

**Right to a fair trial in the Republic of Armenia:
Preliminary conclusions from the observation of the trials
ensuing from the March 2008 wave of arrests and from recent
changes introduced in Armenian legislation**

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The International Federation for Human Rights (FIDH) and its member organisation the Civil Society Institute (CSI) have followed the trials of the individuals arrested in March 2008 in the wake of the violent clashes that took place between police forces and supporters of the political opposition. Our organisations wish to express their concerns at the numerous and consistent reports of pressure exerted on witnesses to criminal cases that are obviously politically motivated. The use in trials of witness testimonies that were obtained through recourse to unlawful methods violates the principle of a fair trial.

FIDH and CSI are equally concerned by certain changes introduced this year in the legislation of the Republic of Armenia. Amendments to the Judicial Code, Criminal Procedure Code, Administrative Procedure Code and Criminal Code of Armenia came into force on March 1st, 2009. Our organisations denounce some of the new provisions that put under threat the right of the accused to be tried in his own presence, and to defend himself in person or through legal assistance of his own choosing.

Background information on the events of March 2008¹

On March 1, 2008 in the wake of the Presidential elections of February 2008, clashes took place between the opposition and the police. President Robert Kocharian decreed a

1 for more information, see: “Friday 7 March 2008 – FIDH calls for an immediate end to the state of emergency” at: <http://www.fidh.org/FIDH-calls-for-an-immediate-end-to>

state of emergency in Yerevan for 20 days which was confirmed by Parliament the next day. All public gatherings were banned, media coverage passed under state control, and some independent websites were banned. More than 100 persons were arrested and were brought to the courts. The detainees were predominantly opposition activists, including three members of Parliament who supported the opposition. The trials of 1st-of-March cases started at the end of March 2008. The main charges were based on the Article 225 (Mass disorders) and 316 (Use of violence against a representative of authorities) of the Criminal Code of Armenia.

In December 2008, the case of “The Seven” started. It concerns seven opposition leaders Alexander Arzumanyan (former foreign Minister), Myasnik Malkhasyan (MP), Sasun Mikaelyan (MP), Hakob Hakobyan (MP), Grigor Voskerchyan, Suren Sirunyan, and Shant Harutyunyan, who were charged under Articles of the Criminal Code of Armenia². On May 13, 2009 Shant Harutyunyan was released, the case against him was terminated because he was found to be in a state of insanity at the time of the crime. The case of “The Seven” was divided into six parts following the next phase of judicial reforms and amendments to the Criminal Code of the Republic of Armenia, and the separate and simultaneous trials of the remaining six opposition leaders started in April 2009. On June 22, 2009 verdicts were issued for Myasnik Malkhasyan, Sasun Mikayelyan, Hakob Hakobyan, Alexander Arzumanyan and Suren Sirunyan. They were found guilty and got different terms of imprisonment. However, with the exception of Sasun Mikayelyan, they were all released from the court rooms following a Law on Amnesty proposed by the President of the Republic of Armenia and approved by the National Assembly.

I - Reports of recourse to unlawful methods to gather witness testimonies

In the course of the trials of the six opposition leaders, a number of witnesses described to the court the circumstances in which they were forced to give witness testimonies during the investigation, from March 2008. They told the court that their testimonies

2 The “Seven” were initially charged under Article 225 part 3 (3. Acts envisaged in part 1 or 2 of this Article accompanied with murder), Article 235 (Illegal procurement, transportation or carrying of weapons, ammunition, explosives or explosive devices.), Article 300 (Usurping state power) and Article 316 (Violence against a representative of authorities). At the trial of April 1, 2009 the prosecutors decided to drop the charges under Article 300, to amend the charges brought under Article 225 part 3 and to bring new charges. They motivated their decision by the amendments brought by the National Assembly of Armenia to Articles 225 and 300 during the court trial of March 18, 2009 (“On amendments and restatements to the Criminal Code of the Republic of Armenia”)

were not true. Many witnesses stated that they were taken to different departments of the Police of the Republic of Armenia and were exposed to serious psychological and physical pressure by law enforcement bodies, who sought to obtain false testimonies against the accused opposition leaders. Many of them also stated that they were called to police departments prior to the trial, and were instructed to confirm their pre-trial testimonies at the trial.

For instance, on May 6, 2009, Yasha Melqonyan, a witness in the case of Sasun Mikayelyan, declared to the court that “I have written false things during the pre-trial phase. I apologize for that. I was in a very bad situation. They were telling me to write down, I was writing. I wanted them just to leave me, so that I would leave and go to bed. I was in pain. Lots of things were dictated by the investigators”. Yasha Melqonyan also said that he had been beaten by people in masks in the Hrazdan City Police Station, with the participation of Sergey Markosyan, head of the criminal department.

Other witnesses told the court that they were beaten during the investigation: Gagik Avdalyan, Edik Khachatryan, Arsen Mkrtychyan, Khachik Davtyan, and 18-year-old Gevorg Muradyan made such statements. Additionally, Gevorg Muradyan declared to the court that he understood that more people had been beaten in the police station because when he was detained in it he heard calls from the next door room such as “Oh my god, what are you doing, don’t beat”. Gevorg Muradyan suffers from a heart illness and said that when he told the police about it one of the policemen said “Beat him carefully, so that he does not die in result”. Gevorg Muradyan concluded his disclosure to the court with: “I know for sure that I won’t be well. I will be taken to the police station again”.

Following the declarations to the court made by witnesses Arsen Mkrtychyan, Yasha Melqonyan and Edik Khachatryan at the trial of Sasun Mikayelyan on the unlawful treatment applied to them, the chief prosecutor of the Republic of Armenia has ordered criminal cases to be initiated on the basis of Article 341 of the Criminal Code of the Republic of Armenia (Forcing testimony by the judge, by the prosecutor, by the investigator or by the person in charge of inquiry). The investigation has been assigned to the Special Investigation Department and National Security Service of the Republic of Armenia.

Some witnesses told the court that they were visited in their homes by representatives of law enforcement bodies, who had threatened them and exerted pressure on them to ensure they would confirm in court the testimony that they had given and signed during the

investigation. On May 20, 2009, at the trial of Myasnik Malkhasyan, the witness Hmayak Galstyan denied his pre-trial testimony in court and said that he had been forced to give this testimony under psychological and physical pressure. He added that prior to the trial he was summoned to Aparan police station, where he was instructed to confirm the testimony he had given during the investigation. The witnesses Serob Serobyan (Hakob Hakobyan's case) and Tatul Karapetyan (Sasun Mikayelyan's case) have also reported that policemen threatened them, demanding to confirm their pre-trial testimonies.

On May 19, 2009, another witness in the Myasnik Malkhasyan's case, Henrik Hartinyan, resident of Ashtarak city, stated that on March 2, 2008, he came to Yerevan with his friend and their car was stopped. People wearing masks put a gun on Henrik Hartinyan's head and made him get out of the car; then they started to beat him, and broke his rib. He was taken to the Combating organised crime division of Police, where he was dictated the witness testimony he had to give. He was threatened, urged to do it if he wanted to stay alive. After that he was thrown out of the building, and remained nearly unconscious for several hours before heading back home. On March 3, 2008 Henrik Artinyan went to see the doctor, who first refused to X-ray him but eventually agreed when Henrik Artinyan told him that he had fallen down from a tree. According to his medical record his rib was broken. At the trial, he withdrew his pre-trial witness testimony. The judge requested the prosecutor to handle this information as a crime report and to take the appropriate measures.

In the same vein, on May 20, 2009, Hmayak Galstyan, a resident of Aragats village, Aparan region and a witness in M. Malkhasyan's case, explained to the court how he was arrested in the night of March 1, when he was going home from Yerkrpah office with Myasnik Malkhasyan. He was beaten severely, and made to write down a specific witness testimony following different physical and psychological pressures. Several people in masks were present during his questioning. Hmayak Galstyan reported these acts of violence to the prosecutor's office, who questioned him on the events. None was found guilty nor brought to justice. At the trial, Hmayak Galstyan withdrew his pre-trial testimony: he denied that Myasnik Malkhasyan kept a metal stick in his hand, that the demonstrators were under the influence of alcohol and drugs, and that Malkhasyan had made calls to get arms and to overthrow the authorities.

On May 20, 2009, Gagik Avdalyan, another witness in Myasnik Malkhasyan's case, was brought violently to Mashtots police station from the Kentron and Norq-Marash court

building. There he was offered to confirm his pre-trial testimony in the court and to say that no violence was used against him in return for the release of his imprisoned brother.

On May 25, 2009 policemen in civilian clothes tried to abduct Mushegh Antonyan, a witness in Hakob Hakobyan's case. Melanya Arustamyan, lawyer of Hakob Hakobyan said that pressure had been exerted on the witness, and that policemen had requested him not to meet the leader of the "Heritage" opposition party who came to court.

Our organisations express our deep concern at the numerous, detailed and consistent reports of the use of physical and psychological pressure on the witnesses during the pre-trial and trial phase. Armenian Courts relying on such evidence violate the international obligations of the Republic of Armenia and encourage the use of such unlawful practices.

Our organisations call upon the Armenian authorities to respect its international obligations and:

- *Not to use evidence obtained by maltreatment as evidence in criminal proceedings, in accordance with Article 6 of the European Convention on Human Rights and Article 15 of the UN Convention against Torture;*
- *In the cases where evidence against suspects was obtained through recourse to unlawful methods, take all necessary steps to ensure that those responsible for using such methods are brought to justice, in accordance with the 1990 UN Guidelines on the Role of Prosecutors;*
- *Develop mechanisms to enable the effective collection of unbiased evidence and reduce the reliance on witness testimonies and confessions in criminal proceedings*

II - Recent reforms: trials in absentia and right to legal assistance of one's choice

On March 1, 2009, amendments to the Judicial Code, Criminal Procedure Code, Administrative Procedure Code, and Criminal Code came into force. Some of them concern directly the right to a fair trial.

According to the new Article 314.1 of the Code of Criminal Procedure, the judge may send the accused out of the courtroom and proceed with the trial *in absentia* in case the accused expresses a lack of respect towards the court. There is no definition of “lack of respect towards the court”, which leaves it open to any interpretation.

On February 5, 2009, four Armenian human rights organisations – the Civil Society Institute, the Helsinki Committee of Armenia, the Helsinki Citizens’ Assembly Vanadzor and Against violation of law – had issued the statement calling upon the National Assembly not to adopt this amendment to the Criminal Code of the Republic of Armenia³.

On March 9, 2009, soon after Article 314.1 came into force, Judge Mnatsakan Martirosyan applied this Article at a hearing of the case of “The Seven” and had five of the defendants (Alexander Arzumanyan, Suren Sirunyan, Myasnik Malkhasyan, Sasun Mikaelyan, Hakob Hakobyan) excluded from the court room for a period of 10 days. He excluded them because of their disrespectful attitude towards the court, not explaining the use the maximum exclusion period of 10 days. On March 13, 2009 defendant Griqor Voskerchyan was removed from the court room for the same reason.

Another amendment puts under threat the right of an individual to defend himself in person or through the legal assistance of his own choosing. Article 69 of the Criminal Procedure Code was amended with a new part 5 which says: “In the cases prescribed by point 11 of this Article, the court may not accept refusal of the defendant from the defense attorney and based on the order prescribed by this Code appoint a new defense attorney or maintain powers of the same attorney”

On March 16, at a hearing of the case of “The Seven”, defense attorney Hovik Arsenyan stated that his client Sasun Mikaelyan had dismissed him. The judge refused to accept

3 see “Human Rights Defenders Against the Conduction of Trial in Absence of the Defendant”, at http://www.hra.am/en/point-of-view/2009/02/05/human_rights_defenders_against_the_conduction_of_trial_in_absence_of_defendant

this dismissal and stated that the court maintained Hovik Arsenyan as defense lawyer for Sasun Mikaelyan.

Our organisations call upon the Armenian authorities to respect its international obligations and:

- *To ensure the right of the accused in criminal proceedings to be present at the trial hearing, and his right to defend himself in person or through legal assistance of his own choosing, according to Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights*