

### **Extract from the IHF report**

#### ***Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)***

#### **Armenia<sup>1</sup>**

**IHF FOCUS: national human rights protection; freedom of expression, free media and information; peaceful assembly; independence of the judiciary; right to a fair trial and effective remedies; torture, ill-treatment and police misconduct; arbitrary arrest and detention; conditions in prisons and detention facilities; freedom of religion and religious tolerance; conscientious objection; rights of homosexuals.<sup>2</sup>**

In January, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1361<sup>3</sup> on the honouring of Council of Europe obligations and commitments by Armenia. The resolution pointed to several serious prevailing human rights problems, *inter alia*, regarding free and fair elections, judicial reforms and independence of the judiciary, administrative detention, freedom of assembly, and misconduct by law enforcement official. Regrettably, the Armenian government failed to take effective measures in 2004 to address these questions.<sup>4</sup>

The central political developments of the first half of 2004 were a direct consequence of the 2003 presidential and parliamentary elections. The opposition attempted to launch a mechanism for the implementation of the 13 April 2003 decisions of the Constitutional Court, which, though acknowledging the victory of Robert Kocharyan in the flawed presidential elections, nevertheless proposed to hold within a year a “referendum of confidence” regarding the incumbent head of state. The tri-party ruling coalition (ARF Dashnaktsutyun, the Republican Party and the Orinats Yerkir party) blocked in the National Assembly the opposition proposal to amend the law on referendum, leading to the boycott of the National Assembly plenary sessions by the nine-party opposition block led by the Ardarutyun (Justice) and the National Unity Party. The boycott lasted throughout the year.

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<sup>1</sup> Based on reports from the Armenian Helsinki Committee and Armenian Helsinki Association. Contributors in the Armenian Helsinki Committee: A. Ishkhanyan, A. Harutunyan, Sh. Khachatryan, L. Simonyan, S. Petrosyan, and R. Bagratunyan.

<sup>2</sup> For information on other human rights issues, please consult the original reports of the two organizations that contributed to this chapter. The reports are available from the IHF Secretariat.

<sup>3</sup> PACE Resolution 1361 (2004), *Honouring of obligations and commitments by Armenia*, Assembly debate on 27 January 2004. See Doc.10027, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). Text adopted by the Assembly on 27 January 2004,

<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/documents/adoptedtext/ta04/eres1361.htm>.

<sup>4</sup> The introduction of this chapter is based on information from the Armenian Helsinki Association to the IHF, January 2005.

At the same time, the opposition took its supporters onto the streets to protest in peaceful mass demonstrations, which were brutally dispersed by law enforcement agencies, reportedly acting upon the personal order of President Kocharyan. On 30 March, the general prosecutor's office stated that it would initiate criminal proceedings under article 300 (appropriation of state power), article 301 (call for a forcible change of the constitutional order) and article 318 (insulting a representative of the authority) of the Criminal Code against all members of the opposition block Ardarutyun who had repeatedly required the president to step down. In April, three members of the political council of the oppositional Republic Party were arrested: Suren Surenyants, Aramazd Zaqaryan, and Vagharshak Harutyunyan. These measures against the opposition prompted large-scale international protests by governments<sup>5</sup> and NGOs.<sup>6</sup>

Throughout the year opposition activists were arrested, faced prosecution on questionable grounds, and were physically assaulted. Party offices were vandalized or raided by the police and equipment and materials were seized. Many arrested activists were ill-treated while in police custody.

In order to seize control of the situation, the government took a number of steps to restrict civil rights and democratic freedoms. By way of adopting new laws, the rights to association<sup>7</sup> and peaceful assembly<sup>8</sup> were restricted, and the regular parliamentary sessions were limited from once every two weeks to once every three.

On 9 November, the general prosecutor's office announced that it had terminated the investigation into the 27 October 1999 armed attack on the parliament. The investigation was focused on those who had masterminded and ordered the terrorist act. During the year, three persons, who were suspected of being involved in the terrorist act or witnessed it, died. Since the 1999 incident, five of its witnesses had died under suspicious circumstances.

During 2004 there was no progress toward a peaceful settlement of the Nagorno-Karabakh conflict. Its continuation made it possible for Armenian authorities, in violation of national legislation, to conscript Armenian citizens for military service in Nagorno-Karabakh and also on the occupied territories. The budget for 2005 envisages a 35-percent increase in military spending, the second highest among CIS states. In reality, military expenses will be even higher as the maintenance of the military contingent in Nagorno-Karabakh and the occupied territory is not included in this figure.

Over the year, the prices of food and services, such as telephone, water, gas and petrol, were constantly on the rise. The majority of Armenian families were only able to make ends meet thanks to money received in foreign currency from relatives living abroad. At the same time, the year marked an abrupt fall in the US dollar, euro and Russian ruble exchange rates against the Armenian dram. On 13 December, Armenia ratified the Geneva Convention on minimum wages<sup>9</sup>, which presumes that the minimum wage level must be established by the law: it was set at 13,000 drams (about EUR 20).

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<sup>5</sup> See, for example, PACE resolution 1374, *Honouring of obligations and commitments by Armenia*, Assembly debate on 28 April 2004, <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1374.htm>; PACE Resolution 1405, *Implementation of Resolutions 1361 (2004) and 1374 (2004) on the honouring of obligations and commitments by Armenia*, adopted by the Assembly on 7 October 2004, <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/asp/search/pasearch.asp>; U.S. State Department, "Political Unrest in Armenia," press statement, 13 April 2004, <http://www.state.gov/r/pa/prs/ps/2004/31373.htm>.

<sup>6</sup> See, for example, IHF, "Violations of Political Rights in Armenia," 13 April 2004, [http://www.ihf-hr.org/viewbinary/viewhtml.php?doc\\_id=5404](http://www.ihf-hr.org/viewbinary/viewhtml.php?doc_id=5404); Human Rights Watch, *Cycle of Repression: Human Rights Violations in Armenia*, briefing paper, 4 May, <http://www.hrw.org/background/eca/armenia/0504/>.

<sup>7</sup> Amendments to the Law "On Political Parties," adopted on 8 December 2004.

<sup>8</sup> The Law "On Holding Assemblies, Rallies, Meetings and Demonstrations," adopted on 28 April 2004.

<sup>9</sup> Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, enacted on 29 April 1972, Convention: C131.

## National Human Rights Protection

### *National Institutions*

The national human rights protection institutions include courts and the human rights ombudsperson. The judicial system comprises the first instance courts; appellate courts for civil cases and criminal and military cases, a cassation court with two chambers; and the Constitutional Court. Under the current Constitution, citizens are not entitled to bring cases before the Constitutional Court.<sup>10</sup>

The law on the office of the “human rights defender,” i.e., the human rights ombudsperson, was adopted in 2003 and became effective on 1 January 2004. This law provides that, pending constitutional amendments, the ombudsperson will be appointed by the president of Armenia. The draft constitutional amendments that are expected to be adopted in 2005 provide that the National Assembly shall appoint the ombudsperson and that the latter has the right to bring cases before the Constitutional Court.<sup>11</sup>

In March 2004, Larisa Alaverdyan took office as the first ombudsperson and will serve until the new legal provisions on the office are accepted. During 2004, the ombudsman received 1,800 complaints, only 555 of which were accepted for consideration. The ombudsperson’s office indicated that 24-25% of the processed complaints were resolved successfully. At the same time, many people who submitted complaints to the ombudsperson claimed that they were simply referred to those bodies, whose decisions they had challenged, or were sent to a prosecutor’s office.<sup>12</sup>

Independent human rights monitors also criticized the ombudsperson for keeping her activities low profile, for her reluctance to criticize clear cases of human rights violations (e.g. during large-scale police violence in April), and even for taking sides with abusive officials.<sup>13</sup>

### *Human Rights Defenders*

In the non-governmental sector of human rights protection, there were 108 registered and active human rights NGOs in Armenia as of the end of 2004, according to the Ministry of Justice. The authorities did not usually obstruct the activities of human rights NGOs. In one case, however, it was suspected that a human rights defender had been assaulted because of his activities.<sup>14</sup>

- On 30 March, unidentified individuals beat up Mikael Danielyan, president of the Helsinki Association of Armenia. He was seriously injured and had to be hospitalized. The incident was believed to be linked to an interview with Danielyan published by the Azeri newspaper *Echo* on 26 March, in which he had stated that it was possible that the president of Armenia would resume war with Azerbaijan. On the day of the attack two pro-governmental newspapers published articles, which harshly criticized Danielyan and accused him of anti-state activity. The police was slow to react to the attack and the perpetrator was never caught.<sup>15</sup>

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<sup>10</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>11</sup> Ibid.

<sup>12</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>13</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>14</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>15</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

## Freedom of Expression, Free Media and Information.

### *Opposition*

Throughout the year opposition activists faced harassment, prosecution on questionable grounds, and were beaten up by the police or by “unidentified individuals.” Party offices were vandalized or searched; computers, equipment and data confiscated, and staff members and activists detained. Many were ill-treated at the hands of the police.

- During the night from 12 to 13 April, the police raided central offices of the opposition parties and took all those present to police stations. The police seized office property, including computers, photo and video devices, professional literature, party documentation and archives, furniture, telephones, money and other items. In most cases, no confiscation protocols were issued and only 30% of the seized property was later returned.<sup>16</sup>

### *Media Freedoms*

Freedom of expression is guaranteed under article 24 of the Constitution of Armenia. The constitutional provisions are regulated by the Law “On Television and the Radio” (2000), the Law “On Freedom of Information” (2003), and the Law “On Mass Media” (2003).<sup>17</sup>

In reality, however, the president of Armenia and other authorities controlled the entire national TV broadcasting. Only a few opposition newspapers were free from the authorities’ control: the *Haykakan Jamanak* (daily), *Chorrord Ishkhanutyun* (bi-weekly), and *AiB-Fe* (weekly, together with its daily news web site).<sup>18</sup>

No notable improvements were made in the field of media legislation in 2004. The Law “On Television and the Radio” remained the focus of criticism due to its provisions on the nomination procedure of and powers vested with the National Television and Radio Commission (NTRC) and the Public Television and Radio Company Board. Under this law, the president appoints the members of both agencies. The drawbacks of the law were clearly witnessed in 2004 during the competition for free. For example, the NTRC in effect removed from air A1+, the only TV station that had not yielded to pressure by the authorities, by refusing to issue it a license. The independent TV station Noyyan Tapan bore the same fate. A1+ filed various lawsuits at domestic courts, which were rejected at all instances, and then submitted a complaint to the European Court of Human Rights (ECtHR).<sup>19</sup>

PACE Resolution 1361 (article 19) was highly critical of the media legislation<sup>20</sup> and continued its criticism in later resolutions<sup>21</sup> demanding that the Armenian authorities create fair conditions for the normal functioning of the media, notably as regards the issuing of broadcasting licenses to television companies and the composition of the NTRC.<sup>22</sup>

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<sup>16</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>17</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>18</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>19</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>20</sup> Resolution 1361 (2004), *Honouring of obligations and commitments by Armenia*, Assembly debate on 27 January 2004 (3rd Sitting).

<sup>21</sup> See, for example, PACE resolution 1374, *Honouring of obligations and commitments by Armenia*, Assembly debate on 28 April 2004,

<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1374.htm>; PACE Resolution 1405 (art.11/iii), *Implementation of Resolutions 1361 (2004) and 1374 (2004) on the honouring of obligations and commitments by Armenia*, Parliamentary Assembly debate, 7 October 2004,

<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1405.htm>.

<sup>22</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

The 2004 amendments to the Criminal Code failed to abolish the crimes of libel and defamation. Therefore, articles 135, 136 and 318 of the Criminal Code still provide for fines of up to 1,000 minimum monthly wages (approximately EUR 20,000) and repeated libel using mass media is punishable by one year deprivation of liberty. Moreover, the privileges afforded to those in power as opposed to ordinary citizens were not eliminated, the former enjoying better protection, contrary to the ECtHR case law.<sup>23</sup>

The authorities also took various other forms of indirect measures to silence critical media outlets, including financial pressure, and unnecessary sanitary and fire inspections.

- In spring 2004 the Russian television channel NTV was removed from air in Armenia. NTV had been the only channel that covered events in Armenia impartially. In the summer, the frequency of NTV was allocated to another Russian channel, Kultura, ostensibly due to numerous requests from Armenian intelligentsia.<sup>24</sup>
- “Azartun,” a new analytical TV news program produced by the Armenian branch of Radio Liberty was suddenly taken off air from Kentron TV Station on 13 October, three days after its first broadcast, despite positive reactions from listeners. The director of Kentron said that the program “was suspended for an indefinite period” but did not give any reason for the suspension.<sup>25</sup>

Police frequently hindered journalists from carrying out their duties, and journalists and reporters were subjected to harassment and physical assault. Law enforcement officials remained inactive or, even worse, often participated in harassment.

- Journalists who were trying to video record and take photos of the 5 April meeting between about 5,000 voters and Artashes Geghamyan, the leader of the opposition party National Unity, were beaten up by bodyguards of Armenian oligarchs while several hundred policemen, who witnessed the incident, remained inactive. Among the injured were correspondents of opposition newspapers, Anna Israelyan (*Aravot*), Hayk Gevorgyan (*Haykakan Jamanak*), and Onik Grigoryan (*Hetk* electronic newsletter), whose cameras were broken. Video cameras of TV stations Kentron, Hay TV and Shant were also smashed. On 10 July, a court sentenced two civilians to a 100,000 dram (EUR 150) fine each for assaulting the journalists. However, Israelyan claimed that one of the convicted persons had not assaulted her, Gevorgyan did not appear at the court proceedings considering it merely a show, and the other assaulted journalists did not even file a case.<sup>26</sup>
- On 24 August, Anna Israelyan and Mkhitar Khachatryan, a photographer of the Fotolur agency, were beaten by guards while taking photos concerning environmental problems in Tsaghkadzor. On 11 October, the Kotayk Marz First Instance Court found one of the guards guilty and sentenced him to six months’ imprisonment.<sup>27</sup>
- On 27 October, the chief and deputy chief of the Aragats fire department of the Aragatsotn Marz beat up Vardevan Grigoryan, editor-in-chief of the *Aragats Ashkharh* newspaper, for the critical articles he had published about the fire department. The fire department chief had

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<sup>23</sup> For details, see the report *Harmonization of Media Legislation of South Caucasus Countries with European Standards* by Baku Press Club, the Committee to Protect Freedom of Expression (Armenia), and the Association of Young Lawyers of Georgia, Baku, 2004, pp. 238-261.

<sup>24</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>25</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>26</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>27</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

resorted to similar violence against Vardevan Grigoryan five years earlier and was consequently punished with a disciplinary fine.<sup>28</sup>

Independent and opposition journalists were also denied access to information of public interest or importance, and they were not allowed to participate in press conferences organized by public authorities.

- On 9 June the first instance court of Center and Norq-Marash communities in Yerevan opened judicial proceedings in the case filed by Investigative Journalists against the Yerevan city hall. The journalists' organization took the case to court after the city hall had refused to allow its chairman, Edik Baghdasaryan, access to documents on the decisions to allot areas for open-air cafés in the public park of the National Opera and Ballet. Both the first and second instance courts dismissed the claim but the Cassation Court on 29 October repealed the lower court ruling and remitted the case for additional court examination. In early December, the court ruled that the journalists' organization must be granted access to the documents.<sup>29</sup>
- On 20 April, the editor-in-chief of *Ambion* newspaper and chairman of the National Press-Club, Narine Mkrtchyan criticized the press service of the president for not granting the newspaper's journalists access to its press briefings and for not giving them information on upcoming events. On that day, an *Ambion* journalist had been denied access to the press meeting organized by the US representative to the OSCE Minsk Group, Steve Mann, which was held in the presidential residence.<sup>30</sup>
- On 9 November, journalists from the weekly newspaper *168 Jam* and A1+ internet service (former A1+ TV journalists) were denied access to a press conference at the prosecutor's office. A journalist of the A1+ internet service was also denied accreditation to cover a NATO representative's press conference. A1+ journalists reported that there were several similar cases of bans on access to information in 2004.

### **Peaceful Assembly<sup>31</sup>**

Violations of the right to peaceful assembly have been at the center of human rights problems in Armenia in recent years. Prior to 28 April 2004, Armenia did not have a law on public gatherings, and article 26 of the Constitution, which safeguards the right to hold peaceful and unarmed public meetings, was applied directly by courts.

On 28 April, the Law "On Conducting Meetings, Demonstrations, Rallies, and Protests" was adopted. However, the law fails to strengthen the guarantees of freedom of assembly. It can be best characterized as enhancing the rights of public authorities to restrict public gatherings rather than protecting the right to peaceful public assemblies.

Under articles 2, 10, and 12 of the new law, mass events – defined as events with 100 or more participants – may only be held by giving three days' advance written notice to public officials, i.e., the mayor's office in Yerevan and heads of municipalities in the regions. As a result, it will be impossible to organize spontaneous events when urgent or unexpected issues arise. Moreover, the authorities may prohibit an event after considering the notice. Article 9 of the law prohibits the holding of mass events within 150 meters of public, strategic, cultural, and sports facilities (if other events are being held there). For example, the city center of Yerevan – the best scene for

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<sup>28</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>29</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>30</sup> Ibid.

<sup>31</sup> Unless otherwise noted, based on information from the Helsinki Committee of Armenia to the IHF, January 2005.

demonstrations – is virtually ruled out for lawful demonstrations. Furthermore, article 13 defines too broadly the grounds for prohibiting demonstrations, thus contradicting both international standards and the Constitution of Armenia.

Prior to the adoption of the law, the Yerevan mayor's office had invoked the 1997 Presidential Decree on Public Administration in the City of Yerevan (which in fact did not stipulate such powers) to prohibit demonstrations if it found them "inappropriate." In addition, Order No. 542 of the Minister on Culture, Youth and Sport of December 2000, which prohibits leasing the ministry's premises to political parties for holding assemblies, remained in effect in 2004 – and was applied exclusively against opposition parties.<sup>32</sup>

From April to June, the Yerevan authorities rejected most opposition requests to hold demonstrations and rallies. For example, they cited "constructions works" or "danger to the health of citizens," regarded it "inappropriate" to hold a demonstration in the vicinity of the Museum for Ancient Manuscripts, or stated that a demonstration would have "a negative impact on the implementation of economic programs and the execution of the budget." In anticipation of mass demonstrations, police forces blocked highways leading to Yerevan in order to hinder the participation of people from outside of the capital at the meetings. Both private cars and public buses were stopped. Armed forces, water canons and barbed wire fences were placed in the city. In some cases the police blocked access to the places, where meetings were supposed to be held.<sup>33</sup>

The holding of demonstrations was also prohibited after the new law on public assemblies had come into force. For example, the mayor's office prohibited the demonstration scheduled for 4 June near the Museum for Ancient Manuscript: After June, the opposition no longer attempted to submit requests to hold demonstrations.

The Council of Europe's Venice Commission noted that the new law should be amended substantially, keeping in mind that a law should "focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa."<sup>34</sup> However, no measures to this end were taken in 2004.

On 25 December, the government submitted to the National Assembly without any publicity or discussion amendments to the Criminal Code to establish criminal responsibility for the organization of unsanctioned public assemblies. According to the amendments, which were adopted, those found guilty can be fined 200-500 minimum wages or be deprived of liberty for up to three months.<sup>35</sup>

## **Independence of the Judiciary**

Article 6 of the Constitution of Armenia enshrines the rule of law, however, Armenia did not have adequate mechanisms to guarantee this principle in practice: there was no real separation of powers, the judiciary was not independent, and public agencies and courts were corrupt. Several recent surveys have illustrated that only 2% of the public trust the courts.<sup>36</sup>

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<sup>32</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>33</sup> Ibid.

<sup>34</sup> European Commission for Democracy through Law, Opinion No. 290/ 2004, 3 June 2004, at [http://www.parliament.am/committees.php?showdoc=16&ID=29&do=show&cat\\_id=&sub\\_cat\\_id=&month=all&year=2004&lang=eng](http://www.parliament.am/committees.php?showdoc=16&ID=29&do=show&cat_id=&sub_cat_id=&month=all&year=2004&lang=eng).

<sup>35</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>36</sup> See, for example, Armenian Center for National and International Studies, "Thirteen-Year-Old Independence and Sovereignty Presentation of Expert and Public Poll Results," October 2004. Information from the Helsinki Committee of Armenia to the IHF, January 2005.

The lack of independence of judges was clearly illustrated also in 2004. In the hearings and in the process of reaching a judgment, judges were confined to the evidence produced by the prosecution. Judicial statistics bear witness to this matter: between 2000 and 2003, there were at best ten acquittals in all court cases each year (of up to a total of 5,569 cases per year). During the first half of 2004, there was one acquittal out of a total of 1,988 cases.<sup>37</sup>

The lack of judicial independence was particularly acute in administrative justice when courts examined administrative cases filed by the executive branch, mostly the police. Courts mainly ignored the principle of providing legal assistance and allowing advocates to be present at hearings – a clear violation of article 40 of the Constitution.<sup>38</sup>

### **Right to a Fair Trial and Effective Remedies**

The Constitution of Armenia enshrines the right to a fair trial and the presumption of innocence, but in practice, many fair trial standards were violated.<sup>39</sup>

The right to not testify against oneself and one's relatives was often violated because a person was first engaged in criminal proceedings as a victim or a witness but later charged as a suspect (see below) on the basis of their own testimony.<sup>40</sup>

In judicial hearings, the principle of the equality of arms was violated in that motions of lawyers were often rejected without any reasonable justification. In both civil and criminal cases, judicial hearings were frequently postponed and in criminal cases, there was no limit on the length of judicial proceedings. As a result, they could last two years or more.<sup>41</sup>

### **Arbitrary Arrest and Detention**

While arbitrary arrest and detention were common in Armenia in general, they occurred on a massive scale from April through June – similar to the aftermath of the 2003 presidential elections.<sup>42</sup> Both the use of administrative detention and violations of provisions of the Criminal Procedure Code regarding arrest and detention gave rise to serious concern.

Administrative justice continued to be exercised to oppress the opposition. According to the *Aravot* daily, courts ordered administrative detention against 48 demonstrators following the demonstration of 5 April alone. On 13 April, hearings held *in camera* led to orders of administrative detention as a precautionary measure against 44 demonstrators.<sup>43</sup> Different sources estimated that, in total, 700-1,000 people were taken into administrative detention.<sup>44</sup>

Local monitors are not aware of one single case in which investigative agencies would have been made accountable for the mass administrative arrests and detention of opposition members. Many opposition supporters, kept in police stations and preliminary investigation cells, were subjected to abuses, inhuman treatment and even to torture. The police failed to notify the relatives about their

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<sup>37</sup> Report of the Criminal and Military Chamber of the Cassation Court, reported by the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>38</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>39</sup> *Ibid.*

<sup>40</sup> For details, see *Ditord/Observer*, bulletin of the Helsinki Committee of Armenia 1996, 3/2004, p. 18.

<sup>41</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>42</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>43</sup> *Aravot*, "In-Camera Solutions in the Form of Court Orders," 16 April 2004.

<sup>44</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.



whereabouts, they were not brought promptly before a judge, and no compensation was paid for arbitrary detention.<sup>45</sup>

Many individuals were arrested under the Code for Administrative Offences for “minor hooliganism” (article 72) or “resisting police officers” (article 182), which allow them to be held for up to 15 days without access to legal counsel. This time was used to gather evidence against them for other crimes they had allegedly committed.<sup>46</sup>

In addition, several politically motivated criminal cases were instigated during 2004.

- On 30 March the prosecutor general’s office stated that a criminal case had been instigated against several opposition members, including Suren Surenyantz (member of the political board of the Republic Party, editor of the *Republic* electronic daily), Artak Gabrielyan (who had distributed fliers on 9 April calling citizens to participate in a meeting), Aramazd Zakaryan (member of the political board of the Republic Party), Vagharshak Harutyunyan (lieutenant general, former minister of defense), Jora Sapeyan (head of the Talin branch of the Republic Party), Lavrenti Kirakosyan (head of the Armavir branch of the National Democratic Union Party), and others. All of them were arrested. They were charged under article 301 (public calls at violently overthrowing the constitutional order) and article 318(2) (speeches or works of art insulting representatives of authorities, made or presented publicly or by means of the mass media) of the Criminal Code. Gabrielyan received a one-year suspended prison sentence, Kirakosyan one-and-half unsuspended. All the men were later released on various grounds, including effective remorse or having served part of their sentence.

A long-standing problem was the violation of Criminal Procedure Code provisions regarding arrest and detention. The code prescribes that individual can be summoned to a police station only with an official writ, which must also state their status (witness, suspect, etc.). In practice, however, most people were simply picked up by police officers or required by phone to show up at a police station. The same code also limits detention without charges to 72 hours, but, in reality, individuals were usually summoned or brought to the police as a witness, and thereafter their status was changed to that of a suspect. By doing this, police could question them without a defense lawyer, and keep them in detention longer than 72 hours as the time limit started only after the status had been changed. Suspects could also be interrogated during the night while witnesses only during working hours.<sup>47</sup>

### **Torture, Ill-Treatment and Police Misconduct**

Armenia has ratified the UN Convention against Torture and the European Convention for the Prevention of Torture and its Protocols 1 and 2. Article 11(7) of the Criminal Procedure Code prohibits the use of torture and article 290 provides that all alleged cases of torture must be promptly investigated. Also the Criminal Code establishes liability for torture.<sup>48</sup>

The report by the European Committee for the Prevention of Torture (CPT) on its 2002 visit to Armenia was published in 2004. The report voiced concern about numerous and consistent allegations of physical ill-treatment of persons detained by the police in Armenia. It stated that torture, inhuman or degrading treatment by law enforcement officials was used widely during pre-trial interrogation by the police.<sup>49</sup> PACE resolution No. 1361 art. 17 also required the Armenian authorities to draw attention to the recommendations laid down in the CPT report.

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<sup>45</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>46</sup> Ibid.

<sup>47</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>48</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>49</sup> CPT, *Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 October 2002*, CPT/Inf (2004) 25, 28 July 2004, <http://www.cpt.coe.int/documents/arm/2004-25-inf-eng.htm>.

While the CPT reported that torture and ill-treatment were still common in 2002 in pre-trial establishments, it appeared that this was no longer the case in 2004. However, in 2004, 60% of all detainees were reportedly beaten at the time of arrest or while in police stations. The Armenian Helsinki Association registered two deaths of detainees in police stations, one of which was suicide.<sup>50</sup>

The use of torture and ill-treatment by police escalated dramatically during the nationwide mass demonstrations in April, particularly during the night between 12 and 13 April. Law enforcement officers used water cannons, explosives, electric shock, truncheons, and other means to disperse demonstrators on Baghramyan Avenue in Yerevan. Hundreds of people were injured, many of them seriously, but it was impossible to verify their total number as most victims did not go to hospital and were afraid to report the incidents, fearing prosecution. A number of victims reported that health care facilities were watched over by law enforcement authorities who in some cases ordered health professionals to act against their professional ethics, e.g., not to register medical problems.<sup>51</sup>

- According to the Republic Party, police stormed the offices that belonged to that party, to the Armenian Democratic Party, and the National Unity Party, and arrested many people during the night of 12-13 April. They also targeted women: Ani Kirakosyan, Varduhi Shahbazyan, and Gahane Ashughyan, in particular, were brutally beaten, and Naira Aghababyan, Gohar Kurazyan, Ani Khachatryan were treated in a degrading manner.<sup>52</sup> Ani Kirakosyan and 13 other women were taken to the police station of the Erebuni community where the chief and deputy chief of police were allegedly involved in their ill-treatment. Reportedly they kicked Kirakosyan's legs and stomach, punched her in the face and threatened her with rape as a "payment" for her intention to "try to change the president." She was later taken to hospital for a sonography. However, once the doctors learned how the injuries had been inflicted, they refused to issue a medical certificate.<sup>53</sup>
- On 14 August, Rostam Suleymanov, an ethnic Yezidi, was brought from his home to the police department of Tashir village (Tavush marz) ostensibly to sign some papers that were related to his desertion from the army ten years earlier. Four days later, the military police in Vanadzor informed his parents that their son had died of a heart attack. It later turned out that Suleymanov had died as a result of beating and torture while held in the military police isolator in Yerevan. His body, neck and face bore signs of torture, and his feet were burned, suggesting that he had been tortured with electroshocks.<sup>54</sup>

There was no efficient independent mechanism to investigate alleged cases of torture by law enforcement officials. In 2004, NGOs did not have access to police stations to look into conditions there. Judges, who also complained about the absence of an independent investigative body, could only register claims by defendants that they had been subjected to torture. While article 105 of the Criminal Procedure Code prohibits judges from taking into account evidence obtained by torture, ironically, in practice judges who suspected that torture had been used invited the police officers who had conducted the investigation to testify. Complaints by defense lawyers to the prosecutor's offices as a rule yielded no results, with perpetrators going unpunished.<sup>55</sup>

- Grisha Virabyan, a history teacher from Artashat and a board member of the Armenian Democratic Party, was taken to the Artashat police station for his participation in opposition demonstrations on 23 April. He was beaten for five hours and then placed in an investigation

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<sup>50</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>51</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>52</sup> N. Mamikonyan, "It's now the women's turn", *Aravot*, 22 April 2004.

<sup>53</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>54</sup> *Ibid.*

<sup>55</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

isolator. The next day he was taken to hospital because of the injuries he had sustained and underwent surgery to remove his left testicle. No judicial proceedings were instigated against the police officers and the investigators who were responsible for the ill-treatment, however, charges were brought against Grisha Virabyan for “violence against an agent of the power” (article 316(3) of the Criminal Code), a crime that carries a prison sentence of five to ten years.<sup>56</sup>

In 2004, local monitors registered no cases of torture in Armenian prisons. However, the living conditions in many cases constituted inhuman or degrading treatment.<sup>57</sup>

### **Conditions in Prisons and Detention Facilities**<sup>58</sup>

The process of transferring the penitentiary institutions, including pre-trial detention facilities, from the Ministries of Interior and National Security to the Ministry of Justice was completed in January 2003. In 2002-2004 legislation on prison reform was passed, including the Law “On Holding Detainees and the Arrested” (2002) and the Law “On Penitentiary Service” (2003). In November 2004, the National Assembly adopted the Penitentiary Code, which regulates the procedure of holding convicts.<sup>59</sup>

Article 47 of the Law “On Holding Detainees and the Arrested” provides that the Ministry of Justice shall establish a group of public prison monitors. On 14 May 2004, the justice minister issued identity papers to 11 members of the ministry’s monitoring group, comprising representatives of NGOs, law enforcement agencies, and the Armenian Apostolic Church. The law prescribes, however, that the group should consist of 21 members.<sup>60</sup>

The Armenian Helsinki Association together with the Norwegian Helsinki Committee continued monitoring places of detention in Armenia.<sup>61</sup> Although it had been granted permission to visit all detention places, the group was on two occasions denied entrance to Yerevan CEI (criminal-executive institution), a former KGB pre-trial detention facility, but was able to visit it once.

According to official information, the overall capacity of the Armenian prison system in 2004 was about 5,000 prisoners, while the number of prisoners in 2004 was about 3,000. The central problems included a lack of medical check-ups upon arrival and inadequate medical care in general; poor quality of food; seriously substandard sanitary conditions; insufficient physical exercise outside cells and contacts with the outside world; poor heating, lighting and ventilation. The conditions in many facilities amounted to inhuman and degrading treatment.<sup>62</sup>

Generally, only poor or no first aid medical services were available, and expired medicines were used. Only prisoners whose relatives were able to pay bribes were taken to the CEI Prison Hospital. Bribery also resulted in healthy prisoners being taken to hospital while those who were in need of medical attention but could not pay for it had to stay in the colonies. Qualified in-house psychiatric care was

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<sup>56</sup> *Aravot*, “Real punchers go unpunished” 18 April 2004, and “Laughter goes punished,” 18 April 2004, reported by the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>57</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>58</sup> Unless otherwise noted, based on information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>59</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>60</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>61</sup> For details of Armenian Helsinki Association – Norwegian Helsinki Committee prison monitoring, see the website of the Norwegian Helsinki Committee, <http://www.nhc.no/engelsk/index.html>.

<sup>62</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

available only at the Nubarashen CEI.

The food in places of detention did not correspond at all to the standards laid down in the governmental decree of 10 April 2003, which includes fruit, vegetables, and meat. Meat was served only on the days when prison monitors visited the facilities. The lack of refrigerators also caused restrictions on some foods. No diets on medical or religious grounds were provided for.<sup>63</sup>

Sanitary conditions in most pre-trial detention and colonies fell seriously short of acceptable standards. Prisoners depended on their relatives and friends for toilet paper, soap, toothbrushes and other hygiene articles. They were allowed to take a shower only once a week and the toilets were mainly holes in the floor. In colonies, toilets were situated outside the barracks, which limited their use especially in winter. In pre-trial detention places, toilets were in the cells, offering little privacy. Laundries were poorly equipped and no disinfected bed linen was available – a common reason for the spread of infections and skin diseases. Most prisoners had to use linen brought by their relatives.

The facilities were usually heated only with hot plates brought by relatives, which could not maintain adequate warmth. Many windows in cells and barracks did not have panes of glass but were covered with polyethylene. Artificial light was inadequate due to weak electric bulbs and in some facilities the electric power was sometimes switched off due to shortages. Ventilation was generally poor or non-existent.

- In the Abovyan CEI, woman prisoners had to live with their children in large barracks with no central heating: they only had one wooden stove to keep the place warm.

In colonies, long-term visits (up to three days) were allowed once every three months and short-term visits (up to three hours) once a month. In pre-trial detention places only short-term visit were allowed once every three months. For life prisoners, a short-term visit once in three months was allowed and in some facilities only in the presence of a guard. Prisoners were allowed to use pay phones only with phone-cards, which were given to them by relatives and friends. Correspondence with the outside world was possible also in pre-trial facilities but all letters were screened by prison officials. In colonies, correspondence was free.

In remand prisons, cell-doors were always shut and outdoor exercise was allowed only for one hour a day. In colonies, inmates were kept mainly in barracks and could move freely within the colony.

Inmates who violated prison regulations could be placed in punishment cells for up to ten days. In some cases, prisoners were moved to Goris CEI as a disciplinary measure: prisoners were held there in single cells.

Inmates' access to information was limited; penitentiary institutions did not receive newspapers and magazines, and the only source of information was television. TV sets were provided by relatives of inmates. The libraries in penitentiary institutions were also scarce, and mainly held outdated books.<sup>64</sup>

Inmates complained that prison staff sometimes abused them. In most cases the victims were newly arrived inmates. In addition, homosexuals and prisoners who had committed some violations of internal rules were frequently subjected to verbal abuse.

The separation between remand and convicted prisoners was not always observed. Sometimes, convicted prisoners were held in pre-trial facilities, but there were also cases in which remand prisoners whose cases were still pending were transferred to a colony.

Juvenile delinquents were sent to Abovyan CEI, which had a school that formally provided secondary

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<sup>63</sup> Ibid.

<sup>64</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

education certificates. However, its curriculum was fictitious and no education was really provided. Nor was any kind of psychological support available to the juvenile inmates.

The CPT report on the results of its 2002 visit to Armenia drew attention to many of the above-mentioned problems.

### **Freedom of Religion and Religious Tolerance**

The 1991 Law “On Freedom of Conscience and Religious Organizations” regulates the activities of religious organizations. It prescribes that registration with the Ministry of Justice is necessary for all religious organizations or confessions to carry out their activities. The ministry bases its decision on the opinion issued by the governmental Department on Issues of National Minorities and Religion. This body tends to favor those religious organizations whose ideology does not contradict the dogma of the Armenian Apostolic Church. A religious organization must have 200 adherents to be granted registration.<sup>65</sup>

According to the 1991 law, after registration, all religious organizations enjoy equal rights (article 7). At the same time, however, its preamble recognizes the Armenian Apostolic Church as the national church, and its article 17 vests this church with a highly privileged status in terms of free worship and dissemination of religious information, building of new churches, teaching at schools and educational facilities, as well organizing pastoral counseling at hospitals, in the army and places of detention.<sup>66</sup>

After years of international criticism, the Ministry of Justice finally granted official registration to the community of Jehovah’s Witnesses on 8 October. However, its registration prompted severe criticism by senior governmental officials and representatives of the ruling coalition, including the prime minister. The youth wing of the ruling coalition put together its own “coalition” with the aim of “combating sects.”<sup>67</sup> The media carried out a campaign against Jehovah’s Witnesses and even the human rights ombudsperson, Larisa Alaverdyan, denounced their registration.<sup>68</sup> She complained that inadequate legislation had made it possible for Jehovah’s Witnesses to be registered, adding that the law should be overhauled, in order to better fight against totalitarian religions and terrorism. She reportedly clearly took sides with the Armenian Apostolic Church against the Jehovah’s Witnesses, accusing them of impairing the true ideas of Christianity, and stated that she would keep close tabs on the community.<sup>69</sup>

According to available information, steps were being taken to draft a new law on religious activities.<sup>70</sup>

### **Conscientious Objection**

In December 2003, the Law “On Alternative Service” was adopted and came into force on 1 July 2004. Under its article 5, the alternative service lasts 36 months in alternative military service, and 42 months in alternative labor service. At the same time, however, military service lasts only 24 months – which makes the length of alternative service punitive. Other shortcomings of the law include the fact that it uses the term “alternative labor service” rather than “alternative civilian service,” and that after

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<sup>65</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>66</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>67</sup> This coalition was organized by the youth wing of the Republican Party, and comprised, among others, representatives of the Student Councils of a number of public universities. See *Haykakan Jamanak*, “Against Proselytism,” 21 October 2004.

<sup>68</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>69</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>70</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

carrying out alternative service, conscientious objectors are deprived of the right “to carry, keep, or use” arms (article 22).<sup>71</sup>

Moreover, the law does not oblige compulsory conscription authorities to notify conscripts of the law on alternative service and the related requirements. During the draft in September 2004, many conscripts were not aware of the possibility of carrying out civilian service. What is more, in some cases not even conscription units had sufficient information on alternative service or where it could be carried out.<sup>72</sup> Twenty applications for alternative civilian service were submitted during the fall 2004 call-up. All of the applicants chose alternative labor service<sup>73</sup> and all of them were Jehovah’s Witnesses.<sup>74</sup>

On 9 July, the governmental decree no. 940-N “On Places of Performing Alternative Service and Order of Wearing and Types of Uniforms of Alternative Serviceman” took effect. According to the decree, 49 persons can perform alternative labor service in establishments under the Ministries of Health and Labor and Social Issues, i.e., in boarding schools, old people’s homes, psychiatric establishments, hospitals, etc. At the same time, alternative military service can be offered to 300 persons.<sup>75</sup>

In some cases, the conditions of alternative civilian service were unbearable.

- Six men performing alternative service in the psychiatric boarding house of the town of Vardenis wanted to terminate their service and serve a prison sentence instead. Their parents told the Helsinki Association that they had to work with seriously ill persons, wash them and their laundry; they were forbidden to leave the territory of the hospital; and they were accommodated in one room and had no possibility to shower. They had to work from 7 A.M. to 9 P.M. and eat the same food as the patients, which was substandard. Military police checked on them several times a week and threatened them with charges for not carrying out military service. The director of the hospital told the parents that he only carried out orders “coming from above,” which advised him to create unbearable conditions for those performing alternative service.<sup>76</sup>

## **Rights of Homosexuals**

Armenian legislation does not contain a single provision on discrimination based on or due to sexual orientation. The Criminal Code was amended in December 2003 to abolish the article that had incriminated homosexual conduct. The code now further contains provisions that consider crimes perpetrated on the basis of the victim’s sexual orientation as an aggravating circumstance.<sup>77</sup>

In practice, though, Armenian society exerts serious social pressure on homosexuals. Police officers continued to harass homosexuals in 2004 – not for moral reasons, but with the aim of extorting money from them and blackmailing them, according to the Association of Armenian Homosexuals of France (AGLA). The NGO also reported that it received endless e-mail messages from homosexuals who complained about police violence against them.<sup>78</sup>

The word “homosexual” is seen as an insult and has recently been frequently used in political

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<sup>71</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>72</sup> L. Simonyan, “Law on Alternative Service and its Implementation,” *Ditord/Observer*, no. 4/2004, p. 14.

<sup>73</sup> *Ibid.*, p. 15.

<sup>74</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>75</sup> Information from the Armenian Helsinki Association to the IHF, January 2005.

<sup>76</sup> *Ibid.*

<sup>77</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>78</sup> *Ibid.*

infigtings against opponents even in the National Assembly. When the chairman of the Union of Armenian Aryanship (Hay Ariner), Armen Avetisyan declared that some of the senior officials were homosexual and promised to produce a list of their names, the National Assembly held a debate during which they threatened to dismiss those officials who could be proven to be homosexual. Avetsyan sent a list of seven alleged homosexuals occupying senior posts in state to the president and prime minister and urged them to take measures “to cleanse the nation from these diseased persons.” The names were never published. The government failed to take any measures to denounce such defamatory activities and statements.<sup>79</sup>

Homosexuals suffered discriminatory treatment in all sectors of life, but particularly in the army and in prisons. In prisons, they were held in separate cells in order to ensure their personal safety and other inmates (just as conscripts in the army) refused all contacts with them. Cases of murder on grounds of sexual orientation were also reported.<sup>80</sup>

- On 17 May, Joshua Hagland, a US citizen, was found stabbed to death in Yerevan. The police treated the case as “premeditated murder” and regarded his homosexuality as the main murder motive. The case had not been solved as of the end of 2004. In the wake of the murder, police raided homes of homosexuals in Yerevan. During the night of 18 June, three police officers showed up at Aramays Khorenyan’s place and took him to the police department of the Center Community of Yerevan. The officers began to beat him on the way to the police department, and continued to assault him during the 18 hours he spent in custody. He was asked only three questions about the murder, but the police demanded he disclose names of other homosexuals known to him. When he refused, they checked all incoming and outgoing calls on his cell phone. After his release, Khorenyan was regularly taken to the police station between 19 and 23 June, and on 21 June he was taken to the municipal prosecutor’s office, where he was kept for seven hours. Moreover, his sister was also taken to the police and held hostage for one hour until her brother gave the contact information of one homosexual known to him. More than 25 homosexuals in total were detained and taken to police stations in connection with the murder case, and some were detained by officers of the Department on Organized Crime.<sup>81</sup>

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<sup>79</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.

<sup>80</sup> Information from the Helsinki Committee of Armenia to the IHF, January 2005.

<sup>81</sup> Information from the Helsinki Committee of Armenia and the Armenian Helsinki Association to the IHF, January 2005.