

ARMENIA*

I. BACKGROUND (Dr. Anna Matveeva)

I.1. Historical and political background

In 1999, there were more than 3 million people living in Armenia. In contrast to Georgia and Azerbaijan, the country hosts only a small percentage of minorities. Quite similar to Azerbaijan, however, the single most important factor determining Armenia's post-independence political and social development was the conflict around the ethnic Armenian enclave of Nagorno-Karabakh.

In July 1988, the Soviet Union Communist Party Politbureau in Moscow rejected Armenian demands on the ethnic Armenian enclave of Nagorno-Karabakh in Azerbaijan. At the time, Armenian dissidents, like in some other Union Republics, organised themselves around a nationalist agenda, and in May 1989 formally established the Armenian National Movement (ANM). The ANM originally did not aim at gaining independent statehood for the Union Republic of Armenia but rather demanded transfer of the predominantly ethnic Armenian enclave of Nagorno-Karabakh from Azerbaijani to Armenian jurisdiction. However, after ANM's initiative was rebuffed by the Soviet regime the Karabakh issue provided the fuel and served as a catalyst for Armenian independence efforts, which concluded with an overwhelming 94 percent approval in the September 1991 referendum. Within a month Levon Ter-Petrosyan was elected president and the Armenian National Movement emerged as the ruling party. The Armenians were in control of the whole territory of the republic and eventually got the upper hand in their war with Azerbaijan, gaining control over Nagorno-Karabakh and strategic positions around the enclave. The military victory also created more coherence within the Armenian political establishment and the initial developments suggested that the young republic was well underway on its road towards democracy.

In 1993, however, the situation started to change and authoritarian tendencies emerged. Persecution of members of the influential Dashnaktsutiun, the oldest political party in Armenia, which had been very instrumental in financing and winning international political support for the Armenian cause in Karabakh, increased dramatically. In December 1994, prominent Dashnak politicians who were in sharp opposition to President Ter-Petrosyan and

* The reports on the Caucasus country presentations are mainly based on the independent expert's assessment of the political and human rights situation in the respective countries; UNHCR's position is reflected in *the UNHCR Background Papers on Refugees and Asylum Seekers from Armenia, Azerbaijan and Georgia* of October 1999, which are attached in the Annex.

the ruling ANM, were arrested and charged with terrorist activities. In addition, the party's activities were suspended and many rank-and-file members were harassed by unknown individuals, which are nowadays believed to have been agents of the state.

A couple of months later, most Dashnak leaders had been arrested for an alleged coup d'état attempt and thus were effectively excluded from the 1995 parliamentary elections and the 1996 presidential elections. The elections, which took place amidst widespread violations, irregularities in voter registration and street violence, were judged 'free, but not fair' by outside observers, who noted that people had had a choice, but not a fair choice, since many candidates had been excluded or had had only limited access to voter lists. After the elections, the president began to increasingly rely on the security apparatus and a tightly-knit group of supporters around him, rather than on broadly-based political parties. At the same time that President Ter-Petrosyan became more and more detached from society and the broader political process, many key figures from Nagorno-Karabakh moved into the mainstream of the Armenian political scene.

As a consequence, when the OSCE Minsk Group, set up for resolving the Nagorno-Karabakh conflict, suggested in 1997 a settlement plan based on the territorial integrity of Azerbaijan for the region and it looked as if President Ter-Petrosyan might agree, he was accused of betraying national interests and finally had to resign in February 1998 under mounting pressure from Karabakh exiles and the military. Furthermore, the prime minister and former president of Nagorno-Karabakh, Robert Kocharian, and his two ministers for defence and the interior, Vazgen and Serge Sarkssians, joined forces to oust Ter-Petrosyan. Immediately after Ter-Petrosyan's resignation, Kocharian lifted the ban on the Dashnak Party's activities and all detained party members were released. In March of the same year, Kocharian was elected President of Armenia in a two-round vote. International observers agreed that the elections procedure had improved, which gave Kocharian more legitimacy and afforded him the opportunity to loosen some of the controls imposed by his predecessor. The setback with these reforms was, though, that it increased the likelihood of abuse on the local level, since local administrators felt unobserved and assumed more liberty in interpreting government policy directives. Parliamentary elections in May 1999 saw the Miasnutyun (Unity) electoral bloc, an alliance of reformed Communists, the People's Party of Armenia, and the Republican Party (military-security staff), win with a 41.69 percent of votes that secured them 64 out of 131 seats in the new legislature. The Miasnutyun did not have a coherent political agenda, and was basically a coalition of key individuals. The Communist Party as the main opposition party also fared quite well and gathered 12.09 percent, to fill 10 seats in parliament.

I.2. Political Structure

Throughout the 1990s Armenia faced the task of building a nation-state where there was none before, while breaking with the old Soviet power and political structures as radically as possible. It was similarly difficult for all newly independent states to find the right balance between executive and parliamentary powers as well as between democracy and the need of the state to project order. In Armenia, this resulted in an extraordinary concentration of executive and legislative powers in the hands of the president and authoritarian tendencies in the state apparatus. As a consequence parliament is too weak to exert any meaningful control of government policies, and corruption and mismanagement are widespread in all layers of administration and the judiciary. And secondly, courts are very reluctant to seriously control the security services. Quite frequently, when people are arbitrarily arrested and detained in police stations, doctors refuse to examine them, or seem to be unable to find medical records of victims of police brutality.

The latest elections, the local elections of October 1999, could have meant an important step towards democracy for Armenia and accession to the Council of Europe. Many independent candidates won seats and the elections took place without major electoral violations. However, the Republican Party managed to maintain its influential position in Armenia's political life. In addition, the voter turnout was a devastatingly low 25 percent which is due to several factors. First of all, after Armenian society experienced a very high degree of mobilisation for an extended period of time, the need for relaxation and for dealing with individual concerns may only seem natural. Moreover, the lack of power and resources given to local authorities and their seeming inefficiency and incapability of improving the lives of ordinary citizens, alongside the widespread view that electoral outcomes are frequently fixed beforehand by local strongmen, has led to increasing cynicism and electoral denial of voters. The low turnout may also in part be explained by the existence of large numbers of ethnic Armenian refugees from Azerbaijan whose status remains undetermined. Despite the government's efforts to give these persons citizens' rights, many of them do not intend to become naturalised for fear of losing the special status and protection they enjoy as refugees. Since non-citizens are not eligible to vote, in 69 electoral districts elections were not held because they were predominantly populated by people who had fled Azerbaijan.

In addition to the Armenian political establishment's failure to increase its legitimacy by gaining massive popular support in the October elections, only a few days after people went to the polls seven senior politicians, among them Prime Minister Vazgen Sarkssian and the Speaker of Parliament, Karen Demirchian, were assassinated. Most observers argue that the

reasons for these murders are not related to the Karabakh conflict, since there is a common understanding in Armenia about the issue, i.e. all Armenians agree that Karabakh is undoubtedly Armenian, and that sooner or later the international community will have to come to terms with this fact.

Rather it may be understood in light of the ongoing influence and power of the military and the security services and of the seeming impossibility to penetrate the political system and existing power structures in Armenia by democratic means. Quite frequently, the same individuals who form the small group of top decision-makers, where political power and control over the coercive forces merge, also informally hold key economic positions. All decision-making by these 'king-makers', who have the power to push and oust presidents, happens in an informal process which is completely suspended from any mechanism of democratic control, i.e. political parties, the voting system, or accountability rules for officials. It can be said for all elections, that there were manipulations and that irregularities in voter registration occurred. Nevertheless, there seemed to be gradual but steady improvement concerning the fairness of elections per se. However, the pervasiveness of the Karabakh issue and the persistent clout of the security forces are clearly not conducive to democratisation and to a more inclusive and open political process.

Armenian diaspora

Before and shortly after the breakdown of the Soviet regime the Armenian diaspora, consisting of the Liberal-Democratic Party (Ramkavars), the Armenian Revolutionary Federation (Dashnaktsutiun), and the Social-Democratic Party (Hnchak), played a key role in Armenian political life. Initially organising the opposition in exile, they were later instrumental in building up financial resources and crucial international support for Armenian claims on Nagorno-Karabakh. The increasing influence of the diaspora - President Ter Petrosyan's Foreign Policy Adviser, for instance, was an American-Armenian - was a constant source of irritation to Karabakh leaders which did not want this sophisticated group of foreigners to interfere. As a result of the Karabakh-elite's opposition, which argued that the returned exiles had not gone through all the hardship of Soviet oppression, the diaspora's political clout shrank considerably, and despite its ongoing importance it is no longer capable of exerting significant pressure on the government.

One of the measures which particularly enraged diaspora Armenians was the adoption of a law on citizenship requiring exiles to renounce their foreign, e.g. French or US, nationality if they wanted to return to Armenia. After relations had cooled down for some years, more

recently tensions between Armenia and its diaspora seem to have subsided, especially in light of current president Robert Kocharian's efforts to reconstitute Dashnak activists.

I.3. Human Rights

Many of Armenia's problems derive from its attempt to build a nation-state where no tradition of a nation-state had existed before. The break with the Communist past and the implementation of a new constitution were necessary steps on Armenia's path to independent statehood, if combined with an extraordinary concentration of powers in the executive branch. After the killings of October 1999, there were encouraging signs of democratisation and a debate ensued over the limitation of presidential powers and the strengthening of parliament. The judiciary, too, has become more assertive, although in most cases it still sides up with the authorities, and very seldom a fair trial can be expected if police or local authorities are accused of discrimination or human rights violations. This is indeed a major point of criticism by the Council of Europe, since people in the pre-trial phase and in detention are regularly harassed and beaten up and victims of police brutality are still routinely threatened to drop charges, and doctors pressured not to conduct examinations or to 'lose' examination records. As a consequence, then, it is extremely difficult for refugees who claim to have been subjected to inhumane treatment in police custody to prove this through documents or provision of medical examination records.

Like Azerbaijan, Armenia has special guest status with the Council of Europe and is currently embarking in an exercise to bring its legislation in accordance with international standards. The efforts of the government to become a member-state of the Council of Europe have led to major improvements in the areas of freedom of speech and freedom of movement. NGOs, for instance, continue to be critical of social problems and government policies without serious repression. Other reforms are still stuck in a discussion or preparatory phase, such as the limitation of the pre-trial detention period and the revision of the criminal code, which would include the abolition of the death penalty and the decriminalisation of homosexuality in particular. Moreover, although in 1999 no one was executed, there is no moratorium on the death penalty.

Another policy concern is the treatment of refugees on Armenian territory. Armenia, state party to the 1951 Convention on Refugees, regards ethnic Armenians from Azerbaijan as 'national refugees' and grants them prima-facie refugee status. Recently, the government has been stepping up efforts to open the naturalisation process for Armenian refugees and

gave them the right to apply for citizenship in a simplified manner. Usually, though, these refugees are not very eager to apply and do not seem too intent to replace their old Soviet passports with new Armenian papers. Most of them think that it would not be to their advantage, i.e. that they would lose the special protection of refugees, the international visibility and would have less social privileges. Another measure was the adoption of legal provisions concerning refugee status determination procedures with the help of UNHCR. All in all, especially in light of the ongoing chaotic and incoherent treatment of refugees and the terrible state of the Armenian economy, the situation of refugees in Armenia remains extremely miserable.

Concerning the general human rights situation it can be said that in Armenia freedom of expression is by and large guaranteed. Certainly, there exists a civil society, e.g. there are a number of NGOs, sometimes well-equipped and supported by the Armenian diaspora, which try to put pressure on the government to improve Armenia's human rights record and to rectify human rights violations committed by unaccountable agents. The results, however, are mixed. Successes include the establishment of the Armenian Human Rights Commission with the support of Amnesty International, and liberalisation in the media sector. Yet, the organisation 'Cooperation and Democracy', which is in touch with most Armenian NGOs and is informed about their activities, also reports harassment of NGOs. Unlike in the Soviet era when a coherent policy was pursued, more recently harassment of NGOs seems to be rather arbitrary, highly personalised and rooted in conflicts with the local authorities. In any case, NGOs are not victims of systematic harassment and may without any major restrictions exercise the freedom of speech. What is lacking, though, is an adequate legal framework, e.g. regulating their work and granting them tax freedom.

II. SPECIFIC GROUPS AT RISK (Dr. Anna Matveeva)

Concerning refugee status determination it is important to note that a legacy from the Soviet era is the differentiation between "citizenship" and "nationality" (i.e. ethnic origin) in the old passports of the former Union Republic of Armenia and new passports of the Republic of Armenia as well. This means that someone may be an Armenian citizen, but an Azeri national, which could lead to some confusion when trying to determine an asylum applicant's status.

Armenian refugees

Armenians, like Jews, are a diaspora nation. Substantial Armenian populations are currently residing in the United States, France, Lebanon, Syria, Iran and Russia, and in most of these countries fare quite well. A smaller number live in Southern Georgia, in the region bordering Armenia, where 90 percent of the population are ethnic Armenians. Although the province does not have official autonomy it is de facto self-governing and the federal government in Tbilisi limits its efforts to project power to the community level. The residents of the region claim that they are generally excluded from wider Georgian life, i.e. they cannot marry ethnic Georgians or get professional jobs.

The situation in the Russian Federation is somewhat more complex. In general, Russia was very generous concerning asylum seekers from other CIS countries and made no distinction between individuals who came for political and those who came for economic reasons. Many people, including thousands of Armenians, were granted refugee status even before the Russian Federation adopted its 1993 law on refugees. In July 1997, changes to the refugee law were implemented that reduced the previously substantial social benefits offered to recognised refugees. In addition, since the war in Chechnya, Caucasians of all origins are suspected of various crimes. There is no official persecution but more checks for non-registered people are conducted and more harassment of foreigners occurs. Many local officials are corrupt and extortion of bribes is a widespread phenomenon in the utterly chaotic and disorganised registration process, which disproportionately affects refugees.

Another problem is the lack of social and economic support for refugees in the Russian Federation. According to UNHCR, due to restrictive and arduous registration procedures and the unwillingness of regional administrations to implement federal government policy directives, many refugees (i.e. those who fled the pogroms in Azerbaijan) have been denied basic human rights. Thanks to the efforts of the influential Armenian diaspora in the United States, some refugees were resettled to North America. After the program has been terminated, quite a number of Armenians are still stranded in Russia, with no definite legal status, and no access to education, jobs, or even apartments. Most Armenians currently living in Russia are, however, economic migrants. As citizens of other countries, they have restricted access to education, health care and jobs. Yet, many prefer to stay in Russia, rather than go back to Armenia.

Ethnic Minorities

Azeris are the largest ethnic minority and the only ethnic group that is at risk. More specifically, the population itself is targeted and the simple fact of membership in the ethnic group of Azeris is taken as evidence of being an enemy and a potential threat. Therefore, being of Azeri ethnic origin is reason enough to have a substantiated fear of persecution. The roots lie in the Nagorno-Karabakh conflict, where massacres, ethnic cleansing and serious ill-treatment occurred on both sides. Mirroring the developments in Azerbaijan, in the period from 1988 to 1992 the vast majority of Azeris were expelled from Armenian territory.

Nevertheless, even today there are persons of Azeri ethnic origin who seek asylum in countries of the West. One possible reason is that they may have found asylum in another CIS country but not sufficient protection from persecution and economic hardship. The second group of applicants are those few hundred individuals of Azeri or mixed ethnic origin who stayed for personal reasons as well as those elderly and invalid persons who seemingly had no choice but to stay. After trying to keep a low profile and even changing their names to pass as ethnic Armenians, they could not bear the ongoing daily discrimination any longer and finally decided to leave. And even leaving the country might prove difficult for many of them, given that Armenian authorities are usually extremely reluctant to deal with Azeris and refuse to issue passports for those wanting to leave the country. Moreover, Armenian authorities will not cooperate, once ethnic Azeri refugees are abroad, be it issuance of a document or confirmation of certain circumstances.

Consequently, mixed ethnic, i.e. Azeri-Armenian, couples are another group at risk. It is very hard for them to find jobs, they are denied access to schools and universities, and many shop owners refuse to sell them goods. In addition to overt discrimination, harassment and persecution by private individuals, including verbal and physical violence, is widespread but usually erratic and arbitrary and does not follow coherent rules. Furthermore, although the authorities and courts do not officially encourage harassment, they do not provide protection from harassment either. As a consequence of social and factual, albeit not legal, marginalisation the prospects for ethnic Azeris, mixed couples and mixed-origin people leading a normal life are extremely limited.

Other ethnic minority groups like Moloccans - most of them have left the country - and Kurds go rather unnoticed. Kurds in particular maintain an accepted status in Armenian society. The Armenian authorities distinguish between Yezidi Kurds, who are favoured, and Muslim

Kurds, who are only in a slightly better position than Azeris. Recently, the Armenian government has made efforts to improve relations with Turkey and therefore avoids any moves that might seriously endanger this rapprochement. Nevertheless, for historical reasons the Kurdish Workers Party (PKK) is strong in Armenia and does not face harassment of any kind. Thus, although the PKK is not directly supported by the Armenian government, there is the possibility of PKK activities taking place on Armenian territory without knowledge of the authorities.

Religious minorities

Armenia adopted its law on freedom of religion in 1991. The law, which grants freedom of conscience and of professing one's belief and prescribes the separation of church and state, at the same time recognises the Armenian Apostolic Church as the dominant church in Armenia. In 1993 a legal provision was passed that gave the State Council on Religious Affairs, which was established under the 1991 law, the right to evaluate the religious nature of activities carried out by a group and to ban those whose activities are judged contrary to the mandate. In 1997 religious freedom has been further restricted through an amendment to the 1991 law, driven by apprehension of alternative churches, such as the Jehovah's Witnesses, Hare Krishnas, the Adventists of the Seven Days, members of South Korea's Unification Church ('Moonies'), as well as the Baptist and Evangelic churches. In order to maintain the Armenian Orthodox Church's dominance (90%), religious denominations now need to have at least two hundred adult members to qualify for official recognition and all religious meetings have to be authorised by the State Council.

Of the roughly 40 religious groups registered in Armenia, the most severely harassed ones were the Hare Krishnas and the Jehovah's Witnesses. In 1993, there was a wave of violence against Hare Krishnas, including physical attacks as well as damage and destruction of worship places and homes, committed by the population and paramilitary groups. The local authorities did not offer any protection and even contributed to persecution of the group by arbitrarily searching their homes and destroying religious materials. More recently, the situation seems to have quieted down, and there have been no reports of serious harassment of religious minorities. Yet, even if simple membership in a religious group may not be sufficient to substantiate a person's claim to refugee status, in combination with other factors, e.g. draft evasion, there may be a well-founded fear of persecution.

Draft evaders and Deserters

Nowadays, the main concern of religious minorities is not so much risk of physical attacks but rather discrimination with regard to military service. Certainly, the question of serving in the national army is closely connected to a person's personal beliefs. Armenia's law on religious freedom formally pays tribute to this argument by explicitly granting individuals the right to refuse service in an armed unit. The law on military service, however, does not provide any alternative service. Instead, draft evaders (1-3 years, under aggravating circumstances up to 5 years) and deserters (3-7 years, under aggravating circumstances 10 or more years and even death penalty) face harsh sentences and ill-treatment. According to the UNHCR guidelines on refugee status determination the impossibility to refuse military service only presents a reason for asylum, if penalties are disproportionate, which - with the exception of the death penalty for deserters - is considered not to be the case in Armenia. For religious minorities (e.g. Jehovah's Witnesses), however, harassment, intimidation, long-term detention, and ill-treatment even during penal procedures have been reported that sidestep or exceed the level of legal sanctions deemed appropriate.

Another point of concern is the common practice of drafting traumatised Armenian refugees into the army. According to Armenian law ethnic Armenians from Azerbaijan are 'de-facto citizens'. Thus, authorities assume the right to draft them into the army, and sometimes even to the province of Nagorno-Karabakh. Since there is no such element as 'de-facto citizen' in international law, and since sending refugees from Azerbaijan back to their country of origin would constitute refoulement, UNHCR along with other international organisations has persistently criticised these practises.

Even for regular citizens being drafted to the Karabakh region is considered to be very problematic. There is no evidence that the alleged voluntary nature of military service in Nagorno-Karabakh holds true in reality. Furthermore, throughout the conflict around the Armenian enclave on the territory of Azerbaijan massive violations of international humanitarian law, hostage-taking and execution of prisoners of war occurred. Consequently, if someone deserted on grounds that he refused to commit acts against international law, such as targeting of civilians or raping women, this person would have a well-founded fear of persecution. In isolated cases even family members of deserters and of those who managed to leave the country had to face harassment.

Armenia's army is a closed institution where ill-treatment and torture occur on a regular basis and where the general human rights situation is indeed worrying. Therefore, draft evasion and desertion are widespread phenomena. In contrast to the rather serious sanctions deserters have to expect, however, treatment of draft evaders is usually much more indulgent. In this context it is important to bear in mind that Armenia lost one third of its population through the war and a devastating earthquake as well as through migration to Russia. Therefore, the government encourages people to return, and it cannot be said that returned draft evaders generally face harsh treatment or long prison sentences, although some NGOs also claim that draft evaders who later decide to serve in the army are very likely to be sent to Nagorno-Karabakh.

The question of safe return of draft evaders to Armenia is closely connected to ethnic background and sexual orientation. Typically laws against returning draft evaders are not implemented in a very strict manner. In contrast, homosexuals and individuals of Azeri or mixed ethnic origin run a high risk of physical and psychological abuse. In other words, it is not the simple matter of draft evasion that is of major concern here. Rather, individuals with a specific ethnic/sexual background and persons who originally come from Nagorno-Karabakh and can make credible that they would have been deployed to the region are the most worthy of protection. In the case of deserters, the crucial question is if they have undergone 'special' treatment in the army for one of the above reasons, or if they have served in the Karabakh region and would have had to commit crimes against humanity.

Homosexuals

Under the current Criminal Code, article 116, "sodomy," defined as "sexual relations of a man with another man" is punishable by up to five years imprisonment. Allegedly the new draft criminal code will abolish criminalisation of homosexual acts between consenting male adults (lesbian women are not mentioned in the current law). In addition to persecution by the state, there is a lot of everyday violence against homosexual minors and adults, with no hope for protection by the police. Even NGOs refrain from supporting individuals who are targeted because of their sexual orientation, since homosexuality is commonly regarded as shameful and activists themselves are threatened. In the army, too, ill-treatment and torture of gay men is common practice.

Political activists

The party which suffered most from political persecution and whose members were subjected to the most serious acts of repression is the Dashnaktsutiun. Harassment of Dashnak activists and followers, however, subsided after the party's most important leaders had been put in jail. When former president Levon Ter-Petrosyan was ousted in 1998, the situation changed dramatically. All imprisoned Dashnaks had their verdicts overturned and were set free. Furthermore, one Dashnak leader who had previously been detained was recently appointed Special Adviser to President Kocharian, and other Dashnaks also hold influential positions in the current administration. Presently, there are also no reports of persecution of other political parties. Thus, until 1997 an applicant contending to have been persecuted for political reasons may have had a substantiated claim, although this person would no longer run the risk of political persecution if returning to Armenia.