound problem is that it is impossible to check timely and thoroughly the actual expenditures made by the parties during election campaigns, since, as it was mentioned above, pursuant to the Law “On Parties”, the parties present only the annual financial report, due by March 25 of the year following the reporting year. If elections are held in the reporting year, especially when the elections are scheduled for the beginning of the year, the falsifications revealed in the result of analysis of the financial report or monitoring cannot be used as the ground for invalidation of the election results. With regard to this, it might be a probable solution to set a requirement to open the account for the election fund as a supplementary account of the party’s principal bank account. Besides, all parties will have to present a quarterly financial report for the period of voting, as well as for two quarters preceding the date of voting.

[42] The same Article specifies that in case of a party (party bloc) the amount of expenditures from the election fund shall not exceed AMD 60 million, and in case of a candidate nominated by the majority procedure - AMD 5 million.
[43] See details on www.transparency.am

FIGHT AGAINST CORRUPTION

ENP Measures and Their Implementation

The ENP EU/Armenia Action Plan contains the requirement to:

- establish administrative courts;

- review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of the civil society and business representatives in monitoring implementation (during 2006);

- evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006)[44]. (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

ENP, Section 4, "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform", Clause "Fight Against Corruption" specifies 8 anti-corruption measures[45]:

1. Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005;

2. Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption and, once ratified, the OECD (Organization of Economic Cooperation and Development - ***Ed. Note***) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

3. Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including development of Code of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on September 19, 2001;

4. Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations;

5. Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

6. Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

[44] See the report section on the civil service.
[45] Almost all of the mentioned measures are specified also in the international anti-corruption convention and the recommendations of GRECO and OECD.

7. Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption;

8. Ensure the implementation of procedures to implement the Code of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

In 2008 the RA Government did not publish any information regarding measures aimed at implementation of the ENP EU/Armenia Action Plan; while in the list of priorities and measures to be implemented in 2007[46] the Government included only two actions:

- Clause 4.1 - review during 2006 the progress made in the implementation of the National Anti-Corruption Strategy and develop new measures (responsible bodies - RA Ministry of Justice and RA State Tax Service);

- Clause 4.2 - develop and enforce specific anti-corruption measures for the law enforcement agencies (the responsible bodies are not specified).

The mentioned clauses are of general character and it is not clear why other measures were not included in the list, especially those, for which the specified term of implementation expired at the end of the year 2006 (for example, the measure related to the UN Convention against Corruption) .

Clause 4.1 fully repeated the relevant provision of Priority 1 of Section 3 of the ENP Action Plan, though without the words “ensure active participation of the civil society and business representatives in monitoring implementation”. Since throughout 2007-2008 no reports or official statements as to the necessity of such monitoring or similar actions appeared, one can hardly judge whether the clause has been implemented. As to participation of the civil society, it should be noted that though several NGOs, in various sectors, implemented anti-corruption projects (mostly, donor-funded), such as traffic police, consumer rights, education, election, etc., this cannot be considered as comprehensive monitoring envisaged under the action plan of the Anti-Corruption Strategy.

Clause 4.2 is the shortened version of the relevant provision of Clause 4.1.1 of Section 4 “Democracy and the Rule of Law, Human Rights and Fundamental Freedoms” of the ENP Action Plan. It does not specify which precise measures should be developed and for which agencies exactly. As no official information has been published with regard to this either, it would be difficult to say whether the RA Government has implemented this measure.

The analysis of implementation of the above-mentioned 8 measures of the Action Plan is given below.

Measure 1

Though the RA Law “On Principles of Administration and Administrative Proceedings” was enforced on January 1, 2005[47], administrative courts were established only on January 1, 2008[48]. The administrative courts examine social disputes on legal relations, one party to which is the local self-government body or the relevant public officers, and the other party -

[46] See the Appendix of the RA Government Ruling No. 927 of July 19, 2007.
[47] Official Bulletin of the Republic of Armenia, No. 18 (317), March 31, 2004.
[48] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.

the citizens. The principal peculiarity is the specific distribution of the burden of proof, according to which: "A state or local self-government body (a public officer) who approved the disputed legal act or committed the disputed action or has not implemented an action, which, according to the claimant's statement, should have been done by him, bears the burden of proving the actual circumstances underlying his decision, action, or inaction" (Clause 3 of Article 26 of the RA Administrative Procedural Code[49]).

One of the fundamental principles for administrative courts is the principle of precedent defined by the law, which is supposed to preclude arbitrary decisions.

The RA Administrative Court is composed of 15 judges, who are much more overburdened as compared with other judges. According to the Chairman of the Administrative Court Tigran Mukuchian, there is always a great number of disputed payment orders: only in the part of the traffic police the monthly quantity of such payment orders reaches 5-6 thousand. Pursuant to the same source, as of August 1, 2008 the Administrative Court had announced 2,288 verdicts, made thousands of decisions, issued even more payment instructions, etc. 90 complaints were received (3.9% of the total number of cases) of which 35 complaints from individuals and 55 from state bodies. 60-65% of 2,288 verdicts referred to entrepreneurs, with relation to whom administrative acts had been issued by tax or customs' authorities. Besides the above-mentioned cases related to the traffic police, there were many disputes with the mayor's office, the local self-government bodies, the state register and the cadastre. Tigran Mukuchian stated that 60-65% of 2,288 cases were solved in favor of the citizens. For several occasions, the Administrative Court announced "open days" and distributed the RA Law "On Principles of Administration and Administrative Proceedings" and the comments on it for free.

In the absence of statistical data or analytical findings, it is difficult to draw a conclusion as to whether the first year of activity of the administrative court has favored adequate prosecution and conviction of bribery and corruption-related offences. In experts' opinion, unlike cases related to economic activity, with regard to other cases the administrative court announced its verdicts mainly in favor of the state bodies, e.g., appeals against the decision of Yerevan Municipality on prohibition of assemblies, rallies, marches or demonstrations. (Thus, pursuant to the data provided by the Armenian National Congress of, only 1 of the presented 50 claims regarding prohibition of meetings and demonstrations was satisfied completely.)

Measure 2

Definition of bribery and corruption specified in the RA Criminal Code[50] (Articles 311 and 312) generally complies with the international standards. As to classification of corruption-related offences, within the scopes of "Istanbul Anti-Corruption Action Plan" developed by the OECD, it became necessary to specify the corruption-related offences, and in 2004 first 22 and then 59 Articles of the Criminal Code were outlined. According to the statement of Garegin Ashrafian, Head of the Procuracy Department for Fight Against Corruption and Organized Crime, taking into account the international experience, this number was reduced to 22. Later on, new types of offences were included in this category. At present, the total number of corruption-related offences, specified in the Criminal Code, is 31.

In 2008 the RA Criminal Code was supplemented with several new articles, in particular, Article 311.1, which refers to receiving illegal remuneration by public officers, Article 311.2,

[49] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[50] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2003.

related to usage of real or alleged influence for lucrative purposes, and Article 312.1 - offering illegal remuneration to a public officer, who is not a state official[51]. According to the same source, the list was prepared on the basis of the following criteria: a) availability of a certain status or duties in the public or private sector; b) violation of duties related to the public or private status; c) goal to score some unlawful advantage.

Since December 2008, information regarding 31 types of corruption-related offences and data on disclosure and conviction for specific criminal cases (since October 2008) is posted on the website of the RA Procuracy[52]. At the same time, the Procuracy does not provide separate statistics on these 31 types of corruption-related offences. Therefore, it is difficult to understand whether the existing definition and classification secure adequate prosecution and conviction of corruption-related offences.

Measure 3

Code of Ethics has been developed and enforced for judges (see Chapter 12 of the Criminal Code[53]), prosecutors (see Order No. 17 of the RA General Prosecutor of May 30, 2007[54]), and the police (see the RA Law "On Adoption of the Code of Conduct of Police"[55]). As to the border service, no information could be gathered in this regard, since the National Security Service did not respond to the researcher's request for an interview.

"Comments on the Code of Ethics of the Judge" were published as a separate booklet in 2007. According to the statement of the First Deputy to the Head of the Forensic Department of the RA, Secretary of the Council of Court Chairman Misak Martirosian, the Commission on Ethics under the Council of Justice considered 9 cases related to the Code of Ethics of Judges in 2007, and 3 issues were considered as of September 2008 (7 more issues were planned for consideration). The Commission on Ethics works mainly with complaints presented by citizens. If the Commission on Ethics is of the opinion that the judge has to be exposed to disciplinary sanctions, the documents should be handed over to the Disciplinary Commission. In 2007, three of the nine issues were handed over for consideration by the Disciplinary Commission.

In case of violating the Code of Ethics of the Prosecutor, the prosecutors shall bear disciplinary liability in accordance with Clause 3 of Article 46 of the RA Law "On Procuracy"[56]. The RA General Prosecutor is the guarantor of observance of the Code of Ethics. The Chairman of the Commission on Ethics of the Procuracy is one of the Deputies to the General Prosecutor. According to the data provided by Garegin Ashrafian, the Head of the Department of Fight Against Corruption and Organized Crime of the Procuracy, only one meeting of the Commission was held in 2007-2008. The meeting considered the issue of violation of the Code of Ethics by a prosecutor from a territorial department of Erebuni and Nubarashen communities of the RA Procuracy. The Commission made a decision to dismiss the prosecutor.

According to the statement of the Deputy Head of the RA Police Gevorg Mherian, a different approach is applied at the police: they have a Council, which considers various problems, including ethical issues. The Council Chairman is the Head of the RA Police,

[51] Official Bulletin of the Republic of Armenia, No. 33 (623), June 4, 2008.
[52] http://www.genproc.am/main/am/189/ ¨ http://www.genproc.am/main/am/193/
[53] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2008.
[54] http://www.genproc.am/main/am/23/2153
[55] Official Bulletin of the Republic of Armenia, No. 29 (401), May 18, 2005.
[56] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

and the members are: the management staff of the police, heads and deputy heads of the principal departments. Scheduled meetings of the Council are called once every six months. Extraordinary meetings can also be summoned, if required. Any violation of ethical norms is considered by the Board and a decision is taken whether disciplinary sanctions need to be applied or not. In the past, the complaints mainly referred to the work of the visa and passport departments and the traffic police. According to the statement of the Deputy Head of the Police, significant changes are being effected at present and the number of complaints has decreased. Thus, in the past they got about 100 daily phone calls with complaints on the work of the visa and passport departments, while in 2008 there was only one call a day on the average.

Measure 4

The Law "On Declaration of Assets and Income by High-Level State Officials of the Republic of Armenia" was adopted on January 1, 2008. It replaced the RA Law "On Declaration of Assets and Income by Individuals". Article 5 of the Law specifies the requirement of presenting such declarations by all employees of state and self-government bodies, irrespective of their salary rate. Pursuant to the Law, the deadline for submission of declarations for 2007 was April 15, 2008. Chapter 8 of the Law specifies more serious sanctions for submission of false declarations than before. But enforcement of the Law was postponed for a year[57].

According to the statement of the First Deputy Head of the RA State Income Committee Aharon Chilingarian, the total number of declarations presented according to the previous law was about 50.000. As to the statistics of 2007, no information was published regarding the number of public officers who failed to present declarations or presented false declarations, or regarding the applied sanctions.

Measure 5

The opinion mentioned in the report of GRECO experts regarding fulfillment of the relevant obligations by Armenia[58] is generally realistic. Still, there are drawbacks left out by the GRECO experts. First, the RA Government did not take measures to conduct studies and gather statistics and presented as accomplished the programs and measures implemented by non-government organizations (international organizations and NGOs). Moreover, the RA Procuracy did not and still does not have a separate website on corruption. Only in December 2008 a separate page about corruption was opened on the website www.genproc.am. Secondly, none of the state bodies (police, tax and customs' authorities) mentioned in Clause 13 of the GRECO experts' report publishes separate information on its website regarding disclosed cases of corruption.

With regard to the appropriate GRECO Recommendation (see Clause 14 of the experts' report) it is mentioned that a number of state bodies (Police, Procuracy, Ministry of Justice and National Statistical Service of Armenia) have jointly developed the system of acquisition of statistical data on corruption-related offences. These data are published on the website of the National Statistical Service (www.armstat.am). It is specified that there are 59 types of corruption-related offences, and the RA Criminal Code envisages different sanctions for such offences. It should be noted that as of that date (the first report was presented on September 27, 2007 and the second one - on May 5, 2008) the number of corruption-related offences was reduced to 22 (see above - analysis of Measure 2) and the

[57] Official Bulletin of the Republic of Armenia, No. 2 (592), January 9, 2008.
[58] http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp

National Statistical Service has never provided separate information on corruption-related offences. Clause 16 of the experts' report refers to installation of hot lines in a number of state bodies, but these hot lines never had any specific anti-corruption designation.

Similar assessment was given to implementation of GRECO Recommendation 3, although it is not clear (as it was mentioned by GRECO experts) whether the new Law "On Public Procuracy", enforced in May 2007, has increased the prosecutors' independence. The same can be stated also with regard to GRECO Recommendation 8 since it is obscure (as it was mentioned in the comments of GRECO experts) what kind of training courses exactly were conducted at the Police Training Center. GRECO Recommendation 14 was assessed as completely fulfilled, but it cannot be construed from the Government report, how many suspicious transactions were reported to the Procuracy by the Financial Monitoring Center of the Central Bank of Armenia. Moreover, no information is available as to whether any investigation was conducted with regard to these cases.

Measure 6

The analysis of Measure 1 contains a reference to ensuring the possibility of court appeals against administrative acts, including through establishment of administrative courts in 2006.

Measure 7

The current salary of judges is insufficient to ensure service with dignity in order to reduce corruption. The salary of judges in courts of original jurisdiction, Court of Appeal and Court of Cassation was increased in accordance with the Judicial Code enforced on April 7, 2007 (see Article 75 of Chapter 11)[59], but only by 15-30%, which cannot ensure service with dignity. At present, a newly appointed judge receives salary of AMD 220,000. On November 27, 2008 the National Assembly approved amendments to the RA Law "On Remuneration Rate of High-Level State Officials of Legislative, Executive and Judicial Power". According to the amendments, the salaries of judges will be doubled in the period from January 1 to December 31, 2009[60].

Measure 8

As to ensuring implementation of procedures aimed at fulfillment of requirements of the Code of Ethics of judges and prosecutors, including introduction of effective systems of supervision over observance of the Code of Ethics by judges and prosecutors, there is no information available, besides the information presented for Measure 7 above.

Description of the General Situation

Since the Anti-Corruption Strategy was actually completed at the end of 2006, in September 2007 the Chairman of the Monitoring Committee, Assistant to the President of Armenia, Gevorg Mherian declared that a new strategy should be developed[61]. Terms of reference on development of the new strategy were approved at the end of 2007 and the group of experts started the relevant work in 2008. A number of non-governmental organizations were requested to give an opinion regarding four chapters of the strategy.

[59] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[60] "Hayastani Hanrapetutiun" daily, December 1, 2008.
[61] "Hayastani Hanrapetutiun" daily, September 8, 2007.

These chapters were posted on the website of the RA Government - www.gov.am - in October 2008.

In September 2007 the RA Government presented a report on implementation of GRECO Recommendations. The assessment of GRECO experts for the first and the second stage was announced in June 2008[62]. According to the assessment, Armenia had fully implemented 7 Recommendations, satisfactorily - 5, partially - 9, and entirely failed to implement 3 Recommendations.

OECD expert opinion on implementation of obligations undertaken by Armenia within the scopes of "Istanbul Anti-Corruption Action Plan"[63] was published at the end of 2007. In this case, only 1 of the 24 recommendations is implemented fully, 8 are implemented basically, 11 - partially, and 4 recommendations are not implemented.

According to the information provided by the RA Ministry of Foreign Affairs, at the beginning of 2008 the RA Government presented a self-appraisal report to the Secretariat of the UN Convention against Corruption, which was a mandatory requirement for the countries acceded to the Convention[64].

The evaluation report on the progress of Armenia in 2007 within the scopes of ENP Action Plan was published in April 2008[65]. Along with a number of positive steps (e.g. legislative and procedural amendments aimed at decrease of corruption, as well as availability of the Code of Ethics for judges, prosecutors, and the police, increase of judges' salary and establishment of a special investigative service), it is mentioned that the issue of effective application of the anti-corruption legislation and policy has not been solved yet.

Numerous anti-corruption legislative amendments and by-laws were approved and/or enforced in 2007-2008, as well as a number of anti-corruption measures were implemented. See below several of these measures:

- Due to the amendments to the RA Constitution[66], the Supervisory Chamber obtained independent status (was removed from the structure of the National Assembly). In 2008 the Supervisory Chamber revealed grave violations and abuse[67] in the sectors of town planning, agriculture, urban heating and gasification, state procurement, apartment allocations, etc. According to the data posted on the website of the Procuracy[68], in the result of the above-mentioned disclosures, only two criminal cases were filed by the end of 2008.

- In accordance with the Law "On the Procuracy"[69], the RA General Prosecutor is appointed to this position and gets dismissed by the National Assembly, a new system of qualification testing and remuneration is introduced, and the Procuracy loses the power to conduct investigation, which is now vested with the police, the National Security Service, the Ministry of Defense, the tax and customs' authorities.

[62] www.coe.int/greco
[63] www.oecd.org/corruption/acn
[64] The report is not accessible to public.
[65] http://ec.europa.eu/world/enp/documents_en.htm
[66] RA Constitution, Article 83.4.
[67] "Hayastani Hanrapetutiun" daily, September 18, November 6 and December 11, 2008.
[68] http://www.genproc.am/main/am/185/
[69] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

There is a Department of Fight Against Corruption and Organized Crime in the Public Procuracy, which is responsible for prosecutor's control and procedural management over corruption cases. The department supervises those cases, which are investigated by the central investigating agencies of the country. In some regions, this is the responsibility of separate investigation bodies and prosecutors. The principal function of the department is the consideration of complaints received from individuals and requesting additional documents with relation to them. In case of revealing evidence of offence, the documents shall be delivered to the respective investigating bodies.

In 2008 the Procuracy conducted cluster meetings in Yerevan and the regions and considered the issues of prevention and disclosure of corruption-related offences and the specifics of their investigation. The meetings were attended by the representatives of law enforcement bodies, tax and customs services, other interested organizations, and journalists.

- A new system of justice was established on the basis of the amended Court Code[70] and the Law "On Administrative Proceedings"[71], which resulted in establishment of administrative courts, introduction of a new system of appointment and remuneration of judges and court chairmen, functioning of the court department (service), registrars, Code of Ethics of the Judge, court school, etc.

- The RA Law "On Operative and Investigation Activities"[72] specifies new types of operative and investigation activity, as well as control and inspection mechanisms for this activity.

- In accordance with the RA Law "On Special Investigative Service"[73], a new body was established to investigate those criminal cases, which involve high-level state officers, representatives of law enforcement bodies and persons engaged in election process. Pursuant to the information provided by official sources, during the first half of 2008 the Special Investigative Service examined 29 criminal cases, 13 of which were against 14 state officials[74]. The criminal cases were basically brought against officials of the lower and middle level.

- The RA Laws "On Organization and Conducting Audits in the Republic of Armenia"[75], "On Registration of Organizations and Individuals and Taking them off the Tax Register"[76], the amendments and supplements to the Laws "On Trade and Services", "On Usage of Cash Machines", "On State Duty" "On Taxes", "On Licensing", approved in 2008, and a number of other Armenian laws[77] are intended for fighting shadow income in the private sector and minimizing the corruption risks of the tax field. As of September 29, 2008 the Tax Inspection conducted inspections in 23 big shops and revealed violations in all of them, connected with usage of cash machines[78]. 9 supermarkets were temporarily shut down by the tax service, for a period of 5-10 days.

[70] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[71] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[72] Official Bulletin of the Republic of Armenia, No. 59 (583), November 28, 2007.
[73] Official Bulletin of the Republic of Armenia, No. 61 (585), December 5, 2007.
[74] "Hayastani Hanrapetutiun" daily, August 5, 2008.
[75] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[76] Official Bulletin of the Republic of Armenia, No. 54(578), November 7, 2007.
[77] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[78] "Hayastani Hanrapetutiun" daily, September 29, 2008.

- The regulations of passport departments have been simplified and streamlined. Sample forms of 7 different applications have been printed and provided to all passport departments. The individual only has to fill in his/her name and sign the application. The phone number of the Deputy Head of Police is also posted up in passport departments, which enables the people to call him in case of complaints. The lists of documents required to receive or change the passport, compile a case about loss of passport, etc. are also posted up on the walls of passport department offices.

The terms and conditions of issuing passports to the under-aged, as well as the list of the required documents were amended by the RA Government Resolution No. 823 of July 31, 2008[79]. The time constraints were removed and a simplified procedure was introduced: anyone may receive a passport for his/her child with validity period of three years and may change the passport at any time. Exit visas are also provided without any restriction.

- The traffic police reform has started. An off-budget fund has been established and 30% of it is transferred to the salary fund of the traffic police officers. Improvement of collection of administrative penalties is underway. This will give the opportunity to increase the salary of the traffic police officers up to AMD 200-250 thousand by the middle of 2009. In general, financing of the police has increased by 35 percent.

- Finally, in 2008 a chapter named “Corruption” was included in the textbook “Social Science” of comprehensive schools. It contains the definition of corruption, information regarding its forms, causes and methods of fighting against it.

Within the same period, reforms were effected also in other sectors, e.g. the tax service, but this report is intended to present only the steps related to the anti-corruption measures implemented or planned within the scopes of the ENP Action Plan.

As to foreign organizations’ opinion regarding the level of corruption in Armenia, pursuant to the Index of Corruption Perception (ICI) of Transparency International[80], in 2007 and 2008 Armenia was still among the most corrupt countries, the index of which is below 3 (by “1-10” scale, where “1” means “a fully corrupt country”, and “10” - “a country with no corruption at all”). During the last five years, the situation with corruption perception in the country remained unchanged: in 2008, 2007, 2006, 2005 and 2004 the ICI in Armenia was 2.9, 3.0, 2.9, 2.9 and 3.1, respectively.

According to the data of the World Corruption Barometer of Transparency International[81], 52% of the people who took part in the poll in 2007, were of the opinion that during the next 3 years the level of corruption in the country would “increase considerably” or “increase moderately”. As to the anti-corruption measures taken by the Government, only 25% of those questioned considered such measures “effective to a certain extent” or “effective”.

The data published by Freedom House in 2007 and 2008[82] evidence that the index of corruption in Armenia remained on the same level as in the previous years - 5.75 (by “1-7” scale, where “1” means “with no corruption at all” and “7” means “fully corrupt”).

[79] Official Bulletin of the Republic of Armenia, No. 51 (641), August 13, 2008.
[80] http://www.transparency.org/policy_research/surveys_indices/cpi
[81] http://www.transparency.org/policy_research/surveys_indices/gcb/2007
[82] http://www.freedomhouse.hu/nit.html

According to the World Poll of Gallup[83] held in 14 former Soviet countries, 50% of the people questioned in Armenia were of the opinion that at present the level of corruption is higher than in the Soviet times.

Global Integrity Index of Corruption in Armenia in 2007 was 58 (by "0-100 scale"), which, according to 23 anti-corruption criteria, corresponds to the rating "extremely weak"[84]. It is noteworthy that one of the management criteria of the World Bank, "control on corruption", was also rated rather low in 2007 - 30 scores of 100[85].

Based on the reports of the local and international organizations regarding the elections of 2007-2008[86] and numerous publications in the press, it can be concluded that political corruption in Armenia considerably increased during this period: abuse of administrative, informational, financial and other resources, bribing of electors, etc.

[83] http://www.gallup.com/poll/101767/Pereceptions-Corruption-Widespread-Former-Soviet-Nations.aspx
[84] http://report.globalintegrity.org/Armenia/2007
[85] http://info.worldbank.org/governance/wg/sc_chart.asp
[86] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php

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OPEN SOCIETY INSTITUTE HUMAN RIGHTS AND GOVERNANCE GRANTS PROGRAM

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MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

2007-2008

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FOREWORD

The Partnership and Cooperation Agreement (PCA, signed in 1996 and in force since 1999) between European Union and Armenia serves as the legal framework for bilateral relations. Since 2004, Armenia and the other South Caucasus states have been part of the European Neighbourhood Policy (launched by the European Union, following its enlargement), encouraging closer ties between Armenia and the EU. An ENP Action Plan for Armenia was published on March 2, 2005, "highlighting areas in which bilateral cooperation could feasibly and valuably be strengthened". The Plan sets "jointly defined priorities in selected areas for the next five years". In November 2005, formal consultations on the Action Plan were opened in Yerevan and as of 2008 are ongoing.

The EU-Armenia relations play an important role in the strengthening and development of democracy in Armenia. The present research aimed to determine whether the reforms, envisaged by the bilateral documents EU-Armenia, are implemented consistently.

Priority Areas 1 and 2 of the Action Plan for Armenia were taken as a basis for the monitoring.

Thus, **Priority Area 1** calls for strengthening of democratic structures, of the rule of law, including reform of the judiciary, and combat of fraud and corruption. **Priority Area 2** calls for strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).

The study was undertaken by Yerevan Press Club under the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Governance Grant Program of Open Society Institute. Support for researching into certain sections of the project and the preparation of this report was also provided by the Open Society Institute Assistance Foundation-Armenia.

Sections of this report were developed by YPC and its partner NGOs - Committee to Protect Freedom of Expression, Helsinki Committee of Armenia, Right and Information Center, Transparency International Anticorruption Center, Communities Finance Officers Association, Collaboration for Democracy Center, as well as individual experts candidate of economic sciences David Tumanian, sociologist Vardan Gevorgian, Doctor of Law Hrayr Ghukasian and Doctor of Law Lilit Simonian.

EXECUTIVE SUMMARY

RA HUMAN RIGHTS DEFENDER INSTITUTE. The cooperation of the RA Human Rights Defender and the state bodies is somewhat hindered. This is mainly manifest in shape of occasional controversies with RA Government, National Assembly and law enforcement bodies. In the first case the difficulties deal with the funding of the Defender's Institute, in the second one - the issue of his mandate revision, and in the third case is the matter of principal divergences in situation assessment. Besides, the RA Law "On RA Human Rights Defender" does not stipulate the involvement of NGOs and civil society in the nomination of the candidate for the post of the RA Human Rights Defender and his election. Besides, the human rights NGOs are unable to address the Defender as a third party. Overall, the cooperation with the civil society institutes is duly developed. With regard to ensuring easy access the need to set up regional representations of the ombudsman is emphasized.

FREEDOM OF ASSEMBLY. While RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" is seen by the Council of Europe to be largely compliant with the European standards, yet it is more of a restrictive than regulatory nature. It is the law enforcement practice that is the most concerning. The competent body with no substantial justification impedes and prohibits assemblies, particularly, marches. The practice of challenging in court is unsatisfactory, too, as it does not ensure fair trial and proportionality, in accordance with Articles 6 and 11 of the European Convention of Human Rights.

RIGHTS OF ETHNIC MINORITIES. None of the ethnic minority groups in Armenia is the main population of any territorial unit of the country. They all are dispersed all over Armenia. No international document expressed serious concern with the rights of ethnic minorities in Armenia. This is due to the fact that ethnic minorities in Armenia do not come out with political demands. They refrain from being actively involved in domestic policy. Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

LOCAL SELF-GOVERNMENT. The requirements on local self-government in the European Neighborhood Policy EU/Armenia Action Plan remain almost unfulfilled in 2007-2008. Certain steps were made only starting from autumn 2008. Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan". The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions. Overall, the institute of local self-government is not substantial in many communities.

LEGAL AND JUDICIAL SYSTEM. The reforms of judicial and legal system that resulted in a number of amendments made in legislative acts and law in force, only partially correspond to the spirit and content of commitments stipulated by ENP EU/Armenia Action Plan. Moreover, if one looks back and analyzes the developments of February-March 2008, one can conclude that most of the amendments made follow a certain pattern and aim to ensure the achievement of certain timeserving objectives. Hence, the reforms in legal and judicial system have not improved most of the existing definiteness, and sometimes have raised new problems that require complex and consistent solutions.

CIVIL SERVICE. With regard to civil service in Armenia the priorities of ENP EU/Armenia Action Plan can be assessed as “partly fulfilled”. The realization of the majority of steps is to a certain extent related to the draft law “On Public Service”. The delay in the adoption of this draft was due to debates regarding its comprehensiveness. Its regulation domain covers not only the civil service, but also all legal relations for all kinds and levels of state and communal administration. In the opinion of most civil service experts, after the adoption of the law “On Public Service” many problems will be resolved or preconditions will be set to solve issues that are in cause and effect relationship.

FREEDOM OF SPEECH, MEDIA AND INFORMATION. Despite the amendments to RA Law “On Television and Radio”, the requirement of ENP EU/Armenia Action Plan - “ensure the independence of media by strengthening the independent regulatory body for the public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” - is not in fact fulfilled. The National Commission on Television and Radio has failed to become an independent regulator. According to amendment made in the Broadcast Law on September 10, 2008, broadcast licensing competitions were frozen for two years. The amendment was assessed by independent experts as a deprivation of the right to take part in broadcast licensing competitions for independent broadcasters that are not subject to governmental control. During the state of emergency announced in Yerevan on March 1-20, 2008, for the first time factual preliminary censorship was exercised not only in Yerevan but also all over the country. Meanwhile the restrictions, introduced by the Decree on State of Emergency, did not stipulate censorship, which is prohibited by the RA Constitution and the RA Law “On Mass Communication”.

ELIMINATION OF TORTURE. Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Armenia ratified in May 2006, stipulated the establishment of national monitoring mechanism in closed systems (penitentiaries, police stations, psychiatric clinics, etc.). Both the Public Monitoring Group in the Detention Centers of the RA Ministry of Justice (in 2005) and the Council of Europe Committee to Prevent Torture in their reports note the degrading treatment of prisoners by prisons’ representatives. The situation is particularly alarming in police stations and other investigatory bodies. The complaints of illegal detention, violence and terror in police stations are numerous. The violence in police stations was practiced mostly to gain confessions or testimony against other people.

ELECTORAL SYSTEM. By ENP EU/Armenia Action Plan Armenia undertook the commitment to ensure the electoral framework in full compliance with OSCE commitments and other international standards for democratic elections. Yet this obligation remains unfulfilled. Amendments to Electoral Code have not included the recommendations of the OSCE and Venice Commission. The Central Electoral Commission was quite formalistic in addressing the complaints received. The courts did not ensure judicial protection of violated electoral rights in any of the more than 20 complaints received with regard to CEC’s actions or inaction. Overall, the international observers, when assessing both the parliamentary elections of 2007 and the presidential elections of 2008, particularly, the post-election situation in 2008, noted the lack of necessary political will and public trust towards elections and their results.

FINANCING OF PARTIES. The satisfactory level of party funding could have been ensured, had the appropriate legal acts been applied properly. Yet the monitoring of election campaigns during parliamentary elections of 2007 and presidential elections of 2008, showed that the expenditures for campaigning do not correspond to those, officially quoted by parties and candidates as their elections funds. The competent state body, the

Ministry of Justice, that receives the financial reports of the parties, never mentioned any cases of fraud, i.e., discrepancy between the information in the reports and the reality. It is hard to say whether this is a consequence of conscientious and honest financial reporting by parties or their reports are simply never audited.

FIGHT AGAINST CORRUPTION. In 2007-2008 in Armenia numerous legal and sublegal acts with anti-corruption trends were adopted and/or enforced, and a number of anti-corruption initiatives were implemented. Yet, the international and local experts believe that the level of corruption in Armenia is still quite high and the anticorruption reforms are of little effect. Thus, in 2007-2008, according to Index of Corruption Perception of Transparency International, Armenia remains in the list of most corrupt countries. According to the World Corruption Barometer of Transparency International, in 2007, 52% of respondents of Armenian survey believed that within upcoming 3 years the corruption level in the country "would grow substantially" or would "grow moderately". In 2007 and 2008 the data of "Freedom House" showed that the corruption index of the country remained the same as during the previous years, while in 2007 the Global Integrity Index of Corruption in Armenia was "extremely weak". One of the World Bank's criteria of good governance, "control on corruption", in 2007 was also assessed quite low. Proceeding from the reports of local and international organizations regarding elections 2007-2008 and numerous press reports, one can conclude that during this period in Armenia the political corruption level has enhanced, such as the abuse of administrative, communication, financial and other resources, election bribes. The increase of political corruption in Armenia is becoming a source of political and social crises.

ACTIVITIES OF THE HUMAN RIGHTS DEFENDER INSTITUTE

The European Neighborhood Policy EU/Armenia Action Plan[1] makes the following note regarding this area: “Develop the Human Rights Ombudsman institution in accordance with the Paris Principles based on UN General Assembly Resolution 48/134 of December 1993” (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Preface

The UN Economic and Social Council (ECOSOC) stressed in the Resolution adopted in 1960, that with regard to the protection and endorsement of human rights a crucial role is played by national institutions that should independently reflect the universal ambition to stand for human rights on the national level. These institutions are competent to engage in activities to attain certain universal goals on national level. In 1991 this Resolution became the basis for the Paris Principles, approved on the Global Human Rights Conference, held in Vienna in 1993 and ratified by the UN General Assembly in 1993[2].

The Paris Principles stipulate the minimal criteria for the foundation and effective activities of the national human rights ombudsman that this institute should be guided with. These criteria allow assessing the structure, the legal basis of establishment, independence from executive and legislative branches of power, guarantees of securing diversity, the competence, partnering with other structures, mission and objectives, awareness-raising activities with regard to human rights, etc.

Human Rights Defender Institute in Armenia

Armenia was the last of South Caucasus countries to have a human rights defender (ombudsman), even though preparations for this started as early as in 1990. This process was accelerated by the country’s accession to the Council of Europe and its commitments in this regard. The draft law on the RA Human Rights Defender was developed on the basis of a similar law of the Russian Federation on Human Rights Commissary. In December 2002 the RA National Assembly adopted the law in the first reading, after which the document was sent for the international expert review. On October 21, 2003 the law was adopted finally, it was enforced on January 1, 2004. The law stipulates the procedure for electing the Human Rights Defender and his dismissal, his competence, terms of service and guarantees.[3]

It should be noted that in 2007 the UN International Coordination Committee for National Institutions dealing with human rights endorsement and protection granted the RA Human Rights Defender the highest A status. This means the Armenian ombudsman corresponds to Paris Principles and enables him to take part in the sessions of UN Human Rights Council.

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[1] http://ec.europa.eu/world/enp/documents_en.htm#2

[2] Human Rights Defender’s Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 20.

[3] Article 1 of the RA Law "On RA Human Rights Defender".

Despite the high status, the RA Law "On RA Human Rights Defender" needs development and improvement. The analysis of the law herein is based on Paris Principles, the survey on Human Rights Defender[4]. Also, a comparative analysis with laws of other countries is made, where the provisions are more specific, distinct, clear and in harmony with Paris Principles.

Scope of Action

According to Paris Principles, the ombudsman must have as broad scope of action as possible. Article 2 of the RA Law "On RA Human Rights Defender" defines the main activities of the ombudsman, enabling him only "to protect the rights and liberties, violated by state bodies, bodies of local self-government and officials" (spelt also in the RA Constitution[5]). Meanwhile, the Paris Principles call for a more broad scope for an ombudsman, enabling him not only "to protect the violated rights and freedoms", but also contribute to the development and advancement of human rights and fundamental freedoms. The ombudsman must be more active. According to Paris Principles, the national institute of ombudsman in the absence of complaints-appeals from individuals should be competent to initiate research, to make official inquires, demand clarifications from state and local self-government bodies. Clause 3 of Article 11 of the Law entitles the Defender to imitate discussions if there are reports of mass violations or the issue is of exceptional importance for the society or is related to the protection of certain persons, yet this norm is envisaged for *emergency* and *exceptional* cases, when the violations are already *committed*.

In accordance with Paris Principles, the mission of the national ombudsman can be seen in the promotion and endorsement or development of human rights and fundamental freedoms. The protection includes the consideration of complaints, legal consultancy, dispute resolution, etc. The endorsement or development process includes quite a broad scope of action, from the promotion of respective laws and international agreements, promotion of human rights to awareness-raising activities in education and other institutions, with vulnerable groups of the society[6]. In essence, the RA Law stipulates protection of human rights and fundamental freedoms, but not the activities with regard to their endorsement, progress and development. Only by Clauses 3 and 4 of Article 7 of the Law the Defender is entitled to be present at the sessions of the Government and other state bodies, the RA National Assembly and to raise issues, if the discussion agenda relates to human rights and fundamental freedoms. According to Paris Principles, the law on ombudsman must distinctly specify that the ombudsman must, *upon his initiative and systematically,* monitor the correspondence of local laws to the international documents on human rights and fundamental freedoms and, if necessary to make appropriate proposals; to control resolutions, legal acts, adopted by state bodies and local self-government so as for them not to go against human rights and fundamental freedoms, and if necessary, to take steps to achieve their abolition (this competence is only stipulated by Clause 1 of Article 15 of the Law only after the consideration of complaints).

Presently the main functions of the RA Human Rights Defender's Office are the independent monitoring of public administration and consideration of citizens' complaints

[4] In October-November the Helsinki Committee of Armenia administered an expert interview at the ombudsman's institute itself.
[5] Article 83.1 of the RA Constitution.
[6] Taking the Paris Principles into Asia. A study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines. Hugo Stokke, Chr. Michelsen Institute Report, page 2.

against state bodies[7]. The research of Helsinki Committee of Armenia showed that experts have much appreciation for the ombudsman's efforts in legislative reforms. The experts emphasized the fact that it is upon the proposal of the ombudsman that some laws ("On State Pension" and "On Alienation of Property for the Needs of Society and State") were amended. With regard to violation of the right of property of the Northern Avenue residents, proceeding from the statement of the ombudsman the RA Constitutional Court recognized that the resolution No.1151 of the RA Government of August 1, 2002 regarding the construction in Kentron community of Yerevan, as well as Article 218 of the Civil Code and Article 104, 106 and 108 of Land Code run counter the RA Main Law. Nevertheless, in the human rights domain a number of issues were noted, related to state bodies, the police and difficulties in terms of cooperation with civil sector. On March 1, 2008 the Head of the Criminal Investigation Division of Kanaker-Zeytun Police Department A. Abrahamian impeded the activities of the Defender, prohibiting his entry to the police station, refused to provide information, as well as was disrespectful, violating thus a number of provisions of the Law, including Article 12, according to which the Defender must have unimpeded access to state institutions, including military units, prisons, detention centers, etc. Besides, while on duty the Defender enjoys the right of being immediately admitted by state bodies and local self-government, received by their officials, the management of penitentiaries[8].

On July 19, 2007 the Government adopted Resolution No.927, according to which the draft laws related to human rights and fundamental freedoms, before being submitted to the sessions of the Government, are sent to the ombudsman for an opinion. While steps are taken to regulate the legislation and harmonize the laws, legal acts and resolutions with the international agreements, ratified by Armenia, there is still a number of laws that contradict the norms and principles of human rights and fundamental freedoms. These laws were never submitted for the Defender's opinion, such as the RA Laws "On Investigating Activities" and "On Holding Assemblies, Rallies, Marches and Demonstrations".

In accordance with the Paris Principles the ombudsman must also contribute to the ratification and application of international treaties, to cooperate with the UN and other international and local structures that operate in human rights domain. According to the research above, the international cooperation of the Defender is expressed mostly in joint experience exchange projects, training, awareness raising. Under a memorandum signed with the Helsinki school some staff of the ombudsman's office have regular training. In partnership with UN awareness campaigns are waged, leaflets and posters are published and disseminated. Under UN Development Program, "Empowerment of Human Rights Defender Institute", the office develops information materials, holds training courses, plans a TV program on vital human rights issues in Armenia. With the assistance of international organizations the Human Rights Defender's office now has a library. To implement legal reforms the Defender appeals for international support, too.

The Paris Principles make a particular emphasis on the ombudsman's activities on awareness raising, media relation and coverage of ombudsman's activities, involvement in curricula development. The RA Law "On RA Human Rights Defender" does not refer to these provisions at all. Currently the real activities of the Defender's office are substantial not only in terms of human rights protection, but also in awareness raising. Awareness raising with regard to human rights is initiated by the Defender through meetings and focus

[7] Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 3.
[8] http://ombuds.am/main/am/9/16/0/36

group discussions, material dissemination. Meetings are held both in office and out of it - universities, schools, senior residences, etc. The Defender pays regular visits to regions, too. The office activities are regularly covered by media, in the annual report. With regard to awareness raising the ombudsman's staff pointed out two major issues: lack of representatives in the regions and the lack of funds for developing information materials.

As the survey showed, these activities are in fact implemented by the ombudsman's office, while not being stipulated by the law. In other words, the Law does not give the legal framework for such activities, thus restricting the mandate of the Defender. That is, the Law does not reflect the issues of awareness and coverage, as required by Paris Principles at all. The Paris Principles also call for the Defender's office to hold human rights training for the police, the representatives of judicial system and other state bodies, vulnerable and special needs groups of the society, at schools, universities, etc.

Election of Defender

Specifications are also necessary in the clause of the Law referring to the election of the Defender. Thus, Clause 1 of Article 3 does not define any professional criteria and gives only a general overview that fully coincides with the requirements posed to a member of parliament, while the mandates for these two positions are quite different in nature. Thus, for example, Article 2 of the Poland's Law "On Representative of Citizens' Rights", apart from stipulating the requirement of being a citizen and enjoying public respect, the ombudsman must also have legal knowledge and professional experience[9]. While the Paris Principles do not single out the legal knowledge, they emphasize expertise in human rights. The Armenian Law refers to the need of legal or special expertise indirectly. Thus, according to Clause 1 of Article 7, "The Defender is competent to give the applicant its recommendations or consultations for challenging resolutions, court rulings or sentence justification", and according to Subclause of Clause 1 of Article 12, the Defender is entitled to "have access to cases on criminal, civil, administrative, disciplinary, economic and other law infringements that have their sentences, rulings and resolutions enforces, as well as the materials that were a basis for refusing institution of proceedings". These functions cannot be performed by the Defender unless he has adequate legal expertise or professional experience. Clause 2 of Article 3 of the Law does not provide for case when more than one candidate is nominated and gains sufficient number of votes, or if none of them gains sufficient number of votes. No provision is made regarding the number of nominations and elections of the same candidate, either. Similar laws of Georgia and Poland envisage only two terms of service for the same candidate[10]. The Paris Principles call for the ombudsman election provisions to contain the following clauses: terms of service, re-election terms, dismissal terms, etc.[11] It is also preferable for the ombudsman to be elected at least for five years' term and have a change to be re-elected for the same term[12].

The Law does not require the legislature to involve representatives of civil society, human rights and other organizations, educational institutions, religious groups to nominate candidates, as well as hold consultations on electing and appointing the Defender, to ensure transparency and confirm his real independence[13]. The law does not regulate the procedure for nomination and election of candidates, either (through open calls for

[9] National Ombudsmans, Code of Legal Provisions, Biuro Rzecznika Praw Obywatelskich, Warsaw, 1999, page 279.
[10] Ibid, pp. 129, 280.
[11] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, page 16.
[12] Ibid.
[13] Ibid.

applications, competitions, etc.). The Paris Principles emphasize the transparency of Defender's election and involvement of all groups of the society in the election process.

Clause 2 of Article 4 of the Law imposes certain restrictions on ombudsman being engaged in other activities. In particular, the ombudsman is prohibited from membering in parties but not from involvement in the activities or assisting any party (such as taking part in sessions or campaigns), which cannot guarantee his independence, impartiality and objectivity.

The norms of early dismissal of the Defender do not provide for the cases of permanent failure to implement his duties of violation of the oath made. Meanwhile, Article 7 of similar law in Poland stipulates that the ombudsman can be dismissed early if he violates his oath[14].

Human Rights Defender as a Mechanism of Independent Monitoring

Paris Principles call for the establishment of special centers adjacent to ombudsman to protect vulnerable groups of society (children, women, the disabled, etc.). The monitoring of compliance with the UN Convention of the Rights of Children is made by ombudsman, yet the Law in force does not contain either provisions or regulating mechanisms. According to research administered, the RA Human Rights Defender has neither a section nor a special children's center - a fact that gained the attention of the Council of Europe[15].

On April 8, 2008 the RA Law "On RA Human Rights Defender" was addended by Article 6.1, referring to the activities of the Defender in international law: "The Defender is the independent national mechanism for prevention, as defined by the Optional Protocol to UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment. The comment on this norm is presented in Chapter 8 of this publication. Yet it is necessary to note that this amendment was not accompanied by any regulatory provision.

Consideration of Complaints

As to the complaints to be considered by the ombudsman (Article 7), it should be noted that the amendment, made on June 1 2006, certainly restricted the Defender's mandate in the judicial. The amendment contradicts the principles of the right to fair trial, prescribed in international documents and RA Constitution. Moreover, if one takes into account that post-Soviet countries are in transition, and the judicial system so far is imperfect, the Defender should be entitled to be present at court sessions (as stipulated by, say, Article 9 of a similar law of Ukraine)[16]. The interview with the ombudsman's office staff revealed that they are occasionally present at court sessions, yet this is not envisaged by the RA Law "On RA Human Rights Defender".

According to Paris Principles, the ombudsman must be entitled to appeal to court on behalf of those who cannot go to court themselves for certain reasons (children, the disabled, convicts, etc.)[17].

[14] National Ombudsmans, p. 281.
[15] Table of Treaty Body Recommendations Relating to National Human Rights Institutions, CRC/C/15/Add.119, 24 February 2000, 23rd Session, COs Europe.
[16] Institute of Ombudsman: evolution of traditions and modern practice (comparative analysis), A. Sungurov, Saint-Petersburg Humanitarian Political Science Center "Strategia", 2005, p. 179.
[17] Institute of Ombudsman: evolution of traditions and modern practice, p.179; Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 10.

The Law does not stipulate the mandate of human rights organizations to address the defender on behalf of third persons, either. The Paris Principles also stipulate close cooperation between the Defender and human rights NGOs. In the case of Armenia such cooperation is particularly important because the Defender does not have regional offices, yet can become acceptable to the people in the regions through local NGOs.

In the course of research one of the respondents noted that the representatives of the Defender must be entitled to suspend proceedings in case of the restoration of rights infringed, which is not envisaged by the law in force.

Ensuring Accessibility

Clause 3 of Article 23 of the Law stipulates that in regions regional offices of the Human Rights Defender *can be* established. As noted above, in accordance with Paris Principles the national ombudsman's institute must be accessible and available for *all groups* of society, and geographic location must not be an impediment for addressing the Defender. Steps are to be taken to establish regional offices or to launch partnership with local NGOs. Apart from this, the offices of the Defender must be accessible for people with special needs, i.e., be duly equipped[18]. According to the research noted above, the national ombudsman's institute has no regional offices or representatives, yet there is the practice of regular visits for awareness raising. The out-of-schedule visits to the regions are made only when an urgent complaint is received. Reasons for the lack of representatives in the regions include the need for office space, furniture and communications, as well as staff.

According to the annual report of the Defender in 2007, most of the complaints (65.8%) are received from residents of Yerevan, while the proportion of these received from the regions is very small (6.8%). Such huge difference is due also to remoteness of location.

Defender's Report

During the period of January 1 - September 30, 2008 the Defender received more than 2845 complaints, 907 of which were in writing. Throughout this period the Defender was addressed by 4096 people[19]. The complaints were mostly directed against the Special Investigative Service (311), Yerevan municipality (293) and the RA Police (222). In the opinion of one of the respondents, it is mostly conditioned by the situation after presidential elections-2008, with regard to which an extraordinary report was made by the Defender.

In accordance with Clause 1 Article 17 of the Law the Defender submits a report on his activities and human rights and fundamental freedoms to the country's President, the legislative, executive and judicial power. According to Paris Principles this is a mandatory component of the ombudsman's activities. In 2008 the Defender presented his report for the previous year, which described the Defender's activities, the human rights and fundamental freedoms situation, the results of complaint consideration, the list of state bodies that made infringements, etc.

In accordance with Clause 2 of the same Article the Defender has the competence of making an extraordinary report on certain issues of public significance or rough human

[18] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, page 22.
[19] Data provided by the RA Human Rights Defender.

rights infringements, as well as in cases of mass failure to eliminate the infringements. In 2008 the Defender made an extraordinary public report on presidential elections of February 19, 2008, post-election situation and events of March 1. This step was somewhat inadequately received by the authorities, in particular, the former RA President; moreover, the General Procuracy and the Ministry of Justice presented their objection, the whole point of which was that the Defender exceeded his mandate[20]. According to the Paris Principles, the ombudsman's mandate includes the issuance of an annual report and, if necessary, issuance of an extraordinary report. The Paris Principles also stipulate that the reports presented by the ombudsman and the infringements they contain must be discussed by the Parliament to be resolved[21] - a fact that is not taken into account by the RA Law "On Human Rights Defender".

The research administered reveals that there are certain problems in cooperation with state bodies. Difficulties were mainly noted in interacting with the Government, the National Assembly and the Police. In the former case difficulties were related to financial issues, in the latter - to the problem of mandate review.

In accordance with the Paris Principles the ombudsman's report must also contain a financial report to ensure public accountability and transparency, also stipulated by the Law, but not reflected in the report for 2007.

Defender's Office

According to Clause 1 of Article 23 of the Law the Defender recruits his staff to implement his activities, yet no procedure is prescribed and no reference to other provisions of the Law is made. The staff of the RA Human Rights Defender includes a secretariat, correspondence department, and a legal service that includes groups for rights of the military, protection of criminal procedural, social, economic, civil and cultural rights. The separate subdivisions are the information and public relations department and international relations department[22]. As follows from the data obtained, the currently existing of the Defender's staff and its statutes will soon be renewed. The draft has already been developed by the Defender and submitted for the approval.

The new structure and statutes call for the introduction of job descriptions, specifying the areas of competence of the staff members, as well as the hierarchy of positions, staff modifications aimed at optimizing the staff. The staff lacks the following professionals: lawyers, experts on international relations, journalists. As the staff members say themselves, the lawyers are particularly necessary.

In accordance with the Paris Principles, the ombudsman forms a staff (as stipulated by the Law), and he must act with sufficient transparency. A special procedure should be used for recruitment.

Yet it should be noted that there is no distinct recruitment procedure. The Defender's staff is quite closed for new staff members. No announcements are published if there are vacancies. The recruitment is made by the Defender through informal interviews. The most significant criterion in recruitment is the experience of dealing with the potential candidate

[20] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, pp. 12, 16.
[21] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, p. 28.
[22] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 4.

in the past. Yet this method contradicts the recruitment transparency, as required by Paris Principles.

According to Paris Principles, to effectively evolve their activities the Ombudsman's staff must be very qualified. They must also be constantly trained[23]. Overall, the staff noted the importance of the trainings, in particular, on human rights and public relations, yet preference is given to experience exchange with experts from other developing countries and practical job placements at some international institutions. It should be noted that the Head of staff assessed the role of training courses as quite low, since all such courses are detached from Armenian reality.

According to Amnesty International, the national ombudsman institutes must create opportunities for recruitment of such vulnerable groups as people with disabilities, women, ethnic minorities who, being well aware of the problems of their groups, may be neglected or underestimated by state bodies[24]. It should be noted that the Defender's staff is quite representative: it includes, refugees, people with disabilities, representatives of ethnic minorities.

Clause 4 of Article 23 of the RA Law "On RA Human Rights Defender" stipulates that the staff of the Defender are employed on short-term contractual basis. Yet this contradicts the norms of International Labor Organization, according to which the short-term contracts are signed with the specific project staff. Such contracts allow the employer to break the contract upon the end of its term with no substantial justification. It should also be noted that short-term contracts are quite demotivating. The contract is signed for a year, yet after its expiration the employer is not reevaluated or tested, the contracts are automatically prolonged.

Immunity

According to Clause 5 of Article 23 of the Law when on duty the staff of the Defender is immune, which is in accordance with Paris Principles. In June 2008 the RA Ministry of Justice proposed an amendment to the Law depriving the ombudsman's staff of immunity[25]. The Paris Principles establish the right of the ombudsman's staff to enjoy immunity that would ensure their implementation of their professional duty as well as guarantee the independence of the ombudsman's staff. This proposal was criticized as well as disapproved by the Venice Commission[26].

Partnership with Civil Society, NGOs and Expert Council

Paris Principles attach importance to the broad involvement of civil society in the institute of ombudsman and the establishment of the Expert Council which is also a guarantee for the development and endorsement of human rights and fundamental freedoms, as well as for the guarantee of diversity[27]. Meanwhile, Article 26 of the Law leaves the issue to the discretion of the Ombudsman. The reality is as follows. Overall, as the respondents say,

[23] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 14.
[24] Ibid, p. 6.
[25] http://ombuds.am/main/am/9/27/1765/
[26] Ibid.
[27] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 32.

the cooperation with the institutes of civil society is still at a low level, in particular, with the NGOs. Nevertheless, in the annual report of the Defender in 2007 the cooperation with the NGOS was quite highly assessed[28]. A relatively positive assessment was given to cooperation with media, too, mostly realized through press-conferences held 4 times a year. In special cases the Defender summons an extraordinary press-conference.

According to the Law, for consultations the Defender can set up an Expert Council. The interview with the key staff revealed that such a Council has already been established upon the initiative of the Defender, its members being representatives of NGOs. The number of the Council members is constant and does not exceed 20. The sessions of the Council are held two or three times a year. The Council is not seen as very effective, which is conditioned by the NGO sector in Armenia being underdeveloped.

Funding of the Human Rights Defender Institute

According to Article 24 of the Law the Defender and his staff implement their activities with funding from state budget. According to the statement of the Head of the Office, the funding of the national ombudsman is stable. Yet the budget allocated to the Defender and his staff is occasionally reduced with no substantiation by the National Assembly and Government, which runs contrary to Clause 4 of the same Article. It should be noted that the budget categories are generally acceptable, yet the amounts allocated are constantly reduced. In the opinion of the Head of the staff and other staff members of the Defender, the low pays are a reason for staff turnover. This situation does not reflect either the Law provisions or the Paris Principles, according to which the state should contribute and establish financially favorable conditions for effective activities of the ombudsman. Because of financial issues a number of problems arise with regard to Defender's activities, contrary to Paris Principles. Moreover, in the interviews it appeared that Clause 1 of Article 21 of the Law is violated, according to which the salary of the Defender must be equal to the salary of the Chairman of the RA Constitutional Court, and this is in compliance with the Paris Principles, yet far from reality.

Conclusion

The RA Law "On RA Human Rights Defender" and its practical application were subject to analysis. It is very important for all provisions of the Law to be implemented in practice and the Law be amended and improved. The Law is the basis and the guarantee for the Defender's activities, the more harmonious it is with Paris Principles, the more effective the activities of the ombudsman in the country will be.

- The Law must provide not only for the activities of the Defender in the human rights protection, but also their endorsement and awareness raising.

- The Law must stipulate a specific procedure for the nomination and election of the Defender, with the civil society being involved in the process.

- Being a mechanism that monitoring the implementation of the UN Convention on Children's Rights, the Human Rights Defender institute must provide for a children's center establishment.

[28] Annual report of RA Human Rights Defender, pp. 46-48.

- The Law must provide for a broader group of potential applicants, including human rights NGOs in it.

- The right to monitor trials should be prescribed by the Law.

- To ensure transparency of the Defender institute vacant positions must be publicly advertised, a distinct formal procedure should developed for recruitment, and the contracts should be signed for longer term.

- To ensure easy access for all citizens, regional representations of the Defenders must be made obligatory.

- The Defender must meet Expert Council member as well as other human rights and other NGOs more often, establishing a closer contact with them.

- The state must ensure appropriate funding for effective activities of the Defender.

- The law must be distinct in stipulating that the report of the Defender should be debated at the National Assembly and resolutions must be sought to eliminate the human rights violations noted in the report.

FREEDOM OF ASSEMBLY

In the ENP EU/Armenia Action Plan it is noted: "Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations". (Section 3 "Priorities for Action", Priority Area 2, Specific Actions).

At the same time, Clause 10 of the RA Government's resolution of July 19, 2007 regarding the implementation of ENP EU/Armenia Action Plan deals not with the amendment of the law, but rather with law enforcement, i.e., no improvement of the law is envisaged.

The RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" has contradictions to the RA Constitution.

1. The first controversy is the name of the Law itself. According to Article 29 of the RA Constitution, "everyone has a right to peaceful unarmed assembly". The concept of "assembly" as provided for by the Constitution in the title of the Law was transformed into 4 notions - "assemblies", "rallies", "marches" and "demonstrations".

2. According to Article 43 of the RA Constitution, the fundamental human rights and freedoms that include freedom of assembly can be restricted by the Law only, "if it is necessary to protect in a democratic state national security, public order, to prevent crime, protect public health and morals, constitutional rights and freedoms, dignity and reputation of other individuals". The remaining restrictions, listed in Clause 1 of Article 1 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", are definitely different from those provided for by the Constitution.

3. It follows from the last sentence of Clause 1 of Article 1 that the police and the state bodies may also restrict the realization of these rights. Meanwhile, Part 2 of Article 29 of the RA Constitution make a comprehensive list of the categories of individuals that can be restricted from exercising fundamental rights and freedoms, and by law only: servicemen in the Armed Forces, the Police, national security bodies, prosecuting agencies, as well as judges and members of the Constitutional Court.

4. According to Clause 2 of Article 5 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", "a public event can be organized and conducted in one or several kinds, as stipulated by this Law". Article 2 of the Law lists these kinds: assembly, rally, demonstration, march, spontaneous public event and others that include festivities, ceremonies, cultural and sports events. This conveys that the right to assembly may be restricted if held in a form, other than those listed in the law.

5. According to Clause 6 of Article 5 of the Law, "mass public event cannot start, if none of its organizers have come". This conveys that if the organizers of the event have failed to be present at it, its other participants may be deprived of the right to realize their constitutional right.

At 60th session of the Venice Commission (Venice, October 8-9, 2004) an opinion was voiced that the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" does not correspond to the demand that the laws on right to assembly must only be restricted through defining legal grounds for acceptable intervention of state bodies. Apart from this, the Law stipulated undue reasons for restricting the conductance of events. In its

Resolution 1405(2004) the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to amend the Law no later than March 2005 for it to be compliant with the standards of the Council of Europe and ensure the freedom of assembly in practice. The authorities developed a draft law on introducing amendments to the Law, consisting of 11 clauses. It was assessed by the experts of OSCE/ODIHR and Venice Commission whose conclusions coincided. Both expert bodies thought the draft submitted did have certain positive shifts, but at the same time there remain serious restrictions, and recommended that further steps be taken to improve the law. In comparison with the Law, adopted on April 28 2004, the prevailing part of the amendments proposed by the draft was seen by the Venice Commission (Strasbourg, February 8, 2005, Opinion 290/2004 CDL (2005)018) as amendments of editorial nature, not requiring substantial change and not influencing the rights and responsibilities of public event participants. The Venice Commission reaffirmed its opinion on the need to bring the Law in compliance with the requirements of the European Convention of Human Rights and Fundamental Freedoms, adopted at its 60th session (CDL(2004)42).

On October 4 2005 the RA National Assembly, having taken into account the recommendations of OSCE/ODIHR and Venice Commission, made certain amendments to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations". Yet, a number of recommendations were ignored. In particular Articles 7 and 9 keep the restrictions, qualified by the international experts as unacceptable.

Throughout 2005-2007 the bids to hold rallies, submitted to Yerevan municipality by both opposition parties and non-governmental organizations, were repeatedly declined on the basis of Clause 2 of Article 12 of the Law as “on the same day, at the same time and in the same place another event is being held”. Yet in the majority of cases no other event was held, or hastily some cultural event or a show for children and adolescents was staged.

On February 20, 2008 after the Central Electoral Commission announced the preliminary results of the presidential elections, the supporters of candidate Levon Ter-Petrosian, refusing to acknowledge the election results, started a termless sit-in protest action. The action was accompanied by crowded rallies and marches. In the early morning of March 1 the police violently dispersed the protesters. Thousands of opposition supporters gathered in the vicinity of Myasnikian monument. In a clash of protesters and the police in the early morning of March 2 ten people died, many were injured.

On March 1, 2008 by a decree of the RA President in Yerevan emergency rule was introduced for 20 days, during this period holding assemblies was prohibited. On March 17 the RA National Assembly introduced amendments to the Law that, contrary to positive expectations, made assemblies questionable.

Thus, Clause 3 of Part 4 of Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was narrated in new edition, according to which the competent body can prohibit holding public events, if it has reliable information that the events are “aimed at violent overthrow of constitutional regime, incitement of national, race, religious hatred. Endorsement of violence or war or can result in mass disorder or crime, harm the national security, public order, health and morals of the society, can infringe constitutional rights and freedoms of other citizens”. The new edition also says: "The information may be considered reliable, if the Police or the National Security Service at the RA Government have given their official assessment of it. The same procedure applies for the assessment by the same bodies of discontinuation of these restrictions”.

Moreover, the list of the terms entitling a competent body to prohibit the event has been expanded. Besides, the Law does not clarify where this information is available to the applicant and the public, whether it can be challenged. Whenever an application for an unwanted rally is submitted, this norm allows getting all the necessary “reliable information” from the competent body.

According to Part 6, inserted in this Article, if the events have resulted in mass disorder with casualties, the competent body can prohibit holding mass public events until the crime is investigated and the perpetrators are identified. This provision of the Law means that if during an event and as a result of mass disorder casualties occurred, holding say environmental rallies can be prohibited. Besides, this provision in essence gives the local self-government structures the mandate to introduce emergency rule, which runs contrary to the RA Constitution and international norms.

Part 1 of Article 10 of the Law has also been amended, omitting a provision that allowed to hold mass public event if it grew spontaneously from a non-mass public event.

The same Article was amended once again, stipulating a timeframe of at least five working days to notify the competent body about holding a mass public event (this timeframe earlier was three working days). At the same time, in Part 1 of Article 12 of the Law the term of notification consideration was prolonged: "The competent body considers the notification within 72 hours after its receipt, in the succession of receipt”. The notifications used to be considered the next day after their receipt by the competent body.

Clause 3 of Part 1 of Article 13, according to which the competent body can prohibit any public event on the grounds, stipulated by Article 9 (described above). This practically means a possibility to prohibit any event.

Thus, the Republic of Armenia not only failed to comply with its commitment to reform the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, but also, with its restrictive amendments, introduced on March 17, 2008, made a serious retreat from democratic principles.

After March 17, 2008 dozens of bids, submitted to Yerevan municipality by the opposition parties and non-governmental organizations, were declined on the basis of restrictions in Article 9 of the Law. Thus on May 6, 2008 the Helsinki Committee of Armenia made an application to Yerevan municipality to hold a march in commemoration of Levon Gulian, dead in the RA Police, on May 12. The notification was declined by the Yerevan municipality proceeding from Clause 6 of Article 9 of the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. The response from the municipality was received by the organization on May 13 only, yet on May 12 the Police impeded the march.

On March 28, 2008 in a joint conclusion 474/2008 of the Venice Commission and OSCE/ODIHR the adopted amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” were strongly criticized and qualified as inappropriate. It was recommended to abolish some of the provisions of the Law, as well as introduce amendments enabling challenging decisions in court in certain cases.

On April 15, 2008 by the results of a discussion at the National Assembly of the Law “On Amending the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” with the involvements of Finola Flanagan, Simona Granata-Menghini (Venice Commission), Denis Petini, Niel Jarmani (OSCE/ODIHR), RA NA Chairman Tigran

Torosian, RA Minister of Justice Gevorg Danielian, RA President's Assistant Gevorg Mherian and the RA NA Chairman's Councilor David Melkonian, the parties reached an agreement that a new draft of five clauses will be developed and submitted to Venice Commission and OSCE/ODIHR before April 25, 2008.

Further on, on the basis of the conclusion of international experts this draft must be introduced to the NA agenda.

It was proposed:

- to amend Clause 3 of Part 4 of Article 9 of the Law, according to which the security threats must be immediate (see above), as well as stipulate that the official conclusion of the Police or National Security Service must be justified;

- to exclude Clause 6 of the same Article, to provide for a possibility to challenge the ban on the event in the court in Article 9;

- to add the clause on the commitment to consider the notification within 72 hours into Part 8, Article 12, as recorded in Part 1 of the same Article;

- to restore the possibility to hold a spontaneous public event without a notification lasting not more than 6 hours with regard to a specific phenomenon or event.

In Clause 12.3 of the Resolution of the Parliamentary Assembly of the Council of Europe 1609 "Functioning of Democratic Institutions in Armenia" of April 17, 2008 it was noted: "The amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect."

On June 11, 2008 the Parliament of Armenia adopted another law on introducing amendments to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations". The following amendments were made:

1. Clause 3 of Part 4 of Article 9 was amended to include immediate threat of violence or real danger (see above);

2. Part 6 of Article 9 is abolished.

3. Possibility to challenge events in court is stipulated. In Clause 3 of Part 4 of Article 9 it was stipulated that the official assessment of the Police or the National Security Service must be justified.

4. In Part 8 of Article 12 a clause on considering the notification submitted within 72 hours is added, recorded in Part 1 of the same Article.

5. Article 2 is addended with a definition of "spontaneous public event".

6. It follows from Clause 1 of Article 10 that no notification is necessary for a spontaneous public event.

7. Article 9 is addended by Part 6.1, according to which no spontaneous public event can last more than six hours. Any subsequent event on the same occasion cannot be

considered spontaneous and must be held in accordance with the defined procedure of notification.

Despite the fact that the recommendations of the Venice Commission and OSCE/ODIHR were mostly realized (except for one), the Law did not come back to its previous version. Some restrictions introduced on March 17, remain in force. In Clause 4.1 of Resolution 1620 of June 25, 2008 the PACE welcomed the amendment of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" in accordance with the standards of the Council of Europe, stating in this regard the assumed commitments are fulfilled. At the same time, in Clause 4.2 the PACE confirmed its requirement that the freedom of assembly in Armenia must be guaranteed in practice. For the reason PACE insists, the Resolution noted, that the Armenian authorities, according to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" guaranteed that no unjustified restrictions be applied with regard to opposition events, in particular, in terms of rally venues.

Despite this, dozens of bids by opposition forces were declined by Yerevan municipality on the basis of Article 9. In the second half of 2008 the representatives of the opposition challenged the bans of the Yerevan municipality with the Administrative Court over 40 times. In the vast majority of cases the opposition suits were not secured. There were two exceptions to this: on September 3 the Administrative Court allowed the conductance of "Dashnaktsutiun" party's rally, then a part of the ruling coalition, and on September 8 the suit of the Armenian National Congress was partly secured - the rally was allowed but not the march initially planned. Contrary to the municipal bans, the opposition held 4 rallies that went in peace - on June 20, July 4, August 1 and September 26, 2008.

Conclusion

While the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" was acknowledged by the Council of Europe as corresponding to the European criteria, it is of more restrictive than regulatory nature. This is true in particular of Article 9. The greatest concern is caused by its practical application. The competent body with no serious justification impedes the conductance of rallies and marches, in particular. The practice of challenging the bans with the court is not satisfactory either, as the court does not ensure the principles of fair trial and proportional punishment, stipulated in Articles 6 and 11 of the European Convention of Human Rights, respectively.

Recommendations

1. To amend the Law "On Holding Assemblies, Rallies, Marches and Demonstrations". To revise Article 9, in particular, abolish Clause 3 of Part 1.4

2. To make the procedure for court challenges more effective

3. To commit the competent body (Yerevan municipality) to placing all the bids for holding assemblies on the web site.

RESPECT FOR THE RIGHTS OF ETHNIC MINORITIES

The ENP EU/Armenia Action Plan notes: "(...) Ensure respect for the rights of persons belonging to national minorities" (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

According to 2001 census, ethnic minorities are 2.2% of the total population of Armenia. There are 11 ethnic communities in Armenia: Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian and German. The biggest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), Kurds (1,519). The greatest part of these communities was formed in the first half of the 19th century. Apart from Yezidis, other communities are concentrated in cities, mostly in Yerevan.

None of the ethnic minority groups dominates any of the territorial units of Armenia. They all are dispersed all over the country. Upon its accession to the Council of Europe Armenia did not assume any special commitment with regard to ethnic minorities. No international document voiced any serious concern with regard to the rights of national minorities. This is due to the fact that ethnic minorities of Armenia make no political demands.

Individual complaints are occasionally received - with regard to pasture use, property, unfair trial, yet such complaints are characteristic of the whole population of Armenia and are not directly related to ethnic discrimination.

During the meetings with representatives of ethnic minorities discontent was mostly heard with regard to lack of funds for more active cultural life, notwithstanding the fact that the RA Government does allocate certain amounts to this effect.

The tense political situation in the country that affected various social groups after the presidential elections of February 2008 does not seem to have directly affected the minorities. Ethnic minorities refrain from being actively involved in domestic politics.

Ethnic minorities are represented in local self-government. In the National Assembly of Armenia there is a deputy of Greek descent, one of the leaders of a ruling party, the Republican Party of Armenia. The biggest community, the Yezidis, is not represented at the parliament, yet they were present in the election party lists of several parties. The absence of Yezidis in the parliament may be explained by the lack of organization within the community. Meanwhile, the correctly organized campaigning can enable Yezidis to have several MPs.

Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

According to Article 14.1 of the RA Constitution: "Everyone shall be equal before the law. 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 ".

Besides, Article 41 of the Constitution says: "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."

Article 1 of the RA Law “On Language” guarantees free use of minority languages in the Republic of Armenia, and Article 2 - a right to be educated in the mother tongue. According to Article 4 of the RA Law “On Language” in official documents, stationery, stamps of ethnic minority organization they can use their mother tongue along with the state language. Article 8 of the RA Law “On Basis of Legislation on Culture” provides that the state “contributes and assists establishment of such conditions that will return the cultural identity of various national minorities”. Article 15 of the RA Criminal Proceedings Code guarantees a state-funded translator’s services to the participant in a trial that do not speak Armenian.

There is no Law on national and ethnic minorities, despite the appeals made by NGOs and political parties since 2003 regarding the need to adopt one. Throughout at least five years various legislative initiatives kept being developed, yet none of the drafts was adopted as a basis for a law.

In 2008 to ensure the rights of ethnic minorities, a number of steps were taken in Armenia[29]:

- The RA Ministry of Culture developed a concept of protecting, retaining and developing the non-material cultural heritage, in which a lot of significance is attached to the issues of protecting and developing the culture of ethnic minorities.

- The volume and the duration of broadcasting in Assyrian and Greek languages on Public Radio of Armenia was increased.

- With state funding, the medieval Jewish cemetery on the bank of Eghegis river was renovated.

- The RA Ministry of Culture organized a republican festival of culture of ethnic minorities.

- The budget of Ministry of Culture has a separate line for funding publication of literary works by ethnic minority writers.

- The expert group of the Council of Europe monitored the process of implementation of European Charter of Regional Languages. Within the monitoring a scientific conference was held, giving floor to discussion of legal and cultural aspects of the problem.

[29] Information is provided by the Department of National Minorities and Religion at the RA Government.

LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.

REFORMS OF LEGAL AND JUDICIAL SYSTEM

The ENP EU/Armenia Action Plan stipulates the following steps to be taken in this domain:

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly (during 2006);

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;

- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006);

- Improve the legal and particularly free legal aid system by improving and , strengthening the system of advocates and develop a school of professional practice for young graduates in law;

- Establish administrative courts (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Current Situation

Amendments made to the RA Constitution on November 27, 2005 launched the implementation of the second stage of the legal and judicial reform. The amendment of the Main Law was aimed to improve the existing legal system, within the concept set as a basis for 1995 Constitution and condition by the principle of separation of powers.

The general analysis of the amendments made to the Constitution in 2005 allows stating the following:

- the institute of the Constitutional Court gained more detailed regulation and became more democratic;

- the legal status of the Court of Cassation was changed;

- additional guarantees for the independence of judges were recorded;

- the limits of constitutional basis for justice were expanded and some of the fundamental principles were prescribed in greater detail;

- the procedure for the formation and activities of the Council of Justice was reconsidered, etc.

Main Objectives

Despite the fact that after the Constitutional reform a number of new legislative acts were adopted and numerous amendments to the laws in force were made, the issue of how compliant the legislative amendments are to the spirit and content of commitments, stipulated by ENP EU/Armenia Action Plan, remains open.

Moreover, looking in retrospect and analyzing the developments of February-March, 2008, one can conclude that most of the amendments were aimed at specific practical targets.

Judicial Power

Current Situation

The primary objective of the reforms was the establishment of unified, full-fledged and independent judicial power, and this consideration lay at the heart of the whole concept of judicial and legal system. This concept was realized through the Judicial Code, adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resolved a number of important and crucial issues. In particular, for the first time the relations, linked to organization and activities of the judicial, were for the first time regulated in a systemic form. Previously these were regulated by separate law - the RA Laws "On the Council of Justice", "On Trials", "On Legal Status of the Judge". Specialized - criminal, civil - courts and the Administrative Court was set up. The role and the significance of the Court of Cassation in the judicial system of Armenia changed; presently its main function is to ensure uniformity of law application and to contribute to the development of the law. Self-regulation bodies for the judicial power were formed, too - the General Conference of the RA Judges and the Council of Court Chairmen, a school has been establish to train judge candidates (Court School), that is to ensure the competence and appropriate training for future judges.

Main Issues

At the same time the legal and judicial reform in general and the Judicial Code in particular did not solve the most important of the urgent issues - creation of real independence guarantees and the practical application. The steps directed at strengthening the independence of the judicial system did not ensure the real independence of certain judges. As a result, within the de jure independent judicial system there are de facto dependent judges, which are illustrated by examples on both legislative and practical level.

Thus, one of the main guarantees for ensuring the independence of judicial system and the judges was to be the Council of Justice, entitled with a new status by the Constitution. Yet the analysis of the legislation shows this body, and hence, the whole judicial system, remains under the influence of the RA President.

This can be proved by several vivid examples:

- According to the Law, the Council of Justice is competent to make up the lists of candidate judges, yet this list is ratified by a decree of the country's President (Part 4 of Article 117 of the RA Judicial Code).

- The lists of promotion of judges of special primary courts and courts of appeals are also made up by the Council of Justice through a secret ballot, yet the President of the country leaves the candidates he finds acceptable on this lies, too and adds new candidates to the list within ten days. If the list is not addended it is considered to be declined (Part 9 of Article 137 and Part 8 of Article 138 of the RA Judicial Code).

- A similar mechanism is stipulated for filling in vacancies on the courts of general jurisdiction. Upon the consent of the candidate the Chairman of the RA Court of Cassation presents his candidacy to the Council of Justice. Unless the procedures stipulated by the Code are violated, the Council of Justice gives a positive opinion through an open ballot. In the case of a positive opinion, the candidacy is presented to the President of the country. If the President fails to appoint the judge this candidacy is considered rejected, it is excluded from the candidate judge list and a nomination to the vacancy is made anew (Parts 9 and 10 of Article 123 of the RA Judicial Code).

It is not surprising that the judges appointed by the abovementioned procedure mostly came up with verdicts of guilty on the criminal cases instituted on the events of February-March 2008, and the 1-2 verdicts of non guilty can be considered a negligible exception. Therefore, one of the conclusions of PACE Resolution 1609 - "despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process" - may be considered fully compliant with the reality.

Another example is the statistics of detention on the cases above - the motions on detainment and its prolongation filed by prosecutors and investigators were almost 100% secured. In Resolution 1609 it was also noted that the courts did not display critical approach to the need for preliminary detainment, did not duly consider the arguments of the defense attorneys, which does not meet the requirements of the European Convention of Human Rights and Fundamental Freedoms and once again raises questions regarding the independence of the judicial.

Procuracy

Current Situation

The constitutional reform was aimed at creating not only an independent judicial, but also a procuracy, independent from all branches of power. The system was supposed to be profoundly changed, as shown in the new RA Law "On Procuracy", adopted on February 22, 2007.

In the new Law "On Procuracy" the following was defined: main principles of procuracy organization and activity; the new procedure for appointing the RA General Prosecutor (upon a proposal of the RA President is appointed by the National Assembly for six years, and can be dismissed by the National Assembly - in the cases specified by the law - with a majority of votes); the structure and the system of the procuracy; the procedure and the conditions of prosecutor's subordination, their appointment and dismissal; immunity, material and social guarantees of prosecutor's activities. Yet the main accomplishment of the Law was certainly the separation from the procuracy of the criminal investigation function, as a result of which this body at the pre-trial investigation had to predominantly concentrate its efforts on the implementation of the control over the legitimacy of the investigation and preliminary examination.

Main Issues

Nevertheless, the developments showed there was no real intention to free the procuracy from investigative functions. Through consistent legislative amendment the procuracy not only restored the former positions, but also gained new privileges.

The first step was the adoption of the RA Law “On Special Investigative Service”. This Law established the new formally independent body in charge of investigating criminal cases. The head of the service is appointed by the RA President upon a proposal from the General Prosecutor.

Appropriate amendments were made to the RA Criminal Proceedings Code, too. According to the amendments the Special Investigative Service was to undertake the preliminary investigation on Articles 149, 150, 154.1, 154.2 of the RA Criminal Code on the cases dealing with the involvement in a crime of the leadership of the legislative, executive and judicial branches of power, of people on special state service, abusing their official positions, as well as dealing with elections.

Besides, a separate provision was made to the effect that the RA General Prosecutor can transfer those criminal cases from other investigative bodies to the Special Investigative Services that involve accomplicity or crime of the officials above as well as the cases in which these individuals are victims (Part 6 of Article 190 of the RA Criminal Proceedings Code).

Further on it became clear that all the loud cases on the events of February-March 2008 under various pretexts were concentrated in the Special Investigative Service, with the whole complex of legislative “innovations” used “successfully” by the RA Procuracy for a total control and investigation in the right direction, in both individual cases and against certain defendants. In fact the previous mandate of the procuracy was restored, with no serious commitments and responsibility.

Access to Justice

Current Situation

The solution of issues related to access to justice, in particular, the establishment of effective mechanisms to ensure free legal aid is a logical component of the whole legal and judicial reform process. The experience of the structures, established at the first stage of the legal and judicial reforms, their benchmarking against the world experience and the study of the legal practice showed that the free legal aid as a way to ensure access to justice is only possible through structural change. It is to this effect that the draft law “On State-Funded Legal Aid” was developed, with the support of Open Society Institute, and submitted to public debate.

Main Issues

Yet another solution was preferred in the course of the legal and judicial reform. In particular, through the RA Chamber of Advocates man attempt was made to regulate a whole domain of public relations outside legal framework by one amendment only, introduced to the RA Law “On Bar”.

This prospect is characterized by a whole number of negative characteristics. First of all, specific criteria of determining inability to pay are lacking, as well as the effective mechanisms for proving the necessary aid. This will have complicated and very negative consequences for the beneficiaries involved.

Besides, the real number of the public attorney of the Public Attorney Office (34, 7 of them working part-time) cannot objectively ensuring free legal aid to vulnerable social groups, in particular in the regions.

Finally, this initiative, being insufficient and completely ineffective, can be presented as an example of state implementation of the commitments to ENP.

Solutions Proposed

Analysis of the problems above allows concluding that the legal and judicial reforms have not corrected most of the existing shortcomings, and in some cases also created new problems, allowing complex and consistent approach. In this regard it is necessary, in particular:

1. To make complex amendments in the RA Judicial Code, aimed at ensuring real independence of judges;

2. To amend the RA Criminal Proceedings Code and the RA Law “On Special Investigative Service” so as to de facto excludes the investigation of criminal cases by the procuracy, as well as the total control of the RA General Prosecutor over the Special Investigative Service;

3. To take productive steps to have adopted by the RA National Assembly the draft law “On State-Funded Legal Aid”, currently in circulation, and have appropriate amendments made in other legal acts.

CIVIL SERVICE DOMAIN

The ENP EU/Armenia Action Plan stipulates the following regarding the civil service reform:

- Establish a unified and transparent system of recruitment for civil servants and develop incentives to promote public integrity through the establishment of merit-based payment structures. Promote the improvement of coherent civil service policy mechanisms and strengthen administrative capacity;

- Promote a merit-based system of payment for civil servants and introduce a rational system of evaluation of work performed;

- Support the improvement of civil service system activities and institutions (job advertisement/selection, appraisal, civil service passports etc.) and bring them in line with European standards;

- Support the improvement of educational and training programs for civil servants (in particular those related to computer and management skills, foreign languages, ethics code etc) in accordance with European standards;

- Establish a coordination network between the relevant authorities of civil service systems of EU Member States and Armenia, to ensure harmonization of legislation (and other relevant activities) and exchange of best practices and data (Section 4 "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform").

In Section 5 of the RA Government Resolution No. 927 of July 19, 2007 on the implementation of ENP EU/Armenia Action Plan, the following priorities are defined:

1. To improve the RA civil service and mechanisms for having a unified policy;

2. To create a single list of professions pertaining to the public administration in Armenia;

3. To develop and introduce a rational system of performance evaluation for the civil servants;

4. To improve the merit-based remuneration system for civil servants;

5. To improve the Ethical Code of the civil servants and its compliance;

6. To ensure incessant renewal of job descriptions for civil service;

7. To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

The reform process in this domain received much attention in the Armenia section of the current report "Implementation of the European Neighborhood Policy in 2007", presented by the Committee of European Communities in Brussels in April 2008. "While no comprehensive evaluation was made of the civil service, nevertheless, steps were taken to improve the system, with particular emphasis made on ethical code, anti-corruption

measures and employment procedures. The process of defining a unified legal norm of civil servants has not been completed yet", - the report noted in particular.

The present research aims to disclose the situation in terms of implementation of priorities above, the results, the reasons that impede their full-fledged and effective implementation.

To obtain information, the following methods were used in the course of the research: document research, in-depth interview or focus group discussion.

Thus, the first method was used to study the following legal, methodological and information documents: the RA Law "On Civil Service" , the RA Law "On Remuneration of Civil Servants"; the draft law "On Introducing Amendments to the RA Law 'On Civil Service' " (July 21, 2008); draft law "On Public Service"; resolutions, current reports, information from the RA Council of Civil Service, etc.

In-depth interviews were administered (personal and group) with the deputy chairman of the RA Council of Civil Service and the Council staff - the heads of subdivisions engaged in the research issues and individual experts. A special questionnaire was developed for in-depth interviews.

The interview participants were offered to give a quantitative and qualitative assessment of the process of the implementation of priorities for 2007-2008 and its results. To this effect we developed certain quantitative and qualitative indicators.

In particular, in terms of quantity the experts were offered to assess the implementation of each of the 2007 priorities by a three-unit scale, where 1 stands for "fully implemented", 2 - for "partially implemented" and 3 - for "nothing is done".

To make a qualitative assessment the experts were offered:

1. To list all steps taken to implement the priority during the reporting period;

2. To describe the rationale, the principles of the abovementioned steps, the criteria of their implementation, changes made, their direction, nature, etc.;

3. To present the reasons, for which the steps planned were not taken or were not fully implemented.

Priority 1: To improve the RA Civil Service and mechanisms for having a unified policy.

The following steps were taken:

To ensure transparency all the agencies have public information departments set up, in which job descriptions have been developed for 55 out of 80 civil servants. The Procedure for Freedom of Information and Provision of Information in Civil Service is being discussed currently. Training of all staff of public information departments was made. Proceeding from the positions in civil service, in the first (special) departments of all agencies the list of staff having access to secret information has been developed, with the level of acceptable access to such information being defined.

All agencies have unified departments of human resource management.

Aiming to overcome corruption in public administration, income statements have become mandatory for all civil servants - in the first years after civil service system was introduced not all classes of civil servants had such an obligation. Notably, the statement of incomes is a necessary but insufficient condition to overcome corruption in public administration.

The draft law “On Public Service” stipulates the introduction of the following new institutes: to expand the Code of Ethics of Civil Servants; the information institute; the notion of conflict of interest; the notion of gifts to officials at duty (in particular, types and cost of the permissible gifts to officials, the circle of interlinked individuals, etc. should be regulated - this requirement is also made by GRECO).

In terms of ensuring unified recruitment mechanisms as well as their examination, a pilot management information system has been developed with the assistance of the Yerevan Institute of Mathematical Machines to hold competitions. It is expected that this system will be used throughout administrative system. Today all human resources management departments perform 90% of their functions through electronic management systems.

By a unanimous opinion of experts, all measures taken to realize priority 1 either have already been taken or are being taken.

The failure to implement some of the recommendations of the priority is due to the fact that the RA Law "On Public Service” has not been adopted yet.

Priority 2: To create a single list of professions pertaining to the public administration in Armenia.

The following steps were taken:

The RA Government has approved a list of positions. While this list, in accordance with the market demands, is being reviewed every year, it still does not include all the diversity of professions necessary in public administration.

After the formation of civil service system a unified list of professions in public administration was to be developed. To this effect the following steps were made:

- the need to create a unified list of professions in administrative system was justified;

- the professions, necessary for various subdivisions, were subdivided into groups;

- the task of specifying requirements for special education for experts in various subdivisions was defined to finalize job descriptions (thus, for example it was hard to define the education background necessary for a HR manager, etc.);

- in the development of a single system of professions, the real requirements of the market and analysis of data on actual basic education of civil servants, employed in public administration from 1960-1970s, archive check-up of the data reliability, as well as the development of mechanisms to ensure effective application.

The problems, related to the implementation of this priority, require knowledge, its solution is impossible through the efforts of the Council of Civil Service, therefore, with no additional funding the single list of professions for public administration is impossible to develop.

In the opinion of experts, this priority was assessed as mostly unfulfilled.

Priority 3: To develop and introduce a rational system of performance evaluation for the civil servants.

The following steps were taken:

Upon the initiative of the RA Government it was proposed to develop a new system, according to which as a main performance evaluation criterion the following indicators are taken:

- volume of work;

- time of implementation;

- quality (compliance with the established quality norms);

- contribution (share or value in the working programs of the subdivision);

- nature (mechanical, semi-mechanical, creative, etc).

In 2007 the Yerevan Institute of Mathematical Machines developed an electronic system for collecting and processing the data necessary to evaluate performance. This was done upon the order of the Council of Civil Service and with the assistance of the World Bank. Upon the initiative of the RA Government another performance evaluation system was developed, too, that is being tested at the staff of the RA Government and the RA Ministry of Economy. Yet the new performance evaluation systems have not been introduced as yet.

The establishment of the general system in accordance with the indicators above calls for the development of qualitative indicators of performance evaluation (including methods of measuring quality, nature, contribution, etc.), which also requires knowledge and skills. It is impossible to solve this problem by the efforts of Civil Service Council only, it also requires financial assistance from outside.

Priority 4: To improve the merit-based remuneration system for civil servants.

In 2007 the RA Law “On Remunerating Civil Servants” was amended, according to which the base salary (the part independent of the years in service) of all civil servants was raised, yet this was not linked to the new evaluation system and did not ensure the differentiation of remuneration of civil servants on the basis of criteria specified.

The introduction of a new system of merit-based remuneration of civil servants was late because no rational performance evaluation system was adopted.

Priority 5: To improve the Ethical Code of the civil servants and its compliance.

Since the draft law “On Public Service” has not been adopted yet, no ethical code has been put into circulation, no sub legal normative acts have been developed, ensuring the compliance with ethical rules.

Despite this, in terms of ethical code improvement certain progress has been recorded owing to draft law “On Public Services”. Before that the Ethical Code of Civil Servants was not stipulated by law, and was only approved by the Council of Civil Service (resolution of No.13 of May 13, 2002). The establishment of ethical norms as a law:

- will reinforce their mandatory implementation as will stress their legal, normative nature, regulated by the law;

- will allow overcoming the unilateralist that exists in several codes of ethics in force. Thus, for example, “the civil servant, out of duty, should avoid other business contacts with people in conflict with state authorities”.

At the same time the draft has some unclear definitions. In particular, the notion of “legal policy”, mentioned in Clause 1 of Part 1 of Article 22, the criteria of “public interest” are also uncertain.

Priority 6: To ensure incessant renewal of job descriptions for civil service.

This is an incessant and permanent function of civil service system that does not call for specific timeframes, unless required by the newly adopted piece of legislation. Overall, changes were introduced in over 4,300 job descriptions.

Priority 7: To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

Instead of a radical change of the specialized legislation a more general decision was made - to develop a draft law “On Civil Service” with an expanded domain of regulation, including also civil service. Yet the adoption of the law was late, for this reason some of the institutional changes aimed at harmonization with the EU countries cannot as yet be implemented.

Certain steps were taken to exchange experience with the EU member countries.

Overall, in the domain of civil service throughout the reporting period the required priorities of ENP Action Plan can be qualified as “partially in line”.

The implementation of the majority of requirements is largely related to the draft law “On Public Service”. The delay in adoption of the draft to a certain extent is conditioned by active discussions, related to its comprehensive nature, since the domain of its regulation includes most crucial relations not only in terms of civil services, but also state and municipal administration.

In the opinion, of the vast majority of experts in civil service, with the adoption of the law “On Public Service” many of the problems of this sphere will be resolved or preconditions will be in place to solve many issues that are in cause-and-effect relationship.

FREEDOM OF SPEECH,
MEDIA AND INFORMATION

The ENP EU/Armenia Action Plan contains the following requirement: “Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” (Section 3 “Priorities for Action”, Priority Area 2).

Section 4 “General Objectives and Actions” also considers this sector. Clause 4.6.3 “Information Society and Media” of Sub-Section 4.1 “Political Dialogue and Reform” of Section 4 “General Objectives and Actions” says:

“- elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-Signatures), e-Government, e-Health, e-Learning, e-Culture;

- work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;

- work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;

- switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.”

The current report "Implementation of the European Neighborhood Policy in 2007” by the Committee of European Communities, section regarding Armenia, reads as follows:

“Measures have been taken to approximate the legislation on freedom of speech to the international standards: the amendments made to the RA Law “On Television and Radio” were aimed at ensuring balance in the National Commission on Television and Radio. Until the year 2013 the National Commission will be supervised by the President, after which the number of Commission members elected by the National Assembly will be equal to the number of members appointed by the President. The board members of the Council of Public Television and Radio Company are appointed only by the President. In July 2007 the National Assembly turned down two draft laws imposing restrictions on programs of international broadcasters. Permanent absence of independence of the regulatory bodies and insufficient informational pluralism still remain causes of concern. The RA Law “On Freedom of Information” is not fully applied yet, namely with regard to recording, classification and storage of information. During the presidential election campaign, a number of broadcasters were exposed to tax inspection, which gave grounds to suspect deliberate pressure exerted on them.

According to the provisions added to the Criminal Code of Armenia in April 2007, hindering the professional activity of journalists is persecuted. But self-censorship, violence and pressure on journalists are still practiced. Libel and insult have been partially decriminalized. Still, libel and "insulting a government representative" are punished also by imprisonment."

Having analyzed fulfillment of the obligations specified in the ENP EU/Armenia Action Plan, Yerevan Press Club (YPC) came to the following conclusions.

Broadcasting Legislation and Practice

On February 26, 2007 the National Assembly of Armenia adopted the RA Laws "On Introducing Amendments to the RA Law 'On Television and Radio'" and "On Introducing Amendments and Addition to the RA Law 'Regulations of the National Commission on Television and Radio'". But, as it has recently become traditional, the Laws were discussed and adopted hastily, through rapid procedure.

The argument that the need to bring the legislation into accord with the amended Constitution called for a rapid procedure does not hold water. Over a year had elapsed since the adoption of the amendments to the Constitution, and both the governmental and the parliamentary structures had enough time to hold discussions, hearings, to study the proposals submitted, to get expert evaluation. Moreover, in September 2006 the Government put into circulation a more comprehensive draft law that was rejected by the National Assembly, due to the efforts of the civil society and journalist community. Thus, the Government had plenty of time to discuss the draft law with the interested organizations since it was just the shortened version of the previous one.

After adoption of the above-mentioned Laws, the YPC made a statement, which covered an opinion regarding these Laws. Namely, it was stated that: "The amendments to the broadcasting legislation (...) do not reflect even the positive stipulations of the amended Constitution. Firstly, the proportion of the members of the regulatory body (the National Commission on Television and Radio), appointed by the President and elected by the Parliament, as provided for by the Main Law, will, following the amendments, only be reached in 2011 (...). Secondly, the amendments do not ensure the public and political diversity in NCTR composition: in accordance with the procedures proposed, the decision about the appointment of NCTR members from NA will be made by the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President. In other words, the regulatory body, like before, will be formed solely by the political forces at power, and in this regard the amended legislation does not introduce any significant novelty. Thirdly, like before, the involvement of the public in NCTR formation and the transparency of its decision-making is not ensured." The YPC also stated that remaining subdivision into the paid (that is, the full-time NCTR members - the chairman and the vice chairman) and the unpaid members conditions huge gap in their competence and violates the principle of collegiate decision-making. And finally, according to YPC statement: "The expansion of the NCTR competence and inclusion of the public broadcaster into it, as stipulated by the amended Constitution, did not entail the description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio in broadcasting legislation."

Above two years have passed since amending the above-mentioned Laws. In April 2007 the tenure of 3 NCTR members expired. According to the law, two persons were to be appointed to this body (the number of the NCTR members changed from 9 to 8). On April

7, 2007 the President of Armenia appointed one National Commission member (Grigor Amalian was reappointed as a member of the NCTR and later on as its Chairman), though the National Assembly should have been the first to elect NCTR member, since the amendments to the Law read as follows: “In case of expiry of the National Commission members’ tenure or early termination of their powers, the vacancies shall be filled first by the National Assembly and then by the President of the Republic.” Still, pursuant to the same amendment: “If one party appointing (electing) a member to the National Commission fails to appoint (elect) its member, this will not deprive the other party appointing (electing) a member to the National Commission of its right to fill in its vacancy.” As of December 31, 2008 the National Commission had not appointed its member, moreover, it did not include this issue on the agenda of its sessions. The tenure of three of the remaining 6 NCTR members expires in 2009 (thus, according to the above-mentioned principle of succession, two of them shall be elected by the National Assembly and one - by the RA President). The tenure of the other three members expires in 2011 (accordingly, two members shall be appointed by the President, one - by the NA) and if the NA remains disinterested in this issue, the amendments made to the Constitution and the laws will lose their significance and the activity of the NCTR will be rendered less efficient.

On June 27, 2007 at the extraordinary session of the RA NA the Draft Laws “On Introducing Amendment to the RA Law 'On Television and Radio'” and “On Introducing an Addition to the RA Law ‘On State Duty’”, initiated by the RA Government, were brought up for consideration. They were immediately called by experts draft laws on stopping the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty in Armenia. The first draft law stipulated prohibition of the activities of other broadcasters on the frequencies held by the Public TV and Radio Company. The second one specified a state duty of 70,000 AMD for “each issuance of a program cycle of the national editorial office or a service of a foreign media by the TV and Radio companies of the Republic of Armenia”. Naturally, adoption of these laws would put an end to broadcasting of Armenian Service of Radio Free Europe/Radio Liberty by the Public Radio of Armenia. Broadcasting of such programs by private companies would become unprofitable.

What issues, vital for the country and the society, are these two draft laws to solve that they had to be necessarily considered at an extraordinary session, instead of being included into the agenda of the ordinary session, following all the procedures that the law provides for? The draft authors have not presented any convincing arguments as to the urgency of their adoption at this very moment.

In this case again, for many times already has the Government hastily submitted draft media-related laws to the National Assembly - without consulting the civil society, media representatives, experts, even without the opinion of the appropriate parliamentary commission. These draft laws did not solve any vital problem for the country and the society, therefore, it is not clear why it was necessary to consider them at an extraordinary session. The draft authors did not present any convincing arguments as to the urgency of their adoption at that very moment.

These draft laws caused a wave of protest since, as it was mentioned in the statement of a number of NGOs, membering in Partnership for Open Society initiative, “analysis of the draft laws, presented to the NA, shows that they are primarily directed against the only broadcast medium out of the control of the RA authorities - the Armenian Service of Radio Free Europe/Radio Liberty, because their adoption in essence will stop the broadcasting of the programs of the Service on Armenian radio waves”.

On July 3, 2007 the draft laws were not adopted due to lack of quorum: 65 deputies took part in the voting, whereas 66 votes were necessary for quorum. Nevertheless, since September 1 the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty on the Public Radio of Armenia were stopped by the initiative of the Council of Public TV and Radio Company. On July 6 the Council of Public TV and Radio Company resolved to stop airing the programs of local and foreign broadcasters on the public TV and radio from August 9. This decision affected not only Radio Liberty: in August the broadcasts of "Tsayg" TV company of Gyumri on the 6th VHF that the TV company had been using jointly with "Shirak" public TV was stopped. The same is true for the program of "Mir" Interstate TV and Radio Company on the Public Radio of Armenia. The broadcasts of the Radio Liberty Armenian Service is made on the frequencies of "ArRadioIntercontinental". This private radio company is aired in Yerevan and in some other regions of Armenia. According to the representatives of the Armenian Service of Radio Liberty, changing the broadcasting company resulted in a significant reduction of the potential audience.

In the years 2007-2008, an example of governmental pressure on media was the campaign against "GALA" TV company of Gyumri. On October 22, 2007 Vahan Khachatrian, the owner of "CHAP" LLC - founder of "GALA" - made a statement regarding the attempts of various power agencies to exert pressure on TV company. The document stressed the infallibility of the TV channel's stance and the readiness to prevent any attempt of intervention into its editorial policy. The need to make such announcement was caused by the fact that after broadcasting by the company of the speech of RA First President Levon Ter-Petrosian at an event, dedicated to Armenia's Independence Day, September 21, different state bodies tried to exert pressure on "GALA", demanding to stop broadcasting speeches of the opposition representatives. A week after the statement of Vahan Khachatrian, the RA State Tax Service started check-up at "CHAP" LLC. Upon the end of the audit the RA State Tax Service reported the violations revealed. In particular, this referred to concealed amounts of TV advertising. Through a motion of the tax officers on December 3, 2007 the property and finance of "CHAP" were taken into custody. On December 17 the court hearings of the suit of the Gyumri Tax Inspection versus the founder of "GALA", "CHAP" LLC, started and were interrupted on December 18 after the court accepted the counter-claim of "CHAP" demanding to abolish the act on the results of audit. On March 19, 2008 the RA Administrative Court obliged "CHAP" LLC to pay into the state budget tax debts and fines, exceeding the amount of 25 million drams (more than $ 81,000). The overall amount that "GALA" founder was to pay including the litigation and the execution expenses came to 26 million 899 thousand AMD (about $ 90,000). From March 19 to March 25, 2008 there was an unprecedented action for Armenia in Gyumri - a telethon in support of "GALA" TV company. Further on, the fundraising was made all over Armenia and abroad. As a result, more than 26 million AMD were raised and used for payment of the tax liabilities.

At that time and afterwards different governmental agencies tried to influence "GALA" TV company. The same authorities pressed on advertisers to discontinue cooperation with "GALA" TV company. As a result, almost no commercials were aired by "GALA" TV company from the end of 2007 until summer of 2008. Besides, in the same period of time a dispute started between the Gyumri municipality and the "GALA" founder, "CHAP" LLC. The Gyumri municipality addressed the court demanding that "CHAP" LLC be obliged to stop the use of the city TV tower. The dispute was settled on October 31, 2008, when RA Court of Cassation abolished the ruling of court of general jurisdiction of Shirak region made in favor of the Gyumri municipality.

The next amendments to the RA Law “On Television and Radio” were made in November 2007, just before the presidential elections. Article 11 of the Law was given a new edition. The Article referred to the activities of TV and radio companies during the period of elections and referenda. The amendments were made to bring the Article into compliance with the RA Electoral Code, regarding pre-election promotion and its coverage in the media. But the amendments did not cover the issue of regulating the activity of media in the period since the announcement of the election date till the start of pre-election promotion. The obvious political bias of most of the TV channels, recorded by the YPC monitoring in October-December 2007, showed the need for such regulation.

The legislation stipulated that the National Commission on Television and Radio must control the compliance of television and radio companies with the procedure of pre-election promotion defined in the RA Electoral Code, and the right to address the court in case of detecting violations. Though the local and international monitoring reports specified cases of violation of the law, the NCTR did not record any violation.

Speaking about amendment to the RA Law “On Television and Radio” it should be mentioned that in August 2008 the RA Government hastily, without any preliminary discussion and acceptable justification, presented to the National Assembly another draft law on introducing an amendment to the Broadcast Law: “Not to announce broadcast licensing competitions till July 20, 2010. The TV companies, whose licenses expire before January 21, 2011, can request prolongation of the license from the National Commission. The license will thus be prolonged for the period requested, but for no longer than January 21, 2011.” The need to introduce such a provision is substantiated by the Government by the expected transition from analogue to digital broadcasting in Armenia.

The draft law was approved at the Government session on August 28, 2008, but was made public only on September 8, the day the session of the parliament was opened. The draft law was promptly put on the agenda, discussed, approved in the first hearing on September 10, and in the evening of the same day finally adopted at the extraordinary session. The civil society and experts regarded this amendment to be aimed at depriving the “A1+” TV company of the opportunity to take part in broadcast licensing competitions for 2 more years.

On September 9, 2008 Yerevan Press Club and its partner organizations released a statement. “This initiative of the Government has nothing to do with either the protection of the broadcasters, consumers, state or “with ensuring equal opportunities and prevention of market upheavals” (as noted in the governmental justification), but is only an attempt to get rid of the broadcast licensing competitions as of an unnecessary headache. The adoption of such laws will result in a situation when we shall enter the era of digital broadcasting with low-quality broadcaster that does not meet the public demand and international standards, is monopolized and hence is easy to control”, the statement stressed in particular.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, also expressed his concern regarding the adopted amendment. In his letter of September 26 to RA President Serge Sargsian, Miklos Haraszti pointed out: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.” In the opinion of Miklos Haraszti, moratorium on licensing meant that Armenia would not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of “A1+” TV company. OSCE Representative also reminded that in April 2008 the Parliamentary

Assembly of the Council of Europe, in its turn, also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow “A1+” to apply for a new license. “I hope that, for the sake of pluralism, the RA Government will review the amendments with the active participation of all relevant civil society and media stakeholders”, Haraszti wrote.

At the end of 2008 a package of amendments to broadcast legislation, developed by a group of deputies, was submitted to the consideration of the National Assembly. The Standing Commission of NA on Science, Education, Culture, Youth issues and Sport put up the package for public discussion.

Yerevan Press Club presented its Conclusion on the issue:

“Having considered the package of draft laws “On Introducing Amendments and Additions to the RA Law 'On Television and Radio'”, “On Introducing Amendments and Additions to the RA Law ‘Regulations of the National Commission on Television and Radio'” and “On Introducing Amendments and Additions to the RA Law ‘Regulations of the RA National Assembly '” put up for discussion by the National Assembly of Armenia, Yerevan Press Club is of the following opinion:

The package does not consider the principal fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. It does not take into account the proposals made by the journalist community and the civil society as well as the obligations towards international organizations undertaken by Armenia:

a) In particular, the draft laws do not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Item 8.3 of PACE Resolution 1609 “Functioning of Democratic Institutions in Armenia” (April 17, 2008): “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account.” Earlier, in July 26, 2006, the OSCE Representative on Freedom of the Media Miklos Haraszti mentioned in his report on the state of media freedom in Armenia: “(...) Legislative changes should not be limited to a ‘half Presidential - half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.” If mechanisms providing for social and political diversity are not developed, then, as Miklos Haraszti stated in the report, the government control over these bodies would not ease, particularly in such time periods when the President and the parliamentary majority represent the same political force.

b) The draft laws do not consider the issue of ensuring transparency in the decision making process of the NCTR. Inadequate transparency in decision making was mentioned in the judgment of the European Court of Human Rights on the case of the founder of “A1+” TV company, “Meltex” LLC, and its President Mesrop Movsesian versus Republic of Armenia (known as the case of “A1+”). In its decision the European Court recalled the guidelines adopted by the Council of Europe Committee of Ministers in the domain of broadcasting regulation, which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that “all decisions taken (...) by the regulatory authorities (...) be (...) duly reasoned”. The judgment

also quoted the PACE Resolution on Armenia of January 27, 2004, which concluded that "the vagueness of the law in force had resulted in (NCTR) being given outright discretionary powers". In the opinion of the European Court, the licensing procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. This was noted also by Miklos Haraszti, who recommended the need for such amendments in his abovementioned report of the RA Law "On Television and Radio" that would be clear about broadcast licensing competition procedures: "The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks."

c) Though the amended Constitution stipulates that the National Commission on Television and Radio should be the regulatory body for both private and public broadcasters, the draft laws do not define precisely the relation between the NCTR and the Council of Public TV and Radio Company, the mechanisms of regulating the public broadcasting, liability forms in case of violations, etc.

d) And finally, the draft laws do not eliminate the negative consequences of the amendment of September 10, 2008 to the RA Law "On Television and Radio". The amendment renders impossible the implementation of practical measures ensuing from the judgment of the European Court of Human Rights on the case of "A1+" TV company, which is emphasized in the recommendations of international organizations. Namely, PACE Resolution 1620 (June 25, 2008) noted: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights concerning the denial of broadcasting license to 'A1+', calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on March 26, 2008 and with the case law of the European Court of Human Rights."

Ignoring the above-mentioned basic issues renders meaningless the amendments to the broadcast legislation. The amendments do not provide for significant reforms and are just formal and superficial."

The situation connected with application of the RA Law "On Freedom of Information" has almost remained unchanged. The absence of two legally stipulated procedures - the procedure of registration, classification and archiving of the information processed by the owner of the information or imparted for him, as well as the procedure of providing duplicates (copies) of information by state institutions and organizations, local self-administration bodies creates certain obstacles. In autumn 2008 the RA Ministry of Justice developed a draft law "On Freedom of Imparting Information". In the opinion of experts from several non-governmental organizations (in particular, the Freedom of Information Center), this draft law is even regressive as compared with the acting Law.

Amendment of the Criminal Code of Armenia

The section regarding Armenia in the current report "Implementation of the European Neighborhood Policy in 2007" by the Committee of European Communities says: "The new provisions included in the RA Criminal Code in April 2007 stipulate that impeding the legitimate professional activities of journalists is persecuted (...)". Meanwhile the RA Criminal Code has long had Article 164 "Impeding the Legitimate Professional Activities of

a Journalist", which was amended on June 1, 2006. Reformatory labor was removed from the list of sanctions specified in the Part 1 and Part 2 of the Article.

Decriminalization of libel and insult has often been discussed, and the international institutions recommend to abolish Articles 135 ("Libel"), 136 ("Insult") and 318 ("Insult of Representative of Power") of the RA Criminal Code. There was progress in this respect in 2008: on May 19, 2008 the RA National Assembly nullified Article 318.

State of Emergency (March 1-20, 2008) and Media

On March 1, 2008 a state of emergency was introduced in Yerevan by the Decree of the RA President Robert Kocharian. Subclause 4 of Clause 4 of the Decree stipulates that "the media publications on state and inner political issues can be made exclusively within official information, released by state bodies". Such definition was in fact used to exert 20-day censorship in Armenia. While censorship was not listed among the restrictions, imposed by the Decree, moreover, according to Article 4 of the RA Law "On Mass Communication", it is actually prohibited, these days not only in Yerevan, but also all over the country factual pre-emptive censorship was practiced.

Due to this the publication of a number of national newspapers was banned because of their content. Some others, facing illegal obstacles, refused working, because they were unable to voice opposition and critical viewpoints, while the publication of opinions, discrediting and insulting for the opposition, often even aggressive, in other newspapers was in no way restricted. The media report that the pre-emptive censorship is practiced by people introducing themselves as officers of National Security Service. The Decree was directly followed by blocking of several news web sites that did not even have time to make any report on the situation. Such actions were completely illegal, and imposing restrictions with no grounds, under the circumstances, could be qualified as a violation of the presumption of innocence. Here, too, political discrimination was manifest, as only those sites were blocked that had previously disseminated criticism of the country authorities.

Meanwhile, in the broadcasting, fully controlled by authorities, there were numerous violations of the legality and the emergency rule. In particular, a number of media, violating the Subclause 4 of Clause 4 of the Decree, published and broadcast not only official information, but also presenting political propaganda, most of which was one-sided, discrediting and insulting for the opposition. The most prominent example of such unacceptable coverage was shown by the First Channel of the Public Television of Armenia that not only neglected the clause of the Decree, but also broke Article 28 of the RA Law "On Television and Radio": "The prevalence of a political stance (...) in the programs broadcast by public TV (...) is prohibited." The National Commission on Television and Radio, which, according to the Law, is an independent regulator and is also "to oversee the activities of TV and radio companies" (RA Law "On Television and Radio", Article 37, Part 1), failed to perform one of its main functions and did not prevent the violation of the Decree provisions not only by the PTA First Channel, but also the majority of private broadcasters. Violations of the relevant Decree provision were recorded also in a number of print media, with no response ensuing from the RA Ministry of Justice. The Ministry, within its competence, had to take steps to eliminate the violations.

On March 13 the Decree on the state of emergency was amended. In particular, Subclause 4 of Clause 4, referring to the media, was re-defined: "The media are prohibited from publishing or disseminating information on state and inner political issues, which is

deliberately untrue or destabilizing, or appeals to take part in events held with no prior notice (illegally), as well as publication or dissemination of such information or appeals in any other way or form." Yet, under the conditions of selective law enforcement and illegal actions that the media sphere encountered lately, this definition rendered media quite vulnerable. After the amendment of the Decree, a number of newspapers were still not allowed to print; the Internet-sites were still blocked until the state of emergency was lifted on March 21, 2008.

In 2008, the Parliamentary Assembly of the Council of Europe addressed the situation in Armenia twice: in its Resolution 1609 (2008) "The Functioning of Democratic Institutions in Armenia" (April 17, 2008), and Resolution 1620 (2008) "The Implementation by Armenia of Assembly Resolution 1609 (2008)" (June 25, 2008). Besides, on June 17, 2008 the European Court of Human Rights released its judgment on the case of the founder of "A1+" TV company, "Meltex" LLC, and its President Mesrop Movsesian versus Republic of Armenia. In particular, the European Court ruled that the right of the applicant to freely impart information and ideas, stipulated in Article 10 of the European Convention of Human Rights and Fundamental Freedoms was violated.

ELIMINATION OF TORTURE

The ENP EU/Armenia Action Plan contains the following provisions regarding elimination of torture, other inhuman or degrading treatment or punishment:

- further reform of the penitentiary system in line with the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions;

- closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society (Section 3 “Priorities for Action”, Priority area 2, Specific Actions);

- ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Section 4 “General Objectives and Actions”, Sub-Section 4.1 “Political Dialogue and Reform”).

Resolution No. 927-n of the RA Government of July 19, 2007 ratified the list of priorities and actions envisaged by ENP EU/Armenia Action Plan to be implemented in 2007. Clauses 12 and 13 stipulated:

“ - further reform of the penitentiary system (take measures aimed at facilitation of public control over the conditions in prisons and places of temporary detention),

- reform of the police (cooperate with OSCE and the Council of Europe in order to eliminate torture, other mistreatments and corruption)”.

The Republic of Armenia has acceded to the Universal Declaration on Human Rights, the International Pact on Civil and Political Rights (1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1993), the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols 1 and 2 (2002), the European Convention of Human Rights and Fundamental Freedoms (2001).

Torture and degrading treatment are prohibited by the RA Constitution (Articles 17, 12). The RA Criminal Code adopted in 2003 specified the respective punishment for torture (Article 119).

In May 2006 the RA ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for establishment of a national observation mechanism (national mechanism) in closed systems (penitentiaries, places of detention, police departments, psychiatric clinics, etc.).

On April 8, 2008 the National Assembly of Armenia made an amendment to the RA Law “On RA Human Rights Defender”, according to which the Defender is the national mechanism specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law does not provide for civil society involvement in the national mechanism. Thus, involvement of the civil society depends on the discretion of the Human Rights Defender.

About a year has passed after approval of the amendment, but nothing has been done either to establish the framework of the mechanism or to introduce it.

Based on the requirements of Article 47 of the RA Law “On Living Conditions of Prisoners and Inmates”, on May 14, 2004 a Public Monitoring Group in the Detention Centers was established under the Criminal Executive Service of the RA Ministry of Justice. In accordance with the “Regulations on Activity of the Public Monitoring Group in the Detention Centers of the Criminal Executive Service of the RA Ministry of Justice”, this Group is the supervisory body responsible for the issues of protection of the rights and freedoms of people in places of detention. Pursuant to the Regulations, the Group members have the right to visit freely the penitentiaries, to read various documents (if the prisoners’ consent is available - also their personal cases and correspondence, except confidential documents), to check the situation inside the institution, and to meet with prisoners.

Both the Public Monitoring Group (in 2005) and the European Committee for Prevention of Torture (CPT) mentioned in their reports the bad physical treatment of the prison staff to prisoners (striking the handcuffed prisoners with hands and feet, hitting with clubs).

The level of medical service in prisons is inadequate. In particular, the injuries suffered by prisoners in the result of ill treatment are not properly recorded in the relevant registers; the prisoners' requests for examination by a forensic doctor called from outside their place of detention are refused. No information is provided to the Procuracy about physical abuse and special measures used towards prisoners.

The biggest concern is caused by the situation in police departments and other investigating bodies. Numerous complaints are presented with regard to unlawful detention of people in police departments, abuse and violence. Violence in police departments is mainly aimed at obtaining a confession or testimony against third persons. The procedures of bringing people to the police department and arresting them are not observed, interrogations are often conducted unattended by the lawyer. The public is informed about cruel treatment in police departments only at times of political tension, when the active representatives of the opposition are brought to police departments, or in cases with fatal outcome.

To analyze the situation with torture and inhuman treatment, a reference should be made the CPT report. The latest CPT report on the situation in Armenia was published in 2006. Still, all concerns and recommendations mentioned in this report are actual for 2008 as well (the CPT visited Armenia in 2008, in the post-election period, but the report has not been published yet).

For example:

- The practice of detainment of criminal suspects for more than four days has remained unaltered since 2006. In particular, after the events in March 2008 there were multiple cases of detainment of people in police departments for a period exceeding four days.

- The term of transporting the people to places intended for preliminary confinement, i.e. not later than within 3 days, is not observed mainly because of wrong arrangement of the work of the escorting police officers. Besides, there are frequent and long-lasting transitions. All this increases the risk of inhuman treatment.

- The reports specify that the people arrested by the police are constantly exposed to inhuman treatment and unlawful actions.

There is no progress with regard to this either. Here is an example:

"On May 12, 2007, according to the official information, Levon Gulian, who was brought to the police department, jumped out of the window and died. A criminal case was filed based on Part 1 of Article 110 of the RA Criminal Code. The preliminary investigation was conducted by the Procuracy of Yerevan. On December 12, 2007 the case was taken over by the senior investigator on high importance cases of the Special Investigative Service of Armenia. On March 12, 2008 G. Petrosian, the senior investigator on high importance cases of the Special Investigative Service of Armenia, made a decision to terminate inspection of the case due to absence of corpus delicti. On March 26, 2008 the complaint presented by the legal successor of the victim was rejected as groundless by decision of Z. Tadevosian, the senior prosecutor of the General Procuracy. The legal successor's lawyers appealed against the decision of the Procuracy to the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan. The court revoked the decision of the Procuracy and made a resolution to recommence investigation of the case. On July 21, 2008 the RA Criminal Court of Appeal ratified the resolution of June 6, 2008 of the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan, according to which the decision to terminate inspection of the fact of Levon Gulian's death in the yard of the police administrative building was considered unjustified and unlawful. The preliminary investigation of the case recommenced on August 16, 2008. The courts had mentioned in their decisions that the preliminary investigation had not been comprehensive, integral or impartial; there had been numerous violations of the law, the required measures aimed at detecting the truth had not been taken, the representatives of the victim's legal successor were not invited to take part in implementation of inspection activities, the unlawful actions of some police officers were not assessed properly. Though several months have passed after recommencement of investigation, the behavior of the preliminary investigation body implies that the Special Investigative Service of Armenia is not in a hurry to fulfill the requirements stipulated by the court resolutions. In particular, other versions of Levon Gulian's death are still ignored. No one has been interrogated except two police officers, no expert examination has been conducted with a manikin, and no one is a suspect or an accused in the case."

- At any stage of detainment by the police, the arrested persons can present a complaint to the judge with regard to inhuman treatment by the police. The judge should make a written record on the complaint, make a decision on conducting a medical examination, and follow up performance of investigation. But the medical examination of the arrested people is often perfunctory and is conducted mainly in the presence of the representatives of the law enforcement bodies. No proper control is ensured by the Procuracy over the claims of the arrested with regard to such injuries, which are later on detected during the medical examination.

There has been no progress in this respect. The results of medical examination of the arrested, as well as their claims about the suffered injuries, are recorded in the relevant registers of criminal executive bodies in the presence of the escorting police officer, which holds the arrested back from telling the truth.

- The arrested are not offered the opportunity to inform their relatives about their situation starting from the very moment of detainment.

There has been no progress in this respect either.

- The arrested are often deprived of the right to use the lawyer's services from the very beginning.

This practice also continues, especially after the events that occurred on March 1, 2008.

During its visit in 2006, the CPT mission received a number of reliable statements about inhuman treatment of the arrested by police officers. Almost all statements were presented by persons (including women and the under-aged) detained in preliminary confinement places.

According to the report: “The statements about inhuman treatment mainly refer to slaps in the face, cuffs, kicks, hitting with rubber and wooden clubs, chair legs. Some statements referred to suffocation with plastic packs as a fact of inhuman treatment. Sometimes, the inhuman treatment was so cruel that it could be considered as torture.”

Almost all statements referred to inhuman treatment by operating officers (less frequently - by investigators and senior police officers) during preliminary interrogations. That was done for the purpose of extorting confession, evidence and other information. Thereafter, the CPT mission talked to several persons (including women and children), who stated that they had been exposed to unacceptable psychological pressure aimed at getting a confession of committed crime. This was accompanied with insults, abuse and threats of physical power or sexual violence to those people or their relatives and friends.

At court sessions no notice is taken of the defendants’ statements that the prejudicial testimonies had been exerted from them by violence. No public officer in Armenia has ever been punished for the use of violence or torture. This is also mentioned in the CPT report.

At the beginning of the visit in 2006, the RA General Procuracy informed the CPT mission that there had been no record of complaints against officers of law enforcement institutions for inhuman treatment. Such a situation would be doubtful with regard to the law enforcement system of any country. At the same time, the Armenian police failed to provide the CPT mission with any information regarding complaints on inhuman behavior, due to the obvious absence of statistics.

To rectify the situation it is necessary:

1. To introduce changes to the court procedural practice, including:

- To apply the relevant provisions of the criminal legislation, pursuant to which, in case of availability of the defendant’s statement about torture, the court should immediately demand investigation;

- To renounce the practice of considering the defendant’s confession as the principal proof of the defendant’s guilt.

2. To apply towards police officers the punishment for tortures envisaged by the criminal legislation.

3. In accordance with the procedure specified in Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to declare that Armenia acknowledges the power of the UN Committee Against Torture to accept and review the personal statements of individuals who consider that the requirements of the Convention have been violated.

4. To reform the criminal legislation, including:

- To amend and supplement the Criminal Procedural Code with provisions regarding interrogation of the suspect, accused, and witness, in order to establish the comprehensive procedure of interrogation by police officers.

5. To organize training for police officers and to check the professional level and knowledge of the international standards while appointing new officers.

6. To conduct proper medical examination starting from the moment of bringing the arrested persons to the penitentiaries and to obtain explanation regarding injuries in the absence of the escorting policeman.

7. To provide for guarantees of independence of the medical staff in the penitentiaries. To consider the possibility of the medical staff reporting to the RA Ministry of Public Health.

8. To introduce legal provisions on establishing a national mechanism, stipulated in Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prescribing the involvement of civil society in it.

FUNCTIONING OF THE ELECTORAL SYSTEM

The ENP EU/Armenia Action Plan contains the following provision regarding this sector: "Ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (Section 3 "Priorities for Action", Priority area 1, Specific Actions).

The elections to the RA National Assembly and the elections of the RA President were held in 2007 and 2008 accordingly.

The parliamentary elections of 2007 were qualified by the international observers as "generally complying with the obligations undertaken towards the OSCE and CoE and with other international standards"[32]; the US State Department stated that they were "significantly improved, though not fully consistent with the international standards"; and the local observers said that "the elections were accompanied by large-scale profound violations". At the same time, the OSCE/ODIHR observers mentioned that there were still unsolved principal problems related to the Electoral Code and implementation thereof, in particular, regulation of the pre-election propaganda, counting of ballots, tabulation of results, the work of electoral commissions, and examination of complaints.

The final report of the international observers' mission on the parliamentary elections of 2007 in Armenia, contained the following recommendations:

- to overcome the discrepancies between the Electoral Code and other pieces of legislation;

- to amend the provisions of the Electoral Code regulating the appeal procedure, by setting the mandatory requirement of calling a meeting of the electoral commission of any level for consideration of any written complaint and making the relevant written decision by the commission;

- to provide for the opportunity of challenging the verdict made by the court of primary jurisdiction with regard to an election dispute;

- to prescribe to the Central Electoral Commission (CEC) and territorial electoral commissions to report to the Procuracy and other authorized bodies regarding all significant violations, including the violations that might affect the election results;

- to place the ballot boxes in electoral districts so that the electors could vote facing the members of the electoral commission;

- to record cases of voting with the help of another person in the register of the district electoral commission and to put down the names of the voter and his/her assistant;

- to specify that a person can assist only one voter;

[32] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

- to put down the initial data (including the number of the received ballot papers and voting envelopes) in the minutes of the district electoral commission prior to commencement of the election process;

- to specify the mandatory requirement to keep the voting results posted up in an "easily observable place" of district electoral commission for a period of seven days following the date of voting[33].

After making these recommendations and until the elections of the RA President in 2008, the Electoral Code was amended and supplemented twice (on November 16, 2007 and December 18, 2007), but the above-mentioned recommendations were not covered by the amendments, and the Code was not brought into compliance with the requirements of the Venice Commission[34].

The elections of the RA President were held on February 19, 2008, during which, according to the local observers, the already vested usage of administrative and financial resources, bribing of the electors, inadequate consideration by the Central Electoral Commission, courts, and law enforcement bodies of cases regarding electoral violations, grew even more extensive.

In the report (February 20, 2008) on their preliminary findings and conclusions with regard to the presidential election of 2008, the international observers stated: "Generally, the election complied with the obligations undertaken by Armenia towards the OSCE, CoE and with other internationally accepted standards", "the authorities have improved the legislative mechanisms, but they were not implemented because of lack of sufficient political will". This opinion of the observers' mission was disputed by some deputies at the spring session of PACE.

In its post-electoral interim report (February 20 - March 3, 2008) OSCE/ODIHR stated: "The final opinion regarding the election depends on the process of final counting and tabulation of votes and examination of disputes". John Prescott, the Head of the Temporary Commission of PACE Observers of the Presidential Elections, qualified the post-electoral situation and the events of March 1, 2008 as "the consequence of lack of the voters' confidence in the electoral process and legitimacy of its results."

In the final report on the presidential elections, OSCE/ODIHR observers stated: "Though in the pre-election process and on the election day the elections generally complied with the obligations undertaken towards the OSCE and with other internationally accepted standards, serious problems in the part of fulfillment of certain obligations arose in the post-electoral period. Thus, the criteria essential for conducting democratic elections were not sufficiently respected and the whole election process was devalued. In particular, lack of reporting and transparency was revealed, and the procedures of presenting complaints and appeals were not fully efficient".[35]

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[33] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

[34] The "Code of the Best Electoral Practice" and "Guidelines and Explanatory Report on the Code of the Best Electoral Practice" adopted during 52nd session of the Commission of the Council of Europe "Democracy through Law" (Venice Commission) on July 5-6 and October 18-19, 2002 accordingly.

[35] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

The international observers, PACE, OSCE/ODIHR and the Venice Commission again demanded to conduct detailed investigation of the violations made in the electoral process and to punish the persons guilty of the violations. Besides, they recommended making further amendments of the Electoral Code in order to secure the following:

- efficient examination of election disputes;

- making a justified decision by the Central Electoral Commission regarding every complaint; the decision shall clearly specify the steps of examination of the complaint, the results thereof, and the grounds for rejection of the complaint;

- mandatory registration of all complaints received by territorial electoral commissions, their examination only at official sittings, and transparency, by means of securing information awareness for all the persons authorized to be present at the sitting, and providing them with the opportunity to attend;

- extending the term for presenting applications for recount of votes from 14:00 to 18:00 p.m.;

- recount of ballot papers in every occasion of receiving such an application or official justification of refusal to recalculate the ballots by the decision of the territorial electoral commission;

- extension of the term defined for summarizing the election results, announcement of the final results of elections only upon expiry of the term set for consideration of all complaints;

- equal opportunities for all bodies authorized to appoint members to the territorial and district electoral commissions, their representation among the leading three members of the mentioned commissions;

- more clear definition of the legal status of decisions taken by territorial electoral commissions;

- the obligation of the police to announce periodically the number of citizens, who had requested the right to vote in places of their temporary residence;

- usage of the common procedure of entering the election results in the electronic network by all district electoral commissions;

- classification of electoral violations into criminal and administrative violations and precise definition of the procedure of their examination by criminal and administrative courts, accordingly.[36]

It is noteworthy that no legislative amendment is required for implementation of the majority of the above-mentioned recommendations. It would be sufficient to improve the law enforcement practice and to secure mutually complementary activity of state bodies in the electoral process, in order to exercise the voting rights of the citizens.

Steps to reform the legislation and improve the law enforcement practice, undertaken within the timeframes of this research, are listed.

[36] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

Improvement of the Legislation

By decision of the Chairman of the National Assembly of Armenia, a special commission was established for preparation of amendments to the Electoral Code. Not only the ruling authorities, but also representatives of other political parties (including the National Democratic Union, "Orinats Yerkir") were involved in the work of the commission (in cooperation with the Venice Commission). But only a few meetings of the commission have been by now called and it seems to have terminated its activity.

Changes in the Law Enforcement Practice

In spite of the received complaints, the CEC has not taken any measure to protect the voting right. It displayed just a formal approach and did not comply with the accepted international norms of examination of complaints.

According to the CEC, the Central Electoral Commission has taken decisions regarding 57 applications and has provided 8 official clarifications[37].

On February 18, 2008 letter No. 01-D/65-94, signed by the CEC Chairman, was addressed to Ruben Torosian, the proxy of the presidential candidate Levon Ter-Petrosian, notifying about rejection of all 33 claims presented by him.

By letter No. 06-D/414 of May 26, 2008 Ruben Torosian was notified that in accordance with Clause 7 of Article 40 of the RA Electoral Code, the CEC considered some of his claims at CEC meetings.

Courts have rejected about 20 claims regarding the activity or inaction of the CEC. Referring to the procedural norms and taking advantage of the omissions in laws, the courts did not secure protection of the violated voting rights of the citizens. The administrative court rejected all claims regarding violations of voting rights. Moreover, all court hearings for those cases were assigned within terms though allowed by the law but still unreasonable, because even if the verdicts had been made in favor of the claimants, they would have been senseless, as it would be already impossible to restore the violated voting rights.

Thus, on February 22, 2008 and March 3, 2008 claims were presented to the RA Administrative Court, with a demand to declare the CEC actions illegitimate for failure to consider the claims presented to it. The court verdict was announced on August 1, 2008 and the claim was rejected.

The hearings for the case "Ruben Torosian versus the Public TV and Radio Company", accepted for processing on February 1, 2008, were held on May 6, 2008.

On March 4, 2008 a claim was presented to the RA Administrative Court with a demand to declare the CEC actions illegitimate for violation of the procedure of summarization of the election results. The Administrative Court announced its verdict only on August 1, 2008. The claim was rejected.

[37] The CEC analysis of violations of the Electoral Code of Armenia, committed during the presidential election on February 19, 2008, page 5.

The election for the local self-government bodies commenced in May 2008. No legislative amendment or organizational change was effected before the election. No change was made with regard to the following:

- the management staff of electoral commissions;

- the procedures of counting of votes, preparation of minutes, tabulation of the voting results.

According to the report of mission of observers of Helsinki Committee of Armenia, which were based in the communities of Yerevan[38]:

1. At several polling stations placement of the voting booths did not comply with the procedure established by the law, though those stations had every opportunity to place the voting booths properly.

2. Unauthorized persons were present at the polling stations - police officers dressed in uniform, some of whom even took part in counting of votes.

3. There were incidents of group voting, open voting, attempts of voting with someone else's passport, voting without passports, as well as throwing a pack of ballots into the ballot boxes, repeated and prompted voting.

4. There were cases of violence and pressure on authorized persons and observers.

5. In several cases, the work of the commission chairmen and members was careless and disorganized.

All these elections were won by the representatives of the acting authorities or the candidates supported by them. Administrative and financial resources had decisive impact on the results of elections. Usage of administrative resources and bribing of the electorate is getting to be a coordinated process in Armenia.

Structural changes are required to ensure functioning of elections as the most important institution of democracy. In particular, the first-priority measures are:

- precise definition of the procedures of claim examination and voting rights' protection, and elimination of contradictions;

- improvement of the level of independence of the bodies responsible for protection of the voting rights (first of all - the RA Administrative Court).

[38] Reports on elections to the local self-government bodies of Nork-Marash, Davitashen, Malatia-Sebastia, Avan communities of Yerevan held on May 18, 2008, and of Arabkir community of Yerevan held on September 7, 2008.

FINANCING OF PARTIES

The ENP EU/Armenia Action Plan, Section 4 "General Objectives and Actions", Sub-Section 4 "Political Dialogue and Reform", Clause 4.1.1 "Strengthening the Stability and Effectiveness of Institutions Guaranteeing Democracy and the Rule of Law" contains the requirement to "establish clear and transparent rules on party financing".

Financing of parties is regulated by Articles 24, 25, 27, and 28 of the RA Law "On Parties"[39]. Article 24 of the Law specifies the types of funds possessed by parties: membership fees, donations, financing from the state budget, income received from civil and legal transactions and other income not prohibited by the law. Article 25 regulates the procedure of making donations to parties. In particular, Clause 2 of the Article specifies the list of legal entities and individuals not allowed to make donations. In case of getting donations from the entities on the list, except anonymous donators, the parties have to return the amount to the donator within two weeks; donations made by anonymous donators should be transferred to the state budget within the same time period. Article 27 regulates the financing of parties, specifying in particular the volume of financing, the parties entitled to such financing and the volume of it[40], allocation of the funds among parties that are members of an election alliance, as well as grounds for termination of state financing. And finally, Article 28 of the Law regulates the procedure and terms of financial reporting by parties. According to this Article, a party should provide the authorized state body (in this case - the RA Ministry of Justice) with the annual report on the funds received and spent during the reporting year. The report should be presented by March 25 of the year following the reporting year. The same deadline is defined for publication of the financial report of the party in media. This Article also specifies to whom and how the financial report should be presented, what shall be reflected in it, as well as refers to the necessity of implementation of financial supervision.

Financing of parties is closely connected with financing of election campaigns. According to Article 25 of the RA Electoral Code, parties are allowed to make personal, optional contributions to the election fund established for financing of the election campaign. This gives the parties the opportunity to finance their election campaigns (if they take part in the election to the National Assembly by the proportional election procedure), the election campaigns of presidential or deputy candidates (by the majority procedure), as well as the election campaigns of their candidates for the position of head or member of the community council. According to Article 79 of the Electoral Code, a party can make a contribution to the election fund of its presidential candidate for the amount not to exceed 30.000-fold of the minimum salary (AMD 1000), i.e. maximum AMD 30 million[41]. Similar restrictions are specified for contributions to the election funds of the parties or the election funds of the candidate(s) nominated or supported by them. According to Article 112 of the Electoral Code, a party may contribute to its election fund (or the election fund of its block

[39] This Law was adopted on July 3, 2002 and was enforced on November 15, 2002. Official Bulletin of the Republic of Armenia, No.34 (209), August 15, 2002.

[40] According to Article 27 of the Law, financing form the state budget can be provided only to those parties (blocks of parties) which have received at least 3% of the sum of the number of inaccuracies and the total number of votes given in favor of the voting lists of all parties by the proportional election procedure at the time of the latest election to the National Assembly. These funds are allocated among the parties (block of parties) proportionate to the votes received by them.

[41] Pursuant to the same Article, the amount of expenditures form the election fund shall not exceed AMD 70 million.

of parties) an amount not to exceed AMD 2 million, and to the fund of a deputy candidate by the majority procedure - the maximum amount of AMD 150,000[42], as a legal entity.

The requirements specified in the above-mentioned legal acts secure sufficient transparency in financing of parties, provided that they will be fulfilled properly. Still, we regret to note that up today civil society institutions and media have not been paying adequate attention to the financial reports presented by parties, though, as it is evidenced by the international experience, they might contain important information. At the same time, to this day no publications have been made by media to attempt and analyze the financial reports by a certain party. The Ministry of Justice - the state body authorized to receive such reports - has never officially reported about any occasion of falsification of such reports, i.e. non-reliability of the presented data. It is difficult to say whether that means that the Armenian parties provide all the required data diligently and fairly, or the reports are simply left unchecked.

As to the contributions to the election funds made by the parties, monitoring of financing of the parliamentary election in 2007 and the presidential election in 2008 conducted by Transparency International Anti-Corruption Center (TIACC) did not reveal significant violations. The parties, which made contributions to the election funds, provided the Central Electoral Commission with the required evidencing documents. But the situation is different with regard to expenditures from the election funds. During both elections, considerable difference was recorded between the declared and actual expenditures revealed by monitoring[43].

A number of provisions of the Electoral Code and the RA Law “On Parties” permit the parties to evade the above-mentioned restrictions regarding the contributions made from their own funds. In particular, the Electoral Code allows for making of contributions by individuals, without providing for mechanisms of preventing the practice widespread in many countries - when the party gives cash to its members who transfer these amounts to the election fund of the party as individual contribution. Since the principal target of the monitoring program implemented by TIACC was to check expenditures from election funds, this issue was not considered by the organization.

A more profound problem is that it is impossible to check timely and thoroughly the actual expenditures made by the parties during election campaigns, since, as it was mentioned above, pursuant to the Law “On Parties”, the parties present only the annual financial report, due by March 25 of the year following the reporting year. If elections are held in the reporting year, especially when the elections are scheduled for the beginning of the year, the falsifications revealed in the result of analysis of the financial report or monitoring cannot be used as the ground for invalidation of the election results. With regard to this, it might be a probable solution to set a requirement to open the account for the election fund as a supplementary account of the party’s principal bank account. Besides, all parties will have to present a quarterly financial report for the period of voting, as well as for two quarters preceding the date of voting.

[42] The same Article specifies that in case of a party (party bloc) the amount of expenditures from the election fund shall not exceed AMD 60 million, and in case of a candidate nominated by the majority procedure - AMD 5 million.
[43] See details on www.transparency.am

FIGHT AGAINST CORRUPTION

ENP Measures and Their Implementation

The ENP EU/Armenia Action Plan contains the requirement to:

- establish administrative courts;

- review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of the civil society and business representatives in monitoring implementation (during 2006);

- evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006)[44]. (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

ENP, Section 4, "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform", Clause "Fight Against Corruption" specifies 8 anti-corruption measures[45]:

1. Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005;

2. Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption and, once ratified, the OECD (Organization of Economic Cooperation and Development - ***Ed. Note***) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

3. Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including development of Code of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on September 19, 2001;

4. Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations;

5. Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

6. Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

[44] See the report section on the civil service.
[45] Almost all of the mentioned measures are specified also in the international anti-corruption convention and the recommendations of GRECO and OECD.

7. Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption;

8. Ensure the implementation of procedures to implement the Code of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

In 2008 the RA Government did not publish any information regarding measures aimed at implementation of the ENP EU/Armenia Action Plan; while in the list of priorities and measures to be implemented in 2007[46] the Government included only two actions:

- Clause 4.1 - review during 2006 the progress made in the implementation of the National Anti-Corruption Strategy and develop new measures (responsible bodies - RA Ministry of Justice and RA State Tax Service);

- Clause 4.2 - develop and enforce specific anti-corruption measures for the law enforcement agencies (the responsible bodies are not specified).

The mentioned clauses are of general character and it is not clear why other measures were not included in the list, especially those, for which the specified term of implementation expired at the end of the year 2006 (for example, the measure related to the UN Convention against Corruption) .

Clause 4.1 fully repeated the relevant provision of Priority 1 of Section 3 of the ENP Action Plan, though without the words “ensure active participation of the civil society and business representatives in monitoring implementation”. Since throughout 2007-2008 no reports or official statements as to the necessity of such monitoring or similar actions appeared, one can hardly judge whether the clause has been implemented. As to participation of the civil society, it should be noted that though several NGOs, in various sectors, implemented anti-corruption projects (mostly, donor-funded), such as traffic police, consumer rights, education, election, etc., this cannot be considered as comprehensive monitoring envisaged under the action plan of the Anti-Corruption Strategy.

Clause 4.2 is the shortened version of the relevant provision of Clause 4.1.1 of Section 4 “Democracy and the Rule of Law, Human Rights and Fundamental Freedoms” of the ENP Action Plan. It does not specify which precise measures should be developed and for which agencies exactly. As no official information has been published with regard to this either, it would be difficult to say whether the RA Government has implemented this measure.

The analysis of implementation of the above-mentioned 8 measures of the Action Plan is given below.

Measure 1

Though the RA Law “On Principles of Administration and Administrative Proceedings” was enforced on January 1, 2005[47], administrative courts were established only on January 1, 2008[48]. The administrative courts examine social disputes on legal relations, one party to which is the local self-government body or the relevant public officers, and the other party -

[46] See the Appendix of the RA Government Ruling No. 927 of July 19, 2007.
[47] Official Bulletin of the Republic of Armenia, No. 18 (317), March 31, 2004.
[48] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.

the citizens. The principal peculiarity is the specific distribution of the burden of proof, according to which: "A state or local self-government body (a public officer) who approved the disputed legal act or committed the disputed action or has not implemented an action, which, according to the claimant's statement, should have been done by him, bears the burden of proving the actual circumstances underlying his decision, action, or inaction" (Clause 3 of Article 26 of the RA Administrative Procedural Code[49]).

One of the fundamental principles for administrative courts is the principle of precedent defined by the law, which is supposed to preclude arbitrary decisions.

The RA Administrative Court is composed of 15 judges, who are much more overburdened as compared with other judges. According to the Chairman of the Administrative Court Tigran Mukuchian, there is always a great number of disputed payment orders: only in the part of the traffic police the monthly quantity of such payment orders reaches 5-6 thousand. Pursuant to the same source, as of August 1, 2008 the Administrative Court had announced 2,288 verdicts, made thousands of decisions, issued even more payment instructions, etc. 90 complaints were received (3.9% of the total number of cases) of which 35 complaints from individuals and 55 from state bodies. 60-65% of 2,288 verdicts referred to entrepreneurs, with relation to whom administrative acts had been issued by tax or customs' authorities. Besides the above-mentioned cases related to the traffic police, there were many disputes with the mayor's office, the local self-government bodies, the state register and the cadastre. Tigran Mukuchian stated that 60-65% of 2,288 cases were solved in favor of the citizens. For several occasions, the Administrative Court announced "open days" and distributed the RA Law "On Principles of Administration and Administrative Proceedings" and the comments on it for free.

In the absence of statistical data or analytical findings, it is difficult to draw a conclusion as to whether the first year of activity of the administrative court has favored adequate prosecution and conviction of bribery and corruption-related offences. In experts' opinion, unlike cases related to economic activity, with regard to other cases the administrative court announced its verdicts mainly in favor of the state bodies, e.g., appeals against the decision of Yerevan Municipality on prohibition of assemblies, rallies, marches or demonstrations. (Thus, pursuant to the data provided by the Armenian National Congress of, only 1 of the presented 50 claims regarding prohibition of meetings and demonstrations was satisfied completely.)

Measure 2

Definition of bribery and corruption specified in the RA Criminal Code[50] (Articles 311 and 312) generally complies with the international standards. As to classification of corruption-related offences, within the scopes of "Istanbul Anti-Corruption Action Plan" developed by the OECD, it became necessary to specify the corruption-related offences, and in 2004 first 22 and then 59 Articles of the Criminal Code were outlined. According to the statement of Garegin Ashrafian, Head of the Procuracy Department for Fight Against Corruption and Organized Crime, taking into account the international experience, this number was reduced to 22. Later on, new types of offences were included in this category. At present, the total number of corruption-related offences, specified in the Criminal Code, is 31.

In 2008 the RA Criminal Code was supplemented with several new articles, in particular, Article 311.1, which refers to receiving illegal remuneration by public officers, Article 311.2,

[49] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[50] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2003.

related to usage of real or alleged influence for lucrative purposes, and Article 312.1 - offering illegal remuneration to a public officer, who is not a state official[51]. According to the same source, the list was prepared on the basis of the following criteria: a) availability of a certain status or duties in the public or private sector; b) violation of duties related to the public or private status; c) goal to score some unlawful advantage.

Since December 2008, information regarding 31 types of corruption-related offences and data on disclosure and conviction for specific criminal cases (since October 2008) is posted on the website of the RA Procuracy[52]. At the same time, the Procuracy does not provide separate statistics on these 31 types of corruption-related offences. Therefore, it is difficult to understand whether the existing definition and classification secure adequate prosecution and conviction of corruption-related offences.

Measure 3

Code of Ethics has been developed and enforced for judges (see Chapter 12 of the Criminal Code[53]), prosecutors (see Order No. 17 of the RA General Prosecutor of May 30, 2007[54]), and the police (see the RA Law "On Adoption of the Code of Conduct of Police"[55]). As to the border service, no information could be gathered in this regard, since the National Security Service did not respond to the researcher's request for an interview.

"Comments on the Code of Ethics of the Judge" were published as a separate booklet in 2007. According to the statement of the First Deputy to the Head of the Forensic Department of the RA, Secretary of the Council of Court Chairman Misak Martirosian, the Commission on Ethics under the Council of Justice considered 9 cases related to the Code of Ethics of Judges in 2007, and 3 issues were considered as of September 2008 (7 more issues were planned for consideration). The Commission on Ethics works mainly with complaints presented by citizens. If the Commission on Ethics is of the opinion that the judge has to be exposed to disciplinary sanctions, the documents should be handed over to the Disciplinary Commission. In 2007, three of the nine issues were handed over for consideration by the Disciplinary Commission.

In case of violating the Code of Ethics of the Prosecutor, the prosecutors shall bear disciplinary liability in accordance with Clause 3 of Article 46 of the RA Law "On Procuracy"[56]. The RA General Prosecutor is the guarantor of observance of the Code of Ethics. The Chairman of the Commission on Ethics of the Procuracy is one of the Deputies to the General Prosecutor. According to the data provided by Garegin Ashrafian, the Head of the Department of Fight Against Corruption and Organized Crime of the Procuracy, only one meeting of the Commission was held in 2007-2008. The meeting considered the issue of violation of the Code of Ethics by a prosecutor from a territorial department of Erebuni and Nubarashen communities of the RA Procuracy. The Commission made a decision to dismiss the prosecutor.

According to the statement of the Deputy Head of the RA Police Gevorg Mherian, a different approach is applied at the police: they have a Council, which considers various problems, including ethical issues. The Council Chairman is the Head of the RA Police,

[51] Official Bulletin of the Republic of Armenia, No. 33 (623), June 4, 2008.
[52] http://www.genproc.am/main/am/189/ ¨ http://www.genproc.am/main/am/193/
[53] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2008.
[54] http://www.genproc.am/main/am/23/2153
[55] Official Bulletin of the Republic of Armenia, No. 29 (401), May 18, 2005.
[56] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

and the members are: the management staff of the police, heads and deputy heads of the principal departments. Scheduled meetings of the Council are called once every six months. Extraordinary meetings can also be summoned, if required. Any violation of ethical norms is considered by the Board and a decision is taken whether disciplinary sanctions need to be applied or not. In the past, the complaints mainly referred to the work of the visa and passport departments and the traffic police. According to the statement of the Deputy Head of the Police, significant changes are being effected at present and the number of complaints has decreased. Thus, in the past they got about 100 daily phone calls with complaints on the work of the visa and passport departments, while in 2008 there was only one call a day on the average.

Measure 4

The Law "On Declaration of Assets and Income by High-Level State Officials of the Republic of Armenia" was adopted on January 1, 2008. It replaced the RA Law "On Declaration of Assets and Income by Individuals". Article 5 of the Law specifies the requirement of presenting such declarations by all employees of state and self-government bodies, irrespective of their salary rate. Pursuant to the Law, the deadline for submission of declarations for 2007 was April 15, 2008. Chapter 8 of the Law specifies more serious sanctions for submission of false declarations than before. But enforcement of the Law was postponed for a year[57].

According to the statement of the First Deputy Head of the RA State Income Committee Aharon Chilingarian, the total number of declarations presented according to the previous law was about 50.000. As to the statistics of 2007, no information was published regarding the number of public officers who failed to present declarations or presented false declarations, or regarding the applied sanctions.

Measure 5

The opinion mentioned in the report of GRECO experts regarding fulfillment of the relevant obligations by Armenia[58] is generally realistic. Still, there are drawbacks left out by the GRECO experts. First, the RA Government did not take measures to conduct studies and gather statistics and presented as accomplished the programs and measures implemented by non-government organizations (international organizations and NGOs). Moreover, the RA Procuracy did not and still does not have a separate website on corruption. Only in December 2008 a separate page about corruption was opened on the website www.genproc.am. Secondly, none of the state bodies (police, tax and customs' authorities) mentioned in Clause 13 of the GRECO experts' report publishes separate information on its website regarding disclosed cases of corruption.

With regard to the appropriate GRECO Recommendation (see Clause 14 of the experts' report) it is mentioned that a number of state bodies (Police, Procuracy, Ministry of Justice and National Statistical Service of Armenia) have jointly developed the system of acquisition of statistical data on corruption-related offences. These data are published on the website of the National Statistical Service (www.armstat.am). It is specified that there are 59 types of corruption-related offences, and the RA Criminal Code envisages different sanctions for such offences. It should be noted that as of that date (the first report was presented on September 27, 2007 and the second one - on May 5, 2008) the number of corruption-related offences was reduced to 22 (see above - analysis of Measure 2) and the

[57] Official Bulletin of the Republic of Armenia, No. 2 (592), January 9, 2008.
[58] http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp

National Statistical Service has never provided separate information on corruption-related offences. Clause 16 of the experts' report refers to installation of hot lines in a number of state bodies, but these hot lines never had any specific anti-corruption designation.

Similar assessment was given to implementation of GRECO Recommendation 3, although it is not clear (as it was mentioned by GRECO experts) whether the new Law "On Public Procuracy", enforced in May 2007, has increased the prosecutors' independence. The same can be stated also with regard to GRECO Recommendation 8 since it is obscure (as it was mentioned in the comments of GRECO experts) what kind of training courses exactly were conducted at the Police Training Center. GRECO Recommendation 14 was assessed as completely fulfilled, but it cannot be construed from the Government report, how many suspicious transactions were reported to the Procuracy by the Financial Monitoring Center of the Central Bank of Armenia. Moreover, no information is available as to whether any investigation was conducted with regard to these cases.

Measure 6

The analysis of Measure 1 contains a reference to ensuring the possibility of court appeals against administrative acts, including through establishment of administrative courts in 2006.

Measure 7

The current salary of judges is insufficient to ensure service with dignity in order to reduce corruption. The salary of judges in courts of original jurisdiction, Court of Appeal and Court of Cassation was increased in accordance with the Judicial Code enforced on April 7, 2007 (see Article 75 of Chapter 11)[59], but only by 15-30%, which cannot ensure service with dignity. At present, a newly appointed judge receives salary of AMD 220,000. On November 27, 2008 the National Assembly approved amendments to the RA Law "On Remuneration Rate of High-Level State Officials of Legislative, Executive and Judicial Power". According to the amendments, the salaries of judges will be doubled in the period from January 1 to December 31, 2009[60].

Measure 8

As to ensuring implementation of procedures aimed at fulfillment of requirements of the Code of Ethics of judges and prosecutors, including introduction of effective systems of supervision over observance of the Code of Ethics by judges and prosecutors, there is no information available, besides the information presented for Measure 7 above.

Description of the General Situation

Since the Anti-Corruption Strategy was actually completed at the end of 2006, in September 2007 the Chairman of the Monitoring Committee, Assistant to the President of Armenia, Gevorg Mherian declared that a new strategy should be developed[61]. Terms of reference on development of the new strategy were approved at the end of 2007 and the group of experts started the relevant work in 2008. A number of non-governmental organizations were requested to give an opinion regarding four chapters of the strategy.

[59] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[60] "Hayastani Hanrapetutiun" daily, December 1, 2008.
[61] "Hayastani Hanrapetutiun" daily, September 8, 2007.

These chapters were posted on the website of the RA Government - www.gov.am - in October 2008.

In September 2007 the RA Government presented a report on implementation of GRECO Recommendations. The assessment of GRECO experts for the first and the second stage was announced in June 2008[62]. According to the assessment, Armenia had fully implemented 7 Recommendations, satisfactorily - 5, partially - 9, and entirely failed to implement 3 Recommendations.

OECD expert opinion on implementation of obligations undertaken by Armenia within the scopes of "Istanbul Anti-Corruption Action Plan"[63] was published at the end of 2007. In this case, only 1 of the 24 recommendations is implemented fully, 8 are implemented basically, 11 - partially, and 4 recommendations are not implemented.

According to the information provided by the RA Ministry of Foreign Affairs, at the beginning of 2008 the RA Government presented a self-appraisal report to the Secretariat of the UN Convention against Corruption, which was a mandatory requirement for the countries acceded to the Convention[64].

The evaluation report on the progress of Armenia in 2007 within the scopes of ENP Action Plan was published in April 2008[65]. Along with a number of positive steps (e.g. legislative and procedural amendments aimed at decrease of corruption, as well as availability of the Code of Ethics for judges, prosecutors, and the police, increase of judges' salary and establishment of a special investigative service), it is mentioned that the issue of effective application of the anti-corruption legislation and policy has not been solved yet.

Numerous anti-corruption legislative amendments and by-laws were approved and/or enforced in 2007-2008, as well as a number of anti-corruption measures were implemented. See below several of these measures:

- Due to the amendments to the RA Constitution[66], the Supervisory Chamber obtained independent status (was removed from the structure of the National Assembly). In 2008 the Supervisory Chamber revealed grave violations and abuse[67] in the sectors of town planning, agriculture, urban heating and gasification, state procurement, apartment allocations, etc. According to the data posted on the website of the Procuracy[68], in the result of the above-mentioned disclosures, only two criminal cases were filed by the end of 2008.

- In accordance with the Law "On the Procuracy"[69], the RA General Prosecutor is appointed to this position and gets dismissed by the National Assembly, a new system of qualification testing and remuneration is introduced, and the Procuracy loses the power to conduct investigation, which is now vested with the police, the National Security Service, the Ministry of Defense, the tax and customs' authorities.

[62] www.coe.int/greco
[63] www.oecd.org/corruption/acn
[64] The report is not accessible to public.
[65] http://ec.europa.eu/world/enp/documents_en.htm
[66] RA Constitution, Article 83.4.
[67] "Hayastani Hanrapetutiun" daily, September 18, November 6 and December 11, 2008.
[68] http://www.genproc.am/main/am/185/
[69] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

There is a Department of Fight Against Corruption and Organized Crime in the Public Procuracy, which is responsible for prosecutor's control and procedural management over corruption cases. The department supervises those cases, which are investigated by the central investigating agencies of the country. In some regions, this is the responsibility of separate investigation bodies and prosecutors. The principal function of the department is the consideration of complaints received from individuals and requesting additional documents with relation to them. In case of revealing evidence of offence, the documents shall be delivered to the respective investigating bodies.

In 2008 the Procuracy conducted cluster meetings in Yerevan and the regions and considered the issues of prevention and disclosure of corruption-related offences and the specifics of their investigation. The meetings were attended by the representatives of law enforcement bodies, tax and customs services, other interested organizations, and journalists.

- A new system of justice was established on the basis of the amended Court Code[70] and the Law "On Administrative Proceedings"[71], which resulted in establishment of administrative courts, introduction of a new system of appointment and remuneration of judges and court chairmen, functioning of the court department (service), registrars, Code of Ethics of the Judge, court school, etc.

- The RA Law "On Operative and Investigation Activities"[72] specifies new types of operative and investigation activity, as well as control and inspection mechanisms for this activity.

- In accordance with the RA Law "On Special Investigative Service"[73], a new body was established to investigate those criminal cases, which involve high-level state officers, representatives of law enforcement bodies and persons engaged in election process. Pursuant to the information provided by official sources, during the first half of 2008 the Special Investigative Service examined 29 criminal cases, 13 of which were against 14 state officials[74]. The criminal cases were basically brought against officials of the lower and middle level.

- The RA Laws "On Organization and Conducting Audits in the Republic of Armenia"[75], "On Registration of Organizations and Individuals and Taking them off the Tax Register"[76], the amendments and supplements to the Laws "On Trade and Services", "On Usage of Cash Machines", "On State Duty" "On Taxes", "On Licensing", approved in 2008, and a number of other Armenian laws[77] are intended for fighting shadow income in the private sector and minimizing the corruption risks of the tax field. As of September 29, 2008 the Tax Inspection conducted inspections in 23 big shops and revealed violations in all of them, connected with usage of cash machines[78]. 9 supermarkets were temporarily shut down by the tax service, for a period of 5-10 days.

[70] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[71] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[72] Official Bulletin of the Republic of Armenia, No. 59 (583), November 28, 2007.
[73] Official Bulletin of the Republic of Armenia, No. 61 (585), December 5, 2007.
[74] "Hayastani Hanrapetutiun" daily, August 5, 2008.
[75] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[76] Official Bulletin of the Republic of Armenia, No. 54(578), November 7, 2007.
[77] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[78] "Hayastani Hanrapetutiun" daily, September 29, 2008.

- The regulations of passport departments have been simplified and streamlined. Sample forms of 7 different applications have been printed and provided to all passport departments. The individual only has to fill in his/her name and sign the application. The phone number of the Deputy Head of Police is also posted up in passport departments, which enables the people to call him in case of complaints. The lists of documents required to receive or change the passport, compile a case about loss of passport, etc. are also posted up on the walls of passport department offices.

The terms and conditions of issuing passports to the under-aged, as well as the list of the required documents were amended by the RA Government Resolution No. 823 of July 31, 2008[79]. The time constraints were removed and a simplified procedure was introduced: anyone may receive a passport for his/her child with validity period of three years and may change the passport at any time. Exit visas are also provided without any restriction.

- The traffic police reform has started. An off-budget fund has been established and 30% of it is transferred to the salary fund of the traffic police officers. Improvement of collection of administrative penalties is underway. This will give the opportunity to increase the salary of the traffic police officers up to AMD 200-250 thousand by the middle of 2009. In general, financing of the police has increased by 35 percent.

- Finally, in 2008 a chapter named “Corruption” was included in the textbook “Social Science” of comprehensive schools. It contains the definition of corruption, information regarding its forms, causes and methods of fighting against it.

Within the same period, reforms were effected also in other sectors, e.g. the tax service, but this report is intended to present only the steps related to the anti-corruption measures implemented or planned within the scopes of the ENP Action Plan.

As to foreign organizations’ opinion regarding the level of corruption in Armenia, pursuant to the Index of Corruption Perception (ICI) of Transparency International[80], in 2007 and 2008 Armenia was still among the most corrupt countries, the index of which is below 3 (by “1-10” scale, where “1” means “a fully corrupt country”, and “10” - “a country with no corruption at all”). During the last five years, the situation with corruption perception in the country remained unchanged: in 2008, 2007, 2006, 2005 and 2004 the ICI in Armenia was 2.9, 3.0, 2.9, 2.9 and 3.1, respectively.

According to the data of the World Corruption Barometer of Transparency International[81], 52% of the people who took part in the poll in 2007, were of the opinion that during the next 3 years the level of corruption in the country would “increase considerably” or “increase moderately”. As to the anti-corruption measures taken by the Government, only 25% of those questioned considered such measures “effective to a certain extent” or “effective”.

The data published by Freedom House in 2007 and 2008[82] evidence that the index of corruption in Armenia remained on the same level as in the previous years - 5.75 (by “1-7” scale, where “1” means “with no corruption at all” and “7” means “fully corrupt”).

[79] Official Bulletin of the Republic of Armenia, No. 51 (641), August 13, 2008.
[80] http://www.transparency.org/policy_research/surveys_indices/cpi
[81] http://www.transparency.org/policy_research/surveys_indices/gcb/2007
[82] http://www.freedomhouse.hu/nit.html

According to the World Poll of Gallup[83] held in 14 former Soviet countries, 50% of the people questioned in Armenia were of the opinion that at present the level of corruption is higher than in the Soviet times.

Global Integrity Index of Corruption in Armenia in 2007 was 58 (by "0-100 scale"), which, according to 23 anti-corruption criteria, corresponds to the rating "extremely weak"[84]. It is noteworthy that one of the management criteria of the World Bank, "control on corruption", was also rated rather low in 2007 - 30 scores of 100[85].

Based on the reports of the local and international organizations regarding the elections of 2007-2008[86] and numerous publications in the press, it can be concluded that political corruption in Armenia considerably increased during this period: abuse of administrative, informational, financial and other resources, bribing of electors, etc.

[83] http://www.gallup.com/poll/101767/Pereceptions-Corruption-Widespread-Former-Soviet-Nations.aspx
[84] http://report.globalintegrity.org/Armenia/2007
[85] http://info.worldbank.org/governance/wg/sc_chart.asp
[86] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php

YEREVAN PRESS CLUB

OPEN SOCIETY INSTITUTE HUMAN RIGHTS AND GOVERNANCE GRANTS PROGRAM

OPEN SOCIETY INSTITUTE ASSISTANCE FOUNDATION-ARMENIA

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

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FOREWORD

The Partnership and Cooperation Agreement (PCA, signed in 1996 and in force since 1999) between European Union and Armenia serves as the legal framework for bilateral relations. Since 2004, Armenia and the other South Caucasus states have been part of the European Neighbourhood Policy (launched by the European Union, following its enlargement), encouraging closer ties between Armenia and the EU. An ENP Action Plan for Armenia was published on March 2, 2005, "highlighting areas in which bilateral cooperation could feasibly and valuably be strengthened". The Plan sets "jointly defined priorities in selected areas for the next five years". In November 2005, formal consultations on the Action Plan were opened in Yerevan and as of 2008 are ongoing.

The EU-Armenia relations play an important role in the strengthening and development of democracy in Armenia. The present research aimed to determine whether the reforms, envisaged by the bilateral documents EU-Armenia, are implemented consistently.

Priority Areas 1 and 2 of the Action Plan for Armenia were taken as a basis for the monitoring.

Thus, **Priority Area 1** calls for strengthening of democratic structures, of the rule of law, including reform of the judiciary, and combat of fraud and corruption. **Priority Area 2** calls for strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).

The study was undertaken by Yerevan Press Club under the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Governance Grant Program of Open Society Institute. Support for researching into certain sections of the project and the preparation of this report was also provided by the Open Society Institute Assistance Foundation-Armenia.

Sections of this report were developed by YPC and its partner NGOs - Committee to Protect Freedom of Expression, Helsinki Committee of Armenia, Right and Information Center, Transparency International Anticorruption Center, Communities Finance Officers Association, Collaboration for Democracy Center, as well as individual experts candidate of economic sciences David Tumanian, sociologist Vardan Gevorgian, Doctor of Law Hrayr Ghukasian and Doctor of Law Lilit Simonian.

EXECUTIVE SUMMARY

RA HUMAN RIGHTS DEFENDER INSTITUTE. The cooperation of the RA Human Rights Defender and the state bodies is somewhat hindered. This is mainly manifest in shape of occasional controversies with RA Government, National Assembly and law enforcement bodies. In the first case the difficulties deal with the funding of the Defender's Institute, in the second one - the issue of his mandate revision, and in the third case is the matter of principal divergences in situation assessment. Besides, the RA Law "On RA Human Rights Defender" does not stipulate the involvement of NGOs and civil society in the nomination of the candidate for the post of the RA Human Rights Defender and his election. Besides, the human rights NGOs are unable to address the Defender as a third party. Overall, the cooperation with the civil society institutes is duly developed. With regard to ensuring easy access the need to set up regional representations of the ombudsman is emphasized.

FREEDOM OF ASSEMBLY. While RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" is seen by the Council of Europe to be largely compliant with the European standards, yet it is more of a restrictive than regulatory nature. It is the law enforcement practice that is the most concerning. The competent body with no substantial justification impedes and prohibits assemblies, particularly, marches. The practice of challenging in court is unsatisfactory, too, as it does not ensure fair trial and proportionality, in accordance with Articles 6 and 11 of the European Convention of Human Rights.

RIGHTS OF ETHNIC MINORITIES. None of the ethnic minority groups in Armenia is the main population of any territorial unit of the country. They all are dispersed all over Armenia. No international document expressed serious concern with the rights of ethnic minorities in Armenia. This is due to the fact that ethnic minorities in Armenia do not come out with political demands. They refrain from being actively involved in domestic policy. Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

LOCAL SELF-GOVERNMENT. The requirements on local self-government in the European Neighborhood Policy EU/Armenia Action Plan remain almost unfulfilled in 2007-2008. Certain steps were made only starting from autumn 2008. Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan". The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions. Overall, the institute of local self-government is not substantial in many communities.

LEGAL AND JUDICIAL SYSTEM. The reforms of judicial and legal system that resulted in a number of amendments made in legislative acts and law in force, only partially correspond to the spirit and content of commitments stipulated by ENP EU/Armenia Action Plan. Moreover, if one looks back and analyzes the developments of February-March 2008, one can conclude that most of the amendments made follow a certain pattern and aim to ensure the achievement of certain timeserving objectives. Hence, the reforms in legal and judicial system have not improved most of the existing definiteness, and sometimes have raised new problems that require complex and consistent solutions.

CIVIL SERVICE. With regard to civil service in Armenia the priorities of ENP EU/Armenia Action Plan can be assessed as “partly fulfilled”. The realization of the majority of steps is to a certain extent related to the draft law “On Public Service”. The delay in the adoption of this draft was due to debates regarding its comprehensiveness. Its regulation domain covers not only the civil service, but also all legal relations for all kinds and levels of state and communal administration. In the opinion of most civil service experts, after the adoption of the law “On Public Service” many problems will be resolved or preconditions will be set to solve issues that are in cause and effect relationship.

FREEDOM OF SPEECH, MEDIA AND INFORMATION. Despite the amendments to RA Law “On Television and Radio”, the requirement of ENP EU/Armenia Action Plan - “ensure the independence of media by strengthening the independent regulatory body for the public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” - is not in fact fulfilled. The National Commission on Television and Radio has failed to become an independent regulator. According to amendment made in the Broadcast Law on September 10, 2008, broadcast licensing competitions were frozen for two years. The amendment was assessed by independent experts as a deprivation of the right to take part in broadcast licensing competitions for independent broadcasters that are not subject to governmental control. During the state of emergency announced in Yerevan on March 1-20, 2008, for the first time factual preliminary censorship was exercised not only in Yerevan but also all over the country. Meanwhile the restrictions, introduced by the Decree on State of Emergency, did not stipulate censorship, which is prohibited by the RA Constitution and the RA Law “On Mass Communication”.

ELIMINATION OF TORTURE. Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Armenia ratified in May 2006, stipulated the establishment of national monitoring mechanism in closed systems (penitentiaries, police stations, psychiatric clinics, etc.). Both the Public Monitoring Group in the Detention Centers of the RA Ministry of Justice (in 2005) and the Council of Europe Committee to Prevent Torture in their reports note the degrading treatment of prisoners by prisons’ representatives. The situation is particularly alarming in police stations and other investigatory bodies. The complaints of illegal detention, violence and terror in police stations are numerous. The violence in police stations was practiced mostly to gain confessions or testimony against other people.

ELECTORAL SYSTEM. By ENP EU/Armenia Action Plan Armenia undertook the commitment to ensure the electoral framework in full compliance with OSCE commitments and other international standards for democratic elections. Yet this obligation remains unfulfilled. Amendments to Electoral Code have not included the recommendations of the OSCE and Venice Commission. The Central Electoral Commission was quite formalistic in addressing the complaints received. The courts did not ensure judicial protection of violated electoral rights in any of the more than 20 complaints received with regard to CEC’s actions or inaction. Overall, the international observers, when assessing both the parliamentary elections of 2007 and the presidential elections of 2008, particularly, the post-election situation in 2008, noted the lack of necessary political will and public trust towards elections and their results.

FINANCING OF PARTIES. The satisfactory level of party funding could have been ensured, had the appropriate legal acts been applied properly. Yet the monitoring of election campaigns during parliamentary elections of 2007 and presidential elections of 2008, showed that the expenditures for campaigning do not correspond to those, officially quoted by parties and candidates as their elections funds. The competent state body, the

Ministry of Justice, that receives the financial reports of the parties, never mentioned any cases of fraud, i.e., discrepancy between the information in the reports and the reality. It is hard to say whether this is a consequence of conscientious and honest financial reporting by parties or their reports are simply never audited.

FIGHT AGAINST CORRUPTION. In 2007-2008 in Armenia numerous legal and sublegal acts with anti-corruption trends were adopted and/or enforced, and a number of anti-corruption initiatives were implemented. Yet, the international and local experts believe that the level of corruption in Armenia is still quite high and the anticorruption reforms are of little effect. Thus, in 2007-2008, according to Index of Corruption Perception of Transparency International, Armenia remains in the list of most corrupt countries. According to the World Corruption Barometer of Transparency International, in 2007, 52% of respondents of Armenian survey believed that within upcoming 3 years the corruption level in the country "would grow substantially" or would "grow moderately". In 2007 and 2008 the data of "Freedom House" showed that the corruption index of the country remained the same as during the previous years, while in 2007 the Global Integrity Index of Corruption in Armenia was "extremely weak". One of the World Bank's criteria of good governance, "control on corruption", in 2007 was also assessed quite low. Proceeding from the reports of local and international organizations regarding elections 2007-2008 and numerous press reports, one can conclude that during this period in Armenia the political corruption level has enhanced, such as the abuse of administrative, communication, financial and other resources, election bribes. The increase of political corruption in Armenia is becoming a source of political and social crises.

ACTIVITIES OF THE HUMAN RIGHTS DEFENDER INSTITUTE

The European Neighborhood Policy EU/Armenia Action Plan[1] makes the following note regarding this area: “Develop the Human Rights Ombudsman institution in accordance with the Paris Principles based on UN General Assembly Resolution 48/134 of December 1993” (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Preface

The UN Economic and Social Council (ECOSOC) stressed in the Resolution adopted in 1960, that with regard to the protection and endorsement of human rights a crucial role is played by national institutions that should independently reflect the universal ambition to stand for human rights on the national level. These institutions are competent to engage in activities to attain certain universal goals on national level. In 1991 this Resolution became the basis for the Paris Principles, approved on the Global Human Rights Conference, held in Vienna in 1993 and ratified by the UN General Assembly in 1993[2].

The Paris Principles stipulate the minimal criteria for the foundation and effective activities of the national human rights ombudsman that this institute should be guided with. These criteria allow assessing the structure, the legal basis of establishment, independence from executive and legislative branches of power, guarantees of securing diversity, the competence, partnering with other structures, mission and objectives, awareness-raising activities with regard to human rights, etc.

Human Rights Defender Institute in Armenia

Armenia was the last of South Caucasus countries to have a human rights defender (ombudsman), even though preparations for this started as early as in 1990. This process was accelerated by the country’s accession to the Council of Europe and its commitments in this regard. The draft law on the RA Human Rights Defender was developed on the basis of a similar law of the Russian Federation on Human Rights Commissary. In December 2002 the RA National Assembly adopted the law in the first reading, after which the document was sent for the international expert review. On October 21, 2003 the law was adopted finally, it was enforced on January 1, 2004. The law stipulates the procedure for electing the Human Rights Defender and his dismissal, his competence, terms of service and guarantees.[3]

It should be noted that in 2007 the UN International Coordination Committee for National Institutions dealing with human rights endorsement and protection granted the RA Human Rights Defender the highest A status. This means the Armenian ombudsman corresponds to Paris Principles and enables him to take part in the sessions of UN Human Rights Council.

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[1] http://ec.europa.eu/world/enp/documents_en.htm#2

[2] Human Rights Defender’s Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 20.

[3] Article 1 of the RA Law "On RA Human Rights Defender".

Despite the high status, the RA Law "On RA Human Rights Defender" needs development and improvement. The analysis of the law herein is based on Paris Principles, the survey on Human Rights Defender[4]. Also, a comparative analysis with laws of other countries is made, where the provisions are more specific, distinct, clear and in harmony with Paris Principles.

Scope of Action

According to Paris Principles, the ombudsman must have as broad scope of action as possible. Article 2 of the RA Law "On RA Human Rights Defender" defines the main activities of the ombudsman, enabling him only "to protect the rights and liberties, violated by state bodies, bodies of local self-government and officials" (spelt also in the RA Constitution[5]). Meanwhile, the Paris Principles call for a more broad scope for an ombudsman, enabling him not only "to protect the violated rights and freedoms", but also contribute to the development and advancement of human rights and fundamental freedoms. The ombudsman must be more active. According to Paris Principles, the national institute of ombudsman in the absence of complaints-appeals from individuals should be competent to initiate research, to make official inquires, demand clarifications from state and local self-government bodies. Clause 3 of Article 11 of the Law entitles the Defender to imitate discussions if there are reports of mass violations or the issue is of exceptional importance for the society or is related to the protection of certain persons, yet this norm is envisaged for *emergency* and *exceptional* cases, when the violations are already *committed*.

In accordance with Paris Principles, the mission of the national ombudsman can be seen in the promotion and endorsement or development of human rights and fundamental freedoms. The protection includes the consideration of complaints, legal consultancy, dispute resolution, etc. The endorsement or development process includes quite a broad scope of action, from the promotion of respective laws and international agreements, promotion of human rights to awareness-raising activities in education and other institutions, with vulnerable groups of the society[6]. In essence, the RA Law stipulates protection of human rights and fundamental freedoms, but not the activities with regard to their endorsement, progress and development. Only by Clauses 3 and 4 of Article 7 of the Law the Defender is entitled to be present at the sessions of the Government and other state bodies, the RA National Assembly and to raise issues, if the discussion agenda relates to human rights and fundamental freedoms. According to Paris Principles, the law on ombudsman must distinctly specify that the ombudsman must, *upon his initiative and systematically,* monitor the correspondence of local laws to the international documents on human rights and fundamental freedoms and, if necessary to make appropriate proposals; to control resolutions, legal acts, adopted by state bodies and local self-government so as for them not to go against human rights and fundamental freedoms, and if necessary, to take steps to achieve their abolition (this competence is only stipulated by Clause 1 of Article 15 of the Law only after the consideration of complaints).

Presently the main functions of the RA Human Rights Defender's Office are the independent monitoring of public administration and consideration of citizens' complaints

[4] In October-November the Helsinki Committee of Armenia administered an expert interview at the ombudsman's institute itself.
[5] Article 83.1 of the RA Constitution.
[6] Taking the Paris Principles into Asia. A study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines. Hugo Stokke, Chr. Michelsen Institute Report, page 2.

against state bodies[7]. The research of Helsinki Committee of Armenia showed that experts have much appreciation for the ombudsman's efforts in legislative reforms. The experts emphasized the fact that it is upon the proposal of the ombudsman that some laws ("On State Pension" and "On Alienation of Property for the Needs of Society and State") were amended. With regard to violation of the right of property of the Northern Avenue residents, proceeding from the statement of the ombudsman the RA Constitutional Court recognized that the resolution No.1151 of the RA Government of August 1, 2002 regarding the construction in Kentron community of Yerevan, as well as Article 218 of the Civil Code and Article 104, 106 and 108 of Land Code run counter the RA Main Law. Nevertheless, in the human rights domain a number of issues were noted, related to state bodies, the police and difficulties in terms of cooperation with civil sector. On March 1, 2008 the Head of the Criminal Investigation Division of Kanaker-Zeytun Police Department A. Abrahamian impeded the activities of the Defender, prohibiting his entry to the police station, refused to provide information, as well as was disrespectful, violating thus a number of provisions of the Law, including Article 12, according to which the Defender must have unimpeded access to state institutions, including military units, prisons, detention centers, etc. Besides, while on duty the Defender enjoys the right of being immediately admitted by state bodies and local self-government, received by their officials, the management of penitentiaries[8].

On July 19, 2007 the Government adopted Resolution No.927, according to which the draft laws related to human rights and fundamental freedoms, before being submitted to the sessions of the Government, are sent to the ombudsman for an opinion. While steps are taken to regulate the legislation and harmonize the laws, legal acts and resolutions with the international agreements, ratified by Armenia, there is still a number of laws that contradict the norms and principles of human rights and fundamental freedoms. These laws were never submitted for the Defender's opinion, such as the RA Laws "On Investigating Activities" and "On Holding Assemblies, Rallies, Marches and Demonstrations".

In accordance with the Paris Principles the ombudsman must also contribute to the ratification and application of international treaties, to cooperate with the UN and other international and local structures that operate in human rights domain. According to the research above, the international cooperation of the Defender is expressed mostly in joint experience exchange projects, training, awareness raising. Under a memorandum signed with the Helsinki school some staff of the ombudsman's office have regular training. In partnership with UN awareness campaigns are waged, leaflets and posters are published and disseminated. Under UN Development Program, "Empowerment of Human Rights Defender Institute", the office develops information materials, holds training courses, plans a TV program on vital human rights issues in Armenia. With the assistance of international organizations the Human Rights Defender's office now has a library. To implement legal reforms the Defender appeals for international support, too.

The Paris Principles make a particular emphasis on the ombudsman's activities on awareness raising, media relation and coverage of ombudsman's activities, involvement in curricula development. The RA Law "On RA Human Rights Defender" does not refer to these provisions at all. Currently the real activities of the Defender's office are substantial not only in terms of human rights protection, but also in awareness raising. Awareness raising with regard to human rights is initiated by the Defender through meetings and focus

[7] Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 3.
[8] http://ombuds.am/main/am/9/16/0/36

group discussions, material dissemination. Meetings are held both in office and out of it - universities, schools, senior residences, etc. The Defender pays regular visits to regions, too. The office activities are regularly covered by media, in the annual report. With regard to awareness raising the ombudsman's staff pointed out two major issues: lack of representatives in the regions and the lack of funds for developing information materials.

As the survey showed, these activities are in fact implemented by the ombudsman's office, while not being stipulated by the law. In other words, the Law does not give the legal framework for such activities, thus restricting the mandate of the Defender. That is, the Law does not reflect the issues of awareness and coverage, as required by Paris Principles at all. The Paris Principles also call for the Defender's office to hold human rights training for the police, the representatives of judicial system and other state bodies, vulnerable and special needs groups of the society, at schools, universities, etc.

Election of Defender

Specifications are also necessary in the clause of the Law referring to the election of the Defender. Thus, Clause 1 of Article 3 does not define any professional criteria and gives only a general overview that fully coincides with the requirements posed to a member of parliament, while the mandates for these two positions are quite different in nature. Thus, for example, Article 2 of the Poland's Law "On Representative of Citizens' Rights", apart from stipulating the requirement of being a citizen and enjoying public respect, the ombudsman must also have legal knowledge and professional experience[9]. While the Paris Principles do not single out the legal knowledge, they emphasize expertise in human rights. The Armenian Law refers to the need of legal or special expertise indirectly. Thus, according to Clause 1 of Article 7, "The Defender is competent to give the applicant its recommendations or consultations for challenging resolutions, court rulings or sentence justification", and according to Subclause of Clause 1 of Article 12, the Defender is entitled to "have access to cases on criminal, civil, administrative, disciplinary, economic and other law infringements that have their sentences, rulings and resolutions enforces, as well as the materials that were a basis for refusing institution of proceedings". These functions cannot be performed by the Defender unless he has adequate legal expertise or professional experience. Clause 2 of Article 3 of the Law does not provide for case when more than one candidate is nominated and gains sufficient number of votes, or if none of them gains sufficient number of votes. No provision is made regarding the number of nominations and elections of the same candidate, either. Similar laws of Georgia and Poland envisage only two terms of service for the same candidate[10]. The Paris Principles call for the ombudsman election provisions to contain the following clauses: terms of service, re-election terms, dismissal terms, etc.[11] It is also preferable for the ombudsman to be elected at least for five years' term and have a change to be re-elected for the same term[12].

The Law does not require the legislature to involve representatives of civil society, human rights and other organizations, educational institutions, religious groups to nominate candidates, as well as hold consultations on electing and appointing the Defender, to ensure transparency and confirm his real independence[13]. The law does not regulate the procedure for nomination and election of candidates, either (through open calls for

[9] National Ombudsmans, Code of Legal Provisions, Biuro Rzecznika Praw Obywatelskich, Warsaw, 1999, page 279.
[10] Ibid, pp. 129, 280.
[11] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, page 16.
[12] Ibid.
[13] Ibid.

applications, competitions, etc.). The Paris Principles emphasize the transparency of Defender's election and involvement of all groups of the society in the election process.

Clause 2 of Article 4 of the Law imposes certain restrictions on ombudsman being engaged in other activities. In particular, the ombudsman is prohibited from membering in parties but not from involvement in the activities or assisting any party (such as taking part in sessions or campaigns), which cannot guarantee his independence, impartiality and objectivity.

The norms of early dismissal of the Defender do not provide for the cases of permanent failure to implement his duties of violation of the oath made. Meanwhile, Article 7 of similar law in Poland stipulates that the ombudsman can be dismissed early if he violates his oath[14].

Human Rights Defender as a Mechanism of Independent Monitoring

Paris Principles call for the establishment of special centers adjacent to ombudsman to protect vulnerable groups of society (children, women, the disabled, etc.). The monitoring of compliance with the UN Convention of the Rights of Children is made by ombudsman, yet the Law in force does not contain either provisions or regulating mechanisms. According to research administered, the RA Human Rights Defender has neither a section nor a special children's center - a fact that gained the attention of the Council of Europe[15].

On April 8, 2008 the RA Law "On RA Human Rights Defender" was addended by Article 6.1, referring to the activities of the Defender in international law: "The Defender is the independent national mechanism for prevention, as defined by the Optional Protocol to UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment. The comment on this norm is presented in Chapter 8 of this publication. Yet it is necessary to note that this amendment was not accompanied by any regulatory provision.

Consideration of Complaints

As to the complaints to be considered by the ombudsman (Article 7), it should be noted that the amendment, made on June 1 2006, certainly restricted the Defender's mandate in the judicial. The amendment contradicts the principles of the right to fair trial, prescribed in international documents and RA Constitution. Moreover, if one takes into account that post-Soviet countries are in transition, and the judicial system so far is imperfect, the Defender should be entitled to be present at court sessions (as stipulated by, say, Article 9 of a similar law of Ukraine)[16]. The interview with the ombudsman's office staff revealed that they are occasionally present at court sessions, yet this is not envisaged by the RA Law "On RA Human Rights Defender".

According to Paris Principles, the ombudsman must be entitled to appeal to court on behalf of those who cannot go to court themselves for certain reasons (children, the disabled, convicts, etc.)[17].

[14] National Ombudsmans, p. 281.
[15] Table of Treaty Body Recommendations Relating to National Human Rights Institutions, CRC/C/15/Add.119, 24 February 2000, 23rd Session, COs Europe.
[16] Institute of Ombudsman: evolution of traditions and modern practice (comparative analysis), A. Sungurov, Saint-Petersburg Humanitarian Political Science Center "Strategia", 2005, p. 179.
[17] Institute of Ombudsman: evolution of traditions and modern practice, p.179; Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 10.

The Law does not stipulate the mandate of human rights organizations to address the defender on behalf of third persons, either. The Paris Principles also stipulate close cooperation between the Defender and human rights NGOs. In the case of Armenia such cooperation is particularly important because the Defender does not have regional offices, yet can become acceptable to the people in the regions through local NGOs.

In the course of research one of the respondents noted that the representatives of the Defender must be entitled to suspend proceedings in case of the restoration of rights infringed, which is not envisaged by the law in force.

Ensuring Accessibility

Clause 3 of Article 23 of the Law stipulates that in regions regional offices of the Human Rights Defender *can be* established. As noted above, in accordance with Paris Principles the national ombudsman's institute must be accessible and available for *all groups* of society, and geographic location must not be an impediment for addressing the Defender. Steps are to be taken to establish regional offices or to launch partnership with local NGOs. Apart from this, the offices of the Defender must be accessible for people with special needs, i.e., be duly equipped[18]. According to the research noted above, the national ombudsman's institute has no regional offices or representatives, yet there is the practice of regular visits for awareness raising. The out-of-schedule visits to the regions are made only when an urgent complaint is received. Reasons for the lack of representatives in the regions include the need for office space, furniture and communications, as well as staff.

According to the annual report of the Defender in 2007, most of the complaints (65.8%) are received from residents of Yerevan, while the proportion of these received from the regions is very small (6.8%). Such huge difference is due also to remoteness of location.

Defender's Report

During the period of January 1 - September 30, 2008 the Defender received more than 2845 complaints, 907 of which were in writing. Throughout this period the Defender was addressed by 4096 people[19]. The complaints were mostly directed against the Special Investigative Service (311), Yerevan municipality (293) and the RA Police (222). In the opinion of one of the respondents, it is mostly conditioned by the situation after presidential elections-2008, with regard to which an extraordinary report was made by the Defender.

In accordance with Clause 1 Article 17 of the Law the Defender submits a report on his activities and human rights and fundamental freedoms to the country's President, the legislative, executive and judicial power. According to Paris Principles this is a mandatory component of the ombudsman's activities. In 2008 the Defender presented his report for the previous year, which described the Defender's activities, the human rights and fundamental freedoms situation, the results of complaint consideration, the list of state bodies that made infringements, etc.

In accordance with Clause 2 of the same Article the Defender has the competence of making an extraordinary report on certain issues of public significance or rough human

[18] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, page 22.
[19] Data provided by the RA Human Rights Defender.

rights infringements, as well as in cases of mass failure to eliminate the infringements. In 2008 the Defender made an extraordinary public report on presidential elections of February 19, 2008, post-election situation and events of March 1. This step was somewhat inadequately received by the authorities, in particular, the former RA President; moreover, the General Procuracy and the Ministry of Justice presented their objection, the whole point of which was that the Defender exceeded his mandate[20]. According to the Paris Principles, the ombudsman's mandate includes the issuance of an annual report and, if necessary, issuance of an extraordinary report. The Paris Principles also stipulate that the reports presented by the ombudsman and the infringements they contain must be discussed by the Parliament to be resolved[21] - a fact that is not taken into account by the RA Law "On Human Rights Defender".

The research administered reveals that there are certain problems in cooperation with state bodies. Difficulties were mainly noted in interacting with the Government, the National Assembly and the Police. In the former case difficulties were related to financial issues, in the latter - to the problem of mandate review.

In accordance with the Paris Principles the ombudsman's report must also contain a financial report to ensure public accountability and transparency, also stipulated by the Law, but not reflected in the report for 2007.

Defender's Office

According to Clause 1 of Article 23 of the Law the Defender recruits his staff to implement his activities, yet no procedure is prescribed and no reference to other provisions of the Law is made. The staff of the RA Human Rights Defender includes a secretariat, correspondence department, and a legal service that includes groups for rights of the military, protection of criminal procedural, social, economic, civil and cultural rights. The separate subdivisions are the information and public relations department and international relations department[22]. As follows from the data obtained, the currently existing of the Defender's staff and its statutes will soon be renewed. The draft has already been developed by the Defender and submitted for the approval.

The new structure and statutes call for the introduction of job descriptions, specifying the areas of competence of the staff members, as well as the hierarchy of positions, staff modifications aimed at optimizing the staff. The staff lacks the following professionals: lawyers, experts on international relations, journalists. As the staff members say themselves, the lawyers are particularly necessary.

In accordance with the Paris Principles, the ombudsman forms a staff (as stipulated by the Law), and he must act with sufficient transparency. A special procedure should be used for recruitment.

Yet it should be noted that there is no distinct recruitment procedure. The Defender's staff is quite closed for new staff members. No announcements are published if there are vacancies. The recruitment is made by the Defender through informal interviews. The most significant criterion in recruitment is the experience of dealing with the potential candidate

[20] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, pp. 12, 16.
[21] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, p. 28.
[22] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 4.

in the past. Yet this method contradicts the recruitment transparency, as required by Paris Principles.

According to Paris Principles, to effectively evolve their activities the Ombudsman's staff must be very qualified. They must also be constantly trained[23]. Overall, the staff noted the importance of the trainings, in particular, on human rights and public relations, yet preference is given to experience exchange with experts from other developing countries and practical job placements at some international institutions. It should be noted that the Head of staff assessed the role of training courses as quite low, since all such courses are detached from Armenian reality.

According to Amnesty International, the national ombudsman institutes must create opportunities for recruitment of such vulnerable groups as people with disabilities, women, ethnic minorities who, being well aware of the problems of their groups, may be neglected or underestimated by state bodies[24]. It should be noted that the Defender's staff is quite representative: it includes, refugees, people with disabilities, representatives of ethnic minorities.

Clause 4 of Article 23 of the RA Law "On RA Human Rights Defender" stipulates that the staff of the Defender are employed on short-term contractual basis. Yet this contradicts the norms of International Labor Organization, according to which the short-term contracts are signed with the specific project staff. Such contracts allow the employer to break the contract upon the end of its term with no substantial justification. It should also be noted that short-term contracts are quite demotivating. The contract is signed for a year, yet after its expiration the employer is not reevaluated or tested, the contracts are automatically prolonged.

Immunity

According to Clause 5 of Article 23 of the Law when on duty the staff of the Defender is immune, which is in accordance with Paris Principles. In June 2008 the RA Ministry of Justice proposed an amendment to the Law depriving the ombudsman's staff of immunity[25]. The Paris Principles establish the right of the ombudsman's staff to enjoy immunity that would ensure their implementation of their professional duty as well as guarantee the independence of the ombudsman's staff. This proposal was criticized as well as disapproved by the Venice Commission[26].

Partnership with Civil Society, NGOs and Expert Council

Paris Principles attach importance to the broad involvement of civil society in the institute of ombudsman and the establishment of the Expert Council which is also a guarantee for the development and endorsement of human rights and fundamental freedoms, as well as for the guarantee of diversity[27]. Meanwhile, Article 26 of the Law leaves the issue to the discretion of the Ombudsman. The reality is as follows. Overall, as the respondents say,

[23] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 14.
[24] Ibid, p. 6.
[25] http://ombuds.am/main/am/9/27/1765/
[26] Ibid.
[27] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 32.

the cooperation with the institutes of civil society is still at a low level, in particular, with the NGOs. Nevertheless, in the annual report of the Defender in 2007 the cooperation with the NGOS was quite highly assessed[28]. A relatively positive assessment was given to cooperation with media, too, mostly realized through press-conferences held 4 times a year. In special cases the Defender summons an extraordinary press-conference.

According to the Law, for consultations the Defender can set up an Expert Council. The interview with the key staff revealed that such a Council has already been established upon the initiative of the Defender, its members being representatives of NGOs. The number of the Council members is constant and does not exceed 20. The sessions of the Council are held two or three times a year. The Council is not seen as very effective, which is conditioned by the NGO sector in Armenia being underdeveloped.

Funding of the Human Rights Defender Institute

According to Article 24 of the Law the Defender and his staff implement their activities with funding from state budget. According to the statement of the Head of the Office, the funding of the national ombudsman is stable. Yet the budget allocated to the Defender and his staff is occasionally reduced with no substantiation by the National Assembly and Government, which runs contrary to Clause 4 of the same Article. It should be noted that the budget categories are generally acceptable, yet the amounts allocated are constantly reduced. In the opinion of the Head of the staff and other staff members of the Defender, the low pays are a reason for staff turnover. This situation does not reflect either the Law provisions or the Paris Principles, according to which the state should contribute and establish financially favorable conditions for effective activities of the ombudsman. Because of financial issues a number of problems arise with regard to Defender's activities, contrary to Paris Principles. Moreover, in the interviews it appeared that Clause 1 of Article 21 of the Law is violated, according to which the salary of the Defender must be equal to the salary of the Chairman of the RA Constitutional Court, and this is in compliance with the Paris Principles, yet far from reality.

Conclusion

The RA Law "On RA Human Rights Defender" and its practical application were subject to analysis. It is very important for all provisions of the Law to be implemented in practice and the Law be amended and improved. The Law is the basis and the guarantee for the Defender's activities, the more harmonious it is with Paris Principles, the more effective the activities of the ombudsman in the country will be.

- The Law must provide not only for the activities of the Defender in the human rights protection, but also their endorsement and awareness raising.

- The Law must stipulate a specific procedure for the nomination and election of the Defender, with the civil society being involved in the process.

- Being a mechanism that monitoring the implementation of the UN Convention on Children's Rights, the Human Rights Defender institute must provide for a children's center establishment.

[28] Annual report of RA Human Rights Defender, pp. 46-48.

- The Law must provide for a broader group of potential applicants, including human rights NGOs in it.

- The right to monitor trials should be prescribed by the Law.

- To ensure transparency of the Defender institute vacant positions must be publicly advertised, a distinct formal procedure should developed for recruitment, and the contracts should be signed for longer term.

- To ensure easy access for all citizens, regional representations of the Defenders must be made obligatory.

- The Defender must meet Expert Council member as well as other human rights and other NGOs more often, establishing a closer contact with them.

- The state must ensure appropriate funding for effective activities of the Defender.

- The law must be distinct in stipulating that the report of the Defender should be debated at the National Assembly and resolutions must be sought to eliminate the human rights violations noted in the report.

FREEDOM OF ASSEMBLY

In the ENP EU/Armenia Action Plan it is noted: "Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations". (Section 3 "Priorities for Action", Priority Area 2, Specific Actions).

At the same time, Clause 10 of the RA Government's resolution of July 19, 2007 regarding the implementation of ENP EU/Armenia Action Plan deals not with the amendment of the law, but rather with law enforcement, i.e., no improvement of the law is envisaged.

The RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" has contradictions to the RA Constitution.

1. The first controversy is the name of the Law itself. According to Article 29 of the RA Constitution, "everyone has a right to peaceful unarmed assembly". The concept of "assembly" as provided for by the Constitution in the title of the Law was transformed into 4 notions - "assemblies", "rallies", "marches" and "demonstrations".

2. According to Article 43 of the RA Constitution, the fundamental human rights and freedoms that include freedom of assembly can be restricted by the Law only, "if it is necessary to protect in a democratic state national security, public order, to prevent crime, protect public health and morals, constitutional rights and freedoms, dignity and reputation of other individuals". The remaining restrictions, listed in Clause 1 of Article 1 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", are definitely different from those provided for by the Constitution.

3. It follows from the last sentence of Clause 1 of Article 1 that the police and the state bodies may also restrict the realization of these rights. Meanwhile, Part 2 of Article 29 of the RA Constitution make a comprehensive list of the categories of individuals that can be restricted from exercising fundamental rights and freedoms, and by law only: servicemen in the Armed Forces, the Police, national security bodies, prosecuting agencies, as well as judges and members of the Constitutional Court.

4. According to Clause 2 of Article 5 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", "a public event can be organized and conducted in one or several kinds, as stipulated by this Law". Article 2 of the Law lists these kinds: assembly, rally, demonstration, march, spontaneous public event and others that include festivities, ceremonies, cultural and sports events. This conveys that the right to assembly may be restricted if held in a form, other than those listed in the law.

5. According to Clause 6 of Article 5 of the Law, "mass public event cannot start, if none of its organizers have come". This conveys that if the organizers of the event have failed to be present at it, its other participants may be deprived of the right to realize their constitutional right.

At 60th session of the Venice Commission (Venice, October 8-9, 2004) an opinion was voiced that the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" does not correspond to the demand that the laws on right to assembly must only be restricted through defining legal grounds for acceptable intervention of state bodies. Apart from this, the Law stipulated undue reasons for restricting the conductance of events. In its

Resolution 1405(2004) the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to amend the Law no later than March 2005 for it to be compliant with the standards of the Council of Europe and ensure the freedom of assembly in practice. The authorities developed a draft law on introducing amendments to the Law, consisting of 11 clauses. It was assessed by the experts of OSCE/ODIHR and Venice Commission whose conclusions coincided. Both expert bodies thought the draft submitted did have certain positive shifts, but at the same time there remain serious restrictions, and recommended that further steps be taken to improve the law. In comparison with the Law, adopted on April 28 2004, the prevailing part of the amendments proposed by the draft was seen by the Venice Commission (Strasbourg, February 8, 2005, Opinion 290/2004 CDL (2005)018) as amendments of editorial nature, not requiring substantial change and not influencing the rights and responsibilities of public event participants. The Venice Commission reaffirmed its opinion on the need to bring the Law in compliance with the requirements of the European Convention of Human Rights and Fundamental Freedoms, adopted at its 60th session (CDL(2004)42).

On October 4 2005 the RA National Assembly, having taken into account the recommendations of OSCE/ODIHR and Venice Commission, made certain amendments to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations". Yet, a number of recommendations were ignored. In particular Articles 7 and 9 keep the restrictions, qualified by the international experts as unacceptable.

Throughout 2005-2007 the bids to hold rallies, submitted to Yerevan municipality by both opposition parties and non-governmental organizations, were repeatedly declined on the basis of Clause 2 of Article 12 of the Law as “on the same day, at the same time and in the same place another event is being held”. Yet in the majority of cases no other event was held, or hastily some cultural event or a show for children and adolescents was staged.

On February 20, 2008 after the Central Electoral Commission announced the preliminary results of the presidential elections, the supporters of candidate Levon Ter-Petrosian, refusing to acknowledge the election results, started a termless sit-in protest action. The action was accompanied by crowded rallies and marches. In the early morning of March 1 the police violently dispersed the protesters. Thousands of opposition supporters gathered in the vicinity of Myasnikian monument. In a clash of protesters and the police in the early morning of March 2 ten people died, many were injured.

On March 1, 2008 by a decree of the RA President in Yerevan emergency rule was introduced for 20 days, during this period holding assemblies was prohibited. On March 17 the RA National Assembly introduced amendments to the Law that, contrary to positive expectations, made assemblies questionable.

Thus, Clause 3 of Part 4 of Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was narrated in new edition, according to which the competent body can prohibit holding public events, if it has reliable information that the events are “aimed at violent overthrow of constitutional regime, incitement of national, race, religious hatred. Endorsement of violence or war or can result in mass disorder or crime, harm the national security, public order, health and morals of the society, can infringe constitutional rights and freedoms of other citizens”. The new edition also says: "The information may be considered reliable, if the Police or the National Security Service at the RA Government have given their official assessment of it. The same procedure applies for the assessment by the same bodies of discontinuation of these restrictions”.

Moreover, the list of the terms entitling a competent body to prohibit the event has been expanded. Besides, the Law does not clarify where this information is available to the applicant and the public, whether it can be challenged. Whenever an application for an unwanted rally is submitted, this norm allows getting all the necessary “reliable information” from the competent body.

According to Part 6, inserted in this Article, if the events have resulted in mass disorder with casualties, the competent body can prohibit holding mass public events until the crime is investigated and the perpetrators are identified. This provision of the Law means that if during an event and as a result of mass disorder casualties occurred, holding say environmental rallies can be prohibited. Besides, this provision in essence gives the local self-government structures the mandate to introduce emergency rule, which runs contrary to the RA Constitution and international norms.

Part 1 of Article 10 of the Law has also been amended, omitting a provision that allowed to hold mass public event if it grew spontaneously from a non-mass public event.

The same Article was amended once again, stipulating a timeframe of at least five working days to notify the competent body about holding a mass public event (this timeframe earlier was three working days). At the same time, in Part 1 of Article 12 of the Law the term of notification consideration was prolonged: "The competent body considers the notification within 72 hours after its receipt, in the succession of receipt”. The notifications used to be considered the next day after their receipt by the competent body.

Clause 3 of Part 1 of Article 13, according to which the competent body can prohibit any public event on the grounds, stipulated by Article 9 (described above). This practically means a possibility to prohibit any event.

Thus, the Republic of Armenia not only failed to comply with its commitment to reform the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, but also, with its restrictive amendments, introduced on March 17, 2008, made a serious retreat from democratic principles.

After March 17, 2008 dozens of bids, submitted to Yerevan municipality by the opposition parties and non-governmental organizations, were declined on the basis of restrictions in Article 9 of the Law. Thus on May 6, 2008 the Helsinki Committee of Armenia made an application to Yerevan municipality to hold a march in commemoration of Levon Gulian, dead in the RA Police, on May 12. The notification was declined by the Yerevan municipality proceeding from Clause 6 of Article 9 of the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. The response from the municipality was received by the organization on May 13 only, yet on May 12 the Police impeded the march.

On March 28, 2008 in a joint conclusion 474/2008 of the Venice Commission and OSCE/ODIHR the adopted amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” were strongly criticized and qualified as inappropriate. It was recommended to abolish some of the provisions of the Law, as well as introduce amendments enabling challenging decisions in court in certain cases.

On April 15, 2008 by the results of a discussion at the National Assembly of the Law “On Amending the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” with the involvements of Finola Flanagan, Simona Granata-Menghini (Venice Commission), Denis Petini, Niel Jarmani (OSCE/ODIHR), RA NA Chairman Tigran

Torosian, RA Minister of Justice Gevorg Danielian, RA President's Assistant Gevorg Mherian and the RA NA Chairman's Councilor David Melkonian, the parties reached an agreement that a new draft of five clauses will be developed and submitted to Venice Commission and OSCE/ODIHR before April 25, 2008.

Further on, on the basis of the conclusion of international experts this draft must be introduced to the NA agenda.

It was proposed:

- to amend Clause 3 of Part 4 of Article 9 of the Law, according to which the security threats must be immediate (see above), as well as stipulate that the official conclusion of the Police or National Security Service must be justified;

- to exclude Clause 6 of the same Article, to provide for a possibility to challenge the ban on the event in the court in Article 9;

- to add the clause on the commitment to consider the notification within 72 hours into Part 8, Article 12, as recorded in Part 1 of the same Article;

- to restore the possibility to hold a spontaneous public event without a notification lasting not more than 6 hours with regard to a specific phenomenon or event.

In Clause 12.3 of the Resolution of the Parliamentary Assembly of the Council of Europe 1609 "Functioning of Democratic Institutions in Armenia" of April 17, 2008 it was noted: "The amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect."

On June 11, 2008 the Parliament of Armenia adopted another law on introducing amendments to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations". The following amendments were made:

1. Clause 3 of Part 4 of Article 9 was amended to include immediate threat of violence or real danger (see above);

2. Part 6 of Article 9 is abolished.

3. Possibility to challenge events in court is stipulated. In Clause 3 of Part 4 of Article 9 it was stipulated that the official assessment of the Police or the National Security Service must be justified.

4. In Part 8 of Article 12 a clause on considering the notification submitted within 72 hours is added, recorded in Part 1 of the same Article.

5. Article 2 is addended with a definition of "spontaneous public event".

6. It follows from Clause 1 of Article 10 that no notification is necessary for a spontaneous public event.

7. Article 9 is addended by Part 6.1, according to which no spontaneous public event can last more than six hours. Any subsequent event on the same occasion cannot be

considered spontaneous and must be held in accordance with the defined procedure of notification.

Despite the fact that the recommendations of the Venice Commission and OSCE/ODIHR were mostly realized (except for one), the Law did not come back to its previous version. Some restrictions introduced on March 17, remain in force. In Clause 4.1 of Resolution 1620 of June 25, 2008 the PACE welcomed the amendment of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" in accordance with the standards of the Council of Europe, stating in this regard the assumed commitments are fulfilled. At the same time, in Clause 4.2 the PACE confirmed its requirement that the freedom of assembly in Armenia must be guaranteed in practice. For the reason PACE insists, the Resolution noted, that the Armenian authorities, according to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" guaranteed that no unjustified restrictions be applied with regard to opposition events, in particular, in terms of rally venues.

Despite this, dozens of bids by opposition forces were declined by Yerevan municipality on the basis of Article 9. In the second half of 2008 the representatives of the opposition challenged the bans of the Yerevan municipality with the Administrative Court over 40 times. In the vast majority of cases the opposition suits were not secured. There were two exceptions to this: on September 3 the Administrative Court allowed the conductance of "Dashnaktsutiun" party's rally, then a part of the ruling coalition, and on September 8 the suit of the Armenian National Congress was partly secured - the rally was allowed but not the march initially planned. Contrary to the municipal bans, the opposition held 4 rallies that went in peace - on June 20, July 4, August 1 and September 26, 2008.

Conclusion

While the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" was acknowledged by the Council of Europe as corresponding to the European criteria, it is of more restrictive than regulatory nature. This is true in particular of Article 9. The greatest concern is caused by its practical application. The competent body with no serious justification impedes the conductance of rallies and marches, in particular. The practice of challenging the bans with the court is not satisfactory either, as the court does not ensure the principles of fair trial and proportional punishment, stipulated in Articles 6 and 11 of the European Convention of Human Rights, respectively.

Recommendations

1. To amend the Law "On Holding Assemblies, Rallies, Marches and Demonstrations". To revise Article 9, in particular, abolish Clause 3 of Part 1.4

2. To make the procedure for court challenges more effective

3. To commit the competent body (Yerevan municipality) to placing all the bids for holding assemblies on the web site.

RESPECT FOR THE RIGHTS OF ETHNIC MINORITIES

The ENP EU/Armenia Action Plan notes: "(...) Ensure respect for the rights of persons belonging to national minorities" (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

According to 2001 census, ethnic minorities are 2.2% of the total population of Armenia. There are 11 ethnic communities in Armenia: Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian and German. The biggest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), Kurds (1,519). The greatest part of these communities was formed in the first half of the 19th century. Apart from Yezidis, other communities are concentrated in cities, mostly in Yerevan.

None of the ethnic minority groups dominates any of the territorial units of Armenia. They all are dispersed all over the country. Upon its accession to the Council of Europe Armenia did not assume any special commitment with regard to ethnic minorities. No international document voiced any serious concern with regard to the rights of national minorities. This is due to the fact that ethnic minorities of Armenia make no political demands.

Individual complaints are occasionally received - with regard to pasture use, property, unfair trial, yet such complaints are characteristic of the whole population of Armenia and are not directly related to ethnic discrimination.

During the meetings with representatives of ethnic minorities discontent was mostly heard with regard to lack of funds for more active cultural life, notwithstanding the fact that the RA Government does allocate certain amounts to this effect.

The tense political situation in the country that affected various social groups after the presidential elections of February 2008 does not seem to have directly affected the minorities. Ethnic minorities refrain from being actively involved in domestic politics.

Ethnic minorities are represented in local self-government. In the National Assembly of Armenia there is a deputy of Greek descent, one of the leaders of a ruling party, the Republican Party of Armenia. The biggest community, the Yezidis, is not represented at the parliament, yet they were present in the election party lists of several parties. The absence of Yezidis in the parliament may be explained by the lack of organization within the community. Meanwhile, the correctly organized campaigning can enable Yezidis to have several MPs.

Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

According to Article 14.1 of the RA Constitution: "Everyone shall be equal before the law. 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 ".

Besides, Article 41 of the Constitution says: "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."

Article 1 of the RA Law “On Language” guarantees free use of minority languages in the Republic of Armenia, and Article 2 - a right to be educated in the mother tongue. According to Article 4 of the RA Law “On Language” in official documents, stationery, stamps of ethnic minority organization they can use their mother tongue along with the state language. Article 8 of the RA Law “On Basis of Legislation on Culture” provides that the state “contributes and assists establishment of such conditions that will return the cultural identity of various national minorities”. Article 15 of the RA Criminal Proceedings Code guarantees a state-funded translator’s services to the participant in a trial that do not speak Armenian.

There is no Law on national and ethnic minorities, despite the appeals made by NGOs and political parties since 2003 regarding the need to adopt one. Throughout at least five years various legislative initiatives kept being developed, yet none of the drafts was adopted as a basis for a law.

In 2008 to ensure the rights of ethnic minorities, a number of steps were taken in Armenia[29]:

- The RA Ministry of Culture developed a concept of protecting, retaining and developing the non-material cultural heritage, in which a lot of significance is attached to the issues of protecting and developing the culture of ethnic minorities.

- The volume and the duration of broadcasting in Assyrian and Greek languages on Public Radio of Armenia was increased.

- With state funding, the medieval Jewish cemetery on the bank of Eghegis river was renovated.

- The RA Ministry of Culture organized a republican festival of culture of ethnic minorities.

- The budget of Ministry of Culture has a separate line for funding publication of literary works by ethnic minority writers.

- The expert group of the Council of Europe monitored the process of implementation of European Charter of Regional Languages. Within the monitoring a scientific conference was held, giving floor to discussion of legal and cultural aspects of the problem.

[29] Information is provided by the Department of National Minorities and Religion at the RA Government.

LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.

REFORMS OF LEGAL AND JUDICIAL SYSTEM

The ENP EU/Armenia Action Plan stipulates the following steps to be taken in this domain:

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly (during 2006);

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;

- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006);

- Improve the legal and particularly free legal aid system by improving and , strengthening the system of advocates and develop a school of professional practice for young graduates in law;

- Establish administrative courts (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Current Situation

Amendments made to the RA Constitution on November 27, 2005 launched the implementation of the second stage of the legal and judicial reform. The amendment of the Main Law was aimed to improve the existing legal system, within the concept set as a basis for 1995 Constitution and condition by the principle of separation of powers.

The general analysis of the amendments made to the Constitution in 2005 allows stating the following:

- the institute of the Constitutional Court gained more detailed regulation and became more democratic;

- the legal status of the Court of Cassation was changed;

- additional guarantees for the independence of judges were recorded;

- the limits of constitutional basis for justice were expanded and some of the fundamental principles were prescribed in greater detail;

- the procedure for the formation and activities of the Council of Justice was reconsidered, etc.

Main Objectives

Despite the fact that after the Constitutional reform a number of new legislative acts were adopted and numerous amendments to the laws in force were made, the issue of how compliant the legislative amendments are to the spirit and content of commitments, stipulated by ENP EU/Armenia Action Plan, remains open.

Moreover, looking in retrospect and analyzing the developments of February-March, 2008, one can conclude that most of the amendments were aimed at specific practical targets.

Judicial Power

Current Situation

The primary objective of the reforms was the establishment of unified, full-fledged and independent judicial power, and this consideration lay at the heart of the whole concept of judicial and legal system. This concept was realized through the Judicial Code, adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resolved a number of important and crucial issues. In particular, for the first time the relations, linked to organization and activities of the judicial, were for the first time regulated in a systemic form. Previously these were regulated by separate law - the RA Laws "On the Council of Justice", "On Trials", "On Legal Status of the Judge". Specialized - criminal, civil - courts and the Administrative Court was set up. The role and the significance of the Court of Cassation in the judicial system of Armenia changed; presently its main function is to ensure uniformity of law application and to contribute to the development of the law. Self-regulation bodies for the judicial power were formed, too - the General Conference of the RA Judges and the Council of Court Chairmen, a school has been establish to train judge candidates (Court School), that is to ensure the competence and appropriate training for future judges.

Main Issues

At the same time the legal and judicial reform in general and the Judicial Code in particular did not solve the most important of the urgent issues - creation of real independence guarantees and the practical application. The steps directed at strengthening the independence of the judicial system did not ensure the real independence of certain judges. As a result, within the de jure independent judicial system there are de facto dependent judges, which are illustrated by examples on both legislative and practical level.

Thus, one of the main guarantees for ensuring the independence of judicial system and the judges was to be the Council of Justice, entitled with a new status by the Constitution. Yet the analysis of the legislation shows this body, and hence, the whole judicial system, remains under the influence of the RA President.

This can be proved by several vivid examples:

- According to the Law, the Council of Justice is competent to make up the lists of candidate judges, yet this list is ratified by a decree of the country's President (Part 4 of Article 117 of the RA Judicial Code).

- The lists of promotion of judges of special primary courts and courts of appeals are also made up by the Council of Justice through a secret ballot, yet the President of the country leaves the candidates he finds acceptable on this lies, too and adds new candidates to the list within ten days. If the list is not addended it is considered to be declined (Part 9 of Article 137 and Part 8 of Article 138 of the RA Judicial Code).

- A similar mechanism is stipulated for filling in vacancies on the courts of general jurisdiction. Upon the consent of the candidate the Chairman of the RA Court of Cassation presents his candidacy to the Council of Justice. Unless the procedures stipulated by the Code are violated, the Council of Justice gives a positive opinion through an open ballot. In the case of a positive opinion, the candidacy is presented to the President of the country. If the President fails to appoint the judge this candidacy is considered rejected, it is excluded from the candidate judge list and a nomination to the vacancy is made anew (Parts 9 and 10 of Article 123 of the RA Judicial Code).

It is not surprising that the judges appointed by the abovementioned procedure mostly came up with verdicts of guilty on the criminal cases instituted on the events of February-March 2008, and the 1-2 verdicts of non guilty can be considered a negligible exception. Therefore, one of the conclusions of PACE Resolution 1609 - "despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process" - may be considered fully compliant with the reality.

Another example is the statistics of detention on the cases above - the motions on detainment and its prolongation filed by prosecutors and investigators were almost 100% secured. In Resolution 1609 it was also noted that the courts did not display critical approach to the need for preliminary detainment, did not duly consider the arguments of the defense attorneys, which does not meet the requirements of the European Convention of Human Rights and Fundamental Freedoms and once again raises questions regarding the independence of the judicial.

Procuracy

Current Situation

The constitutional reform was aimed at creating not only an independent judicial, but also a procuracy, independent from all branches of power. The system was supposed to be profoundly changed, as shown in the new RA Law "On Procuracy", adopted on February 22, 2007.

In the new Law "On Procuracy" the following was defined: main principles of procuracy organization and activity; the new procedure for appointing the RA General Prosecutor (upon a proposal of the RA President is appointed by the National Assembly for six years, and can be dismissed by the National Assembly - in the cases specified by the law - with a majority of votes); the structure and the system of the procuracy; the procedure and the conditions of prosecutor's subordination, their appointment and dismissal; immunity, material and social guarantees of prosecutor's activities. Yet the main accomplishment of the Law was certainly the separation from the procuracy of the criminal investigation function, as a result of which this body at the pre-trial investigation had to predominantly concentrate its efforts on the implementation of the control over the legitimacy of the investigation and preliminary examination.

Main Issues

Nevertheless, the developments showed there was no real intention to free the procuracy from investigative functions. Through consistent legislative amendment the procuracy not only restored the former positions, but also gained new privileges.

The first step was the adoption of the RA Law “On Special Investigative Service”. This Law established the new formally independent body in charge of investigating criminal cases. The head of the service is appointed by the RA President upon a proposal from the General Prosecutor.

Appropriate amendments were made to the RA Criminal Proceedings Code, too. According to the amendments the Special Investigative Service was to undertake the preliminary investigation on Articles 149, 150, 154.1, 154.2 of the RA Criminal Code on the cases dealing with the involvement in a crime of the leadership of the legislative, executive and judicial branches of power, of people on special state service, abusing their official positions, as well as dealing with elections.

Besides, a separate provision was made to the effect that the RA General Prosecutor can transfer those criminal cases from other investigative bodies to the Special Investigative Services that involve accomplicity or crime of the officials above as well as the cases in which these individuals are victims (Part 6 of Article 190 of the RA Criminal Proceedings Code).

Further on it became clear that all the loud cases on the events of February-March 2008 under various pretexts were concentrated in the Special Investigative Service, with the whole complex of legislative “innovations” used “successfully” by the RA Procuracy for a total control and investigation in the right direction, in both individual cases and against certain defendants. In fact the previous mandate of the procuracy was restored, with no serious commitments and responsibility.

Access to Justice

Current Situation

The solution of issues related to access to justice, in particular, the establishment of effective mechanisms to ensure free legal aid is a logical component of the whole legal and judicial reform process. The experience of the structures, established at the first stage of the legal and judicial reforms, their benchmarking against the world experience and the study of the legal practice showed that the free legal aid as a way to ensure access to justice is only possible through structural change. It is to this effect that the draft law “On State-Funded Legal Aid” was developed, with the support of Open Society Institute, and submitted to public debate.

Main Issues

Yet another solution was preferred in the course of the legal and judicial reform. In particular, through the RA Chamber of Advocates man attempt was made to regulate a whole domain of public relations outside legal framework by one amendment only, introduced to the RA Law “On Bar”.

This prospect is characterized by a whole number of negative characteristics. First of all, specific criteria of determining inability to pay are lacking, as well as the effective mechanisms for proving the necessary aid. This will have complicated and very negative consequences for the beneficiaries involved.

Besides, the real number of the public attorney of the Public Attorney Office (34, 7 of them working part-time) cannot objectively ensuring free legal aid to vulnerable social groups, in particular in the regions.

Finally, this initiative, being insufficient and completely ineffective, can be presented as an example of state implementation of the commitments to ENP.

Solutions Proposed

Analysis of the problems above allows concluding that the legal and judicial reforms have not corrected most of the existing shortcomings, and in some cases also created new problems, allowing complex and consistent approach. In this regard it is necessary, in particular:

1. To make complex amendments in the RA Judicial Code, aimed at ensuring real independence of judges;

2. To amend the RA Criminal Proceedings Code and the RA Law “On Special Investigative Service” so as to de facto excludes the investigation of criminal cases by the procuracy, as well as the total control of the RA General Prosecutor over the Special Investigative Service;

3. To take productive steps to have adopted by the RA National Assembly the draft law “On State-Funded Legal Aid”, currently in circulation, and have appropriate amendments made in other legal acts.

CIVIL SERVICE DOMAIN

The ENP EU/Armenia Action Plan stipulates the following regarding the civil service reform:

- Establish a unified and transparent system of recruitment for civil servants and develop incentives to promote public integrity through the establishment of merit-based payment structures. Promote the improvement of coherent civil service policy mechanisms and strengthen administrative capacity;

- Promote a merit-based system of payment for civil servants and introduce a rational system of evaluation of work performed;

- Support the improvement of civil service system activities and institutions (job advertisement/selection, appraisal, civil service passports etc.) and bring them in line with European standards;

- Support the improvement of educational and training programs for civil servants (in particular those related to computer and management skills, foreign languages, ethics code etc) in accordance with European standards;

- Establish a coordination network between the relevant authorities of civil service systems of EU Member States and Armenia, to ensure harmonization of legislation (and other relevant activities) and exchange of best practices and data (Section 4 "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform").

In Section 5 of the RA Government Resolution No. 927 of July 19, 2007 on the implementation of ENP EU/Armenia Action Plan, the following priorities are defined:

1. To improve the RA civil service and mechanisms for having a unified policy;

2. To create a single list of professions pertaining to the public administration in Armenia;

3. To develop and introduce a rational system of performance evaluation for the civil servants;

4. To improve the merit-based remuneration system for civil servants;

5. To improve the Ethical Code of the civil servants and its compliance;

6. To ensure incessant renewal of job descriptions for civil service;

7. To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

The reform process in this domain received much attention in the Armenia section of the current report "Implementation of the European Neighborhood Policy in 2007", presented by the Committee of European Communities in Brussels in April 2008. "While no comprehensive evaluation was made of the civil service, nevertheless, steps were taken to improve the system, with particular emphasis made on ethical code, anti-corruption

measures and employment procedures. The process of defining a unified legal norm of civil servants has not been completed yet", - the report noted in particular.

The present research aims to disclose the situation in terms of implementation of priorities above, the results, the reasons that impede their full-fledged and effective implementation.

To obtain information, the following methods were used in the course of the research: document research, in-depth interview or focus group discussion.

Thus, the first method was used to study the following legal, methodological and information documents: the RA Law "On Civil Service" , the RA Law "On Remuneration of Civil Servants"; the draft law "On Introducing Amendments to the RA Law 'On Civil Service' " (July 21, 2008); draft law "On Public Service"; resolutions, current reports, information from the RA Council of Civil Service, etc.

In-depth interviews were administered (personal and group) with the deputy chairman of the RA Council of Civil Service and the Council staff - the heads of subdivisions engaged in the research issues and individual experts. A special questionnaire was developed for in-depth interviews.

The interview participants were offered to give a quantitative and qualitative assessment of the process of the implementation of priorities for 2007-2008 and its results. To this effect we developed certain quantitative and qualitative indicators.

In particular, in terms of quantity the experts were offered to assess the implementation of each of the 2007 priorities by a three-unit scale, where 1 stands for "fully implemented", 2 - for "partially implemented" and 3 - for "nothing is done".

To make a qualitative assessment the experts were offered:

1. To list all steps taken to implement the priority during the reporting period;

2. To describe the rationale, the principles of the abovementioned steps, the criteria of their implementation, changes made, their direction, nature, etc.;

3. To present the reasons, for which the steps planned were not taken or were not fully implemented.

Priority 1: To improve the RA Civil Service and mechanisms for having a unified policy.

The following steps were taken:

To ensure transparency all the agencies have public information departments set up, in which job descriptions have been developed for 55 out of 80 civil servants. The Procedure for Freedom of Information and Provision of Information in Civil Service is being discussed currently. Training of all staff of public information departments was made. Proceeding from the positions in civil service, in the first (special) departments of all agencies the list of staff having access to secret information has been developed, with the level of acceptable access to such information being defined.

All agencies have unified departments of human resource management.

Aiming to overcome corruption in public administration, income statements have become mandatory for all civil servants - in the first years after civil service system was introduced not all classes of civil servants had such an obligation. Notably, the statement of incomes is a necessary but insufficient condition to overcome corruption in public administration.

The draft law “On Public Service” stipulates the introduction of the following new institutes: to expand the Code of Ethics of Civil Servants; the information institute; the notion of conflict of interest; the notion of gifts to officials at duty (in particular, types and cost of the permissible gifts to officials, the circle of interlinked individuals, etc. should be regulated - this requirement is also made by GRECO).

In terms of ensuring unified recruitment mechanisms as well as their examination, a pilot management information system has been developed with the assistance of the Yerevan Institute of Mathematical Machines to hold competitions. It is expected that this system will be used throughout administrative system. Today all human resources management departments perform 90% of their functions through electronic management systems.

By a unanimous opinion of experts, all measures taken to realize priority 1 either have already been taken or are being taken.

The failure to implement some of the recommendations of the priority is due to the fact that the RA Law "On Public Service” has not been adopted yet.

Priority 2: To create a single list of professions pertaining to the public administration in Armenia.

The following steps were taken:

The RA Government has approved a list of positions. While this list, in accordance with the market demands, is being reviewed every year, it still does not include all the diversity of professions necessary in public administration.

After the formation of civil service system a unified list of professions in public administration was to be developed. To this effect the following steps were made:

- the need to create a unified list of professions in administrative system was justified;

- the professions, necessary for various subdivisions, were subdivided into groups;

- the task of specifying requirements for special education for experts in various subdivisions was defined to finalize job descriptions (thus, for example it was hard to define the education background necessary for a HR manager, etc.);

- in the development of a single system of professions, the real requirements of the market and analysis of data on actual basic education of civil servants, employed in public administration from 1960-1970s, archive check-up of the data reliability, as well as the development of mechanisms to ensure effective application.

The problems, related to the implementation of this priority, require knowledge, its solution is impossible through the efforts of the Council of Civil Service, therefore, with no additional funding the single list of professions for public administration is impossible to develop.

In the opinion of experts, this priority was assessed as mostly unfulfilled.

Priority 3: To develop and introduce a rational system of performance evaluation for the civil servants.

The following steps were taken:

Upon the initiative of the RA Government it was proposed to develop a new system, according to which as a main performance evaluation criterion the following indicators are taken:

- volume of work;

- time of implementation;

- quality (compliance with the established quality norms);

- contribution (share or value in the working programs of the subdivision);

- nature (mechanical, semi-mechanical, creative, etc).

In 2007 the Yerevan Institute of Mathematical Machines developed an electronic system for collecting and processing the data necessary to evaluate performance. This was done upon the order of the Council of Civil Service and with the assistance of the World Bank. Upon the initiative of the RA Government another performance evaluation system was developed, too, that is being tested at the staff of the RA Government and the RA Ministry of Economy. Yet the new performance evaluation systems have not been introduced as yet.

The establishment of the general system in accordance with the indicators above calls for the development of qualitative indicators of performance evaluation (including methods of measuring quality, nature, contribution, etc.), which also requires knowledge and skills. It is impossible to solve this problem by the efforts of Civil Service Council only, it also requires financial assistance from outside.

Priority 4: To improve the merit-based remuneration system for civil servants.

In 2007 the RA Law “On Remunerating Civil Servants” was amended, according to which the base salary (the part independent of the years in service) of all civil servants was raised, yet this was not linked to the new evaluation system and did not ensure the differentiation of remuneration of civil servants on the basis of criteria specified.

The introduction of a new system of merit-based remuneration of civil servants was late because no rational performance evaluation system was adopted.

Priority 5: To improve the Ethical Code of the civil servants and its compliance.

Since the draft law “On Public Service” has not been adopted yet, no ethical code has been put into circulation, no sub legal normative acts have been developed, ensuring the compliance with ethical rules.

Despite this, in terms of ethical code improvement certain progress has been recorded owing to draft law “On Public Services”. Before that the Ethical Code of Civil Servants was not stipulated by law, and was only approved by the Council of Civil Service (resolution of No.13 of May 13, 2002). The establishment of ethical norms as a law:

- will reinforce their mandatory implementation as will stress their legal, normative nature, regulated by the law;

- will allow overcoming the unilateralist that exists in several codes of ethics in force. Thus, for example, “the civil servant, out of duty, should avoid other business contacts with people in conflict with state authorities”.

At the same time the draft has some unclear definitions. In particular, the notion of “legal policy”, mentioned in Clause 1 of Part 1 of Article 22, the criteria of “public interest” are also uncertain.

Priority 6: To ensure incessant renewal of job descriptions for civil service.

This is an incessant and permanent function of civil service system that does not call for specific timeframes, unless required by the newly adopted piece of legislation. Overall, changes were introduced in over 4,300 job descriptions.

Priority 7: To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

Instead of a radical change of the specialized legislation a more general decision was made - to develop a draft law “On Civil Service” with an expanded domain of regulation, including also civil service. Yet the adoption of the law was late, for this reason some of the institutional changes aimed at harmonization with the EU countries cannot as yet be implemented.

Certain steps were taken to exchange experience with the EU member countries.

Overall, in the domain of civil service throughout the reporting period the required priorities of ENP Action Plan can be qualified as “partially in line”.

The implementation of the majority of requirements is largely related to the draft law “On Public Service”. The delay in adoption of the draft to a certain extent is conditioned by active discussions, related to its comprehensive nature, since the domain of its regulation includes most crucial relations not only in terms of civil services, but also state and municipal administration.

In the opinion, of the vast majority of experts in civil service, with the adoption of the law “On Public Service” many of the problems of this sphere will be resolved or preconditions will be in place to solve many issues that are in cause-and-effect relationship.

FREEDOM OF SPEECH,
MEDIA AND INFORMATION

The ENP EU/Armenia Action Plan contains the following requirement: “Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” (Section 3 “Priorities for Action”, Priority Area 2).

Section 4 “General Objectives and Actions” also considers this sector. Clause 4.6.3 “Information Society and Media” of Sub-Section 4.1 “Political Dialogue and Reform” of Section 4 “General Objectives and Actions” says:

“- elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-Signatures), e-Government, e-Health, e-Learning, e-Culture;

- work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;

- work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;

- switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.”

The current report "Implementation of the European Neighborhood Policy in 2007” by the Committee of European Communities, section regarding Armenia, reads as follows:

“Measures have been taken to approximate the legislation on freedom of speech to the international standards: the amendments made to the RA Law “On Television and Radio” were aimed at ensuring balance in the National Commission on Television and Radio. Until the year 2013 the National Commission will be supervised by the President, after which the number of Commission members elected by the National Assembly will be equal to the number of members appointed by the President. The board members of the Council of Public Television and Radio Company are appointed only by the President. In July 2007 the National Assembly turned down two draft laws imposing restrictions on programs of international broadcasters. Permanent absence of independence of the regulatory bodies and insufficient informational pluralism still remain causes of concern. The RA Law “On Freedom of Information” is not fully applied yet, namely with regard to recording, classification and storage of information. During the presidential election campaign, a number of broadcasters were exposed to tax inspection, which gave grounds to suspect deliberate pressure exerted on them.

According to the provisions added to the Criminal Code of Armenia in April 2007, hindering the professional activity of journalists is persecuted. But self-censorship, violence and pressure on journalists are still practiced. Libel and insult have been partially decriminalized. Still, libel and "insulting a government representative" are punished also by imprisonment."

Having analyzed fulfillment of the obligations specified in the ENP EU/Armenia Action Plan, Yerevan Press Club (YPC) came to the following conclusions.

Broadcasting Legislation and Practice

On February 26, 2007 the National Assembly of Armenia adopted the RA Laws "On Introducing Amendments to the RA Law 'On Television and Radio'" and "On Introducing Amendments and Addition to the RA Law 'Regulations of the National Commission on Television and Radio'". But, as it has recently become traditional, the Laws were discussed and adopted hastily, through rapid procedure.

The argument that the need to bring the legislation into accord with the amended Constitution called for a rapid procedure does not hold water. Over a year had elapsed since the adoption of the amendments to the Constitution, and both the governmental and the parliamentary structures had enough time to hold discussions, hearings, to study the proposals submitted, to get expert evaluation. Moreover, in September 2006 the Government put into circulation a more comprehensive draft law that was rejected by the National Assembly, due to the efforts of the civil society and journalist community. Thus, the Government had plenty of time to discuss the draft law with the interested organizations since it was just the shortened version of the previous one.

After adoption of the above-mentioned Laws, the YPC made a statement, which covered an opinion regarding these Laws. Namely, it was stated that: "The amendments to the broadcasting legislation (...) do not reflect even the positive stipulations of the amended Constitution. Firstly, the proportion of the members of the regulatory body (the National Commission on Television and Radio), appointed by the President and elected by the Parliament, as provided for by the Main Law, will, following the amendments, only be reached in 2011 (...). Secondly, the amendments do not ensure the public and political diversity in NCTR composition: in accordance with the procedures proposed, the decision about the appointment of NCTR members from NA will be made by the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President. In other words, the regulatory body, like before, will be formed solely by the political forces at power, and in this regard the amended legislation does not introduce any significant novelty. Thirdly, like before, the involvement of the public in NCTR formation and the transparency of its decision-making is not ensured." The YPC also stated that remaining subdivision into the paid (that is, the full-time NCTR members - the chairman and the vice chairman) and the unpaid members conditions huge gap in their competence and violates the principle of collegiate decision-making. And finally, according to YPC statement: "The expansion of the NCTR competence and inclusion of the public broadcaster into it, as stipulated by the amended Constitution, did not entail the description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio in broadcasting legislation."

Above two years have passed since amending the above-mentioned Laws. In April 2007 the tenure of 3 NCTR members expired. According to the law, two persons were to be appointed to this body (the number of the NCTR members changed from 9 to 8). On April

7, 2007 the President of Armenia appointed one National Commission member (Grigor Amalian was reappointed as a member of the NCTR and later on as its Chairman), though the National Assembly should have been the first to elect NCTR member, since the amendments to the Law read as follows: “In case of expiry of the National Commission members’ tenure or early termination of their powers, the vacancies shall be filled first by the National Assembly and then by the President of the Republic.” Still, pursuant to the same amendment: “If one party appointing (electing) a member to the National Commission fails to appoint (elect) its member, this will not deprive the other party appointing (electing) a member to the National Commission of its right to fill in its vacancy.” As of December 31, 2008 the National Commission had not appointed its member, moreover, it did not include this issue on the agenda of its sessions. The tenure of three of the remaining 6 NCTR members expires in 2009 (thus, according to the above-mentioned principle of succession, two of them shall be elected by the National Assembly and one - by the RA President). The tenure of the other three members expires in 2011 (accordingly, two members shall be appointed by the President, one - by the NA) and if the NA remains disinterested in this issue, the amendments made to the Constitution and the laws will lose their significance and the activity of the NCTR will be rendered less efficient.

On June 27, 2007 at the extraordinary session of the RA NA the Draft Laws “On Introducing Amendment to the RA Law 'On Television and Radio'” and “On Introducing an Addition to the RA Law ‘On State Duty’”, initiated by the RA Government, were brought up for consideration. They were immediately called by experts draft laws on stopping the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty in Armenia. The first draft law stipulated prohibition of the activities of other broadcasters on the frequencies held by the Public TV and Radio Company. The second one specified a state duty of 70,000 AMD for “each issuance of a program cycle of the national editorial office or a service of a foreign media by the TV and Radio companies of the Republic of Armenia”. Naturally, adoption of these laws would put an end to broadcasting of Armenian Service of Radio Free Europe/Radio Liberty by the Public Radio of Armenia. Broadcasting of such programs by private companies would become unprofitable.

What issues, vital for the country and the society, are these two draft laws to solve that they had to be necessarily considered at an extraordinary session, instead of being included into the agenda of the ordinary session, following all the procedures that the law provides for? The draft authors have not presented any convincing arguments as to the urgency of their adoption at this very moment.

In this case again, for many times already has the Government hastily submitted draft media-related laws to the National Assembly - without consulting the civil society, media representatives, experts, even without the opinion of the appropriate parliamentary commission. These draft laws did not solve any vital problem for the country and the society, therefore, it is not clear why it was necessary to consider them at an extraordinary session. The draft authors did not present any convincing arguments as to the urgency of their adoption at that very moment.

These draft laws caused a wave of protest since, as it was mentioned in the statement of a number of NGOs, membering in Partnership for Open Society initiative, “analysis of the draft laws, presented to the NA, shows that they are primarily directed against the only broadcast medium out of the control of the RA authorities - the Armenian Service of Radio Free Europe/Radio Liberty, because their adoption in essence will stop the broadcasting of the programs of the Service on Armenian radio waves”.

On July 3, 2007 the draft laws were not adopted due to lack of quorum: 65 deputies took part in the voting, whereas 66 votes were necessary for quorum. Nevertheless, since September 1 the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty on the Public Radio of Armenia were stopped by the initiative of the Council of Public TV and Radio Company. On July 6 the Council of Public TV and Radio Company resolved to stop airing the programs of local and foreign broadcasters on the public TV and radio from August 9. This decision affected not only Radio Liberty: in August the broadcasts of "Tsayg" TV company of Gyumri on the 6th VHF that the TV company had been using jointly with "Shirak" public TV was stopped. The same is true for the program of "Mir" Interstate TV and Radio Company on the Public Radio of Armenia. The broadcasts of the Radio Liberty Armenian Service is made on the frequencies of "ArRadioIntercontinental". This private radio company is aired in Yerevan and in some other regions of Armenia. According to the representatives of the Armenian Service of Radio Liberty, changing the broadcasting company resulted in a significant reduction of the potential audience.

In the years 2007-2008, an example of governmental pressure on media was the campaign against "GALA" TV company of Gyumri. On October 22, 2007 Vahan Khachatrian, the owner of "CHAP" LLC - founder of "GALA" - made a statement regarding the attempts of various power agencies to exert pressure on TV company. The document stressed the infallibility of the TV channel's stance and the readiness to prevent any attempt of intervention into its editorial policy. The need to make such announcement was caused by the fact that after broadcasting by the company of the speech of RA First President Levon Ter-Petrosian at an event, dedicated to Armenia's Independence Day, September 21, different state bodies tried to exert pressure on "GALA", demanding to stop broadcasting speeches of the opposition representatives. A week after the statement of Vahan Khachatrian, the RA State Tax Service started check-up at "CHAP" LLC. Upon the end of the audit the RA State Tax Service reported the violations revealed. In particular, this referred to concealed amounts of TV advertising. Through a motion of the tax officers on December 3, 2007 the property and finance of "CHAP" were taken into custody. On December 17 the court hearings of the suit of the Gyumri Tax Inspection versus the founder of "GALA", "CHAP" LLC, started and were interrupted on December 18 after the court accepted the counter-claim of "CHAP" demanding to abolish the act on the results of audit. On March 19, 2008 the RA Administrative Court obliged "CHAP" LLC to pay into the state budget tax debts and fines, exceeding the amount of 25 million drams (more than $ 81,000). The overall amount that "GALA" founder was to pay including the litigation and the execution expenses came to 26 million 899 thousand AMD (about $ 90,000). From March 19 to March 25, 2008 there was an unprecedented action for Armenia in Gyumri - a telethon in support of "GALA" TV company. Further on, the fundraising was made all over Armenia and abroad. As a result, more than 26 million AMD were raised and used for payment of the tax liabilities.

At that time and afterwards different governmental agencies tried to influence "GALA" TV company. The same authorities pressed on advertisers to discontinue cooperation with "GALA" TV company. As a result, almost no commercials were aired by "GALA" TV company from the end of 2007 until summer of 2008. Besides, in the same period of time a dispute started between the Gyumri municipality and the "GALA" founder, "CHAP" LLC. The Gyumri municipality addressed the court demanding that "CHAP" LLC be obliged to stop the use of the city TV tower. The dispute was settled on October 31, 2008, when RA Court of Cassation abolished the ruling of court of general jurisdiction of Shirak region made in favor of the Gyumri municipality.

The next amendments to the RA Law “On Television and Radio” were made in November 2007, just before the presidential elections. Article 11 of the Law was given a new edition. The Article referred to the activities of TV and radio companies during the period of elections and referenda. The amendments were made to bring the Article into compliance with the RA Electoral Code, regarding pre-election promotion and its coverage in the media. But the amendments did not cover the issue of regulating the activity of media in the period since the announcement of the election date till the start of pre-election promotion. The obvious political bias of most of the TV channels, recorded by the YPC monitoring in October-December 2007, showed the need for such regulation.

The legislation stipulated that the National Commission on Television and Radio must control the compliance of television and radio companies with the procedure of pre-election promotion defined in the RA Electoral Code, and the right to address the court in case of detecting violations. Though the local and international monitoring reports specified cases of violation of the law, the NCTR did not record any violation.

Speaking about amendment to the RA Law “On Television and Radio” it should be mentioned that in August 2008 the RA Government hastily, without any preliminary discussion and acceptable justification, presented to the National Assembly another draft law on introducing an amendment to the Broadcast Law: “Not to announce broadcast licensing competitions till July 20, 2010. The TV companies, whose licenses expire before January 21, 2011, can request prolongation of the license from the National Commission. The license will thus be prolonged for the period requested, but for no longer than January 21, 2011.” The need to introduce such a provision is substantiated by the Government by the expected transition from analogue to digital broadcasting in Armenia.

The draft law was approved at the Government session on August 28, 2008, but was made public only on September 8, the day the session of the parliament was opened. The draft law was promptly put on the agenda, discussed, approved in the first hearing on September 10, and in the evening of the same day finally adopted at the extraordinary session. The civil society and experts regarded this amendment to be aimed at depriving the “A1+” TV company of the opportunity to take part in broadcast licensing competitions for 2 more years.

On September 9, 2008 Yerevan Press Club and its partner organizations released a statement. “This initiative of the Government has nothing to do with either the protection of the broadcasters, consumers, state or “with ensuring equal opportunities and prevention of market upheavals” (as noted in the governmental justification), but is only an attempt to get rid of the broadcast licensing competitions as of an unnecessary headache. The adoption of such laws will result in a situation when we shall enter the era of digital broadcasting with low-quality broadcaster that does not meet the public demand and international standards, is monopolized and hence is easy to control”, the statement stressed in particular.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, also expressed his concern regarding the adopted amendment. In his letter of September 26 to RA President Serge Sargsian, Miklos Haraszti pointed out: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.” In the opinion of Miklos Haraszti, moratorium on licensing meant that Armenia would not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of “A1+” TV company. OSCE Representative also reminded that in April 2008 the Parliamentary

Assembly of the Council of Europe, in its turn, also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow “A1+” to apply for a new license. “I hope that, for the sake of pluralism, the RA Government will review the amendments with the active participation of all relevant civil society and media stakeholders”, Haraszti wrote.

At the end of 2008 a package of amendments to broadcast legislation, developed by a group of deputies, was submitted to the consideration of the National Assembly. The Standing Commission of NA on Science, Education, Culture, Youth issues and Sport put up the package for public discussion.

Yerevan Press Club presented its Conclusion on the issue:

“Having considered the package of draft laws “On Introducing Amendments and Additions to the RA Law 'On Television and Radio'”, “On Introducing Amendments and Additions to the RA Law ‘Regulations of the National Commission on Television and Radio'” and “On Introducing Amendments and Additions to the RA Law ‘Regulations of the RA National Assembly '” put up for discussion by the National Assembly of Armenia, Yerevan Press Club is of the following opinion:

The package does not consider the principal fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. It does not take into account the proposals made by the journalist community and the civil society as well as the obligations towards international organizations undertaken by Armenia:

a) In particular, the draft laws do not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Item 8.3 of PACE Resolution 1609 “Functioning of Democratic Institutions in Armenia” (April 17, 2008): “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account.” Earlier, in July 26, 2006, the OSCE Representative on Freedom of the Media Miklos Haraszti mentioned in his report on the state of media freedom in Armenia: “(...) Legislative changes should not be limited to a ‘half Presidential - half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.” If mechanisms providing for social and political diversity are not developed, then, as Miklos Haraszti stated in the report, the government control over these bodies would not ease, particularly in such time periods when the President and the parliamentary majority represent the same political force.

b) The draft laws do not consider the issue of ensuring transparency in the decision making process of the NCTR. Inadequate transparency in decision making was mentioned in the judgment of the European Court of Human Rights on the case of the founder of “A1+” TV company, “Meltex” LLC, and its President Mesrop Movsesian versus Republic of Armenia (known as the case of “A1+”). In its decision the European Court recalled the guidelines adopted by the Council of Europe Committee of Ministers in the domain of broadcasting regulation, which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that “all decisions taken (...) by the regulatory authorities (...) be (...) duly reasoned”. The judgment

also quoted the PACE Resolution on Armenia of January 27, 2004, which concluded that "the vagueness of the law in force had resulted in (NCTR) being given outright discretionary powers". In the opinion of the European Court, the licensing procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. This was noted also by Miklos Haraszti, who recommended the need for such amendments in his abovementioned report of the RA Law "On Television and Radio" that would be clear about broadcast licensing competition procedures: "The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks."

c) Though the amended Constitution stipulates that the National Commission on Television and Radio should be the regulatory body for both private and public broadcasters, the draft laws do not define precisely the relation between the NCTR and the Council of Public TV and Radio Company, the mechanisms of regulating the public broadcasting, liability forms in case of violations, etc.

d) And finally, the draft laws do not eliminate the negative consequences of the amendment of September 10, 2008 to the RA Law "On Television and Radio". The amendment renders impossible the implementation of practical measures ensuing from the judgment of the European Court of Human Rights on the case of "A1+" TV company, which is emphasized in the recommendations of international organizations. Namely, PACE Resolution 1620 (June 25, 2008) noted: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights concerning the denial of broadcasting license to 'A1+', calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on March 26, 2008 and with the case law of the European Court of Human Rights."

Ignoring the above-mentioned basic issues renders meaningless the amendments to the broadcast legislation. The amendments do not provide for significant reforms and are just formal and superficial."

The situation connected with application of the RA Law "On Freedom of Information" has almost remained unchanged. The absence of two legally stipulated procedures - the procedure of registration, classification and archiving of the information processed by the owner of the information or imparted for him, as well as the procedure of providing duplicates (copies) of information by state institutions and organizations, local self-administration bodies creates certain obstacles. In autumn 2008 the RA Ministry of Justice developed a draft law "On Freedom of Imparting Information". In the opinion of experts from several non-governmental organizations (in particular, the Freedom of Information Center), this draft law is even regressive as compared with the acting Law.

Amendment of the Criminal Code of Armenia

The section regarding Armenia in the current report "Implementation of the European Neighborhood Policy in 2007" by the Committee of European Communities says: "The new provisions included in the RA Criminal Code in April 2007 stipulate that impeding the legitimate professional activities of journalists is persecuted (...)". Meanwhile the RA Criminal Code has long had Article 164 "Impeding the Legitimate Professional Activities of

a Journalist", which was amended on June 1, 2006. Reformatory labor was removed from the list of sanctions specified in the Part 1 and Part 2 of the Article.

Decriminalization of libel and insult has often been discussed, and the international institutions recommend to abolish Articles 135 ("Libel"), 136 ("Insult") and 318 ("Insult of Representative of Power") of the RA Criminal Code. There was progress in this respect in 2008: on May 19, 2008 the RA National Assembly nullified Article 318.

State of Emergency (March 1-20, 2008) and Media

On March 1, 2008 a state of emergency was introduced in Yerevan by the Decree of the RA President Robert Kocharian. Subclause 4 of Clause 4 of the Decree stipulates that "the media publications on state and inner political issues can be made exclusively within official information, released by state bodies". Such definition was in fact used to exert 20-day censorship in Armenia. While censorship was not listed among the restrictions, imposed by the Decree, moreover, according to Article 4 of the RA Law "On Mass Communication", it is actually prohibited, these days not only in Yerevan, but also all over the country factual pre-emptive censorship was practiced.

Due to this the publication of a number of national newspapers was banned because of their content. Some others, facing illegal obstacles, refused working, because they were unable to voice opposition and critical viewpoints, while the publication of opinions, discrediting and insulting for the opposition, often even aggressive, in other newspapers was in no way restricted. The media report that the pre-emptive censorship is practiced by people introducing themselves as officers of National Security Service. The Decree was directly followed by blocking of several news web sites that did not even have time to make any report on the situation. Such actions were completely illegal, and imposing restrictions with no grounds, under the circumstances, could be qualified as a violation of the presumption of innocence. Here, too, political discrimination was manifest, as only those sites were blocked that had previously disseminated criticism of the country authorities.

Meanwhile, in the broadcasting, fully controlled by authorities, there were numerous violations of the legality and the emergency rule. In particular, a number of media, violating the Subclause 4 of Clause 4 of the Decree, published and broadcast not only official information, but also presenting political propaganda, most of which was one-sided, discrediting and insulting for the opposition. The most prominent example of such unacceptable coverage was shown by the First Channel of the Public Television of Armenia that not only neglected the clause of the Decree, but also broke Article 28 of the RA Law "On Television and Radio": "The prevalence of a political stance (...) in the programs broadcast by public TV (...) is prohibited." The National Commission on Television and Radio, which, according to the Law, is an independent regulator and is also "to oversee the activities of TV and radio companies" (RA Law "On Television and Radio", Article 37, Part 1), failed to perform one of its main functions and did not prevent the violation of the Decree provisions not only by the PTA First Channel, but also the majority of private broadcasters. Violations of the relevant Decree provision were recorded also in a number of print media, with no response ensuing from the RA Ministry of Justice. The Ministry, within its competence, had to take steps to eliminate the violations.

On March 13 the Decree on the state of emergency was amended. In particular, Subclause 4 of Clause 4, referring to the media, was re-defined: "The media are prohibited from publishing or disseminating information on state and inner political issues, which is

deliberately untrue or destabilizing, or appeals to take part in events held with no prior notice (illegally), as well as publication or dissemination of such information or appeals in any other way or form." Yet, under the conditions of selective law enforcement and illegal actions that the media sphere encountered lately, this definition rendered media quite vulnerable. After the amendment of the Decree, a number of newspapers were still not allowed to print; the Internet-sites were still blocked until the state of emergency was lifted on March 21, 2008.

In 2008, the Parliamentary Assembly of the Council of Europe addressed the situation in Armenia twice: in its Resolution 1609 (2008) "The Functioning of Democratic Institutions in Armenia" (April 17, 2008), and Resolution 1620 (2008) "The Implementation by Armenia of Assembly Resolution 1609 (2008)" (June 25, 2008). Besides, on June 17, 2008 the European Court of Human Rights released its judgment on the case of the founder of "A1+" TV company, "Meltex" LLC, and its President Mesrop Movsesian versus Republic of Armenia. In particular, the European Court ruled that the right of the applicant to freely impart information and ideas, stipulated in Article 10 of the European Convention of Human Rights and Fundamental Freedoms was violated.

ELIMINATION OF TORTURE

The ENP EU/Armenia Action Plan contains the following provisions regarding elimination of torture, other inhuman or degrading treatment or punishment:

- further reform of the penitentiary system in line with the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions;

- closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society (Section 3 “Priorities for Action”, Priority area 2, Specific Actions);

- ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Section 4 “General Objectives and Actions”, Sub-Section 4.1 “Political Dialogue and Reform”).

Resolution No. 927-n of the RA Government of July 19, 2007 ratified the list of priorities and actions envisaged by ENP EU/Armenia Action Plan to be implemented in 2007. Clauses 12 and 13 stipulated:

“ - further reform of the penitentiary system (take measures aimed at facilitation of public control over the conditions in prisons and places of temporary detention),

- reform of the police (cooperate with OSCE and the Council of Europe in order to eliminate torture, other mistreatments and corruption)”.

The Republic of Armenia has acceded to the Universal Declaration on Human Rights, the International Pact on Civil and Political Rights (1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1993), the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols 1 and 2 (2002), the European Convention of Human Rights and Fundamental Freedoms (2001).

Torture and degrading treatment are prohibited by the RA Constitution (Articles 17, 12). The RA Criminal Code adopted in 2003 specified the respective punishment for torture (Article 119).

In May 2006 the RA ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for establishment of a national observation mechanism (national mechanism) in closed systems (penitentiaries, places of detention, police departments, psychiatric clinics, etc.).

On April 8, 2008 the National Assembly of Armenia made an amendment to the RA Law “On RA Human Rights Defender”, according to which the Defender is the national mechanism specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law does not provide for civil society involvement in the national mechanism. Thus, involvement of the civil society depends on the discretion of the Human Rights Defender.

About a year has passed after approval of the amendment, but nothing has been done either to establish the framework of the mechanism or to introduce it.

Based on the requirements of Article 47 of the RA Law “On Living Conditions of Prisoners and Inmates”, on May 14, 2004 a Public Monitoring Group in the Detention Centers was established under the Criminal Executive Service of the RA Ministry of Justice. In accordance with the “Regulations on Activity of the Public Monitoring Group in the Detention Centers of the Criminal Executive Service of the RA Ministry of Justice”, this Group is the supervisory body responsible for the issues of protection of the rights and freedoms of people in places of detention. Pursuant to the Regulations, the Group members have the right to visit freely the penitentiaries, to read various documents (if the prisoners’ consent is available - also their personal cases and correspondence, except confidential documents), to check the situation inside the institution, and to meet with prisoners.

Both the Public Monitoring Group (in 2005) and the European Committee for Prevention of Torture (CPT) mentioned in their reports the bad physical treatment of the prison staff to prisoners (striking the handcuffed prisoners with hands and feet, hitting with clubs).

The level of medical service in prisons is inadequate. In particular, the injuries suffered by prisoners in the result of ill treatment are not properly recorded in the relevant registers; the prisoners' requests for examination by a forensic doctor called from outside their place of detention are refused. No information is provided to the Procuracy about physical abuse and special measures used towards prisoners.

The biggest concern is caused by the situation in police departments and other investigating bodies. Numerous complaints are presented with regard to unlawful detention of people in police departments, abuse and violence. Violence in police departments is mainly aimed at obtaining a confession or testimony against third persons. The procedures of bringing people to the police department and arresting them are not observed, interrogations are often conducted unattended by the lawyer. The public is informed about cruel treatment in police departments only at times of political tension, when the active representatives of the opposition are brought to police departments, or in cases with fatal outcome.

To analyze the situation with torture and inhuman treatment, a reference should be made the CPT report. The latest CPT report on the situation in Armenia was published in 2006. Still, all concerns and recommendations mentioned in this report are actual for 2008 as well (the CPT visited Armenia in 2008, in the post-election period, but the report has not been published yet).

For example:

- The practice of detainment of criminal suspects for more than four days has remained unaltered since 2006. In particular, after the events in March 2008 there were multiple cases of detainment of people in police departments for a period exceeding four days.

- The term of transporting the people to places intended for preliminary confinement, i.e. not later than within 3 days, is not observed mainly because of wrong arrangement of the work of the escorting police officers. Besides, there are frequent and long-lasting transitions. All this increases the risk of inhuman treatment.

- The reports specify that the people arrested by the police are constantly exposed to inhuman treatment and unlawful actions.

There is no progress with regard to this either. Here is an example:

"On May 12, 2007, according to the official information, Levon Gulian, who was brought to the police department, jumped out of the window and died. A criminal case was filed based on Part 1 of Article 110 of the RA Criminal Code. The preliminary investigation was conducted by the Procuracy of Yerevan. On December 12, 2007 the case was taken over by the senior investigator on high importance cases of the Special Investigative Service of Armenia. On March 12, 2008 G. Petrosian, the senior investigator on high importance cases of the Special Investigative Service of Armenia, made a decision to terminate inspection of the case due to absence of corpus delicti. On March 26, 2008 the complaint presented by the legal successor of the victim was rejected as groundless by decision of Z. Tadevosian, the senior prosecutor of the General Procuracy. The legal successor's lawyers appealed against the decision of the Procuracy to the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan. The court revoked the decision of the Procuracy and made a resolution to recommence investigation of the case. On July 21, 2008 the RA Criminal Court of Appeal ratified the resolution of June 6, 2008 of the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan, according to which the decision to terminate inspection of the fact of Levon Gulian's death in the yard of the police administrative building was considered unjustified and unlawful. The preliminary investigation of the case recommenced on August 16, 2008. The courts had mentioned in their decisions that the preliminary investigation had not been comprehensive, integral or impartial; there had been numerous violations of the law, the required measures aimed at detecting the truth had not been taken, the representatives of the victim's legal successor were not invited to take part in implementation of inspection activities, the unlawful actions of some police officers were not assessed properly. Though several months have passed after recommencement of investigation, the behavior of the preliminary investigation body implies that the Special Investigative Service of Armenia is not in a hurry to fulfill the requirements stipulated by the court resolutions. In particular, other versions of Levon Gulian's death are still ignored. No one has been interrogated except two police officers, no expert examination has been conducted with a manikin, and no one is a suspect or an accused in the case."

- At any stage of detainment by the police, the arrested persons can present a complaint to the judge with regard to inhuman treatment by the police. The judge should make a written record on the complaint, make a decision on conducting a medical examination, and follow up performance of investigation. But the medical examination of the arrested people is often perfunctory and is conducted mainly in the presence of the representatives of the law enforcement bodies. No proper control is ensured by the Procuracy over the claims of the arrested with regard to such injuries, which are later on detected during the medical examination.

There has been no progress in this respect. The results of medical examination of the arrested, as well as their claims about the suffered injuries, are recorded in the relevant registers of criminal executive bodies in the presence of the escorting police officer, which holds the arrested back from telling the truth.

- The arrested are not offered the opportunity to inform their relatives about their situation starting from the very moment of detainment.

There has been no progress in this respect either.

- The arrested are often deprived of the right to use the lawyer's services from the very beginning.

This practice also continues, especially after the events that occurred on March 1, 2008.

During its visit in 2006, the CPT mission received a number of reliable statements about inhuman treatment of the arrested by police officers. Almost all statements were presented by persons (including women and the under-aged) detained in preliminary confinement places.

According to the report: “The statements about inhuman treatment mainly refer to slaps in the face, cuffs, kicks, hitting with rubber and wooden clubs, chair legs. Some statements referred to suffocation with plastic packs as a fact of inhuman treatment. Sometimes, the inhuman treatment was so cruel that it could be considered as torture.”

Almost all statements referred to inhuman treatment by operating officers (less frequently - by investigators and senior police officers) during preliminary interrogations. That was done for the purpose of extorting confession, evidence and other information. Thereafter, the CPT mission talked to several persons (including women and children), who stated that they had been exposed to unacceptable psychological pressure aimed at getting a confession of committed crime. This was accompanied with insults, abuse and threats of physical power or sexual violence to those people or their relatives and friends.

At court sessions no notice is taken of the defendants’ statements that the prejudicial testimonies had been exerted from them by violence. No public officer in Armenia has ever been punished for the use of violence or torture. This is also mentioned in the CPT report.

At the beginning of the visit in 2006, the RA General Procuracy informed the CPT mission that there had been no record of complaints against officers of law enforcement institutions for inhuman treatment. Such a situation would be doubtful with regard to the law enforcement system of any country. At the same time, the Armenian police failed to provide the CPT mission with any information regarding complaints on inhuman behavior, due to the obvious absence of statistics.

To rectify the situation it is necessary:

1. To introduce changes to the court procedural practice, including:

- To apply the relevant provisions of the criminal legislation, pursuant to which, in case of availability of the defendant’s statement about torture, the court should immediately demand investigation;

- To renounce the practice of considering the defendant’s confession as the principal proof of the defendant’s guilt.

2. To apply towards police officers the punishment for tortures envisaged by the criminal legislation.

3. In accordance with the procedure specified in Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to declare that Armenia acknowledges the power of the UN Committee Against Torture to accept and review the personal statements of individuals who consider that the requirements of the Convention have been violated.

4. To reform the criminal legislation, including:

- To amend and supplement the Criminal Procedural Code with provisions regarding interrogation of the suspect, accused, and witness, in order to establish the comprehensive procedure of interrogation by police officers.

5. To organize training for police officers and to check the professional level and knowledge of the international standards while appointing new officers.

6. To conduct proper medical examination starting from the moment of bringing the arrested persons to the penitentiaries and to obtain explanation regarding injuries in the absence of the escorting policeman.

7. To provide for guarantees of independence of the medical staff in the penitentiaries. To consider the possibility of the medical staff reporting to the RA Ministry of Public Health.

8. To introduce legal provisions on establishing a national mechanism, stipulated in Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prescribing the involvement of civil society in it.

FUNCTIONING OF THE ELECTORAL SYSTEM

The ENP EU/Armenia Action Plan contains the following provision regarding this sector: "Ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (Section 3 "Priorities for Action", Priority area 1, Specific Actions).

The elections to the RA National Assembly and the elections of the RA President were held in 2007 and 2008 accordingly.

The parliamentary elections of 2007 were qualified by the international observers as "generally complying with the obligations undertaken towards the OSCE and CoE and with other international standards"[32]; the US State Department stated that they were "significantly improved, though not fully consistent with the international standards"; and the local observers said that "the elections were accompanied by large-scale profound violations". At the same time, the OSCE/ODIHR observers mentioned that there were still unsolved principal problems related to the Electoral Code and implementation thereof, in particular, regulation of the pre-election propaganda, counting of ballots, tabulation of results, the work of electoral commissions, and examination of complaints.

The final report of the international observers' mission on the parliamentary elections of 2007 in Armenia, contained the following recommendations:

- to overcome the discrepancies between the Electoral Code and other pieces of legislation;

- to amend the provisions of the Electoral Code regulating the appeal procedure, by setting the mandatory requirement of calling a meeting of the electoral commission of any level for consideration of any written complaint and making the relevant written decision by the commission;

- to provide for the opportunity of challenging the verdict made by the court of primary jurisdiction with regard to an election dispute;

- to prescribe to the Central Electoral Commission (CEC) and territorial electoral commissions to report to the Procuracy and other authorized bodies regarding all significant violations, including the violations that might affect the election results;

- to place the ballot boxes in electoral districts so that the electors could vote facing the members of the electoral commission;

- to record cases of voting with the help of another person in the register of the district electoral commission and to put down the names of the voter and his/her assistant;

- to specify that a person can assist only one voter;

[32] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

- to put down the initial data (including the number of the received ballot papers and voting envelopes) in the minutes of the district electoral commission prior to commencement of the election process;

- to specify the mandatory requirement to keep the voting results posted up in an "easily observable place" of district electoral commission for a period of seven days following the date of voting[33].

After making these recommendations and until the elections of the RA President in 2008, the Electoral Code was amended and supplemented twice (on November 16, 2007 and December 18, 2007), but the above-mentioned recommendations were not covered by the amendments, and the Code was not brought into compliance with the requirements of the Venice Commission[34].

The elections of the RA President were held on February 19, 2008, during which, according to the local observers, the already vested usage of administrative and financial resources, bribing of the electors, inadequate consideration by the Central Electoral Commission, courts, and law enforcement bodies of cases regarding electoral violations, grew even more extensive.

In the report (February 20, 2008) on their preliminary findings and conclusions with regard to the presidential election of 2008, the international observers stated: "Generally, the election complied with the obligations undertaken by Armenia towards the OSCE, CoE and with other internationally accepted standards", "the authorities have improved the legislative mechanisms, but they were not implemented because of lack of sufficient political will". This opinion of the observers' mission was disputed by some deputies at the spring session of PACE.

In its post-electoral interim report (February 20 - March 3, 2008) OSCE/ODIHR stated: "The final opinion regarding the election depends on the process of final counting and tabulation of votes and examination of disputes". John Prescott, the Head of the Temporary Commission of PACE Observers of the Presidential Elections, qualified the post-electoral situation and the events of March 1, 2008 as "the consequence of lack of the voters' confidence in the electoral process and legitimacy of its results."

In the final report on the presidential elections, OSCE/ODIHR observers stated: "Though in the pre-election process and on the election day the elections generally complied with the obligations undertaken towards the OSCE and with other internationally accepted standards, serious problems in the part of fulfillment of certain obligations arose in the post-electoral period. Thus, the criteria essential for conducting democratic elections were not sufficiently respected and the whole election process was devalued. In particular, lack of reporting and transparency was revealed, and the procedures of presenting complaints and appeals were not fully efficient".[35]

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[33] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

[34] The "Code of the Best Electoral Practice" and "Guidelines and Explanatory Report on the Code of the Best Electoral Practice" adopted during 52nd session of the Commission of the Council of Europe "Democracy through Law" (Venice Commission) on July 5-6 and October 18-19, 2002 accordingly.

[35] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

The international observers, PACE, OSCE/ODIHR and the Venice Commission again demanded to conduct detailed investigation of the violations made in the electoral process and to punish the persons guilty of the violations. Besides, they recommended making further amendments of the Electoral Code in order to secure the following:

- efficient examination of election disputes;

- making a justified decision by the Central Electoral Commission regarding every complaint; the decision shall clearly specify the steps of examination of the complaint, the results thereof, and the grounds for rejection of the complaint;

- mandatory registration of all complaints received by territorial electoral commissions, their examination only at official sittings, and transparency, by means of securing information awareness for all the persons authorized to be present at the sitting, and providing them with the opportunity to attend;

- extending the term for presenting applications for recount of votes from 14:00 to 18:00 p.m.;

- recount of ballot papers in every occasion of receiving such an application or official justification of refusal to recalculate the ballots by the decision of the territorial electoral commission;

- extension of the term defined for summarizing the election results, announcement of the final results of elections only upon expiry of the term set for consideration of all complaints;

- equal opportunities for all bodies authorized to appoint members to the territorial and district electoral commissions, their representation among the leading three members of the mentioned commissions;

- more clear definition of the legal status of decisions taken by territorial electoral commissions;

- the obligation of the police to announce periodically the number of citizens, who had requested the right to vote in places of their temporary residence;

- usage of the common procedure of entering the election results in the electronic network by all district electoral commissions;

- classification of electoral violations into criminal and administrative violations and precise definition of the procedure of their examination by criminal and administrative courts, accordingly.[36]

It is noteworthy that no legislative amendment is required for implementation of the majority of the above-mentioned recommendations. It would be sufficient to improve the law enforcement practice and to secure mutually complementary activity of state bodies in the electoral process, in order to exercise the voting rights of the citizens.

Steps to reform the legislation and improve the law enforcement practice, undertaken within the timeframes of this research, are listed.

[36] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

Improvement of the Legislation

By decision of the Chairman of the National Assembly of Armenia, a special commission was established for preparation of amendments to the Electoral Code. Not only the ruling authorities, but also representatives of other political parties (including the National Democratic Union, "Orinats Yerkir") were involved in the work of the commission (in cooperation with the Venice Commission). But only a few meetings of the commission have been by now called and it seems to have terminated its activity.

Changes in the Law Enforcement Practice

In spite of the received complaints, the CEC has not taken any measure to protect the voting right. It displayed just a formal approach and did not comply with the accepted international norms of examination of complaints.

According to the CEC, the Central Electoral Commission has taken decisions regarding 57 applications and has provided 8 official clarifications[37].

On February 18, 2008 letter No. 01-D/65-94, signed by the CEC Chairman, was addressed to Ruben Torosian, the proxy of the presidential candidate Levon Ter-Petrosian, notifying about rejection of all 33 claims presented by him.

By letter No. 06-D/414 of May 26, 2008 Ruben Torosian was notified that in accordance with Clause 7 of Article 40 of the RA Electoral Code, the CEC considered some of his claims at CEC meetings.

Courts have rejected about 20 claims regarding the activity or inaction of the CEC. Referring to the procedural norms and taking advantage of the omissions in laws, the courts did not secure protection of the violated voting rights of the citizens. The administrative court rejected all claims regarding violations of voting rights. Moreover, all court hearings for those cases were assigned within terms though allowed by the law but still unreasonable, because even if the verdicts had been made in favor of the claimants, they would have been senseless, as it would be already impossible to restore the violated voting rights.

Thus, on February 22, 2008 and March 3, 2008 claims were presented to the RA Administrative Court, with a demand to declare the CEC actions illegitimate for failure to consider the claims presented to it. The court verdict was announced on August 1, 2008 and the claim was rejected.

The hearings for the case "Ruben Torosian versus the Public TV and Radio Company", accepted for processing on February 1, 2008, were held on May 6, 2008.

On March 4, 2008 a claim was presented to the RA Administrative Court with a demand to declare the CEC actions illegitimate for violation of the procedure of summarization of the election results. The Administrative Court announced its verdict only on August 1, 2008. The claim was rejected.

[37] The CEC analysis of violations of the Electoral Code of Armenia, committed during the presidential election on February 19, 2008, page 5.

The election for the local self-government bodies commenced in May 2008. No legislative amendment or organizational change was effected before the election. No change was made with regard to the following:

- the management staff of electoral commissions;

- the procedures of counting of votes, preparation of minutes, tabulation of the voting results.

According to the report of mission of observers of Helsinki Committee of Armenia, which were based in the communities of Yerevan[38]:

1. At several polling stations placement of the voting booths did not comply with the procedure established by the law, though those stations had every opportunity to place the voting booths properly.

2. Unauthorized persons were present at the polling stations - police officers dressed in uniform, some of whom even took part in counting of votes.

3. There were incidents of group voting, open voting, attempts of voting with someone else's passport, voting without passports, as well as throwing a pack of ballots into the ballot boxes, repeated and prompted voting.

4. There were cases of violence and pressure on authorized persons and observers.

5. In several cases, the work of the commission chairmen and members was careless and disorganized.

All these elections were won by the representatives of the acting authorities or the candidates supported by them. Administrative and financial resources had decisive impact on the results of elections. Usage of administrative resources and bribing of the electorate is getting to be a coordinated process in Armenia.

Structural changes are required to ensure functioning of elections as the most important institution of democracy. In particular, the first-priority measures are:

- precise definition of the procedures of claim examination and voting rights' protection, and elimination of contradictions;

- improvement of the level of independence of the bodies responsible for protection of the voting rights (first of all - the RA Administrative Court).

[38] Reports on elections to the local self-government bodies of Nork-Marash, Davitashen, Malatia-Sebastia, Avan communities of Yerevan held on May 18, 2008, and of Arabkir community of Yerevan held on September 7, 2008.

FINANCING OF PARTIES

The ENP EU/Armenia Action Plan, Section 4 "General Objectives and Actions", Sub-Section 4 "Political Dialogue and Reform", Clause 4.1.1 "Strengthening the Stability and Effectiveness of Institutions Guaranteeing Democracy and the Rule of Law" contains the requirement to "establish clear and transparent rules on party financing".

Financing of parties is regulated by Articles 24, 25, 27, and 28 of the RA Law "On Parties"[39]. Article 24 of the Law specifies the types of funds possessed by parties: membership fees, donations, financing from the state budget, income received from civil and legal transactions and other income not prohibited by the law. Article 25 regulates the procedure of making donations to parties. In particular, Clause 2 of the Article specifies the list of legal entities and individuals not allowed to make donations. In case of getting donations from the entities on the list, except anonymous donators, the parties have to return the amount to the donator within two weeks; donations made by anonymous donators should be transferred to the state budget within the same time period. Article 27 regulates the financing of parties, specifying in particular the volume of financing, the parties entitled to such financing and the volume of it[40], allocation of the funds among parties that are members of an election alliance, as well as grounds for termination of state financing. And finally, Article 28 of the Law regulates the procedure and terms of financial reporting by parties. According to this Article, a party should provide the authorized state body (in this case - the RA Ministry of Justice) with the annual report on the funds received and spent during the reporting year. The report should be presented by March 25 of the year following the reporting year. The same deadline is defined for publication of the financial report of the party in media. This Article also specifies to whom and how the financial report should be presented, what shall be reflected in it, as well as refers to the necessity of implementation of financial supervision.

Financing of parties is closely connected with financing of election campaigns. According to Article 25 of the RA Electoral Code, parties are allowed to make personal, optional contributions to the election fund established for financing of the election campaign. This gives the parties the opportunity to finance their election campaigns (if they take part in the election to the National Assembly by the proportional election procedure), the election campaigns of presidential or deputy candidates (by the majority procedure), as well as the election campaigns of their candidates for the position of head or member of the community council. According to Article 79 of the Electoral Code, a party can make a contribution to the election fund of its presidential candidate for the amount not to exceed 30.000-fold of the minimum salary (AMD 1000), i.e. maximum AMD 30 million[41]. Similar restrictions are specified for contributions to the election funds of the parties or the election funds of the candidate(s) nominated or supported by them. According to Article 112 of the Electoral Code, a party may contribute to its election fund (or the election fund of its block

[39] This Law was adopted on July 3, 2002 and was enforced on November 15, 2002. Official Bulletin of the Republic of Armenia, No.34 (209), August 15, 2002.

[40] According to Article 27 of the Law, financing form the state budget can be provided only to those parties (blocks of parties) which have received at least 3% of the sum of the number of inaccuracies and the total number of votes given in favor of the voting lists of all parties by the proportional election procedure at the time of the latest election to the National Assembly. These funds are allocated among the parties (block of parties) proportionate to the votes received by them.

[41] Pursuant to the same Article, the amount of expenditures form the election fund shall not exceed AMD 70 million.

of parties) an amount not to exceed AMD 2 million, and to the fund of a deputy candidate by the majority procedure - the maximum amount of AMD 150,000[42], as a legal entity.

The requirements specified in the above-mentioned legal acts secure sufficient transparency in financing of parties, provided that they will be fulfilled properly. Still, we regret to note that up today civil society institutions and media have not been paying adequate attention to the financial reports presented by parties, though, as it is evidenced by the international experience, they might contain important information. At the same time, to this day no publications have been made by media to attempt and analyze the financial reports by a certain party. The Ministry of Justice - the state body authorized to receive such reports - has never officially reported about any occasion of falsification of such reports, i.e. non-reliability of the presented data. It is difficult to say whether that means that the Armenian parties provide all the required data diligently and fairly, or the reports are simply left unchecked.

As to the contributions to the election funds made by the parties, monitoring of financing of the parliamentary election in 2007 and the presidential election in 2008 conducted by Transparency International Anti-Corruption Center (TIACC) did not reveal significant violations. The parties, which made contributions to the election funds, provided the Central Electoral Commission with the required evidencing documents. But the situation is different with regard to expenditures from the election funds. During both elections, considerable difference was recorded between the declared and actual expenditures revealed by monitoring[43].

A number of provisions of the Electoral Code and the RA Law “On Parties” permit the parties to evade the above-mentioned restrictions regarding the contributions made from their own funds. In particular, the Electoral Code allows for making of contributions by individuals, without providing for mechanisms of preventing the practice widespread in many countries - when the party gives cash to its members who transfer these amounts to the election fund of the party as individual contribution. Since the principal target of the monitoring program implemented by TIACC was to check expenditures from election funds, this issue was not considered by the organization.

A more profound problem is that it is impossible to check timely and thoroughly the actual expenditures made by the parties during election campaigns, since, as it was mentioned above, pursuant to the Law “On Parties”, the parties present only the annual financial report, due by March 25 of the year following the reporting year. If elections are held in the reporting year, especially when the elections are scheduled for the beginning of the year, the falsifications revealed in the result of analysis of the financial report or monitoring cannot be used as the ground for invalidation of the election results. With regard to this, it might be a probable solution to set a requirement to open the account for the election fund as a supplementary account of the party’s principal bank account. Besides, all parties will have to present a quarterly financial report for the period of voting, as well as for two quarters preceding the date of voting.

[42] The same Article specifies that in case of a party (party bloc) the amount of expenditures from the election fund shall not exceed AMD 60 million, and in case of a candidate nominated by the majority procedure - AMD 5 million.
[43] See details on www.transparency.am

FIGHT AGAINST CORRUPTION

ENP Measures and Their Implementation

The ENP EU/Armenia Action Plan contains the requirement to:

- establish administrative courts;

- review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of the civil society and business representatives in monitoring implementation (during 2006);

- evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006)[44]. (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

ENP, Section 4, "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform", Clause "Fight Against Corruption" specifies 8 anti-corruption measures[45]:

1. Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005;

2. Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption and, once ratified, the OECD (Organization of Economic Cooperation and Development - ***Ed. Note***) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

3. Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including development of Code of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on September 19, 2001;

4. Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations;

5. Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

6. Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

[44] See the report section on the civil service.
[45] Almost all of the mentioned measures are specified also in the international anti-corruption convention and the recommendations of GRECO and OECD.

7. Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption;

8. Ensure the implementation of procedures to implement the Code of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

In 2008 the RA Government did not publish any information regarding measures aimed at implementation of the ENP EU/Armenia Action Plan; while in the list of priorities and measures to be implemented in 2007[46] the Government included only two actions:

- Clause 4.1 - review during 2006 the progress made in the implementation of the National Anti-Corruption Strategy and develop new measures (responsible bodies - RA Ministry of Justice and RA State Tax Service);

- Clause 4.2 - develop and enforce specific anti-corruption measures for the law enforcement agencies (the responsible bodies are not specified).

The mentioned clauses are of general character and it is not clear why other measures were not included in the list, especially those, for which the specified term of implementation expired at the end of the year 2006 (for example, the measure related to the UN Convention against Corruption) .

Clause 4.1 fully repeated the relevant provision of Priority 1 of Section 3 of the ENP Action Plan, though without the words “ensure active participation of the civil society and business representatives in monitoring implementation”. Since throughout 2007-2008 no reports or official statements as to the necessity of such monitoring or similar actions appeared, one can hardly judge whether the clause has been implemented. As to participation of the civil society, it should be noted that though several NGOs, in various sectors, implemented anti-corruption projects (mostly, donor-funded), such as traffic police, consumer rights, education, election, etc., this cannot be considered as comprehensive monitoring envisaged under the action plan of the Anti-Corruption Strategy.

Clause 4.2 is the shortened version of the relevant provision of Clause 4.1.1 of Section 4 “Democracy and the Rule of Law, Human Rights and Fundamental Freedoms” of the ENP Action Plan. It does not specify which precise measures should be developed and for which agencies exactly. As no official information has been published with regard to this either, it would be difficult to say whether the RA Government has implemented this measure.

The analysis of implementation of the above-mentioned 8 measures of the Action Plan is given below.

Measure 1

Though the RA Law “On Principles of Administration and Administrative Proceedings” was enforced on January 1, 2005[47], administrative courts were established only on January 1, 2008[48]. The administrative courts examine social disputes on legal relations, one party to which is the local self-government body or the relevant public officers, and the other party -

[46] See the Appendix of the RA Government Ruling No. 927 of July 19, 2007.
[47] Official Bulletin of the Republic of Armenia, No. 18 (317), March 31, 2004.
[48] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.

the citizens. The principal peculiarity is the specific distribution of the burden of proof, according to which: "A state or local self-government body (a public officer) who approved the disputed legal act or committed the disputed action or has not implemented an action, which, according to the claimant's statement, should have been done by him, bears the burden of proving the actual circumstances underlying his decision, action, or inaction" (Clause 3 of Article 26 of the RA Administrative Procedural Code[49]).

One of the fundamental principles for administrative courts is the principle of precedent defined by the law, which is supposed to preclude arbitrary decisions.

The RA Administrative Court is composed of 15 judges, who are much more overburdened as compared with other judges. According to the Chairman of the Administrative Court Tigran Mukuchian, there is always a great number of disputed payment orders: only in the part of the traffic police the monthly quantity of such payment orders reaches 5-6 thousand. Pursuant to the same source, as of August 1, 2008 the Administrative Court had announced 2,288 verdicts, made thousands of decisions, issued even more payment instructions, etc. 90 complaints were received (3.9% of the total number of cases) of which 35 complaints from individuals and 55 from state bodies. 60-65% of 2,288 verdicts referred to entrepreneurs, with relation to whom administrative acts had been issued by tax or customs' authorities. Besides the above-mentioned cases related to the traffic police, there were many disputes with the mayor's office, the local self-government bodies, the state register and the cadastre. Tigran Mukuchian stated that 60-65% of 2,288 cases were solved in favor of the citizens. For several occasions, the Administrative Court announced "open days" and distributed the RA Law "On Principles of Administration and Administrative Proceedings" and the comments on it for free.

In the absence of statistical data or analytical findings, it is difficult to draw a conclusion as to whether the first year of activity of the administrative court has favored adequate prosecution and conviction of bribery and corruption-related offences. In experts' opinion, unlike cases related to economic activity, with regard to other cases the administrative court announced its verdicts mainly in favor of the state bodies, e.g., appeals against the decision of Yerevan Municipality on prohibition of assemblies, rallies, marches or demonstrations. (Thus, pursuant to the data provided by the Armenian National Congress of, only 1 of the presented 50 claims regarding prohibition of meetings and demonstrations was satisfied completely.)

Measure 2

Definition of bribery and corruption specified in the RA Criminal Code[50] (Articles 311 and 312) generally complies with the international standards. As to classification of corruption-related offences, within the scopes of "Istanbul Anti-Corruption Action Plan" developed by the OECD, it became necessary to specify the corruption-related offences, and in 2004 first 22 and then 59 Articles of the Criminal Code were outlined. According to the statement of Garegin Ashrafian, Head of the Procuracy Department for Fight Against Corruption and Organized Crime, taking into account the international experience, this number was reduced to 22. Later on, new types of offences were included in this category. At present, the total number of corruption-related offences, specified in the Criminal Code, is 31.

In 2008 the RA Criminal Code was supplemented with several new articles, in particular, Article 311.1, which refers to receiving illegal remuneration by public officers, Article 311.2,

[49] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[50] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2003.

related to usage of real or alleged influence for lucrative purposes, and Article 312.1 - offering illegal remuneration to a public officer, who is not a state official[51]. According to the same source, the list was prepared on the basis of the following criteria: a) availability of a certain status or duties in the public or private sector; b) violation of duties related to the public or private status; c) goal to score some unlawful advantage.

Since December 2008, information regarding 31 types of corruption-related offences and data on disclosure and conviction for specific criminal cases (since October 2008) is posted on the website of the RA Procuracy[52]. At the same time, the Procuracy does not provide separate statistics on these 31 types of corruption-related offences. Therefore, it is difficult to understand whether the existing definition and classification secure adequate prosecution and conviction of corruption-related offences.

Measure 3

Code of Ethics has been developed and enforced for judges (see Chapter 12 of the Criminal Code[53]), prosecutors (see Order No. 17 of the RA General Prosecutor of May 30, 2007[54]), and the police (see the RA Law "On Adoption of the Code of Conduct of Police"[55]). As to the border service, no information could be gathered in this regard, since the National Security Service did not respond to the researcher's request for an interview.

"Comments on the Code of Ethics of the Judge" were published as a separate booklet in 2007. According to the statement of the First Deputy to the Head of the Forensic Department of the RA, Secretary of the Council of Court Chairman Misak Martirosian, the Commission on Ethics under the Council of Justice considered 9 cases related to the Code of Ethics of Judges in 2007, and 3 issues were considered as of September 2008 (7 more issues were planned for consideration). The Commission on Ethics works mainly with complaints presented by citizens. If the Commission on Ethics is of the opinion that the judge has to be exposed to disciplinary sanctions, the documents should be handed over to the Disciplinary Commission. In 2007, three of the nine issues were handed over for consideration by the Disciplinary Commission.

In case of violating the Code of Ethics of the Prosecutor, the prosecutors shall bear disciplinary liability in accordance with Clause 3 of Article 46 of the RA Law "On Procuracy"[56]. The RA General Prosecutor is the guarantor of observance of the Code of Ethics. The Chairman of the Commission on Ethics of the Procuracy is one of the Deputies to the General Prosecutor. According to the data provided by Garegin Ashrafian, the Head of the Department of Fight Against Corruption and Organized Crime of the Procuracy, only one meeting of the Commission was held in 2007-2008. The meeting considered the issue of violation of the Code of Ethics by a prosecutor from a territorial department of Erebuni and Nubarashen communities of the RA Procuracy. The Commission made a decision to dismiss the prosecutor.

According to the statement of the Deputy Head of the RA Police Gevorg Mherian, a different approach is applied at the police: they have a Council, which considers various problems, including ethical issues. The Council Chairman is the Head of the RA Police,

[51] Official Bulletin of the Republic of Armenia, No. 33 (623), June 4, 2008.
[52] http://www.genproc.am/main/am/189/ ¨ http://www.genproc.am/main/am/193/
[53] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2008.
[54] http://www.genproc.am/main/am/23/2153
[55] Official Bulletin of the Republic of Armenia, No. 29 (401), May 18, 2005.
[56] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

and the members are: the management staff of the police, heads and deputy heads of the principal departments. Scheduled meetings of the Council are called once every six months. Extraordinary meetings can also be summoned, if required. Any violation of ethical norms is considered by the Board and a decision is taken whether disciplinary sanctions need to be applied or not. In the past, the complaints mainly referred to the work of the visa and passport departments and the traffic police. According to the statement of the Deputy Head of the Police, significant changes are being effected at present and the number of complaints has decreased. Thus, in the past they got about 100 daily phone calls with complaints on the work of the visa and passport departments, while in 2008 there was only one call a day on the average.

Measure 4

The Law "On Declaration of Assets and Income by High-Level State Officials of the Republic of Armenia" was adopted on January 1, 2008. It replaced the RA Law "On Declaration of Assets and Income by Individuals". Article 5 of the Law specifies the requirement of presenting such declarations by all employees of state and self-government bodies, irrespective of their salary rate. Pursuant to the Law, the deadline for submission of declarations for 2007 was April 15, 2008. Chapter 8 of the Law specifies more serious sanctions for submission of false declarations than before. But enforcement of the Law was postponed for a year[57].

According to the statement of the First Deputy Head of the RA State Income Committee Aharon Chilingarian, the total number of declarations presented according to the previous law was about 50.000. As to the statistics of 2007, no information was published regarding the number of public officers who failed to present declarations or presented false declarations, or regarding the applied sanctions.

Measure 5

The opinion mentioned in the report of GRECO experts regarding fulfillment of the relevant obligations by Armenia[58] is generally realistic. Still, there are drawbacks left out by the GRECO experts. First, the RA Government did not take measures to conduct studies and gather statistics and presented as accomplished the programs and measures implemented by non-government organizations (international organizations and NGOs). Moreover, the RA Procuracy did not and still does not have a separate website on corruption. Only in December 2008 a separate page about corruption was opened on the website www.genproc.am. Secondly, none of the state bodies (police, tax and customs' authorities) mentioned in Clause 13 of the GRECO experts' report publishes separate information on its website regarding disclosed cases of corruption.

With regard to the appropriate GRECO Recommendation (see Clause 14 of the experts' report) it is mentioned that a number of state bodies (Police, Procuracy, Ministry of Justice and National Statistical Service of Armenia) have jointly developed the system of acquisition of statistical data on corruption-related offences. These data are published on the website of the National Statistical Service (www.armstat.am). It is specified that there are 59 types of corruption-related offences, and the RA Criminal Code envisages different sanctions for such offences. It should be noted that as of that date (the first report was presented on September 27, 2007 and the second one - on May 5, 2008) the number of corruption-related offences was reduced to 22 (see above - analysis of Measure 2) and the

[57] Official Bulletin of the Republic of Armenia, No. 2 (592), January 9, 2008.
[58] http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp

National Statistical Service has never provided separate information on corruption-related offences. Clause 16 of the experts' report refers to installation of hot lines in a number of state bodies, but these hot lines never had any specific anti-corruption designation.

Similar assessment was given to implementation of GRECO Recommendation 3, although it is not clear (as it was mentioned by GRECO experts) whether the new Law "On Public Procuracy", enforced in May 2007, has increased the prosecutors' independence. The same can be stated also with regard to GRECO Recommendation 8 since it is obscure (as it was mentioned in the comments of GRECO experts) what kind of training courses exactly were conducted at the Police Training Center. GRECO Recommendation 14 was assessed as completely fulfilled, but it cannot be construed from the Government report, how many suspicious transactions were reported to the Procuracy by the Financial Monitoring Center of the Central Bank of Armenia. Moreover, no information is available as to whether any investigation was conducted with regard to these cases.

Measure 6

The analysis of Measure 1 contains a reference to ensuring the possibility of court appeals against administrative acts, including through establishment of administrative courts in 2006.

Measure 7

The current salary of judges is insufficient to ensure service with dignity in order to reduce corruption. The salary of judges in courts of original jurisdiction, Court of Appeal and Court of Cassation was increased in accordance with the Judicial Code enforced on April 7, 2007 (see Article 75 of Chapter 11)[59], but only by 15-30%, which cannot ensure service with dignity. At present, a newly appointed judge receives salary of AMD 220,000. On November 27, 2008 the National Assembly approved amendments to the RA Law "On Remuneration Rate of High-Level State Officials of Legislative, Executive and Judicial Power". According to the amendments, the salaries of judges will be doubled in the period from January 1 to December 31, 2009[60].

Measure 8

As to ensuring implementation of procedures aimed at fulfillment of requirements of the Code of Ethics of judges and prosecutors, including introduction of effective systems of supervision over observance of the Code of Ethics by judges and prosecutors, there is no information available, besides the information presented for Measure 7 above.

Description of the General Situation

Since the Anti-Corruption Strategy was actually completed at the end of 2006, in September 2007 the Chairman of the Monitoring Committee, Assistant to the President of Armenia, Gevorg Mherian declared that a new strategy should be developed[61]. Terms of reference on development of the new strategy were approved at the end of 2007 and the group of experts started the relevant work in 2008. A number of non-governmental organizations were requested to give an opinion regarding four chapters of the strategy.

[59] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[60] "Hayastani Hanrapetutiun" daily, December 1, 2008.
[61] "Hayastani Hanrapetutiun" daily, September 8, 2007.

These chapters were posted on the website of the RA Government - www.gov.am - in October 2008.

In September 2007 the RA Government presented a report on implementation of GRECO Recommendations. The assessment of GRECO experts for the first and the second stage was announced in June 2008[62]. According to the assessment, Armenia had fully implemented 7 Recommendations, satisfactorily - 5, partially - 9, and entirely failed to implement 3 Recommendations.

OECD expert opinion on implementation of obligations undertaken by Armenia within the scopes of "Istanbul Anti-Corruption Action Plan"[63] was published at the end of 2007. In this case, only 1 of the 24 recommendations is implemented fully, 8 are implemented basically, 11 - partially, and 4 recommendations are not implemented.

According to the information provided by the RA Ministry of Foreign Affairs, at the beginning of 2008 the RA Government presented a self-appraisal report to the Secretariat of the UN Convention against Corruption, which was a mandatory requirement for the countries acceded to the Convention[64].

The evaluation report on the progress of Armenia in 2007 within the scopes of ENP Action Plan was published in April 2008[65]. Along with a number of positive steps (e.g. legislative and procedural amendments aimed at decrease of corruption, as well as availability of the Code of Ethics for judges, prosecutors, and the police, increase of judges' salary and establishment of a special investigative service), it is mentioned that the issue of effective application of the anti-corruption legislation and policy has not been solved yet.

Numerous anti-corruption legislative amendments and by-laws were approved and/or enforced in 2007-2008, as well as a number of anti-corruption measures were implemented. See below several of these measures:

- Due to the amendments to the RA Constitution[66], the Supervisory Chamber obtained independent status (was removed from the structure of the National Assembly). In 2008 the Supervisory Chamber revealed grave violations and abuse[67] in the sectors of town planning, agriculture, urban heating and gasification, state procurement, apartment allocations, etc. According to the data posted on the website of the Procuracy[68], in the result of the above-mentioned disclosures, only two criminal cases were filed by the end of 2008.

- In accordance with the Law "On the Procuracy"[69], the RA General Prosecutor is appointed to this position and gets dismissed by the National Assembly, a new system of qualification testing and remuneration is introduced, and the Procuracy loses the power to conduct investigation, which is now vested with the police, the National Security Service, the Ministry of Defense, the tax and customs' authorities.

[62] www.coe.int/greco
[63] www.oecd.org/corruption/acn
[64] The report is not accessible to public.
[65] http://ec.europa.eu/world/enp/documents_en.htm
[66] RA Constitution, Article 83.4.
[67] "Hayastani Hanrapetutiun" daily, September 18, November 6 and December 11, 2008.
[68] http://www.genproc.am/main/am/185/
[69] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

There is a Department of Fight Against Corruption and Organized Crime in the Public Procuracy, which is responsible for prosecutor's control and procedural management over corruption cases. The department supervises those cases, which are investigated by the central investigating agencies of the country. In some regions, this is the responsibility of separate investigation bodies and prosecutors. The principal function of the department is the consideration of complaints received from individuals and requesting additional documents with relation to them. In case of revealing evidence of offence, the documents shall be delivered to the respective investigating bodies.

In 2008 the Procuracy conducted cluster meetings in Yerevan and the regions and considered the issues of prevention and disclosure of corruption-related offences and the specifics of their investigation. The meetings were attended by the representatives of law enforcement bodies, tax and customs services, other interested organizations, and journalists.

- A new system of justice was established on the basis of the amended Court Code[70] and the Law "On Administrative Proceedings"[71], which resulted in establishment of administrative courts, introduction of a new system of appointment and remuneration of judges and court chairmen, functioning of the court department (service), registrars, Code of Ethics of the Judge, court school, etc.

- The RA Law "On Operative and Investigation Activities"[72] specifies new types of operative and investigation activity, as well as control and inspection mechanisms for this activity.

- In accordance with the RA Law "On Special Investigative Service"[73], a new body was established to investigate those criminal cases, which involve high-level state officers, representatives of law enforcement bodies and persons engaged in election process. Pursuant to the information provided by official sources, during the first half of 2008 the Special Investigative Service examined 29 criminal cases, 13 of which were against 14 state officials[74]. The criminal cases were basically brought against officials of the lower and middle level.

- The RA Laws "On Organization and Conducting Audits in the Republic of Armenia"[75], "On Registration of Organizations and Individuals and Taking them off the Tax Register"[76], the amendments and supplements to the Laws "On Trade and Services", "On Usage of Cash Machines", "On State Duty" "On Taxes", "On Licensing", approved in 2008, and a number of other Armenian laws[77] are intended for fighting shadow income in the private sector and minimizing the corruption risks of the tax field. As of September 29, 2008 the Tax Inspection conducted inspections in 23 big shops and revealed violations in all of them, connected with usage of cash machines[78]. 9 supermarkets were temporarily shut down by the tax service, for a period of 5-10 days.

[70] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[71] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[72] Official Bulletin of the Republic of Armenia, No. 59 (583), November 28, 2007.
[73] Official Bulletin of the Republic of Armenia, No. 61 (585), December 5, 2007.
[74] "Hayastani Hanrapetutiun" daily, August 5, 2008.
[75] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[76] Official Bulletin of the Republic of Armenia, No. 54(578), November 7, 2007.
[77] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[78] "Hayastani Hanrapetutiun" daily, September 29, 2008.

- The regulations of passport departments have been simplified and streamlined. Sample forms of 7 different applications have been printed and provided to all passport departments. The individual only has to fill in his/her name and sign the application. The phone number of the Deputy Head of Police is also posted up in passport departments, which enables the people to call him in case of complaints. The lists of documents required to receive or change the passport, compile a case about loss of passport, etc. are also posted up on the walls of passport department offices.

The terms and conditions of issuing passports to the under-aged, as well as the list of the required documents were amended by the RA Government Resolution No. 823 of July 31, 2008[79]. The time constraints were removed and a simplified procedure was introduced: anyone may receive a passport for his/her child with validity period of three years and may change the passport at any time. Exit visas are also provided without any restriction.

- The traffic police reform has started. An off-budget fund has been established and 30% of it is transferred to the salary fund of the traffic police officers. Improvement of collection of administrative penalties is underway. This will give the opportunity to increase the salary of the traffic police officers up to AMD 200-250 thousand by the middle of 2009. In general, financing of the police has increased by 35 percent.

- Finally, in 2008 a chapter named “Corruption” was included in the textbook “Social Science” of comprehensive schools. It contains the definition of corruption, information regarding its forms, causes and methods of fighting against it.

Within the same period, reforms were effected also in other sectors, e.g. the tax service, but this report is intended to present only the steps related to the anti-corruption measures implemented or planned within the scopes of the ENP Action Plan.

As to foreign organizations’ opinion regarding the level of corruption in Armenia, pursuant to the Index of Corruption Perception (ICI) of Transparency International[80], in 2007 and 2008 Armenia was still among the most corrupt countries, the index of which is below 3 (by “1-10” scale, where “1” means “a fully corrupt country”, and “10” - “a country with no corruption at all”). During the last five years, the situation with corruption perception in the country remained unchanged: in 2008, 2007, 2006, 2005 and 2004 the ICI in Armenia was 2.9, 3.0, 2.9, 2.9 and 3.1, respectively.

According to the data of the World Corruption Barometer of Transparency International[81], 52% of the people who took part in the poll in 2007, were of the opinion that during the next 3 years the level of corruption in the country would “increase considerably” or “increase moderately”. As to the anti-corruption measures taken by the Government, only 25% of those questioned considered such measures “effective to a certain extent” or “effective”.

The data published by Freedom House in 2007 and 2008[82] evidence that the index of corruption in Armenia remained on the same level as in the previous years - 5.75 (by “1-7” scale, where “1” means “with no corruption at all” and “7” means “fully corrupt”).

[79] Official Bulletin of the Republic of Armenia, No. 51 (641), August 13, 2008.
[80] http://www.transparency.org/policy_research/surveys_indices/cpi
[81] http://www.transparency.org/policy_research/surveys_indices/gcb/2007
[82] http://www.freedomhouse.hu/nit.html

According to the World Poll of Gallup[83] held in 14 former Soviet countries, 50% of the people questioned in Armenia were of the opinion that at present the level of corruption is higher than in the Soviet times.

Global Integrity Index of Corruption in Armenia in 2007 was 58 (by "0-100 scale"), which, according to 23 anti-corruption criteria, corresponds to the rating "extremely weak"[84]. It is noteworthy that one of the management criteria of the World Bank, "control on corruption", was also rated rather low in 2007 - 30 scores of 100[85].

Based on the reports of the local and international organizations regarding the elections of 2007-2008[86] and numerous publications in the press, it can be concluded that political corruption in Armenia considerably increased during this period: abuse of administrative, informational, financial and other resources, bribing of electors, etc.

[83] http://www.gallup.com/poll/101767/Pereceptions-Corruption-Widespread-Former-Soviet-Nations.aspx
[84] http://report.globalintegrity.org/Armenia/2007
[85] http://info.worldbank.org/governance/wg/sc_chart.asp
[86] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php

YEREVAN PRESS CLUB

OPEN SOCIETY INSTITUTE HUMAN RIGHTS AND GOVERNANCE GRANTS PROGRAM

OPEN SOCIETY INSTITUTE ASSISTANCE FOUNDATION-ARMENIA

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

REPORT

2007-2008

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FOREWORD

The Partnership and Cooperation Agreement (PCA, signed in 1996 and in force since 1999) between European Union and Armenia serves as the legal framework for bilateral relations. Since 2004, Armenia and the other South Caucasus states have been part of the European Neighbourhood Policy (launched by the European Union, following its enlargement), encouraging closer ties between Armenia and the EU. An ENP Action Plan for Armenia was published on March 2, 2005, "highlighting areas in which bilateral cooperation could feasibly and valuably be strengthened". The Plan sets "jointly defined priorities in selected areas for the next five years". In November 2005, formal consultations on the Action Plan were opened in Yerevan and as of 2008 are ongoing.

The EU-Armenia relations play an important role in the strengthening and development of democracy in Armenia. The present research aimed to determine whether the reforms, envisaged by the bilateral documents EU-Armenia, are implemented consistently.

Priority Areas 1 and 2 of the Action Plan for Armenia were taken as a basis for the monitoring.

Thus, **Priority Area 1** calls for strengthening of democratic structures, of the rule of law, including reform of the judiciary, and combat of fraud and corruption. **Priority Area 2** calls for strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).

The study was undertaken by Yerevan Press Club under the “Monitoring Democracy Indicators to Gauge Armenia’s Reform Progress” project, supported by the Human Rights and Governance Grant Program of Open Society Institute. Support for researching into certain sections of the project and the preparation of this report was also provided by the Open Society Institute Assistance Foundation-Armenia.

Sections of this report were developed by YPC and its partner NGOs - Committee to Protect Freedom of Expression, Helsinki Committee of Armenia, Right and Information Center, Transparency International Anticorruption Center, Communities Finance Officers Association, Collaboration for Democracy Center, as well as individual experts candidate of economic sciences David Tumanian, sociologist Vardan Gevorgian, Doctor of Law Hrayr Ghukasian and Doctor of Law Lilit Simonian.

EXECUTIVE SUMMARY

RA HUMAN RIGHTS DEFENDER INSTITUTE. The cooperation of the RA Human Rights Defender and the state bodies is somewhat hindered. This is mainly manifest in shape of occasional controversies with RA Government, National Assembly and law enforcement bodies. In the first case the difficulties deal with the funding of the Defender's Institute, in the second one - the issue of his mandate revision, and in the third case is the matter of principal divergences in situation assessment. Besides, the RA Law "On RA Human Rights Defender" does not stipulate the involvement of NGOs and civil society in the nomination of the candidate for the post of the RA Human Rights Defender and his election. Besides, the human rights NGOs are unable to address the Defender as a third party. Overall, the cooperation with the civil society institutes is duly developed. With regard to ensuring easy access the need to set up regional representations of the ombudsman is emphasized.

FREEDOM OF ASSEMBLY. While RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" is seen by the Council of Europe to be largely compliant with the European standards, yet it is more of a restrictive than regulatory nature. It is the law enforcement practice that is the most concerning. The competent body with no substantial justification impedes and prohibits assemblies, particularly, marches. The practice of challenging in court is unsatisfactory, too, as it does not ensure fair trial and proportionality, in accordance with Articles 6 and 11 of the European Convention of Human Rights.

RIGHTS OF ETHNIC MINORITIES. None of the ethnic minority groups in Armenia is the main population of any territorial unit of the country. They all are dispersed all over Armenia. No international document expressed serious concern with the rights of ethnic minorities in Armenia. This is due to the fact that ethnic minorities in Armenia do not come out with political demands. They refrain from being actively involved in domestic policy. Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

LOCAL SELF-GOVERNMENT. The requirements on local self-government in the European Neighborhood Policy EU/Armenia Action Plan remain almost unfulfilled in 2007-2008. Certain steps were made only starting from autumn 2008. Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan". The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions. Overall, the institute of local self-government is not substantial in many communities.

LEGAL AND JUDICIAL SYSTEM. The reforms of judicial and legal system that resulted in a number of amendments made in legislative acts and law in force, only partially correspond to the spirit and content of commitments stipulated by ENP EU/Armenia Action Plan. Moreover, if one looks back and analyzes the developments of February-March 2008, one can conclude that most of the amendments made follow a certain pattern and aim to ensure the achievement of certain timeserving objectives. Hence, the reforms in legal and judicial system have not improved most of the existing definiteness, and sometimes have raised new problems that require complex and consistent solutions.

CIVIL SERVICE. With regard to civil service in Armenia the priorities of ENP EU/Armenia Action Plan can be assessed as “partly fulfilled”. The realization of the majority of steps is to a certain extent related to the draft law “On Public Service”. The delay in the adoption of this draft was due to debates regarding its comprehensiveness. Its regulation domain covers not only the civil service, but also all legal relations for all kinds and levels of state and communal administration. In the opinion of most civil service experts, after the adoption of the law “On Public Service” many problems will be resolved or preconditions will be set to solve issues that are in cause and effect relationship.

FREEDOM OF SPEECH, MEDIA AND INFORMATION. Despite the amendments to RA Law “On Television and Radio”, the requirement of ENP EU/Armenia Action Plan - “ensure the independence of media by strengthening the independent regulatory body for the public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” - is not in fact fulfilled. The National Commission on Television and Radio has failed to become an independent regulator. According to amendment made in the Broadcast Law on September 10, 2008, broadcast licensing competitions were frozen for two years. The amendment was assessed by independent experts as a deprivation of the right to take part in broadcast licensing competitions for independent broadcasters that are not subject to governmental control. During the state of emergency announced in Yerevan on March 1-20, 2008, for the first time factual preliminary censorship was exercised not only in Yerevan but also all over the country. Meanwhile the restrictions, introduced by the Decree on State of Emergency, did not stipulate censorship, which is prohibited by the RA Constitution and the RA Law “On Mass Communication”.

ELIMINATION OF TORTURE. Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Armenia ratified in May 2006, stipulated the establishment of national monitoring mechanism in closed systems (penitentiaries, police stations, psychiatric clinics, etc.). Both the Public Monitoring Group in the Detention Centers of the RA Ministry of Justice (in 2005) and the Council of Europe Committee to Prevent Torture in their reports note the degrading treatment of prisoners by prisons’ representatives. The situation is particularly alarming in police stations and other investigatory bodies. The complaints of illegal detention, violence and terror in police stations are numerous. The violence in police stations was practiced mostly to gain confessions or testimony against other people.

ELECTORAL SYSTEM. By ENP EU/Armenia Action Plan Armenia undertook the commitment to ensure the electoral framework in full compliance with OSCE commitments and other international standards for democratic elections. Yet this obligation remains unfulfilled. Amendments to Electoral Code have not included the recommendations of the OSCE and Venice Commission. The Central Electoral Commission was quite formalistic in addressing the complaints received. The courts did not ensure judicial protection of violated electoral rights in any of the more than 20 complaints received with regard to CEC’s actions or inaction. Overall, the international observers, when assessing both the parliamentary elections of 2007 and the presidential elections of 2008, particularly, the post-election situation in 2008, noted the lack of necessary political will and public trust towards elections and their results.

FINANCING OF PARTIES. The satisfactory level of party funding could have been ensured, had the appropriate legal acts been applied properly. Yet the monitoring of election campaigns during parliamentary elections of 2007 and presidential elections of 2008, showed that the expenditures for campaigning do not correspond to those, officially quoted by parties and candidates as their elections funds. The competent state body, the

Ministry of Justice, that receives the financial reports of the parties, never mentioned any cases of fraud, i.e., discrepancy between the information in the reports and the reality. It is hard to say whether this is a consequence of conscientious and honest financial reporting by parties or their reports are simply never audited.

FIGHT AGAINST CORRUPTION. In 2007-2008 in Armenia numerous legal and sublegal acts with anti-corruption trends were adopted and/or enforced, and a number of anti-corruption initiatives were implemented. Yet, the international and local experts believe that the level of corruption in Armenia is still quite high and the anticorruption reforms are of little effect. Thus, in 2007-2008, according to Index of Corruption Perception of Transparency International, Armenia remains in the list of most corrupt countries. According to the World Corruption Barometer of Transparency International, in 2007, 52% of respondents of Armenian survey believed that within upcoming 3 years the corruption level in the country "would grow substantially" or would "grow moderately". In 2007 and 2008 the data of "Freedom House" showed that the corruption index of the country remained the same as during the previous years, while in 2007 the Global Integrity Index of Corruption in Armenia was "extremely weak". One of the World Bank's criteria of good governance, "control on corruption", in 2007 was also assessed quite low. Proceeding from the reports of local and international organizations regarding elections 2007-2008 and numerous press reports, one can conclude that during this period in Armenia the political corruption level has enhanced, such as the abuse of administrative, communication, financial and other resources, election bribes. The increase of political corruption in Armenia is becoming a source of political and social crises.

ACTIVITIES OF THE HUMAN RIGHTS DEFENDER INSTITUTE

The European Neighborhood Policy EU/Armenia Action Plan[1] makes the following note regarding this area: “Develop the Human Rights Ombudsman institution in accordance with the Paris Principles based on UN General Assembly Resolution 48/134 of December 1993” (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Preface

The UN Economic and Social Council (ECOSOC) stressed in the Resolution adopted in 1960, that with regard to the protection and endorsement of human rights a crucial role is played by national institutions that should independently reflect the universal ambition to stand for human rights on the national level. These institutions are competent to engage in activities to attain certain universal goals on national level. In 1991 this Resolution became the basis for the Paris Principles, approved on the Global Human Rights Conference, held in Vienna in 1993 and ratified by the UN General Assembly in 1993[2].

The Paris Principles stipulate the minimal criteria for the foundation and effective activities of the national human rights ombudsman that this institute should be guided with. These criteria allow assessing the structure, the legal basis of establishment, independence from executive and legislative branches of power, guarantees of securing diversity, the competence, partnering with other structures, mission and objectives, awareness-raising activities with regard to human rights, etc.

Human Rights Defender Institute in Armenia

Armenia was the last of South Caucasus countries to have a human rights defender (ombudsman), even though preparations for this started as early as in 1990. This process was accelerated by the country’s accession to the Council of Europe and its commitments in this regard. The draft law on the RA Human Rights Defender was developed on the basis of a similar law of the Russian Federation on Human Rights Commissary. In December 2002 the RA National Assembly adopted the law in the first reading, after which the document was sent for the international expert review. On October 21, 2003 the law was adopted finally, it was enforced on January 1, 2004. The law stipulates the procedure for electing the Human Rights Defender and his dismissal, his competence, terms of service and guarantees.[3]

It should be noted that in 2007 the UN International Coordination Committee for National Institutions dealing with human rights endorsement and protection granted the RA Human Rights Defender the highest A status. This means the Armenian ombudsman corresponds to Paris Principles and enables him to take part in the sessions of UN Human Rights Council.

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[1] http://ec.europa.eu/world/enp/documents_en.htm#2

[2] Human Rights Defender’s Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 20.

[3] Article 1 of the RA Law "On RA Human Rights Defender".

Despite the high status, the RA Law "On RA Human Rights Defender" needs development and improvement. The analysis of the law herein is based on Paris Principles, the survey on Human Rights Defender[4]. Also, a comparative analysis with laws of other countries is made, where the provisions are more specific, distinct, clear and in harmony with Paris Principles.

Scope of Action

According to Paris Principles, the ombudsman must have as broad scope of action as possible. Article 2 of the RA Law "On RA Human Rights Defender" defines the main activities of the ombudsman, enabling him only "to protect the rights and liberties, violated by state bodies, bodies of local self-government and officials" (spelt also in the RA Constitution[5]). Meanwhile, the Paris Principles call for a more broad scope for an ombudsman, enabling him not only "to protect the violated rights and freedoms", but also contribute to the development and advancement of human rights and fundamental freedoms. The ombudsman must be more active. According to Paris Principles, the national institute of ombudsman in the absence of complaints-appeals from individuals should be competent to initiate research, to make official inquires, demand clarifications from state and local self-government bodies. Clause 3 of Article 11 of the Law entitles the Defender to imitate discussions if there are reports of mass violations or the issue is of exceptional importance for the society or is related to the protection of certain persons, yet this norm is envisaged for *emergency* and *exceptional* cases, when the violations are already *committed*.

In accordance with Paris Principles, the mission of the national ombudsman can be seen in the promotion and endorsement or development of human rights and fundamental freedoms. The protection includes the consideration of complaints, legal consultancy, dispute resolution, etc. The endorsement or development process includes quite a broad scope of action, from the promotion of respective laws and international agreements, promotion of human rights to awareness-raising activities in education and other institutions, with vulnerable groups of the society[6]. In essence, the RA Law stipulates protection of human rights and fundamental freedoms, but not the activities with regard to their endorsement, progress and development. Only by Clauses 3 and 4 of Article 7 of the Law the Defender is entitled to be present at the sessions of the Government and other state bodies, the RA National Assembly and to raise issues, if the discussion agenda relates to human rights and fundamental freedoms. According to Paris Principles, the law on ombudsman must distinctly specify that the ombudsman must, *upon his initiative and systematically,* monitor the correspondence of local laws to the international documents on human rights and fundamental freedoms and, if necessary to make appropriate proposals; to control resolutions, legal acts, adopted by state bodies and local self-government so as for them not to go against human rights and fundamental freedoms, and if necessary, to take steps to achieve their abolition (this competence is only stipulated by Clause 1 of Article 15 of the Law only after the consideration of complaints).

Presently the main functions of the RA Human Rights Defender's Office are the independent monitoring of public administration and consideration of citizens' complaints

[4] In October-November the Helsinki Committee of Armenia administered an expert interview at the ombudsman's institute itself.
[5] Article 83.1 of the RA Constitution.
[6] Taking the Paris Principles into Asia. A study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines. Hugo Stokke, Chr. Michelsen Institute Report, page 2.

against state bodies[7]. The research of Helsinki Committee of Armenia showed that experts have much appreciation for the ombudsman's efforts in legislative reforms. The experts emphasized the fact that it is upon the proposal of the ombudsman that some laws ("On State Pension" and "On Alienation of Property for the Needs of Society and State") were amended. With regard to violation of the right of property of the Northern Avenue residents, proceeding from the statement of the ombudsman the RA Constitutional Court recognized that the resolution No.1151 of the RA Government of August 1, 2002 regarding the construction in Kentron community of Yerevan, as well as Article 218 of the Civil Code and Article 104, 106 and 108 of Land Code run counter the RA Main Law. Nevertheless, in the human rights domain a number of issues were noted, related to state bodies, the police and difficulties in terms of cooperation with civil sector. On March 1, 2008 the Head of the Criminal Investigation Division of Kanaker-Zeytun Police Department A. Abrahamian impeded the activities of the Defender, prohibiting his entry to the police station, refused to provide information, as well as was disrespectful, violating thus a number of provisions of the Law, including Article 12, according to which the Defender must have unimpeded access to state institutions, including military units, prisons, detention centers, etc. Besides, while on duty the Defender enjoys the right of being immediately admitted by state bodies and local self-government, received by their officials, the management of penitentiaries[8].

On July 19, 2007 the Government adopted Resolution No.927, according to which the draft laws related to human rights and fundamental freedoms, before being submitted to the sessions of the Government, are sent to the ombudsman for an opinion. While steps are taken to regulate the legislation and harmonize the laws, legal acts and resolutions with the international agreements, ratified by Armenia, there is still a number of laws that contradict the norms and principles of human rights and fundamental freedoms. These laws were never submitted for the Defender's opinion, such as the RA Laws "On Investigating Activities" and "On Holding Assemblies, Rallies, Marches and Demonstrations".

In accordance with the Paris Principles the ombudsman must also contribute to the ratification and application of international treaties, to cooperate with the UN and other international and local structures that operate in human rights domain. According to the research above, the international cooperation of the Defender is expressed mostly in joint experience exchange projects, training, awareness raising. Under a memorandum signed with the Helsinki school some staff of the ombudsman's office have regular training. In partnership with UN awareness campaigns are waged, leaflets and posters are published and disseminated. Under UN Development Program, "Empowerment of Human Rights Defender Institute", the office develops information materials, holds training courses, plans a TV program on vital human rights issues in Armenia. With the assistance of international organizations the Human Rights Defender's office now has a library. To implement legal reforms the Defender appeals for international support, too.

The Paris Principles make a particular emphasis on the ombudsman's activities on awareness raising, media relation and coverage of ombudsman's activities, involvement in curricula development. The RA Law "On RA Human Rights Defender" does not refer to these provisions at all. Currently the real activities of the Defender's office are substantial not only in terms of human rights protection, but also in awareness raising. Awareness raising with regard to human rights is initiated by the Defender through meetings and focus

[7] Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 3.
[8] http://ombuds.am/main/am/9/16/0/36

group discussions, material dissemination. Meetings are held both in office and out of it - universities, schools, senior residences, etc. The Defender pays regular visits to regions, too. The office activities are regularly covered by media, in the annual report. With regard to awareness raising the ombudsman's staff pointed out two major issues: lack of representatives in the regions and the lack of funds for developing information materials.

As the survey showed, these activities are in fact implemented by the ombudsman's office, while not being stipulated by the law. In other words, the Law does not give the legal framework for such activities, thus restricting the mandate of the Defender. That is, the Law does not reflect the issues of awareness and coverage, as required by Paris Principles at all. The Paris Principles also call for the Defender's office to hold human rights training for the police, the representatives of judicial system and other state bodies, vulnerable and special needs groups of the society, at schools, universities, etc.

Election of Defender

Specifications are also necessary in the clause of the Law referring to the election of the Defender. Thus, Clause 1 of Article 3 does not define any professional criteria and gives only a general overview that fully coincides with the requirements posed to a member of parliament, while the mandates for these two positions are quite different in nature. Thus, for example, Article 2 of the Poland's Law "On Representative of Citizens' Rights", apart from stipulating the requirement of being a citizen and enjoying public respect, the ombudsman must also have legal knowledge and professional experience[9]. While the Paris Principles do not single out the legal knowledge, they emphasize expertise in human rights. The Armenian Law refers to the need of legal or special expertise indirectly. Thus, according to Clause 1 of Article 7, "The Defender is competent to give the applicant its recommendations or consultations for challenging resolutions, court rulings or sentence justification", and according to Subclause of Clause 1 of Article 12, the Defender is entitled to "have access to cases on criminal, civil, administrative, disciplinary, economic and other law infringements that have their sentences, rulings and resolutions enforces, as well as the materials that were a basis for refusing institution of proceedings". These functions cannot be performed by the Defender unless he has adequate legal expertise or professional experience. Clause 2 of Article 3 of the Law does not provide for case when more than one candidate is nominated and gains sufficient number of votes, or if none of them gains sufficient number of votes. No provision is made regarding the number of nominations and elections of the same candidate, either. Similar laws of Georgia and Poland envisage only two terms of service for the same candidate[10]. The Paris Principles call for the ombudsman election provisions to contain the following clauses: terms of service, re-election terms, dismissal terms, etc.[11] It is also preferable for the ombudsman to be elected at least for five years' term and have a change to be re-elected for the same term[12].

The Law does not require the legislature to involve representatives of civil society, human rights and other organizations, educational institutions, religious groups to nominate candidates, as well as hold consultations on electing and appointing the Defender, to ensure transparency and confirm his real independence[13]. The law does not regulate the procedure for nomination and election of candidates, either (through open calls for

[9] National Ombudsmans, Code of Legal Provisions, Biuro Rzecznika Praw Obywatelskich, Warsaw, 1999, page 279.
[10] Ibid, pp. 129, 280.
[11] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, page 16.
[12] Ibid.
[13] Ibid.

applications, competitions, etc.). The Paris Principles emphasize the transparency of Defender's election and involvement of all groups of the society in the election process.

Clause 2 of Article 4 of the Law imposes certain restrictions on ombudsman being engaged in other activities. In particular, the ombudsman is prohibited from membering in parties but not from involvement in the activities or assisting any party (such as taking part in sessions or campaigns), which cannot guarantee his independence, impartiality and objectivity.

The norms of early dismissal of the Defender do not provide for the cases of permanent failure to implement his duties of violation of the oath made. Meanwhile, Article 7 of similar law in Poland stipulates that the ombudsman can be dismissed early if he violates his oath[14].

Human Rights Defender as a Mechanism of Independent Monitoring

Paris Principles call for the establishment of special centers adjacent to ombudsman to protect vulnerable groups of society (children, women, the disabled, etc.). The monitoring of compliance with the UN Convention of the Rights of Children is made by ombudsman, yet the Law in force does not contain either provisions or regulating mechanisms. According to research administered, the RA Human Rights Defender has neither a section nor a special children's center - a fact that gained the attention of the Council of Europe[15].

On April 8, 2008 the RA Law "On RA Human Rights Defender" was addended by Article 6.1, referring to the activities of the Defender in international law: "The Defender is the independent national mechanism for prevention, as defined by the Optional Protocol to UN Convention against *Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment. The comment on this norm is presented in Chapter 8 of this publication. Yet it is necessary to note that this amendment was not accompanied by any regulatory provision.

Consideration of Complaints

As to the complaints to be considered by the ombudsman (Article 7), it should be noted that the amendment, made on June 1 2006, certainly restricted the Defender's mandate in the judicial. The amendment contradicts the principles of the right to fair trial, prescribed in international documents and RA Constitution. Moreover, if one takes into account that post-Soviet countries are in transition, and the judicial system so far is imperfect, the Defender should be entitled to be present at court sessions (as stipulated by, say, Article 9 of a similar law of Ukraine)[16]. The interview with the ombudsman's office staff revealed that they are occasionally present at court sessions, yet this is not envisaged by the RA Law "On RA Human Rights Defender".

According to Paris Principles, the ombudsman must be entitled to appeal to court on behalf of those who cannot go to court themselves for certain reasons (children, the disabled, convicts, etc.)[17].

[14] National Ombudsmans, p. 281.
[15] Table of Treaty Body Recommendations Relating to National Human Rights Institutions, CRC/C/15/Add.119, 24 February 2000, 23rd Session, COs Europe.
[16] Institute of Ombudsman: evolution of traditions and modern practice (comparative analysis), A. Sungurov, Saint-Petersburg Humanitarian Political Science Center "Strategia", 2005, p. 179.
[17] Institute of Ombudsman: evolution of traditions and modern practice, p.179; Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 10.

The Law does not stipulate the mandate of human rights organizations to address the defender on behalf of third persons, either. The Paris Principles also stipulate close cooperation between the Defender and human rights NGOs. In the case of Armenia such cooperation is particularly important because the Defender does not have regional offices, yet can become acceptable to the people in the regions through local NGOs.

In the course of research one of the respondents noted that the representatives of the Defender must be entitled to suspend proceedings in case of the restoration of rights infringed, which is not envisaged by the law in force.

Ensuring Accessibility

Clause 3 of Article 23 of the Law stipulates that in regions regional offices of the Human Rights Defender *can be* established. As noted above, in accordance with Paris Principles the national ombudsman's institute must be accessible and available for *all groups* of society, and geographic location must not be an impediment for addressing the Defender. Steps are to be taken to establish regional offices or to launch partnership with local NGOs. Apart from this, the offices of the Defender must be accessible for people with special needs, i.e., be duly equipped[18]. According to the research noted above, the national ombudsman's institute has no regional offices or representatives, yet there is the practice of regular visits for awareness raising. The out-of-schedule visits to the regions are made only when an urgent complaint is received. Reasons for the lack of representatives in the regions include the need for office space, furniture and communications, as well as staff.

According to the annual report of the Defender in 2007, most of the complaints (65.8%) are received from residents of Yerevan, while the proportion of these received from the regions is very small (6.8%). Such huge difference is due also to remoteness of location.

Defender's Report

During the period of January 1 - September 30, 2008 the Defender received more than 2845 complaints, 907 of which were in writing. Throughout this period the Defender was addressed by 4096 people[19]. The complaints were mostly directed against the Special Investigative Service (311), Yerevan municipality (293) and the RA Police (222). In the opinion of one of the respondents, it is mostly conditioned by the situation after presidential elections-2008, with regard to which an extraordinary report was made by the Defender.

In accordance with Clause 1 Article 17 of the Law the Defender submits a report on his activities and human rights and fundamental freedoms to the country's President, the legislative, executive and judicial power. According to Paris Principles this is a mandatory component of the ombudsman's activities. In 2008 the Defender presented his report for the previous year, which described the Defender's activities, the human rights and fundamental freedoms situation, the results of complaint consideration, the list of state bodies that made infringements, etc.

In accordance with Clause 2 of the same Article the Defender has the competence of making an extraordinary report on certain issues of public significance or rough human

[18] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, page 22.
[19] Data provided by the RA Human Rights Defender.

rights infringements, as well as in cases of mass failure to eliminate the infringements. In 2008 the Defender made an extraordinary public report on presidential elections of February 19, 2008, post-election situation and events of March 1. This step was somewhat inadequately received by the authorities, in particular, the former RA President; moreover, the General Procuracy and the Ministry of Justice presented their objection, the whole point of which was that the Defender exceeded his mandate[20]. According to the Paris Principles, the ombudsman's mandate includes the issuance of an annual report and, if necessary, issuance of an extraordinary report. The Paris Principles also stipulate that the reports presented by the ombudsman and the infringements they contain must be discussed by the Parliament to be resolved[21] - a fact that is not taken into account by the RA Law "On Human Rights Defender".

The research administered reveals that there are certain problems in cooperation with state bodies. Difficulties were mainly noted in interacting with the Government, the National Assembly and the Police. In the former case difficulties were related to financial issues, in the latter - to the problem of mandate review.

In accordance with the Paris Principles the ombudsman's report must also contain a financial report to ensure public accountability and transparency, also stipulated by the Law, but not reflected in the report for 2007.

Defender's Office

According to Clause 1 of Article 23 of the Law the Defender recruits his staff to implement his activities, yet no procedure is prescribed and no reference to other provisions of the Law is made. The staff of the RA Human Rights Defender includes a secretariat, correspondence department, and a legal service that includes groups for rights of the military, protection of criminal procedural, social, economic, civil and cultural rights. The separate subdivisions are the information and public relations department and international relations department[22]. As follows from the data obtained, the currently existing of the Defender's staff and its statutes will soon be renewed. The draft has already been developed by the Defender and submitted for the approval.

The new structure and statutes call for the introduction of job descriptions, specifying the areas of competence of the staff members, as well as the hierarchy of positions, staff modifications aimed at optimizing the staff. The staff lacks the following professionals: lawyers, experts on international relations, journalists. As the staff members say themselves, the lawyers are particularly necessary.

In accordance with the Paris Principles, the ombudsman forms a staff (as stipulated by the Law), and he must act with sufficient transparency. A special procedure should be used for recruitment.

Yet it should be noted that there is no distinct recruitment procedure. The Defender's staff is quite closed for new staff members. No announcements are published if there are vacancies. The recruitment is made by the Defender through informal interviews. The most significant criterion in recruitment is the experience of dealing with the potential candidate

[20] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, pp. 12, 16.
[21] National Human Rights Institutions, Best Practice, Commonwealth Secretariat, London, 2001, p. 28.
[22] RA Human Rights Defender's Newsletter, #1, 2008, UNDP Armenia, SIDA, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, page 4.

in the past. Yet this method contradicts the recruitment transparency, as required by Paris Principles.

According to Paris Principles, to effectively evolve their activities the Ombudsman's staff must be very qualified. They must also be constantly trained[23]. Overall, the staff noted the importance of the trainings, in particular, on human rights and public relations, yet preference is given to experience exchange with experts from other developing countries and practical job placements at some international institutions. It should be noted that the Head of staff assessed the role of training courses as quite low, since all such courses are detached from Armenian reality.

According to Amnesty International, the national ombudsman institutes must create opportunities for recruitment of such vulnerable groups as people with disabilities, women, ethnic minorities who, being well aware of the problems of their groups, may be neglected or underestimated by state bodies[24]. It should be noted that the Defender's staff is quite representative: it includes, refugees, people with disabilities, representatives of ethnic minorities.

Clause 4 of Article 23 of the RA Law "On RA Human Rights Defender" stipulates that the staff of the Defender are employed on short-term contractual basis. Yet this contradicts the norms of International Labor Organization, according to which the short-term contracts are signed with the specific project staff. Such contracts allow the employer to break the contract upon the end of its term with no substantial justification. It should also be noted that short-term contracts are quite demotivating. The contract is signed for a year, yet after its expiration the employer is not reevaluated or tested, the contracts are automatically prolonged.

Immunity

According to Clause 5 of Article 23 of the Law when on duty the staff of the Defender is immune, which is in accordance with Paris Principles. In June 2008 the RA Ministry of Justice proposed an amendment to the Law depriving the ombudsman's staff of immunity[25]. The Paris Principles establish the right of the ombudsman's staff to enjoy immunity that would ensure their implementation of their professional duty as well as guarantee the independence of the ombudsman's staff. This proposal was criticized as well as disapproved by the Venice Commission[26].

Partnership with Civil Society, NGOs and Expert Council

Paris Principles attach importance to the broad involvement of civil society in the institute of ombudsman and the establishment of the Expert Council which is also a guarantee for the development and endorsement of human rights and fundamental freedoms, as well as for the guarantee of diversity[27]. Meanwhile, Article 26 of the Law leaves the issue to the discretion of the Ombudsman. The reality is as follows. Overall, as the respondents say,

[23] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 14.
[24] Ibid, p. 6.
[25] http://ombuds.am/main/am/9/27/1765/
[26] Ibid.
[27] Amnesty International's Recommendations on the National Human Rights Institutions, October 2001, p. 32.

the cooperation with the institutes of civil society is still at a low level, in particular, with the NGOs. Nevertheless, in the annual report of the Defender in 2007 the cooperation with the NGOS was quite highly assessed[28]. A relatively positive assessment was given to cooperation with media, too, mostly realized through press-conferences held 4 times a year. In special cases the Defender summons an extraordinary press-conference.

According to the Law, for consultations the Defender can set up an Expert Council. The interview with the key staff revealed that such a Council has already been established upon the initiative of the Defender, its members being representatives of NGOs. The number of the Council members is constant and does not exceed 20. The sessions of the Council are held two or three times a year. The Council is not seen as very effective, which is conditioned by the NGO sector in Armenia being underdeveloped.

Funding of the Human Rights Defender Institute

According to Article 24 of the Law the Defender and his staff implement their activities with funding from state budget. According to the statement of the Head of the Office, the funding of the national ombudsman is stable. Yet the budget allocated to the Defender and his staff is occasionally reduced with no substantiation by the National Assembly and Government, which runs contrary to Clause 4 of the same Article. It should be noted that the budget categories are generally acceptable, yet the amounts allocated are constantly reduced. In the opinion of the Head of the staff and other staff members of the Defender, the low pays are a reason for staff turnover. This situation does not reflect either the Law provisions or the Paris Principles, according to which the state should contribute and establish financially favorable conditions for effective activities of the ombudsman. Because of financial issues a number of problems arise with regard to Defender's activities, contrary to Paris Principles. Moreover, in the interviews it appeared that Clause 1 of Article 21 of the Law is violated, according to which the salary of the Defender must be equal to the salary of the Chairman of the RA Constitutional Court, and this is in compliance with the Paris Principles, yet far from reality.

Conclusion

The RA Law "On RA Human Rights Defender" and its practical application were subject to analysis. It is very important for all provisions of the Law to be implemented in practice and the Law be amended and improved. The Law is the basis and the guarantee for the Defender's activities, the more harmonious it is with Paris Principles, the more effective the activities of the ombudsman in the country will be.

- The Law must provide not only for the activities of the Defender in the human rights protection, but also their endorsement and awareness raising.

- The Law must stipulate a specific procedure for the nomination and election of the Defender, with the civil society being involved in the process.

- Being a mechanism that monitoring the implementation of the UN Convention on Children's Rights, the Human Rights Defender institute must provide for a children's center establishment.

[28] Annual report of RA Human Rights Defender, pp. 46-48.

- The Law must provide for a broader group of potential applicants, including human rights NGOs in it.

- The right to monitor trials should be prescribed by the Law.

- To ensure transparency of the Defender institute vacant positions must be publicly advertised, a distinct formal procedure should developed for recruitment, and the contracts should be signed for longer term.

- To ensure easy access for all citizens, regional representations of the Defenders must be made obligatory.

- The Defender must meet Expert Council member as well as other human rights and other NGOs more often, establishing a closer contact with them.

- The state must ensure appropriate funding for effective activities of the Defender.

- The law must be distinct in stipulating that the report of the Defender should be debated at the National Assembly and resolutions must be sought to eliminate the human rights violations noted in the report.

FREEDOM OF ASSEMBLY

In the ENP EU/Armenia Action Plan it is noted: "Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations". (Section 3 "Priorities for Action", Priority Area 2, Specific Actions).

At the same time, Clause 10 of the RA Government's resolution of July 19, 2007 regarding the implementation of ENP EU/Armenia Action Plan deals not with the amendment of the law, but rather with law enforcement, i.e., no improvement of the law is envisaged.

The RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" has contradictions to the RA Constitution.

1. The first controversy is the name of the Law itself. According to Article 29 of the RA Constitution, "everyone has a right to peaceful unarmed assembly". The concept of "assembly" as provided for by the Constitution in the title of the Law was transformed into 4 notions - "assemblies", "rallies", "marches" and "demonstrations".

2. According to Article 43 of the RA Constitution, the fundamental human rights and freedoms that include freedom of assembly can be restricted by the Law only, "if it is necessary to protect in a democratic state national security, public order, to prevent crime, protect public health and morals, constitutional rights and freedoms, dignity and reputation of other individuals". The remaining restrictions, listed in Clause 1 of Article 1 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", are definitely different from those provided for by the Constitution.

3. It follows from the last sentence of Clause 1 of Article 1 that the police and the state bodies may also restrict the realization of these rights. Meanwhile, Part 2 of Article 29 of the RA Constitution make a comprehensive list of the categories of individuals that can be restricted from exercising fundamental rights and freedoms, and by law only: servicemen in the Armed Forces, the Police, national security bodies, prosecuting agencies, as well as judges and members of the Constitutional Court.

4. According to Clause 2 of Article 5 of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations", "a public event can be organized and conducted in one or several kinds, as stipulated by this Law". Article 2 of the Law lists these kinds: assembly, rally, demonstration, march, spontaneous public event and others that include festivities, ceremonies, cultural and sports events. This conveys that the right to assembly may be restricted if held in a form, other than those listed in the law.

5. According to Clause 6 of Article 5 of the Law, "mass public event cannot start, if none of its organizers have come". This conveys that if the organizers of the event have failed to be present at it, its other participants may be deprived of the right to realize their constitutional right.

At 60th session of the Venice Commission (Venice, October 8-9, 2004) an opinion was voiced that the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" does not correspond to the demand that the laws on right to assembly must only be restricted through defining legal grounds for acceptable intervention of state bodies. Apart from this, the Law stipulated undue reasons for restricting the conductance of events. In its

Resolution 1405(2004) the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to amend the Law no later than March 2005 for it to be compliant with the standards of the Council of Europe and ensure the freedom of assembly in practice. The authorities developed a draft law on introducing amendments to the Law, consisting of 11 clauses. It was assessed by the experts of OSCE/ODIHR and Venice Commission whose conclusions coincided. Both expert bodies thought the draft submitted did have certain positive shifts, but at the same time there remain serious restrictions, and recommended that further steps be taken to improve the law. In comparison with the Law, adopted on April 28 2004, the prevailing part of the amendments proposed by the draft was seen by the Venice Commission (Strasbourg, February 8, 2005, Opinion 290/2004 CDL (2005)018) as amendments of editorial nature, not requiring substantial change and not influencing the rights and responsibilities of public event participants. The Venice Commission reaffirmed its opinion on the need to bring the Law in compliance with the requirements of the European Convention of Human Rights and Fundamental Freedoms, adopted at its 60th session (CDL(2004)42).

On October 4 2005 the RA National Assembly, having taken into account the recommendations of OSCE/ODIHR and Venice Commission, made certain amendments to the Law “On Holding Assemblies, Rallies, Marches and Demonstrations". Yet, a number of recommendations were ignored. In particular Articles 7 and 9 keep the restrictions, qualified by the international experts as unacceptable.

Throughout 2005-2007 the bids to hold rallies, submitted to Yerevan municipality by both opposition parties and non-governmental organizations, were repeatedly declined on the basis of Clause 2 of Article 12 of the Law as “on the same day, at the same time and in the same place another event is being held”. Yet in the majority of cases no other event was held, or hastily some cultural event or a show for children and adolescents was staged.

On February 20, 2008 after the Central Electoral Commission announced the preliminary results of the presidential elections, the supporters of candidate Levon Ter-Petrosian, refusing to acknowledge the election results, started a termless sit-in protest action. The action was accompanied by crowded rallies and marches. In the early morning of March 1 the police violently dispersed the protesters. Thousands of opposition supporters gathered in the vicinity of Myasnikian monument. In a clash of protesters and the police in the early morning of March 2 ten people died, many were injured.

On March 1, 2008 by a decree of the RA President in Yerevan emergency rule was introduced for 20 days, during this period holding assemblies was prohibited. On March 17 the RA National Assembly introduced amendments to the Law that, contrary to positive expectations, made assemblies questionable.

Thus, Clause 3 of Part 4 of Article 9 of the Law “On Holding Assemblies, Rallies, Marches and Demonstrations” was narrated in new edition, according to which the competent body can prohibit holding public events, if it has reliable information that the events are “aimed at violent overthrow of constitutional regime, incitement of national, race, religious hatred. Endorsement of violence or war or can result in mass disorder or crime, harm the national security, public order, health and morals of the society, can infringe constitutional rights and freedoms of other citizens”. The new edition also says: "The information may be considered reliable, if the Police or the National Security Service at the RA Government have given their official assessment of it. The same procedure applies for the assessment by the same bodies of discontinuation of these restrictions”.

Moreover, the list of the terms entitling a competent body to prohibit the event has been expanded. Besides, the Law does not clarify where this information is available to the applicant and the public, whether it can be challenged. Whenever an application for an unwanted rally is submitted, this norm allows getting all the necessary “reliable information” from the competent body.

According to Part 6, inserted in this Article, if the events have resulted in mass disorder with casualties, the competent body can prohibit holding mass public events until the crime is investigated and the perpetrators are identified. This provision of the Law means that if during an event and as a result of mass disorder casualties occurred, holding say environmental rallies can be prohibited. Besides, this provision in essence gives the local self-government structures the mandate to introduce emergency rule, which runs contrary to the RA Constitution and international norms.

Part 1 of Article 10 of the Law has also been amended, omitting a provision that allowed to hold mass public event if it grew spontaneously from a non-mass public event.

The same Article was amended once again, stipulating a timeframe of at least five working days to notify the competent body about holding a mass public event (this timeframe earlier was three working days). At the same time, in Part 1 of Article 12 of the Law the term of notification consideration was prolonged: "The competent body considers the notification within 72 hours after its receipt, in the succession of receipt”. The notifications used to be considered the next day after their receipt by the competent body.

Clause 3 of Part 1 of Article 13, according to which the competent body can prohibit any public event on the grounds, stipulated by Article 9 (described above). This practically means a possibility to prohibit any event.

Thus, the Republic of Armenia not only failed to comply with its commitment to reform the Law “On Holding Assemblies, Rallies, Marches and Demonstrations”, but also, with its restrictive amendments, introduced on March 17, 2008, made a serious retreat from democratic principles.

After March 17, 2008 dozens of bids, submitted to Yerevan municipality by the opposition parties and non-governmental organizations, were declined on the basis of restrictions in Article 9 of the Law. Thus on May 6, 2008 the Helsinki Committee of Armenia made an application to Yerevan municipality to hold a march in commemoration of Levon Gulian, dead in the RA Police, on May 12. The notification was declined by the Yerevan municipality proceeding from Clause 6 of Article 9 of the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations”. The response from the municipality was received by the organization on May 13 only, yet on May 12 the Police impeded the march.

On March 28, 2008 in a joint conclusion 474/2008 of the Venice Commission and OSCE/ODIHR the adopted amendments to the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” were strongly criticized and qualified as inappropriate. It was recommended to abolish some of the provisions of the Law, as well as introduce amendments enabling challenging decisions in court in certain cases.

On April 15, 2008 by the results of a discussion at the National Assembly of the Law “On Amending the RA Law “On Holding Assemblies, Rallies, Marches and Demonstrations” with the involvements of Finola Flanagan, Simona Granata-Menghini (Venice Commission), Denis Petini, Niel Jarmani (OSCE/ODIHR), RA NA Chairman Tigran

Torosian, RA Minister of Justice Gevorg Danielian, RA President's Assistant Gevorg Mherian and the RA NA Chairman's Councilor David Melkonian, the parties reached an agreement that a new draft of five clauses will be developed and submitted to Venice Commission and OSCE/ODIHR before April 25, 2008.

Further on, on the basis of the conclusion of international experts this draft must be introduced to the NA agenda.

It was proposed:

- to amend Clause 3 of Part 4 of Article 9 of the Law, according to which the security threats must be immediate (see above), as well as stipulate that the official conclusion of the Police or National Security Service must be justified;

- to exclude Clause 6 of the same Article, to provide for a possibility to challenge the ban on the event in the court in Article 9;

- to add the clause on the commitment to consider the notification within 72 hours into Part 8, Article 12, as recorded in Part 1 of the same Article;

- to restore the possibility to hold a spontaneous public event without a notification lasting not more than 6 hours with regard to a specific phenomenon or event.

In Clause 12.3 of the Resolution of the Parliamentary Assembly of the Council of Europe 1609 "Functioning of Democratic Institutions in Armenia" of April 17, 2008 it was noted: "The amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations should be revoked in line with the recommendations of the Venice Commission with immediate effect."

On June 11, 2008 the Parliament of Armenia adopted another law on introducing amendments to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations". The following amendments were made:

1. Clause 3 of Part 4 of Article 9 was amended to include immediate threat of violence or real danger (see above);

2. Part 6 of Article 9 is abolished.

3. Possibility to challenge events in court is stipulated. In Clause 3 of Part 4 of Article 9 it was stipulated that the official assessment of the Police or the National Security Service must be justified.

4. In Part 8 of Article 12 a clause on considering the notification submitted within 72 hours is added, recorded in Part 1 of the same Article.

5. Article 2 is addended with a definition of "spontaneous public event".

6. It follows from Clause 1 of Article 10 that no notification is necessary for a spontaneous public event.

7. Article 9 is addended by Part 6.1, according to which no spontaneous public event can last more than six hours. Any subsequent event on the same occasion cannot be

considered spontaneous and must be held in accordance with the defined procedure of notification.

Despite the fact that the recommendations of the Venice Commission and OSCE/ODIHR were mostly realized (except for one), the Law did not come back to its previous version. Some restrictions introduced on March 17, remain in force. In Clause 4.1 of Resolution 1620 of June 25, 2008 the PACE welcomed the amendment of the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" in accordance with the standards of the Council of Europe, stating in this regard the assumed commitments are fulfilled. At the same time, in Clause 4.2 the PACE confirmed its requirement that the freedom of assembly in Armenia must be guaranteed in practice. For the reason PACE insists, the Resolution noted, that the Armenian authorities, according to the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" guaranteed that no unjustified restrictions be applied with regard to opposition events, in particular, in terms of rally venues.

Despite this, dozens of bids by opposition forces were declined by Yerevan municipality on the basis of Article 9. In the second half of 2008 the representatives of the opposition challenged the bans of the Yerevan municipality with the Administrative Court over 40 times. In the vast majority of cases the opposition suits were not secured. There were two exceptions to this: on September 3 the Administrative Court allowed the conductance of "Dashnaktsutiun" party's rally, then a part of the ruling coalition, and on September 8 the suit of the Armenian National Congress was partly secured - the rally was allowed but not the march initially planned. Contrary to the municipal bans, the opposition held 4 rallies that went in peace - on June 20, July 4, August 1 and September 26, 2008.

Conclusion

While the RA Law "On Holding Assemblies, Rallies, Marches and Demonstrations" was acknowledged by the Council of Europe as corresponding to the European criteria, it is of more restrictive than regulatory nature. This is true in particular of Article 9. The greatest concern is caused by its practical application. The competent body with no serious justification impedes the conductance of rallies and marches, in particular. The practice of challenging the bans with the court is not satisfactory either, as the court does not ensure the principles of fair trial and proportional punishment, stipulated in Articles 6 and 11 of the European Convention of Human Rights, respectively.

Recommendations

1. To amend the Law "On Holding Assemblies, Rallies, Marches and Demonstrations". To revise Article 9, in particular, abolish Clause 3 of Part 1.4

2. To make the procedure for court challenges more effective

3. To commit the competent body (Yerevan municipality) to placing all the bids for holding assemblies on the web site.

RESPECT FOR THE RIGHTS OF ETHNIC MINORITIES

The ENP EU/Armenia Action Plan notes: "(...) Ensure respect for the rights of persons belonging to national minorities" (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

According to 2001 census, ethnic minorities are 2.2% of the total population of Armenia. There are 11 ethnic communities in Armenia: Assyrian, Yezidi, Kurdish, Russian, Greek, Molokan, Jewish, Polish, Ukrainian, Georgian and German. The biggest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), Kurds (1,519). The greatest part of these communities was formed in the first half of the 19th century. Apart from Yezidis, other communities are concentrated in cities, mostly in Yerevan.

None of the ethnic minority groups dominates any of the territorial units of Armenia. They all are dispersed all over the country. Upon its accession to the Council of Europe Armenia did not assume any special commitment with regard to ethnic minorities. No international document voiced any serious concern with regard to the rights of national minorities. This is due to the fact that ethnic minorities of Armenia make no political demands.

Individual complaints are occasionally received - with regard to pasture use, property, unfair trial, yet such complaints are characteristic of the whole population of Armenia and are not directly related to ethnic discrimination.

During the meetings with representatives of ethnic minorities discontent was mostly heard with regard to lack of funds for more active cultural life, notwithstanding the fact that the RA Government does allocate certain amounts to this effect.

The tense political situation in the country that affected various social groups after the presidential elections of February 2008 does not seem to have directly affected the minorities. Ethnic minorities refrain from being actively involved in domestic politics.

Ethnic minorities are represented in local self-government. In the National Assembly of Armenia there is a deputy of Greek descent, one of the leaders of a ruling party, the Republican Party of Armenia. The biggest community, the Yezidis, is not represented at the parliament, yet they were present in the election party lists of several parties. The absence of Yezidis in the parliament may be explained by the lack of organization within the community. Meanwhile, the correctly organized campaigning can enable Yezidis to have several MPs.

Armenia ratified the CE Framework Convention on National Minority Languages (1998) and the European Charter of Regional and Minority Languages (2002).

According to Article 14.1 of the RA Constitution: "Everyone shall be equal before the law. 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 ".

Besides, Article 41 of the Constitution says: "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."

Article 1 of the RA Law “On Language” guarantees free use of minority languages in the Republic of Armenia, and Article 2 - a right to be educated in the mother tongue. According to Article 4 of the RA Law “On Language” in official documents, stationery, stamps of ethnic minority organization they can use their mother tongue along with the state language. Article 8 of the RA Law “On Basis of Legislation on Culture” provides that the state “contributes and assists establishment of such conditions that will return the cultural identity of various national minorities”. Article 15 of the RA Criminal Proceedings Code guarantees a state-funded translator’s services to the participant in a trial that do not speak Armenian.

There is no Law on national and ethnic minorities, despite the appeals made by NGOs and political parties since 2003 regarding the need to adopt one. Throughout at least five years various legislative initiatives kept being developed, yet none of the drafts was adopted as a basis for a law.

In 2008 to ensure the rights of ethnic minorities, a number of steps were taken in Armenia[29]:

- The RA Ministry of Culture developed a concept of protecting, retaining and developing the non-material cultural heritage, in which a lot of significance is attached to the issues of protecting and developing the culture of ethnic minorities.

- The volume and the duration of broadcasting in Assyrian and Greek languages on Public Radio of Armenia was increased.

- With state funding, the medieval Jewish cemetery on the bank of Eghegis river was renovated.

- The RA Ministry of Culture organized a republican festival of culture of ethnic minorities.

- The budget of Ministry of Culture has a separate line for funding publication of literary works by ethnic minority writers.

- The expert group of the Council of Europe monitored the process of implementation of European Charter of Regional Languages. Within the monitoring a scientific conference was held, giving floor to discussion of legal and cultural aspects of the problem.

[29] Information is provided by the Department of National Minorities and Religion at the RA Government.

LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.

REFORMS OF LEGAL AND JUDICIAL SYSTEM

The ENP EU/Armenia Action Plan stipulates the following steps to be taken in this domain:

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly (during 2006);

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;

- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006);

- Improve the legal and particularly free legal aid system by improving and , strengthening the system of advocates and develop a school of professional practice for young graduates in law;

- Establish administrative courts (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

Current Situation

Amendments made to the RA Constitution on November 27, 2005 launched the implementation of the second stage of the legal and judicial reform. The amendment of the Main Law was aimed to improve the existing legal system, within the concept set as a basis for 1995 Constitution and condition by the principle of separation of powers.

The general analysis of the amendments made to the Constitution in 2005 allows stating the following:

- the institute of the Constitutional Court gained more detailed regulation and became more democratic;

- the legal status of the Court of Cassation was changed;

- additional guarantees for the independence of judges were recorded;

- the limits of constitutional basis for justice were expanded and some of the fundamental principles were prescribed in greater detail;

- the procedure for the formation and activities of the Council of Justice was reconsidered, etc.

Main Objectives

Despite the fact that after the Constitutional reform a number of new legislative acts were adopted and numerous amendments to the laws in force were made, the issue of how compliant the legislative amendments are to the spirit and content of commitments, stipulated by ENP EU/Armenia Action Plan, remains open.

Moreover, looking in retrospect and analyzing the developments of February-March, 2008, one can conclude that most of the amendments were aimed at specific practical targets.

Judicial Power

Current Situation

The primary objective of the reforms was the establishment of unified, full-fledged and independent judicial power, and this consideration lay at the heart of the whole concept of judicial and legal system. This concept was realized through the Judicial Code, adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resolved a number of important and crucial issues. In particular, for the first time the relations, linked to organization and activities of the judicial, were for the first time regulated in a systemic form. Previously these were regulated by separate law - the RA Laws "On the Council of Justice", "On Trials", "On Legal Status of the Judge". Specialized - criminal, civil - courts and the Administrative Court was set up. The role and the significance of the Court of Cassation in the judicial system of Armenia changed; presently its main function is to ensure uniformity of law application and to contribute to the development of the law. Self-regulation bodies for the judicial power were formed, too - the General Conference of the RA Judges and the Council of Court Chairmen, a school has been establish to train judge candidates (Court School), that is to ensure the competence and appropriate training for future judges.

Main Issues

At the same time the legal and judicial reform in general and the Judicial Code in particular did not solve the most important of the urgent issues - creation of real independence guarantees and the practical application. The steps directed at strengthening the independence of the judicial system did not ensure the real independence of certain judges. As a result, within the de jure independent judicial system there are de facto dependent judges, which are illustrated by examples on both legislative and practical level.

Thus, one of the main guarantees for ensuring the independence of judicial system and the judges was to be the Council of Justice, entitled with a new status by the Constitution. Yet the analysis of the legislation shows this body, and hence, the whole judicial system, remains under the influence of the RA President.

This can be proved by several vivid examples:

- According to the Law, the Council of Justice is competent to make up the lists of candidate judges, yet this list is ratified by a decree of the country's President (Part 4 of Article 117 of the RA Judicial Code).

- The lists of promotion of judges of special primary courts and courts of appeals are also made up by the Council of Justice through a secret ballot, yet the President of the country leaves the candidates he finds acceptable on this lies, too and adds new candidates to the list within ten days. If the list is not addended it is considered to be declined (Part 9 of Article 137 and Part 8 of Article 138 of the RA Judicial Code).

- A similar mechanism is stipulated for filling in vacancies on the courts of general jurisdiction. Upon the consent of the candidate the Chairman of the RA Court of Cassation presents his candidacy to the Council of Justice. Unless the procedures stipulated by the Code are violated, the Council of Justice gives a positive opinion through an open ballot. In the case of a positive opinion, the candidacy is presented to the President of the country. If the President fails to appoint the judge this candidacy is considered rejected, it is excluded from the candidate judge list and a nomination to the vacancy is made anew (Parts 9 and 10 of Article 123 of the RA Judicial Code).

It is not surprising that the judges appointed by the abovementioned procedure mostly came up with verdicts of guilty on the criminal cases instituted on the events of February-March 2008, and the 1-2 verdicts of non guilty can be considered a negligible exception. Therefore, one of the conclusions of PACE Resolution 1609 - "despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process" - may be considered fully compliant with the reality.

Another example is the statistics of detention on the cases above - the motions on detainment and its prolongation filed by prosecutors and investigators were almost 100% secured. In Resolution 1609 it was also noted that the courts did not display critical approach to the need for preliminary detainment, did not duly consider the arguments of the defense attorneys, which does not meet the requirements of the European Convention of Human Rights and Fundamental Freedoms and once again raises questions regarding the independence of the judicial.

Procuracy

Current Situation

The constitutional reform was aimed at creating not only an independent judicial, but also a procuracy, independent from all branches of power. The system was supposed to be profoundly changed, as shown in the new RA Law "On Procuracy", adopted on February 22, 2007.

In the new Law "On Procuracy" the following was defined: main principles of procuracy organization and activity; the new procedure for appointing the RA General Prosecutor (upon a proposal of the RA President is appointed by the National Assembly for six years, and can be dismissed by the National Assembly - in the cases specified by the law - with a majority of votes); the structure and the system of the procuracy; the procedure and the conditions of prosecutor's subordination, their appointment and dismissal; immunity, material and social guarantees of prosecutor's activities. Yet the main accomplishment of the Law was certainly the separation from the procuracy of the criminal investigation function, as a result of which this body at the pre-trial investigation had to predominantly concentrate its efforts on the implementation of the control over the legitimacy of the investigation and preliminary examination.

Main Issues

Nevertheless, the developments showed there was no real intention to free the procuracy from investigative functions. Through consistent legislative amendment the procuracy not only restored the former positions, but also gained new privileges.

The first step was the adoption of the RA Law “On Special Investigative Service”. This Law established the new formally independent body in charge of investigating criminal cases. The head of the service is appointed by the RA President upon a proposal from the General Prosecutor.

Appropriate amendments were made to the RA Criminal Proceedings Code, too. According to the amendments the Special Investigative Service was to undertake the preliminary investigation on Articles 149, 150, 154.1, 154.2 of the RA Criminal Code on the cases dealing with the involvement in a crime of the leadership of the legislative, executive and judicial branches of power, of people on special state service, abusing their official positions, as well as dealing with elections.

Besides, a separate provision was made to the effect that the RA General Prosecutor can transfer those criminal cases from other investigative bodies to the Special Investigative Services that involve accomplicity or crime of the officials above as well as the cases in which these individuals are victims (Part 6 of Article 190 of the RA Criminal Proceedings Code).

Further on it became clear that all the loud cases on the events of February-March 2008 under various pretexts were concentrated in the Special Investigative Service, with the whole complex of legislative “innovations” used “successfully” by the RA Procuracy for a total control and investigation in the right direction, in both individual cases and against certain defendants. In fact the previous mandate of the procuracy was restored, with no serious commitments and responsibility.

Access to Justice

Current Situation

The solution of issues related to access to justice, in particular, the establishment of effective mechanisms to ensure free legal aid is a logical component of the whole legal and judicial reform process. The experience of the structures, established at the first stage of the legal and judicial reforms, their benchmarking against the world experience and the study of the legal practice showed that the free legal aid as a way to ensure access to justice is only possible through structural change. It is to this effect that the draft law “On State-Funded Legal Aid” was developed, with the support of Open Society Institute, and submitted to public debate.

Main Issues

Yet another solution was preferred in the course of the legal and judicial reform. In particular, through the RA Chamber of Advocates man attempt was made to regulate a whole domain of public relations outside legal framework by one amendment only, introduced to the RA Law “On Bar”.

This prospect is characterized by a whole number of negative characteristics. First of all, specific criteria of determining inability to pay are lacking, as well as the effective mechanisms for proving the necessary aid. This will have complicated and very negative consequences for the beneficiaries involved.

Besides, the real number of the public attorney of the Public Attorney Office (34, 7 of them working part-time) cannot objectively ensuring free legal aid to vulnerable social groups, in particular in the regions.

Finally, this initiative, being insufficient and completely ineffective, can be presented as an example of state implementation of the commitments to ENP.

Solutions Proposed

Analysis of the problems above allows concluding that the legal and judicial reforms have not corrected most of the existing shortcomings, and in some cases also created new problems, allowing complex and consistent approach. In this regard it is necessary, in particular:

1. To make complex amendments in the RA Judicial Code, aimed at ensuring real independence of judges;

2. To amend the RA Criminal Proceedings Code and the RA Law “On Special Investigative Service” so as to de facto excludes the investigation of criminal cases by the procuracy, as well as the total control of the RA General Prosecutor over the Special Investigative Service;

3. To take productive steps to have adopted by the RA National Assembly the draft law “On State-Funded Legal Aid”, currently in circulation, and have appropriate amendments made in other legal acts.

CIVIL SERVICE DOMAIN

The ENP EU/Armenia Action Plan stipulates the following regarding the civil service reform:

- Establish a unified and transparent system of recruitment for civil servants and develop incentives to promote public integrity through the establishment of merit-based payment structures. Promote the improvement of coherent civil service policy mechanisms and strengthen administrative capacity;

- Promote a merit-based system of payment for civil servants and introduce a rational system of evaluation of work performed;

- Support the improvement of civil service system activities and institutions (job advertisement/selection, appraisal, civil service passports etc.) and bring them in line with European standards;

- Support the improvement of educational and training programs for civil servants (in particular those related to computer and management skills, foreign languages, ethics code etc) in accordance with European standards;

- Establish a coordination network between the relevant authorities of civil service systems of EU Member States and Armenia, to ensure harmonization of legislation (and other relevant activities) and exchange of best practices and data (Section 4 "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform").

In Section 5 of the RA Government Resolution No. 927 of July 19, 2007 on the implementation of ENP EU/Armenia Action Plan, the following priorities are defined:

1. To improve the RA civil service and mechanisms for having a unified policy;

2. To create a single list of professions pertaining to the public administration in Armenia;

3. To develop and introduce a rational system of performance evaluation for the civil servants;

4. To improve the merit-based remuneration system for civil servants;

5. To improve the Ethical Code of the civil servants and its compliance;

6. To ensure incessant renewal of job descriptions for civil service;

7. To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

The reform process in this domain received much attention in the Armenia section of the current report "Implementation of the European Neighborhood Policy in 2007", presented by the Committee of European Communities in Brussels in April 2008. "While no comprehensive evaluation was made of the civil service, nevertheless, steps were taken to improve the system, with particular emphasis made on ethical code, anti-corruption

measures and employment procedures. The process of defining a unified legal norm of civil servants has not been completed yet", - the report noted in particular.

The present research aims to disclose the situation in terms of implementation of priorities above, the results, the reasons that impede their full-fledged and effective implementation.

To obtain information, the following methods were used in the course of the research: document research, in-depth interview or focus group discussion.

Thus, the first method was used to study the following legal, methodological and information documents: the RA Law "On Civil Service" , the RA Law "On Remuneration of Civil Servants"; the draft law "On Introducing Amendments to the RA Law 'On Civil Service' " (July 21, 2008); draft law "On Public Service"; resolutions, current reports, information from the RA Council of Civil Service, etc.

In-depth interviews were administered (personal and group) with the deputy chairman of the RA Council of Civil Service and the Council staff - the heads of subdivisions engaged in the research issues and individual experts. A special questionnaire was developed for in-depth interviews.

The interview participants were offered to give a quantitative and qualitative assessment of the process of the implementation of priorities for 2007-2008 and its results. To this effect we developed certain quantitative and qualitative indicators.

In particular, in terms of quantity the experts were offered to assess the implementation of each of the 2007 priorities by a three-unit scale, where 1 stands for "fully implemented", 2 - for "partially implemented" and 3 - for "nothing is done".

To make a qualitative assessment the experts were offered:

1. To list all steps taken to implement the priority during the reporting period;

2. To describe the rationale, the principles of the abovementioned steps, the criteria of their implementation, changes made, their direction, nature, etc.;

3. To present the reasons, for which the steps planned were not taken or were not fully implemented.

Priority 1: To improve the RA Civil Service and mechanisms for having a unified policy.

The following steps were taken:

To ensure transparency all the agencies have public information departments set up, in which job descriptions have been developed for 55 out of 80 civil servants. The Procedure for Freedom of Information and Provision of Information in Civil Service is being discussed currently. Training of all staff of public information departments was made. Proceeding from the positions in civil service, in the first (special) departments of all agencies the list of staff having access to secret information has been developed, with the level of acceptable access to such information being defined.

All agencies have unified departments of human resource management.

Aiming to overcome corruption in public administration, income statements have become mandatory for all civil servants - in the first years after civil service system was introduced not all classes of civil servants had such an obligation. Notably, the statement of incomes is a necessary but insufficient condition to overcome corruption in public administration.

The draft law “On Public Service” stipulates the introduction of the following new institutes: to expand the Code of Ethics of Civil Servants; the information institute; the notion of conflict of interest; the notion of gifts to officials at duty (in particular, types and cost of the permissible gifts to officials, the circle of interlinked individuals, etc. should be regulated - this requirement is also made by GRECO).

In terms of ensuring unified recruitment mechanisms as well as their examination, a pilot management information system has been developed with the assistance of the Yerevan Institute of Mathematical Machines to hold competitions. It is expected that this system will be used throughout administrative system. Today all human resources management departments perform 90% of their functions through electronic management systems.

By a unanimous opinion of experts, all measures taken to realize priority 1 either have already been taken or are being taken.

The failure to implement some of the recommendations of the priority is due to the fact that the RA Law "On Public Service” has not been adopted yet.

Priority 2: To create a single list of professions pertaining to the public administration in Armenia.

The following steps were taken:

The RA Government has approved a list of positions. While this list, in accordance with the market demands, is being reviewed every year, it still does not include all the diversity of professions necessary in public administration.

After the formation of civil service system a unified list of professions in public administration was to be developed. To this effect the following steps were made:

- the need to create a unified list of professions in administrative system was justified;

- the professions, necessary for various subdivisions, were subdivided into groups;

- the task of specifying requirements for special education for experts in various subdivisions was defined to finalize job descriptions (thus, for example it was hard to define the education background necessary for a HR manager, etc.);

- in the development of a single system of professions, the real requirements of the market and analysis of data on actual basic education of civil servants, employed in public administration from 1960-1970s, archive check-up of the data reliability, as well as the development of mechanisms to ensure effective application.

The problems, related to the implementation of this priority, require knowledge, its solution is impossible through the efforts of the Council of Civil Service, therefore, with no additional funding the single list of professions for public administration is impossible to develop.

In the opinion of experts, this priority was assessed as mostly unfulfilled.

Priority 3: To develop and introduce a rational system of performance evaluation for the civil servants.

The following steps were taken:

Upon the initiative of the RA Government it was proposed to develop a new system, according to which as a main performance evaluation criterion the following indicators are taken:

- volume of work;

- time of implementation;

- quality (compliance with the established quality norms);

- contribution (share or value in the working programs of the subdivision);

- nature (mechanical, semi-mechanical, creative, etc).

In 2007 the Yerevan Institute of Mathematical Machines developed an electronic system for collecting and processing the data necessary to evaluate performance. This was done upon the order of the Council of Civil Service and with the assistance of the World Bank. Upon the initiative of the RA Government another performance evaluation system was developed, too, that is being tested at the staff of the RA Government and the RA Ministry of Economy. Yet the new performance evaluation systems have not been introduced as yet.

The establishment of the general system in accordance with the indicators above calls for the development of qualitative indicators of performance evaluation (including methods of measuring quality, nature, contribution, etc.), which also requires knowledge and skills. It is impossible to solve this problem by the efforts of Civil Service Council only, it also requires financial assistance from outside.

Priority 4: To improve the merit-based remuneration system for civil servants.

In 2007 the RA Law “On Remunerating Civil Servants” was amended, according to which the base salary (the part independent of the years in service) of all civil servants was raised, yet this was not linked to the new evaluation system and did not ensure the differentiation of remuneration of civil servants on the basis of criteria specified.

The introduction of a new system of merit-based remuneration of civil servants was late because no rational performance evaluation system was adopted.

Priority 5: To improve the Ethical Code of the civil servants and its compliance.

Since the draft law “On Public Service” has not been adopted yet, no ethical code has been put into circulation, no sub legal normative acts have been developed, ensuring the compliance with ethical rules.

Despite this, in terms of ethical code improvement certain progress has been recorded owing to draft law “On Public Services”. Before that the Ethical Code of Civil Servants was not stipulated by law, and was only approved by the Council of Civil Service (resolution of No.13 of May 13, 2002). The establishment of ethical norms as a law:

- will reinforce their mandatory implementation as will stress their legal, normative nature, regulated by the law;

- will allow overcoming the unilateralist that exists in several codes of ethics in force. Thus, for example, “the civil servant, out of duty, should avoid other business contacts with people in conflict with state authorities”.

At the same time the draft has some unclear definitions. In particular, the notion of “legal policy”, mentioned in Clause 1 of Part 1 of Article 22, the criteria of “public interest” are also uncertain.

Priority 6: To ensure incessant renewal of job descriptions for civil service.

This is an incessant and permanent function of civil service system that does not call for specific timeframes, unless required by the newly adopted piece of legislation. Overall, changes were introduced in over 4,300 job descriptions.

Priority 7: To ensure the harmonization of the legislation on civil service of EU countries and Armenia, as well as to have experience and information exchange among appropriate institutions.

Instead of a radical change of the specialized legislation a more general decision was made - to develop a draft law “On Civil Service” with an expanded domain of regulation, including also civil service. Yet the adoption of the law was late, for this reason some of the institutional changes aimed at harmonization with the EU countries cannot as yet be implemented.

Certain steps were taken to exchange experience with the EU member countries.

Overall, in the domain of civil service throughout the reporting period the required priorities of ENP Action Plan can be qualified as “partially in line”.

The implementation of the majority of requirements is largely related to the draft law “On Public Service”. The delay in adoption of the draft to a certain extent is conditioned by active discussions, related to its comprehensive nature, since the domain of its regulation includes most crucial relations not only in terms of civil services, but also state and municipal administration.

In the opinion, of the vast majority of experts in civil service, with the adoption of the law “On Public Service” many of the problems of this sphere will be resolved or preconditions will be in place to solve many issues that are in cause-and-effect relationship.

FREEDOM OF SPEECH,
MEDIA AND INFORMATION

The ENP EU/Armenia Action Plan contains the following requirement: “Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision” (Section 3 “Priorities for Action”, Priority Area 2).

Section 4 “General Objectives and Actions” also considers this sector. Clause 4.6.3 “Information Society and Media” of Sub-Section 4.1 “Political Dialogue and Reform” of Section 4 “General Objectives and Actions” says:

“- elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-Signatures), e-Government, e-Health, e-Learning, e-Culture;

- work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;

- work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;

- switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.”

The current report "Implementation of the European Neighborhood Policy in 2007” by the Committee of European Communities, section regarding Armenia, reads as follows:

“Measures have been taken to approximate the legislation on freedom of speech to the international standards: the amendments made to the RA Law “On Television and Radio” were aimed at ensuring balance in the National Commission on Television and Radio. Until the year 2013 the National Commission will be supervised by the President, after which the number of Commission members elected by the National Assembly will be equal to the number of members appointed by the President. The board members of the Council of Public Television and Radio Company are appointed only by the President. In July 2007 the National Assembly turned down two draft laws imposing restrictions on programs of international broadcasters. Permanent absence of independence of the regulatory bodies and insufficient informational pluralism still remain causes of concern. The RA Law “On Freedom of Information” is not fully applied yet, namely with regard to recording, classification and storage of information. During the presidential election campaign, a number of broadcasters were exposed to tax inspection, which gave grounds to suspect deliberate pressure exerted on them.

According to the provisions added to the Criminal Code of Armenia in April 2007, hindering the professional activity of journalists is persecuted. But self-censorship, violence and pressure on journalists are still practiced. Libel and insult have been partially decriminalized. Still, libel and "insulting a government representative" are punished also by imprisonment."

Having analyzed fulfillment of the obligations specified in the ENP EU/Armenia Action Plan, Yerevan Press Club (YPC) came to the following conclusions.

Broadcasting Legislation and Practice

On February 26, 2007 the National Assembly of Armenia adopted the RA Laws "On Introducing Amendments to the RA Law 'On Television and Radio'" and "On Introducing Amendments and Addition to the RA Law 'Regulations of the National Commission on Television and Radio'". But, as it has recently become traditional, the Laws were discussed and adopted hastily, through rapid procedure.

The argument that the need to bring the legislation into accord with the amended Constitution called for a rapid procedure does not hold water. Over a year had elapsed since the adoption of the amendments to the Constitution, and both the governmental and the parliamentary structures had enough time to hold discussions, hearings, to study the proposals submitted, to get expert evaluation. Moreover, in September 2006 the Government put into circulation a more comprehensive draft law that was rejected by the National Assembly, due to the efforts of the civil society and journalist community. Thus, the Government had plenty of time to discuss the draft law with the interested organizations since it was just the shortened version of the previous one.

After adoption of the above-mentioned Laws, the YPC made a statement, which covered an opinion regarding these Laws. Namely, it was stated that: "The amendments to the broadcasting legislation (...) do not reflect even the positive stipulations of the amended Constitution. Firstly, the proportion of the members of the regulatory body (the National Commission on Television and Radio), appointed by the President and elected by the Parliament, as provided for by the Main Law, will, following the amendments, only be reached in 2011 (...). Secondly, the amendments do not ensure the public and political diversity in NCTR composition: in accordance with the procedures proposed, the decision about the appointment of NCTR members from NA will be made by the parliamentary majority, which, as the political practice of Armenia shows, is always in the same camp with the President. In other words, the regulatory body, like before, will be formed solely by the political forces at power, and in this regard the amended legislation does not introduce any significant novelty. Thirdly, like before, the involvement of the public in NCTR formation and the transparency of its decision-making is not ensured." The YPC also stated that remaining subdivision into the paid (that is, the full-time NCTR members - the chairman and the vice chairman) and the unpaid members conditions huge gap in their competence and violates the principle of collegiate decision-making. And finally, according to YPC statement: "The expansion of the NCTR competence and inclusion of the public broadcaster into it, as stipulated by the amended Constitution, did not entail the description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio in broadcasting legislation."

Above two years have passed since amending the above-mentioned Laws. In April 2007 the tenure of 3 NCTR members expired. According to the law, two persons were to be appointed to this body (the number of the NCTR members changed from 9 to 8). On April

7, 2007 the President of Armenia appointed one National Commission member (Grigor Amalian was reappointed as a member of the NCTR and later on as its Chairman), though the National Assembly should have been the first to elect NCTR member, since the amendments to the Law read as follows: “In case of expiry of the National Commission members’ tenure or early termination of their powers, the vacancies shall be filled first by the National Assembly and then by the President of the Republic.” Still, pursuant to the same amendment: “If one party appointing (electing) a member to the National Commission fails to appoint (elect) its member, this will not deprive the other party appointing (electing) a member to the National Commission of its right to fill in its vacancy.” As of December 31, 2008 the National Commission had not appointed its member, moreover, it did not include this issue on the agenda of its sessions. The tenure of three of the remaining 6 NCTR members expires in 2009 (thus, according to the above-mentioned principle of succession, two of them shall be elected by the National Assembly and one - by the RA President). The tenure of the other three members expires in 2011 (accordingly, two members shall be appointed by the President, one - by the NA) and if the NA remains disinterested in this issue, the amendments made to the Constitution and the laws will lose their significance and the activity of the NCTR will be rendered less efficient.

On June 27, 2007 at the extraordinary session of the RA NA the Draft Laws “On Introducing Amendment to the RA Law 'On Television and Radio'” and “On Introducing an Addition to the RA Law ‘On State Duty’”, initiated by the RA Government, were brought up for consideration. They were immediately called by experts draft laws on stopping the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty in Armenia. The first draft law stipulated prohibition of the activities of other broadcasters on the frequencies held by the Public TV and Radio Company. The second one specified a state duty of 70,000 AMD for “each issuance of a program cycle of the national editorial office or a service of a foreign media by the TV and Radio companies of the Republic of Armenia”. Naturally, adoption of these laws would put an end to broadcasting of Armenian Service of Radio Free Europe/Radio Liberty by the Public Radio of Armenia. Broadcasting of such programs by private companies would become unprofitable.

What issues, vital for the country and the society, are these two draft laws to solve that they had to be necessarily considered at an extraordinary session, instead of being included into the agenda of the ordinary session, following all the procedures that the law provides for? The draft authors have not presented any convincing arguments as to the urgency of their adoption at this very moment.

In this case again, for many times already has the Government hastily submitted draft media-related laws to the National Assembly - without consulting the civil society, media representatives, experts, even without the opinion of the appropriate parliamentary commission. These draft laws did not solve any vital problem for the country and the society, therefore, it is not clear why it was necessary to consider them at an extraordinary session. The draft authors did not present any convincing arguments as to the urgency of their adoption at that very moment.

These draft laws caused a wave of protest since, as it was mentioned in the statement of a number of NGOs, membering in Partnership for Open Society initiative, “analysis of the draft laws, presented to the NA, shows that they are primarily directed against the only broadcast medium out of the control of the RA authorities - the Armenian Service of Radio Free Europe/Radio Liberty, because their adoption in essence will stop the broadcasting of the programs of the Service on Armenian radio waves”.

On July 3, 2007 the draft laws were not adopted due to lack of quorum: 65 deputies took part in the voting, whereas 66 votes were necessary for quorum. Nevertheless, since September 1 the broadcasts of the Armenian Service of Radio Free Europe/Radio Liberty on the Public Radio of Armenia were stopped by the initiative of the Council of Public TV and Radio Company. On July 6 the Council of Public TV and Radio Company resolved to stop airing the programs of local and foreign broadcasters on the public TV and radio from August 9. This decision affected not only Radio Liberty: in August the broadcasts of "Tsayg" TV company of Gyumri on the 6th VHF that the TV company had been using jointly with "Shirak" public TV was stopped. The same is true for the program of "Mir" Interstate TV and Radio Company on the Public Radio of Armenia. The broadcasts of the Radio Liberty Armenian Service is made on the frequencies of "ArRadioIntercontinental". This private radio company is aired in Yerevan and in some other regions of Armenia. According to the representatives of the Armenian Service of Radio Liberty, changing the broadcasting company resulted in a significant reduction of the potential audience.

In the years 2007-2008, an example of governmental pressure on media was the campaign against "GALA" TV company of Gyumri. On October 22, 2007 Vahan Khachatrian, the owner of "CHAP" LLC - founder of "GALA" - made a statement regarding the attempts of various power agencies to exert pressure on TV company. The document stressed the infallibility of the TV channel's stance and the readiness to prevent any attempt of intervention into its editorial policy. The need to make such announcement was caused by the fact that after broadcasting by the company of the speech of RA First President Levon Ter-Petrosian at an event, dedicated to Armenia's Independence Day, September 21, different state bodies tried to exert pressure on "GALA", demanding to stop broadcasting speeches of the opposition representatives. A week after the statement of Vahan Khachatrian, the RA State Tax Service started check-up at "CHAP" LLC. Upon the end of the audit the RA State Tax Service reported the violations revealed. In particular, this referred to concealed amounts of TV advertising. Through a motion of the tax officers on December 3, 2007 the property and finance of "CHAP" were taken into custody. On December 17 the court hearings of the suit of the Gyumri Tax Inspection versus the founder of "GALA", "CHAP" LLC, started and were interrupted on December 18 after the court accepted the counter-claim of "CHAP" demanding to abolish the act on the results of audit. On March 19, 2008 the RA Administrative Court obliged "CHAP" LLC to pay into the state budget tax debts and fines, exceeding the amount of 25 million drams (more than $ 81,000). The overall amount that "GALA" founder was to pay including the litigation and the execution expenses came to 26 million 899 thousand AMD (about $ 90,000). From March 19 to March 25, 2008 there was an unprecedented action for Armenia in Gyumri - a telethon in support of "GALA" TV company. Further on, the fundraising was made all over Armenia and abroad. As a result, more than 26 million AMD were raised and used for payment of the tax liabilities.

At that time and afterwards different governmental agencies tried to influence "GALA" TV company. The same authorities pressed on advertisers to discontinue cooperation with "GALA" TV company. As a result, almost no commercials were aired by "GALA" TV company from the end of 2007 until summer of 2008. Besides, in the same period of time a dispute started between the Gyumri municipality and the "GALA" founder, "CHAP" LLC. The Gyumri municipality addressed the court demanding that "CHAP" LLC be obliged to stop the use of the city TV tower. The dispute was settled on October 31, 2008, when RA Court of Cassation abolished the ruling of court of general jurisdiction of Shirak region made in favor of the Gyumri municipality.

The next amendments to the RA Law “On Television and Radio” were made in November 2007, just before the presidential elections. Article 11 of the Law was given a new edition. The Article referred to the activities of TV and radio companies during the period of elections and referenda. The amendments were made to bring the Article into compliance with the RA Electoral Code, regarding pre-election promotion and its coverage in the media. But the amendments did not cover the issue of regulating the activity of media in the period since the announcement of the election date till the start of pre-election promotion. The obvious political bias of most of the TV channels, recorded by the YPC monitoring in October-December 2007, showed the need for such regulation.

The legislation stipulated that the National Commission on Television and Radio must control the compliance of television and radio companies with the procedure of pre-election promotion defined in the RA Electoral Code, and the right to address the court in case of detecting violations. Though the local and international monitoring reports specified cases of violation of the law, the NCTR did not record any violation.

Speaking about amendment to the RA Law “On Television and Radio” it should be mentioned that in August 2008 the RA Government hastily, without any preliminary discussion and acceptable justification, presented to the National Assembly another draft law on introducing an amendment to the Broadcast Law: “Not to announce broadcast licensing competitions till July 20, 2010. The TV companies, whose licenses expire before January 21, 2011, can request prolongation of the license from the National Commission. The license will thus be prolonged for the period requested, but for no longer than January 21, 2011.” The need to introduce such a provision is substantiated by the Government by the expected transition from analogue to digital broadcasting in Armenia.

The draft law was approved at the Government session on August 28, 2008, but was made public only on September 8, the day the session of the parliament was opened. The draft law was promptly put on the agenda, discussed, approved in the first hearing on September 10, and in the evening of the same day finally adopted at the extraordinary session. The civil society and experts regarded this amendment to be aimed at depriving the “A1+” TV company of the opportunity to take part in broadcast licensing competitions for 2 more years.

On September 9, 2008 Yerevan Press Club and its partner organizations released a statement. “This initiative of the Government has nothing to do with either the protection of the broadcasters, consumers, state or “with ensuring equal opportunities and prevention of market upheavals” (as noted in the governmental justification), but is only an attempt to get rid of the broadcast licensing competitions as of an unnecessary headache. The adoption of such laws will result in a situation when we shall enter the era of digital broadcasting with low-quality broadcaster that does not meet the public demand and international standards, is monopolized and hence is easy to control”, the statement stressed in particular.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, also expressed his concern regarding the adopted amendment. In his letter of September 26 to RA President Serge Sargsian, Miklos Haraszti pointed out: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.” In the opinion of Miklos Haraszti, moratorium on licensing meant that Armenia would not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of “A1+” TV company. OSCE Representative also reminded that in April 2008 the Parliamentary

Assembly of the Council of Europe, in its turn, also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow “A1+” to apply for a new license. “I hope that, for the sake of pluralism, the RA Government will review the amendments with the active participation of all relevant civil society and media stakeholders”, Haraszti wrote.

At the end of 2008 a package of amendments to broadcast legislation, developed by a group of deputies, was submitted to the consideration of the National Assembly. The Standing Commission of NA on Science, Education, Culture, Youth issues and Sport put up the package for public discussion.

Yerevan Press Club presented its Conclusion on the issue:

“Having considered the package of draft laws “On Introducing Amendments and Additions to the RA Law 'On Television and Radio'”, “On Introducing Amendments and Additions to the RA Law ‘Regulations of the National Commission on Television and Radio'” and “On Introducing Amendments and Additions to the RA Law ‘Regulations of the RA National Assembly '” put up for discussion by the National Assembly of Armenia, Yerevan Press Club is of the following opinion:

The package does not consider the principal fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. It does not take into account the proposals made by the journalist community and the civil society as well as the obligations towards international organizations undertaken by Armenia:

a) In particular, the draft laws do not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Item 8.3 of PACE Resolution 1609 “Functioning of Democratic Institutions in Armenia” (April 17, 2008): “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account.” Earlier, in July 26, 2006, the OSCE Representative on Freedom of the Media Miklos Haraszti mentioned in his report on the state of media freedom in Armenia: “(...) Legislative changes should not be limited to a ‘half Presidential - half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.” If mechanisms providing for social and political diversity are not developed, then, as Miklos Haraszti stated in the report, the government control over these bodies would not ease, particularly in such time periods when the President and the parliamentary majority represent the same political force.

b) The draft laws do not consider the issue of ensuring transparency in the decision making process of the NCTR. Inadequate transparency in decision making was mentioned in the judgment of the European Court of Human Rights on the case of the founder of “A1+” TV company, “Meltex” LLC, and its President Mesrop Movsesian versus Republic of Armenia (known as the case of “A1+”). In its decision the European Court recalled the guidelines adopted by the Council of Europe Committee of Ministers in the domain of broadcasting regulation, which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that “all decisions taken (...) by the regulatory authorities (...) be (...) duly reasoned”. The judgment

also quoted the PACE Resolution on Armenia of January 27, 2004, which concluded that "the vagueness of the law in force had resulted in (NCTR) being given outright discretionary powers". In the opinion of the European Court, the licensing procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. This was noted also by Miklos Haraszti, who recommended the need for such amendments in his abovementioned report of the RA Law "On Television and Radio" that would be clear about broadcast licensing competition procedures: "The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks."

c) Though the amended Constitution stipulates that the National Commission on Television and Radio should be the regulatory body for both private and public broadcasters, the draft laws do not define precisely the relation between the NCTR and the Council of Public TV and Radio Company, the mechanisms of regulating the public broadcasting, liability forms in case of violations, etc.

d) And finally, the draft laws do not eliminate the negative consequences of the amendment of September 10, 2008 to the RA Law "On Television and Radio". The amendment renders impossible the implementation of practical measures ensuing from the judgment of the European Court of Human Rights on the case of "A1+" TV company, which is emphasized in the recommendations of international organizations. Namely, PACE Resolution 1620 (June 25, 2008) noted: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights concerning the denial of broadcasting license to 'A1+', calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on March 26, 2008 and with the case law of the European Court of Human Rights."

Ignoring the above-mentioned basic issues renders meaningless the amendments to the broadcast legislation. The amendments do not provide for significant reforms and are just formal and superficial."

The situation connected with application of the RA Law "On Freedom of Information" has almost remained unchanged. The absence of two legally stipulated procedures - the procedure of registration, classification and archiving of the information processed by the owner of the information or imparted for him, as well as the procedure of providing duplicates (copies) of information by state institutions and organizations, local self-administration bodies creates certain obstacles. In autumn 2008 the RA Ministry of Justice developed a draft law "On Freedom of Imparting Information". In the opinion of experts from several non-governmental organizations (in particular, the Freedom of Information Center), this draft law is even regressive as compared with the acting Law.

Amendment of the Criminal Code of Armenia

The section regarding Armenia in the current report "Implementation of the European Neighborhood Policy in 2007" by the Committee of European Communities says: "The new provisions included in the RA Criminal Code in April 2007 stipulate that impeding the legitimate professional activities of journalists is persecuted (...)". Meanwhile the RA Criminal Code has long had Article 164 "Impeding the Legitimate Professional Activities of

a Journalist", which was amended on June 1, 2006. Reformatory labor was removed from the list of sanctions specified in the Part 1 and Part 2 of the Article.

Decriminalization of libel and insult has often been discussed, and the international institutions recommend to abolish Articles 135 ("Libel"), 136 ("Insult") and 318 ("Insult of Representative of Power") of the RA Criminal Code. There was progress in this respect in 2008: on May 19, 2008 the RA National Assembly nullified Article 318.

State of Emergency (March 1-20, 2008) and Media

On March 1, 2008 a state of emergency was introduced in Yerevan by the Decree of the RA President Robert Kocharian. Subclause 4 of Clause 4 of the Decree stipulates that "the media publications on state and inner political issues can be made exclusively within official information, released by state bodies". Such definition was in fact used to exert 20-day censorship in Armenia. While censorship was not listed among the restrictions, imposed by the Decree, moreover, according to Article 4 of the RA Law "On Mass Communication", it is actually prohibited, these days not only in Yerevan, but also all over the country factual pre-emptive censorship was practiced.

Due to this the publication of a number of national newspapers was banned because of their content. Some others, facing illegal obstacles, refused working, because they were unable to voice opposition and critical viewpoints, while the publication of opinions, discrediting and insulting for the opposition, often even aggressive, in other newspapers was in no way restricted. The media report that the pre-emptive censorship is practiced by people introducing themselves as officers of National Security Service. The Decree was directly followed by blocking of several news web sites that did not even have time to make any report on the situation. Such actions were completely illegal, and imposing restrictions with no grounds, under the circumstances, could be qualified as a violation of the presumption of innocence. Here, too, political discrimination was manifest, as only those sites were blocked that had previously disseminated criticism of the country authorities.

Meanwhile, in the broadcasting, fully controlled by authorities, there were numerous violations of the legality and the emergency rule. In particular, a number of media, violating the Subclause 4 of Clause 4 of the Decree, published and broadcast not only official information, but also presenting political propaganda, most of which was one-sided, discrediting and insulting for the opposition. The most prominent example of such unacceptable coverage was shown by the First Channel of the Public Television of Armenia that not only neglected the clause of the Decree, but also broke Article 28 of the RA Law "On Television and Radio": "The prevalence of a political stance (...) in the programs broadcast by public TV (...) is prohibited." The National Commission on Television and Radio, which, according to the Law, is an independent regulator and is also "to oversee the activities of TV and radio companies" (RA Law "On Television and Radio", Article 37, Part 1), failed to perform one of its main functions and did not prevent the violation of the Decree provisions not only by the PTA First Channel, but also the majority of private broadcasters. Violations of the relevant Decree provision were recorded also in a number of print media, with no response ensuing from the RA Ministry of Justice. The Ministry, within its competence, had to take steps to eliminate the violations.

On March 13 the Decree on the state of emergency was amended. In particular, Subclause 4 of Clause 4, referring to the media, was re-defined: "The media are prohibited from publishing or disseminating information on state and inner political issues, which is

deliberately untrue or destabilizing, or appeals to take part in events held with no prior notice (illegally), as well as publication or dissemination of such information or appeals in any other way or form." Yet, under the conditions of selective law enforcement and illegal actions that the media sphere encountered lately, this definition rendered media quite vulnerable. After the amendment of the Decree, a number of newspapers were still not allowed to print; the Internet-sites were still blocked until the state of emergency was lifted on March 21, 2008.

In 2008, the Parliamentary Assembly of the Council of Europe addressed the situation in Armenia twice: in its Resolution 1609 (2008) "The Functioning of Democratic Institutions in Armenia" (April 17, 2008), and Resolution 1620 (2008) "The Implementation by Armenia of Assembly Resolution 1609 (2008)" (June 25, 2008). Besides, on June 17, 2008 the European Court of Human Rights released its judgment on the case of the founder of "A1+" TV company, "Meltex" LLC, and its President Mesrop Movsesian versus Republic of Armenia. In particular, the European Court ruled that the right of the applicant to freely impart information and ideas, stipulated in Article 10 of the European Convention of Human Rights and Fundamental Freedoms was violated.

ELIMINATION OF TORTURE

The ENP EU/Armenia Action Plan contains the following provisions regarding elimination of torture, other inhuman or degrading treatment or punishment:

- further reform of the penitentiary system in line with the recommendations of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions;

- closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society (Section 3 “Priorities for Action”, Priority area 2, Specific Actions);

- ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Section 4 “General Objectives and Actions”, Sub-Section 4.1 “Political Dialogue and Reform”).

Resolution No. 927-n of the RA Government of July 19, 2007 ratified the list of priorities and actions envisaged by ENP EU/Armenia Action Plan to be implemented in 2007. Clauses 12 and 13 stipulated:

“ - further reform of the penitentiary system (take measures aimed at facilitation of public control over the conditions in prisons and places of temporary detention),

- reform of the police (cooperate with OSCE and the Council of Europe in order to eliminate torture, other mistreatments and corruption)”.

The Republic of Armenia has acceded to the Universal Declaration on Human Rights, the International Pact on Civil and Political Rights (1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1993), the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols 1 and 2 (2002), the European Convention of Human Rights and Fundamental Freedoms (2001).

Torture and degrading treatment are prohibited by the RA Constitution (Articles 17, 12). The RA Criminal Code adopted in 2003 specified the respective punishment for torture (Article 119).

In May 2006 the RA ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for establishment of a national observation mechanism (national mechanism) in closed systems (penitentiaries, places of detention, police departments, psychiatric clinics, etc.).

On April 8, 2008 the National Assembly of Armenia made an amendment to the RA Law “On RA Human Rights Defender”, according to which the Defender is the national mechanism specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law does not provide for civil society involvement in the national mechanism. Thus, involvement of the civil society depends on the discretion of the Human Rights Defender.

About a year has passed after approval of the amendment, but nothing has been done either to establish the framework of the mechanism or to introduce it.

Based on the requirements of Article 47 of the RA Law “On Living Conditions of Prisoners and Inmates”, on May 14, 2004 a Public Monitoring Group in the Detention Centers was established under the Criminal Executive Service of the RA Ministry of Justice. In accordance with the “Regulations on Activity of the Public Monitoring Group in the Detention Centers of the Criminal Executive Service of the RA Ministry of Justice”, this Group is the supervisory body responsible for the issues of protection of the rights and freedoms of people in places of detention. Pursuant to the Regulations, the Group members have the right to visit freely the penitentiaries, to read various documents (if the prisoners’ consent is available - also their personal cases and correspondence, except confidential documents), to check the situation inside the institution, and to meet with prisoners.

Both the Public Monitoring Group (in 2005) and the European Committee for Prevention of Torture (CPT) mentioned in their reports the bad physical treatment of the prison staff to prisoners (striking the handcuffed prisoners with hands and feet, hitting with clubs).

The level of medical service in prisons is inadequate. In particular, the injuries suffered by prisoners in the result of ill treatment are not properly recorded in the relevant registers; the prisoners' requests for examination by a forensic doctor called from outside their place of detention are refused. No information is provided to the Procuracy about physical abuse and special measures used towards prisoners.

The biggest concern is caused by the situation in police departments and other investigating bodies. Numerous complaints are presented with regard to unlawful detention of people in police departments, abuse and violence. Violence in police departments is mainly aimed at obtaining a confession or testimony against third persons. The procedures of bringing people to the police department and arresting them are not observed, interrogations are often conducted unattended by the lawyer. The public is informed about cruel treatment in police departments only at times of political tension, when the active representatives of the opposition are brought to police departments, or in cases with fatal outcome.

To analyze the situation with torture and inhuman treatment, a reference should be made the CPT report. The latest CPT report on the situation in Armenia was published in 2006. Still, all concerns and recommendations mentioned in this report are actual for 2008 as well (the CPT visited Armenia in 2008, in the post-election period, but the report has not been published yet).

For example:

- The practice of detainment of criminal suspects for more than four days has remained unaltered since 2006. In particular, after the events in March 2008 there were multiple cases of detainment of people in police departments for a period exceeding four days.

- The term of transporting the people to places intended for preliminary confinement, i.e. not later than within 3 days, is not observed mainly because of wrong arrangement of the work of the escorting police officers. Besides, there are frequent and long-lasting transitions. All this increases the risk of inhuman treatment.

- The reports specify that the people arrested by the police are constantly exposed to inhuman treatment and unlawful actions.

There is no progress with regard to this either. Here is an example:

"On May 12, 2007, according to the official information, Levon Gulian, who was brought to the police department, jumped out of the window and died. A criminal case was filed based on Part 1 of Article 110 of the RA Criminal Code. The preliminary investigation was conducted by the Procuracy of Yerevan. On December 12, 2007 the case was taken over by the senior investigator on high importance cases of the Special Investigative Service of Armenia. On March 12, 2008 G. Petrosian, the senior investigator on high importance cases of the Special Investigative Service of Armenia, made a decision to terminate inspection of the case due to absence of corpus delicti. On March 26, 2008 the complaint presented by the legal successor of the victim was rejected as groundless by decision of Z. Tadevosian, the senior prosecutor of the General Procuracy. The legal successor's lawyers appealed against the decision of the Procuracy to the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan. The court revoked the decision of the Procuracy and made a resolution to recommence investigation of the case. On July 21, 2008 the RA Criminal Court of Appeal ratified the resolution of June 6, 2008 of the court of general jurisdiction of Kentron and Nork-Marash communities of Yerevan, according to which the decision to terminate inspection of the fact of Levon Gulian's death in the yard of the police administrative building was considered unjustified and unlawful. The preliminary investigation of the case recommenced on August 16, 2008. The courts had mentioned in their decisions that the preliminary investigation had not been comprehensive, integral or impartial; there had been numerous violations of the law, the required measures aimed at detecting the truth had not been taken, the representatives of the victim's legal successor were not invited to take part in implementation of inspection activities, the unlawful actions of some police officers were not assessed properly. Though several months have passed after recommencement of investigation, the behavior of the preliminary investigation body implies that the Special Investigative Service of Armenia is not in a hurry to fulfill the requirements stipulated by the court resolutions. In particular, other versions of Levon Gulian's death are still ignored. No one has been interrogated except two police officers, no expert examination has been conducted with a manikin, and no one is a suspect or an accused in the case."

- At any stage of detainment by the police, the arrested persons can present a complaint to the judge with regard to inhuman treatment by the police. The judge should make a written record on the complaint, make a decision on conducting a medical examination, and follow up performance of investigation. But the medical examination of the arrested people is often perfunctory and is conducted mainly in the presence of the representatives of the law enforcement bodies. No proper control is ensured by the Procuracy over the claims of the arrested with regard to such injuries, which are later on detected during the medical examination.

There has been no progress in this respect. The results of medical examination of the arrested, as well as their claims about the suffered injuries, are recorded in the relevant registers of criminal executive bodies in the presence of the escorting police officer, which holds the arrested back from telling the truth.

- The arrested are not offered the opportunity to inform their relatives about their situation starting from the very moment of detainment.

There has been no progress in this respect either.

- The arrested are often deprived of the right to use the lawyer's services from the very beginning.

This practice also continues, especially after the events that occurred on March 1, 2008.

During its visit in 2006, the CPT mission received a number of reliable statements about inhuman treatment of the arrested by police officers. Almost all statements were presented by persons (including women and the under-aged) detained in preliminary confinement places.

According to the report: “The statements about inhuman treatment mainly refer to slaps in the face, cuffs, kicks, hitting with rubber and wooden clubs, chair legs. Some statements referred to suffocation with plastic packs as a fact of inhuman treatment. Sometimes, the inhuman treatment was so cruel that it could be considered as torture.”

Almost all statements referred to inhuman treatment by operating officers (less frequently - by investigators and senior police officers) during preliminary interrogations. That was done for the purpose of extorting confession, evidence and other information. Thereafter, the CPT mission talked to several persons (including women and children), who stated that they had been exposed to unacceptable psychological pressure aimed at getting a confession of committed crime. This was accompanied with insults, abuse and threats of physical power or sexual violence to those people or their relatives and friends.

At court sessions no notice is taken of the defendants’ statements that the prejudicial testimonies had been exerted from them by violence. No public officer in Armenia has ever been punished for the use of violence or torture. This is also mentioned in the CPT report.

At the beginning of the visit in 2006, the RA General Procuracy informed the CPT mission that there had been no record of complaints against officers of law enforcement institutions for inhuman treatment. Such a situation would be doubtful with regard to the law enforcement system of any country. At the same time, the Armenian police failed to provide the CPT mission with any information regarding complaints on inhuman behavior, due to the obvious absence of statistics.

To rectify the situation it is necessary:

1. To introduce changes to the court procedural practice, including:

- To apply the relevant provisions of the criminal legislation, pursuant to which, in case of availability of the defendant’s statement about torture, the court should immediately demand investigation;

- To renounce the practice of considering the defendant’s confession as the principal proof of the defendant’s guilt.

2. To apply towards police officers the punishment for tortures envisaged by the criminal legislation.

3. In accordance with the procedure specified in Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to declare that Armenia acknowledges the power of the UN Committee Against Torture to accept and review the personal statements of individuals who consider that the requirements of the Convention have been violated.

4. To reform the criminal legislation, including:

- To amend and supplement the Criminal Procedural Code with provisions regarding interrogation of the suspect, accused, and witness, in order to establish the comprehensive procedure of interrogation by police officers.

5. To organize training for police officers and to check the professional level and knowledge of the international standards while appointing new officers.

6. To conduct proper medical examination starting from the moment of bringing the arrested persons to the penitentiaries and to obtain explanation regarding injuries in the absence of the escorting policeman.

7. To provide for guarantees of independence of the medical staff in the penitentiaries. To consider the possibility of the medical staff reporting to the RA Ministry of Public Health.

8. To introduce legal provisions on establishing a national mechanism, stipulated in Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prescribing the involvement of civil society in it.

FUNCTIONING OF THE ELECTORAL SYSTEM

The ENP EU/Armenia Action Plan contains the following provision regarding this sector: "Ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (Section 3 "Priorities for Action", Priority area 1, Specific Actions).

The elections to the RA National Assembly and the elections of the RA President were held in 2007 and 2008 accordingly.

The parliamentary elections of 2007 were qualified by the international observers as "generally complying with the obligations undertaken towards the OSCE and CoE and with other international standards"[32]; the US State Department stated that they were "significantly improved, though not fully consistent with the international standards"; and the local observers said that "the elections were accompanied by large-scale profound violations". At the same time, the OSCE/ODIHR observers mentioned that there were still unsolved principal problems related to the Electoral Code and implementation thereof, in particular, regulation of the pre-election propaganda, counting of ballots, tabulation of results, the work of electoral commissions, and examination of complaints.

The final report of the international observers' mission on the parliamentary elections of 2007 in Armenia, contained the following recommendations:

- to overcome the discrepancies between the Electoral Code and other pieces of legislation;

- to amend the provisions of the Electoral Code regulating the appeal procedure, by setting the mandatory requirement of calling a meeting of the electoral commission of any level for consideration of any written complaint and making the relevant written decision by the commission;

- to provide for the opportunity of challenging the verdict made by the court of primary jurisdiction with regard to an election dispute;

- to prescribe to the Central Electoral Commission (CEC) and territorial electoral commissions to report to the Procuracy and other authorized bodies regarding all significant violations, including the violations that might affect the election results;

- to place the ballot boxes in electoral districts so that the electors could vote facing the members of the electoral commission;

- to record cases of voting with the help of another person in the register of the district electoral commission and to put down the names of the voter and his/her assistant;

- to specify that a person can assist only one voter;

[32] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

- to put down the initial data (including the number of the received ballot papers and voting envelopes) in the minutes of the district electoral commission prior to commencement of the election process;

- to specify the mandatory requirement to keep the voting results posted up in an "easily observable place" of district electoral commission for a period of seven days following the date of voting[33].

After making these recommendations and until the elections of the RA President in 2008, the Electoral Code was amended and supplemented twice (on November 16, 2007 and December 18, 2007), but the above-mentioned recommendations were not covered by the amendments, and the Code was not brought into compliance with the requirements of the Venice Commission[34].

The elections of the RA President were held on February 19, 2008, during which, according to the local observers, the already vested usage of administrative and financial resources, bribing of the electors, inadequate consideration by the Central Electoral Commission, courts, and law enforcement bodies of cases regarding electoral violations, grew even more extensive.

In the report (February 20, 2008) on their preliminary findings and conclusions with regard to the presidential election of 2008, the international observers stated: "Generally, the election complied with the obligations undertaken by Armenia towards the OSCE, CoE and with other internationally accepted standards", "the authorities have improved the legislative mechanisms, but they were not implemented because of lack of sufficient political will". This opinion of the observers' mission was disputed by some deputies at the spring session of PACE.

In its post-electoral interim report (February 20 - March 3, 2008) OSCE/ODIHR stated: "The final opinion regarding the election depends on the process of final counting and tabulation of votes and examination of disputes". John Prescott, the Head of the Temporary Commission of PACE Observers of the Presidential Elections, qualified the post-electoral situation and the events of March 1, 2008 as "the consequence of lack of the voters' confidence in the electoral process and legitimacy of its results."

In the final report on the presidential elections, OSCE/ODIHR observers stated: "Though in the pre-election process and on the election day the elections generally complied with the obligations undertaken towards the OSCE and with other internationally accepted standards, serious problems in the part of fulfillment of certain obligations arose in the post-electoral period. Thus, the criteria essential for conducting democratic elections were not sufficiently respected and the whole election process was devalued. In particular, lack of reporting and transparency was revealed, and the procedures of presenting complaints and appeals were not fully efficient".[35]

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[33] The final OSCE/ODIHR election report of the observers' mission, Warsaw, September 10, 2007 www.osce.org/documents/html/pdftohtml/26169_en.pdf.html

[34] The "Code of the Best Electoral Practice" and "Guidelines and Explanatory Report on the Code of the Best Electoral Practice" adopted during 52nd session of the Commission of the Council of Europe "Democracy through Law" (Venice Commission) on July 5-6 and October 18-19, 2002 accordingly.

[35] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

The international observers, PACE, OSCE/ODIHR and the Venice Commission again demanded to conduct detailed investigation of the violations made in the electoral process and to punish the persons guilty of the violations. Besides, they recommended making further amendments of the Electoral Code in order to secure the following:

- efficient examination of election disputes;

- making a justified decision by the Central Electoral Commission regarding every complaint; the decision shall clearly specify the steps of examination of the complaint, the results thereof, and the grounds for rejection of the complaint;

- mandatory registration of all complaints received by territorial electoral commissions, their examination only at official sittings, and transparency, by means of securing information awareness for all the persons authorized to be present at the sitting, and providing them with the opportunity to attend;

- extending the term for presenting applications for recount of votes from 14:00 to 18:00 p.m.;

- recount of ballot papers in every occasion of receiving such an application or official justification of refusal to recalculate the ballots by the decision of the territorial electoral commission;

- extension of the term defined for summarizing the election results, announcement of the final results of elections only upon expiry of the term set for consideration of all complaints;

- equal opportunities for all bodies authorized to appoint members to the territorial and district electoral commissions, their representation among the leading three members of the mentioned commissions;

- more clear definition of the legal status of decisions taken by territorial electoral commissions;

- the obligation of the police to announce periodically the number of citizens, who had requested the right to vote in places of their temporary residence;

- usage of the common procedure of entering the election results in the electronic network by all district electoral commissions;

- classification of electoral violations into criminal and administrative violations and precise definition of the procedure of their examination by criminal and administrative courts, accordingly.[36]

It is noteworthy that no legislative amendment is required for implementation of the majority of the above-mentioned recommendations. It would be sufficient to improve the law enforcement practice and to secure mutually complementary activity of state bodies in the electoral process, in order to exercise the voting rights of the citizens.

Steps to reform the legislation and improve the law enforcement practice, undertaken within the timeframes of this research, are listed.

[36] The final report of OSCE/ODIHR observers' mission, Warsaw, May 30, 2008. http://www.osce.org/documents/html/pdftohtml/31397_en.pdf.html

Improvement of the Legislation

By decision of the Chairman of the National Assembly of Armenia, a special commission was established for preparation of amendments to the Electoral Code. Not only the ruling authorities, but also representatives of other political parties (including the National Democratic Union, "Orinats Yerkir") were involved in the work of the commission (in cooperation with the Venice Commission). But only a few meetings of the commission have been by now called and it seems to have terminated its activity.

Changes in the Law Enforcement Practice

In spite of the received complaints, the CEC has not taken any measure to protect the voting right. It displayed just a formal approach and did not comply with the accepted international norms of examination of complaints.

According to the CEC, the Central Electoral Commission has taken decisions regarding 57 applications and has provided 8 official clarifications[37].

On February 18, 2008 letter No. 01-D/65-94, signed by the CEC Chairman, was addressed to Ruben Torosian, the proxy of the presidential candidate Levon Ter-Petrosian, notifying about rejection of all 33 claims presented by him.

By letter No. 06-D/414 of May 26, 2008 Ruben Torosian was notified that in accordance with Clause 7 of Article 40 of the RA Electoral Code, the CEC considered some of his claims at CEC meetings.

Courts have rejected about 20 claims regarding the activity or inaction of the CEC. Referring to the procedural norms and taking advantage of the omissions in laws, the courts did not secure protection of the violated voting rights of the citizens. The administrative court rejected all claims regarding violations of voting rights. Moreover, all court hearings for those cases were assigned within terms though allowed by the law but still unreasonable, because even if the verdicts had been made in favor of the claimants, they would have been senseless, as it would be already impossible to restore the violated voting rights.

Thus, on February 22, 2008 and March 3, 2008 claims were presented to the RA Administrative Court, with a demand to declare the CEC actions illegitimate for failure to consider the claims presented to it. The court verdict was announced on August 1, 2008 and the claim was rejected.

The hearings for the case "Ruben Torosian versus the Public TV and Radio Company", accepted for processing on February 1, 2008, were held on May 6, 2008.

On March 4, 2008 a claim was presented to the RA Administrative Court with a demand to declare the CEC actions illegitimate for violation of the procedure of summarization of the election results. The Administrative Court announced its verdict only on August 1, 2008. The claim was rejected.

[37] The CEC analysis of violations of the Electoral Code of Armenia, committed during the presidential election on February 19, 2008, page 5.

The election for the local self-government bodies commenced in May 2008. No legislative amendment or organizational change was effected before the election. No change was made with regard to the following:

- the management staff of electoral commissions;

- the procedures of counting of votes, preparation of minutes, tabulation of the voting results.

According to the report of mission of observers of Helsinki Committee of Armenia, which were based in the communities of Yerevan[38]:

1. At several polling stations placement of the voting booths did not comply with the procedure established by the law, though those stations had every opportunity to place the voting booths properly.

2. Unauthorized persons were present at the polling stations - police officers dressed in uniform, some of whom even took part in counting of votes.

3. There were incidents of group voting, open voting, attempts of voting with someone else's passport, voting without passports, as well as throwing a pack of ballots into the ballot boxes, repeated and prompted voting.

4. There were cases of violence and pressure on authorized persons and observers.

5. In several cases, the work of the commission chairmen and members was careless and disorganized.

All these elections were won by the representatives of the acting authorities or the candidates supported by them. Administrative and financial resources had decisive impact on the results of elections. Usage of administrative resources and bribing of the electorate is getting to be a coordinated process in Armenia.

Structural changes are required to ensure functioning of elections as the most important institution of democracy. In particular, the first-priority measures are:

- precise definition of the procedures of claim examination and voting rights' protection, and elimination of contradictions;

- improvement of the level of independence of the bodies responsible for protection of the voting rights (first of all - the RA Administrative Court).

[38] Reports on elections to the local self-government bodies of Nork-Marash, Davitashen, Malatia-Sebastia, Avan communities of Yerevan held on May 18, 2008, and of Arabkir community of Yerevan held on September 7, 2008.

FINANCING OF PARTIES

The ENP EU/Armenia Action Plan, Section 4 "General Objectives and Actions", Sub-Section 4 "Political Dialogue and Reform", Clause 4.1.1 "Strengthening the Stability and Effectiveness of Institutions Guaranteeing Democracy and the Rule of Law" contains the requirement to "establish clear and transparent rules on party financing".

Financing of parties is regulated by Articles 24, 25, 27, and 28 of the RA Law "On Parties"[39]. Article 24 of the Law specifies the types of funds possessed by parties: membership fees, donations, financing from the state budget, income received from civil and legal transactions and other income not prohibited by the law. Article 25 regulates the procedure of making donations to parties. In particular, Clause 2 of the Article specifies the list of legal entities and individuals not allowed to make donations. In case of getting donations from the entities on the list, except anonymous donators, the parties have to return the amount to the donator within two weeks; donations made by anonymous donators should be transferred to the state budget within the same time period. Article 27 regulates the financing of parties, specifying in particular the volume of financing, the parties entitled to such financing and the volume of it[40], allocation of the funds among parties that are members of an election alliance, as well as grounds for termination of state financing. And finally, Article 28 of the Law regulates the procedure and terms of financial reporting by parties. According to this Article, a party should provide the authorized state body (in this case - the RA Ministry of Justice) with the annual report on the funds received and spent during the reporting year. The report should be presented by March 25 of the year following the reporting year. The same deadline is defined for publication of the financial report of the party in media. This Article also specifies to whom and how the financial report should be presented, what shall be reflected in it, as well as refers to the necessity of implementation of financial supervision.

Financing of parties is closely connected with financing of election campaigns. According to Article 25 of the RA Electoral Code, parties are allowed to make personal, optional contributions to the election fund established for financing of the election campaign. This gives the parties the opportunity to finance their election campaigns (if they take part in the election to the National Assembly by the proportional election procedure), the election campaigns of presidential or deputy candidates (by the majority procedure), as well as the election campaigns of their candidates for the position of head or member of the community council. According to Article 79 of the Electoral Code, a party can make a contribution to the election fund of its presidential candidate for the amount not to exceed 30.000-fold of the minimum salary (AMD 1000), i.e. maximum AMD 30 million[41]. Similar restrictions are specified for contributions to the election funds of the parties or the election funds of the candidate(s) nominated or supported by them. According to Article 112 of the Electoral Code, a party may contribute to its election fund (or the election fund of its block

[39] This Law was adopted on July 3, 2002 and was enforced on November 15, 2002. Official Bulletin of the Republic of Armenia, No.34 (209), August 15, 2002.

[40] According to Article 27 of the Law, financing form the state budget can be provided only to those parties (blocks of parties) which have received at least 3% of the sum of the number of inaccuracies and the total number of votes given in favor of the voting lists of all parties by the proportional election procedure at the time of the latest election to the National Assembly. These funds are allocated among the parties (block of parties) proportionate to the votes received by them.

[41] Pursuant to the same Article, the amount of expenditures form the election fund shall not exceed AMD 70 million.

of parties) an amount not to exceed AMD 2 million, and to the fund of a deputy candidate by the majority procedure - the maximum amount of AMD 150,000[42], as a legal entity.

The requirements specified in the above-mentioned legal acts secure sufficient transparency in financing of parties, provided that they will be fulfilled properly. Still, we regret to note that up today civil society institutions and media have not been paying adequate attention to the financial reports presented by parties, though, as it is evidenced by the international experience, they might contain important information. At the same time, to this day no publications have been made by media to attempt and analyze the financial reports by a certain party. The Ministry of Justice - the state body authorized to receive such reports - has never officially reported about any occasion of falsification of such reports, i.e. non-reliability of the presented data. It is difficult to say whether that means that the Armenian parties provide all the required data diligently and fairly, or the reports are simply left unchecked.

As to the contributions to the election funds made by the parties, monitoring of financing of the parliamentary election in 2007 and the presidential election in 2008 conducted by Transparency International Anti-Corruption Center (TIACC) did not reveal significant violations. The parties, which made contributions to the election funds, provided the Central Electoral Commission with the required evidencing documents. But the situation is different with regard to expenditures from the election funds. During both elections, considerable difference was recorded between the declared and actual expenditures revealed by monitoring[43].

A number of provisions of the Electoral Code and the RA Law “On Parties” permit the parties to evade the above-mentioned restrictions regarding the contributions made from their own funds. In particular, the Electoral Code allows for making of contributions by individuals, without providing for mechanisms of preventing the practice widespread in many countries - when the party gives cash to its members who transfer these amounts to the election fund of the party as individual contribution. Since the principal target of the monitoring program implemented by TIACC was to check expenditures from election funds, this issue was not considered by the organization.

A more profound problem is that it is impossible to check timely and thoroughly the actual expenditures made by the parties during election campaigns, since, as it was mentioned above, pursuant to the Law “On Parties”, the parties present only the annual financial report, due by March 25 of the year following the reporting year. If elections are held in the reporting year, especially when the elections are scheduled for the beginning of the year, the falsifications revealed in the result of analysis of the financial report or monitoring cannot be used as the ground for invalidation of the election results. With regard to this, it might be a probable solution to set a requirement to open the account for the election fund as a supplementary account of the party’s principal bank account. Besides, all parties will have to present a quarterly financial report for the period of voting, as well as for two quarters preceding the date of voting.

[42] The same Article specifies that in case of a party (party bloc) the amount of expenditures from the election fund shall not exceed AMD 60 million, and in case of a candidate nominated by the majority procedure - AMD 5 million.
[43] See details on www.transparency.am

FIGHT AGAINST CORRUPTION

ENP Measures and Their Implementation

The ENP EU/Armenia Action Plan contains the requirement to:

- establish administrative courts;

- review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of the civil society and business representatives in monitoring implementation (during 2006);

- evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006)[44]. (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

ENP, Section 4, "General Objectives and Actions", Sub-Section 4.1 "Political Dialogue and Reform", Clause "Fight Against Corruption" specifies 8 anti-corruption measures[45]:

1. Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005;

2. Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption and, once ratified, the OECD (Organization of Economic Cooperation and Development - ***Ed. Note***) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

3. Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including development of Code of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on September 19, 2001;

4. Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations;

5. Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

6. Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

[44] See the report section on the civil service.
[45] Almost all of the mentioned measures are specified also in the international anti-corruption convention and the recommendations of GRECO and OECD.

7. Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption;

8. Ensure the implementation of procedures to implement the Code of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

In 2008 the RA Government did not publish any information regarding measures aimed at implementation of the ENP EU/Armenia Action Plan; while in the list of priorities and measures to be implemented in 2007[46] the Government included only two actions:

- Clause 4.1 - review during 2006 the progress made in the implementation of the National Anti-Corruption Strategy and develop new measures (responsible bodies - RA Ministry of Justice and RA State Tax Service);

- Clause 4.2 - develop and enforce specific anti-corruption measures for the law enforcement agencies (the responsible bodies are not specified).

The mentioned clauses are of general character and it is not clear why other measures were not included in the list, especially those, for which the specified term of implementation expired at the end of the year 2006 (for example, the measure related to the UN Convention against Corruption) .

Clause 4.1 fully repeated the relevant provision of Priority 1 of Section 3 of the ENP Action Plan, though without the words “ensure active participation of the civil society and business representatives in monitoring implementation”. Since throughout 2007-2008 no reports or official statements as to the necessity of such monitoring or similar actions appeared, one can hardly judge whether the clause has been implemented. As to participation of the civil society, it should be noted that though several NGOs, in various sectors, implemented anti-corruption projects (mostly, donor-funded), such as traffic police, consumer rights, education, election, etc., this cannot be considered as comprehensive monitoring envisaged under the action plan of the Anti-Corruption Strategy.

Clause 4.2 is the shortened version of the relevant provision of Clause 4.1.1 of Section 4 “Democracy and the Rule of Law, Human Rights and Fundamental Freedoms” of the ENP Action Plan. It does not specify which precise measures should be developed and for which agencies exactly. As no official information has been published with regard to this either, it would be difficult to say whether the RA Government has implemented this measure.

The analysis of implementation of the above-mentioned 8 measures of the Action Plan is given below.

Measure 1

Though the RA Law “On Principles of Administration and Administrative Proceedings” was enforced on January 1, 2005[47], administrative courts were established only on January 1, 2008[48]. The administrative courts examine social disputes on legal relations, one party to which is the local self-government body or the relevant public officers, and the other party -

[46] See the Appendix of the RA Government Ruling No. 927 of July 19, 2007.
[47] Official Bulletin of the Republic of Armenia, No. 18 (317), March 31, 2004.
[48] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.

the citizens. The principal peculiarity is the specific distribution of the burden of proof, according to which: "A state or local self-government body (a public officer) who approved the disputed legal act or committed the disputed action or has not implemented an action, which, according to the claimant's statement, should have been done by him, bears the burden of proving the actual circumstances underlying his decision, action, or inaction" (Clause 3 of Article 26 of the RA Administrative Procedural Code[49]).

One of the fundamental principles for administrative courts is the principle of precedent defined by the law, which is supposed to preclude arbitrary decisions.

The RA Administrative Court is composed of 15 judges, who are much more overburdened as compared with other judges. According to the Chairman of the Administrative Court Tigran Mukuchian, there is always a great number of disputed payment orders: only in the part of the traffic police the monthly quantity of such payment orders reaches 5-6 thousand. Pursuant to the same source, as of August 1, 2008 the Administrative Court had announced 2,288 verdicts, made thousands of decisions, issued even more payment instructions, etc. 90 complaints were received (3.9% of the total number of cases) of which 35 complaints from individuals and 55 from state bodies. 60-65% of 2,288 verdicts referred to entrepreneurs, with relation to whom administrative acts had been issued by tax or customs' authorities. Besides the above-mentioned cases related to the traffic police, there were many disputes with the mayor's office, the local self-government bodies, the state register and the cadastre. Tigran Mukuchian stated that 60-65% of 2,288 cases were solved in favor of the citizens. For several occasions, the Administrative Court announced "open days" and distributed the RA Law "On Principles of Administration and Administrative Proceedings" and the comments on it for free.

In the absence of statistical data or analytical findings, it is difficult to draw a conclusion as to whether the first year of activity of the administrative court has favored adequate prosecution and conviction of bribery and corruption-related offences. In experts' opinion, unlike cases related to economic activity, with regard to other cases the administrative court announced its verdicts mainly in favor of the state bodies, e.g., appeals against the decision of Yerevan Municipality on prohibition of assemblies, rallies, marches or demonstrations. (Thus, pursuant to the data provided by the Armenian National Congress of, only 1 of the presented 50 claims regarding prohibition of meetings and demonstrations was satisfied completely.)

Measure 2

Definition of bribery and corruption specified in the RA Criminal Code[50] (Articles 311 and 312) generally complies with the international standards. As to classification of corruption-related offences, within the scopes of "Istanbul Anti-Corruption Action Plan" developed by the OECD, it became necessary to specify the corruption-related offences, and in 2004 first 22 and then 59 Articles of the Criminal Code were outlined. According to the statement of Garegin Ashrafian, Head of the Procuracy Department for Fight Against Corruption and Organized Crime, taking into account the international experience, this number was reduced to 22. Later on, new types of offences were included in this category. At present, the total number of corruption-related offences, specified in the Criminal Code, is 31.

In 2008 the RA Criminal Code was supplemented with several new articles, in particular, Article 311.1, which refers to receiving illegal remuneration by public officers, Article 311.2,

[49] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[50] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2003.

related to usage of real or alleged influence for lucrative purposes, and Article 312.1 - offering illegal remuneration to a public officer, who is not a state official[51]. According to the same source, the list was prepared on the basis of the following criteria: a) availability of a certain status or duties in the public or private sector; b) violation of duties related to the public or private status; c) goal to score some unlawful advantage.

Since December 2008, information regarding 31 types of corruption-related offences and data on disclosure and conviction for specific criminal cases (since October 2008) is posted on the website of the RA Procuracy[52]. At the same time, the Procuracy does not provide separate statistics on these 31 types of corruption-related offences. Therefore, it is difficult to understand whether the existing definition and classification secure adequate prosecution and conviction of corruption-related offences.

Measure 3

Code of Ethics has been developed and enforced for judges (see Chapter 12 of the Criminal Code[53]), prosecutors (see Order No. 17 of the RA General Prosecutor of May 30, 2007[54]), and the police (see the RA Law "On Adoption of the Code of Conduct of Police"[55]). As to the border service, no information could be gathered in this regard, since the National Security Service did not respond to the researcher's request for an interview.

"Comments on the Code of Ethics of the Judge" were published as a separate booklet in 2007. According to the statement of the First Deputy to the Head of the Forensic Department of the RA, Secretary of the Council of Court Chairman Misak Martirosian, the Commission on Ethics under the Council of Justice considered 9 cases related to the Code of Ethics of Judges in 2007, and 3 issues were considered as of September 2008 (7 more issues were planned for consideration). The Commission on Ethics works mainly with complaints presented by citizens. If the Commission on Ethics is of the opinion that the judge has to be exposed to disciplinary sanctions, the documents should be handed over to the Disciplinary Commission. In 2007, three of the nine issues were handed over for consideration by the Disciplinary Commission.

In case of violating the Code of Ethics of the Prosecutor, the prosecutors shall bear disciplinary liability in accordance with Clause 3 of Article 46 of the RA Law "On Procuracy"[56]. The RA General Prosecutor is the guarantor of observance of the Code of Ethics. The Chairman of the Commission on Ethics of the Procuracy is one of the Deputies to the General Prosecutor. According to the data provided by Garegin Ashrafian, the Head of the Department of Fight Against Corruption and Organized Crime of the Procuracy, only one meeting of the Commission was held in 2007-2008. The meeting considered the issue of violation of the Code of Ethics by a prosecutor from a territorial department of Erebuni and Nubarashen communities of the RA Procuracy. The Commission made a decision to dismiss the prosecutor.

According to the statement of the Deputy Head of the RA Police Gevorg Mherian, a different approach is applied at the police: they have a Council, which considers various problems, including ethical issues. The Council Chairman is the Head of the RA Police,

[51] Official Bulletin of the Republic of Armenia, No. 33 (623), June 4, 2008.
[52] http://www.genproc.am/main/am/189/ ¨ http://www.genproc.am/main/am/193/
[53] Official Bulletin of the Republic of Armenia, No. 25 (260), May 2, 2008.
[54] http://www.genproc.am/main/am/23/2153
[55] Official Bulletin of the Republic of Armenia, No. 29 (401), May 18, 2005.
[56] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

and the members are: the management staff of the police, heads and deputy heads of the principal departments. Scheduled meetings of the Council are called once every six months. Extraordinary meetings can also be summoned, if required. Any violation of ethical norms is considered by the Board and a decision is taken whether disciplinary sanctions need to be applied or not. In the past, the complaints mainly referred to the work of the visa and passport departments and the traffic police. According to the statement of the Deputy Head of the Police, significant changes are being effected at present and the number of complaints has decreased. Thus, in the past they got about 100 daily phone calls with complaints on the work of the visa and passport departments, while in 2008 there was only one call a day on the average.

Measure 4

The Law "On Declaration of Assets and Income by High-Level State Officials of the Republic of Armenia" was adopted on January 1, 2008. It replaced the RA Law "On Declaration of Assets and Income by Individuals". Article 5 of the Law specifies the requirement of presenting such declarations by all employees of state and self-government bodies, irrespective of their salary rate. Pursuant to the Law, the deadline for submission of declarations for 2007 was April 15, 2008. Chapter 8 of the Law specifies more serious sanctions for submission of false declarations than before. But enforcement of the Law was postponed for a year[57].

According to the statement of the First Deputy Head of the RA State Income Committee Aharon Chilingarian, the total number of declarations presented according to the previous law was about 50.000. As to the statistics of 2007, no information was published regarding the number of public officers who failed to present declarations or presented false declarations, or regarding the applied sanctions.

Measure 5

The opinion mentioned in the report of GRECO experts regarding fulfillment of the relevant obligations by Armenia[58] is generally realistic. Still, there are drawbacks left out by the GRECO experts. First, the RA Government did not take measures to conduct studies and gather statistics and presented as accomplished the programs and measures implemented by non-government organizations (international organizations and NGOs). Moreover, the RA Procuracy did not and still does not have a separate website on corruption. Only in December 2008 a separate page about corruption was opened on the website www.genproc.am. Secondly, none of the state bodies (police, tax and customs' authorities) mentioned in Clause 13 of the GRECO experts' report publishes separate information on its website regarding disclosed cases of corruption.

With regard to the appropriate GRECO Recommendation (see Clause 14 of the experts' report) it is mentioned that a number of state bodies (Police, Procuracy, Ministry of Justice and National Statistical Service of Armenia) have jointly developed the system of acquisition of statistical data on corruption-related offences. These data are published on the website of the National Statistical Service (www.armstat.am). It is specified that there are 59 types of corruption-related offences, and the RA Criminal Code envisages different sanctions for such offences. It should be noted that as of that date (the first report was presented on September 27, 2007 and the second one - on May 5, 2008) the number of corruption-related offences was reduced to 22 (see above - analysis of Measure 2) and the

[57] Official Bulletin of the Republic of Armenia, No. 2 (592), January 9, 2008.
[58] http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp

National Statistical Service has never provided separate information on corruption-related offences. Clause 16 of the experts' report refers to installation of hot lines in a number of state bodies, but these hot lines never had any specific anti-corruption designation.

Similar assessment was given to implementation of GRECO Recommendation 3, although it is not clear (as it was mentioned by GRECO experts) whether the new Law "On Public Procuracy", enforced in May 2007, has increased the prosecutors' independence. The same can be stated also with regard to GRECO Recommendation 8 since it is obscure (as it was mentioned in the comments of GRECO experts) what kind of training courses exactly were conducted at the Police Training Center. GRECO Recommendation 14 was assessed as completely fulfilled, but it cannot be construed from the Government report, how many suspicious transactions were reported to the Procuracy by the Financial Monitoring Center of the Central Bank of Armenia. Moreover, no information is available as to whether any investigation was conducted with regard to these cases.

Measure 6

The analysis of Measure 1 contains a reference to ensuring the possibility of court appeals against administrative acts, including through establishment of administrative courts in 2006.

Measure 7

The current salary of judges is insufficient to ensure service with dignity in order to reduce corruption. The salary of judges in courts of original jurisdiction, Court of Appeal and Court of Cassation was increased in accordance with the Judicial Code enforced on April 7, 2007 (see Article 75 of Chapter 11)[59], but only by 15-30%, which cannot ensure service with dignity. At present, a newly appointed judge receives salary of AMD 220,000. On November 27, 2008 the National Assembly approved amendments to the RA Law "On Remuneration Rate of High-Level State Officials of Legislative, Executive and Judicial Power". According to the amendments, the salaries of judges will be doubled in the period from January 1 to December 31, 2009[60].

Measure 8

As to ensuring implementation of procedures aimed at fulfillment of requirements of the Code of Ethics of judges and prosecutors, including introduction of effective systems of supervision over observance of the Code of Ethics by judges and prosecutors, there is no information available, besides the information presented for Measure 7 above.

Description of the General Situation

Since the Anti-Corruption Strategy was actually completed at the end of 2006, in September 2007 the Chairman of the Monitoring Committee, Assistant to the President of Armenia, Gevorg Mherian declared that a new strategy should be developed[61]. Terms of reference on development of the new strategy were approved at the end of 2007 and the group of experts started the relevant work in 2008. A number of non-governmental organizations were requested to give an opinion regarding four chapters of the strategy.

[59] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[60] "Hayastani Hanrapetutiun" daily, December 1, 2008.
[61] "Hayastani Hanrapetutiun" daily, September 8, 2007.

These chapters were posted on the website of the RA Government - www.gov.am - in October 2008.

In September 2007 the RA Government presented a report on implementation of GRECO Recommendations. The assessment of GRECO experts for the first and the second stage was announced in June 2008[62]. According to the assessment, Armenia had fully implemented 7 Recommendations, satisfactorily - 5, partially - 9, and entirely failed to implement 3 Recommendations.

OECD expert opinion on implementation of obligations undertaken by Armenia within the scopes of "Istanbul Anti-Corruption Action Plan"[63] was published at the end of 2007. In this case, only 1 of the 24 recommendations is implemented fully, 8 are implemented basically, 11 - partially, and 4 recommendations are not implemented.

According to the information provided by the RA Ministry of Foreign Affairs, at the beginning of 2008 the RA Government presented a self-appraisal report to the Secretariat of the UN Convention against Corruption, which was a mandatory requirement for the countries acceded to the Convention[64].

The evaluation report on the progress of Armenia in 2007 within the scopes of ENP Action Plan was published in April 2008[65]. Along with a number of positive steps (e.g. legislative and procedural amendments aimed at decrease of corruption, as well as availability of the Code of Ethics for judges, prosecutors, and the police, increase of judges' salary and establishment of a special investigative service), it is mentioned that the issue of effective application of the anti-corruption legislation and policy has not been solved yet.

Numerous anti-corruption legislative amendments and by-laws were approved and/or enforced in 2007-2008, as well as a number of anti-corruption measures were implemented. See below several of these measures:

- Due to the amendments to the RA Constitution[66], the Supervisory Chamber obtained independent status (was removed from the structure of the National Assembly). In 2008 the Supervisory Chamber revealed grave violations and abuse[67] in the sectors of town planning, agriculture, urban heating and gasification, state procurement, apartment allocations, etc. According to the data posted on the website of the Procuracy[68], in the result of the above-mentioned disclosures, only two criminal cases were filed by the end of 2008.

- In accordance with the Law "On the Procuracy"[69], the RA General Prosecutor is appointed to this position and gets dismissed by the National Assembly, a new system of qualification testing and remuneration is introduced, and the Procuracy loses the power to conduct investigation, which is now vested with the police, the National Security Service, the Ministry of Defense, the tax and customs' authorities.

[62] www.coe.int/greco
[63] www.oecd.org/corruption/acn
[64] The report is not accessible to public.
[65] http://ec.europa.eu/world/enp/documents_en.htm
[66] RA Constitution, Article 83.4.
[67] "Hayastani Hanrapetutiun" daily, September 18, November 6 and December 11, 2008.
[68] http://www.genproc.am/main/am/185/
[69] Official Bulletin of the Republic of Armenia, No. 19 (543), April 11, 2007.

There is a Department of Fight Against Corruption and Organized Crime in the Public Procuracy, which is responsible for prosecutor's control and procedural management over corruption cases. The department supervises those cases, which are investigated by the central investigating agencies of the country. In some regions, this is the responsibility of separate investigation bodies and prosecutors. The principal function of the department is the consideration of complaints received from individuals and requesting additional documents with relation to them. In case of revealing evidence of offence, the documents shall be delivered to the respective investigating bodies.

In 2008 the Procuracy conducted cluster meetings in Yerevan and the regions and considered the issues of prevention and disclosure of corruption-related offences and the specifics of their investigation. The meetings were attended by the representatives of law enforcement bodies, tax and customs services, other interested organizations, and journalists.

- A new system of justice was established on the basis of the amended Court Code[70] and the Law "On Administrative Proceedings"[71], which resulted in establishment of administrative courts, introduction of a new system of appointment and remuneration of judges and court chairmen, functioning of the court department (service), registrars, Code of Ethics of the Judge, court school, etc.

- The RA Law "On Operative and Investigation Activities"[72] specifies new types of operative and investigation activity, as well as control and inspection mechanisms for this activity.

- In accordance with the RA Law "On Special Investigative Service"[73], a new body was established to investigate those criminal cases, which involve high-level state officers, representatives of law enforcement bodies and persons engaged in election process. Pursuant to the information provided by official sources, during the first half of 2008 the Special Investigative Service examined 29 criminal cases, 13 of which were against 14 state officials[74]. The criminal cases were basically brought against officials of the lower and middle level.

- The RA Laws "On Organization and Conducting Audits in the Republic of Armenia"[75], "On Registration of Organizations and Individuals and Taking them off the Tax Register"[76], the amendments and supplements to the Laws "On Trade and Services", "On Usage of Cash Machines", "On State Duty" "On Taxes", "On Licensing", approved in 2008, and a number of other Armenian laws[77] are intended for fighting shadow income in the private sector and minimizing the corruption risks of the tax field. As of September 29, 2008 the Tax Inspection conducted inspections in 23 big shops and revealed violations in all of them, connected with usage of cash machines[78]. 9 supermarkets were temporarily shut down by the tax service, for a period of 5-10 days.

[70] Official Bulletin of the Republic of Armenia, No. 20 (544), April 18, 2007.
[71] Official Bulletin of the Republic of Armenia, No. 64 (588), December 19, 2007.
[72] Official Bulletin of the Republic of Armenia, No. 59 (583), November 28, 2007.
[73] Official Bulletin of the Republic of Armenia, No. 61 (585), December 5, 2007.
[74] "Hayastani Hanrapetutiun" daily, August 5, 2008.
[75] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[76] Official Bulletin of the Republic of Armenia, No. 54(578), November 7, 2007.
[77] Official Bulletin of the Republic of Armenia, No. 59 (649), September 24, 2008.
[78] "Hayastani Hanrapetutiun" daily, September 29, 2008.

- The regulations of passport departments have been simplified and streamlined. Sample forms of 7 different applications have been printed and provided to all passport departments. The individual only has to fill in his/her name and sign the application. The phone number of the Deputy Head of Police is also posted up in passport departments, which enables the people to call him in case of complaints. The lists of documents required to receive or change the passport, compile a case about loss of passport, etc. are also posted up on the walls of passport department offices.

The terms and conditions of issuing passports to the under-aged, as well as the list of the required documents were amended by the RA Government Resolution No. 823 of July 31, 2008[79]. The time constraints were removed and a simplified procedure was introduced: anyone may receive a passport for his/her child with validity period of three years and may change the passport at any time. Exit visas are also provided without any restriction.

- The traffic police reform has started. An off-budget fund has been established and 30% of it is transferred to the salary fund of the traffic police officers. Improvement of collection of administrative penalties is underway. This will give the opportunity to increase the salary of the traffic police officers up to AMD 200-250 thousand by the middle of 2009. In general, financing of the police has increased by 35 percent.

- Finally, in 2008 a chapter named “Corruption” was included in the textbook “Social Science” of comprehensive schools. It contains the definition of corruption, information regarding its forms, causes and methods of fighting against it.

Within the same period, reforms were effected also in other sectors, e.g. the tax service, but this report is intended to present only the steps related to the anti-corruption measures implemented or planned within the scopes of the ENP Action Plan.

As to foreign organizations’ opinion regarding the level of corruption in Armenia, pursuant to the Index of Corruption Perception (ICI) of Transparency International[80], in 2007 and 2008 Armenia was still among the most corrupt countries, the index of which is below 3 (by “1-10” scale, where “1” means “a fully corrupt country”, and “10” - “a country with no corruption at all”). During the last five years, the situation with corruption perception in the country remained unchanged: in 2008, 2007, 2006, 2005 and 2004 the ICI in Armenia was 2.9, 3.0, 2.9, 2.9 and 3.1, respectively.

According to the data of the World Corruption Barometer of Transparency International[81], 52% of the people who took part in the poll in 2007, were of the opinion that during the next 3 years the level of corruption in the country would “increase considerably” or “increase moderately”. As to the anti-corruption measures taken by the Government, only 25% of those questioned considered such measures “effective to a certain extent” or “effective”.

The data published by Freedom House in 2007 and 2008[82] evidence that the index of corruption in Armenia remained on the same level as in the previous years - 5.75 (by “1-7” scale, where “1” means “with no corruption at all” and “7” means “fully corrupt”).

[79] Official Bulletin of the Republic of Armenia, No. 51 (641), August 13, 2008.
[80] http://www.transparency.org/policy_research/surveys_indices/cpi
[81] http://www.transparency.org/policy_research/surveys_indices/gcb/2007
[82] http://www.freedomhouse.hu/nit.html

According to the World Poll of Gallup[83] held in 14 former Soviet countries, 50% of the people questioned in Armenia were of the opinion that at present the level of corruption is higher than in the Soviet times.

Global Integrity Index of Corruption in Armenia in 2007 was 58 (by "0-100 scale"), which, according to 23 anti-corruption criteria, corresponds to the rating "extremely weak"[84]. It is noteworthy that one of the management criteria of the World Bank, "control on corruption", was also rated rather low in 2007 - 30 scores of 100[85].

Based on the reports of the local and international organizations regarding the elections of 2007-2008[86] and numerous publications in the press, it can be concluded that political corruption in Armenia considerably increased during this period: abuse of administrative, informational, financial and other resources, bribing of electors, etc.

[83] http://www.gallup.com/poll/101767/Pereceptions-Corruption-Widespread-Former-Soviet-Nations.aspx
[84] http://report.globalintegrity.org/Armenia/2007
[85] http://info.worldbank.org/governance/wg/sc_chart.asp
[86] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php