

**IHF FOCUS: good governance (corruption); national human rights protection; elections and referenda; freedom of the media; peaceful assembly; judicial system and independence of the judiciary; torture and ill-treatment; arbitrary arrest and detention; conscientious objection; property rights; national and ethnic minorities.**

Problems related to the local elections and the referendum on constitutional amendments were major concerns in Armenia in 2005: restrictions on opposition campaigning hindered *inter alia* the free flow of information and the right to peaceful assembly.

Despite certain improvements to legislation regulating the holding of demonstrations and other public assemblies, a number of provisions remained restrictive and vaguely worded, thereby paving the way for inadequate implementation. While the opposition was able to hold some demonstrations, in most cases these and other political events held by the opposition were thwarted by authorities and police using excessive force and violence.

According to the "Freedom of the Press in the World Index," freedom of expression and the media deteriorated in 2005, and the efforts of the television station A1+, that was taken off air in 2002, to be granted a frequency to resume broadcasting, proved futile – the case was declared partially admissible by the European Court of Human Rights (ECtHR).

Basic deficiencies in the judicial system and the operation of the judiciary reported in an independent study published in December 2004 continued in 2005. These included dependence of judges on public authorities, problems with judicial review, as well as poor judicial oversight and administrative practices. Despite all these problems, the ombudsman was not allowed to review complaints about inadequate operation of judicial bodies. Her report published in April clearly pointed to some serious human rights violations that

occurred in the course of 2004 – and was heavily criticized by many Armenian officials responsible for the abuses. Corruption remained widespread and the measures taken in 2005 to fight it were half-hearted and inefficient.

Indications in 2004 of a decrease in the use of torture and ill-treatment in penitentiaries proved to be overly optimistic as new cases were discovered in the Nubashen penitentiary in 2005. Police misconduct was also commonplace during operations to disperse opposition rallies: police used excessive force and brutally beat demonstrators, arrested them in a manner that amounted to kidnapping and held them at police stations for questioning without legitimate grounds.

The inadequate law on conscientious objection and conditions of alternative service led to criminal proceedings against 23 men who had interrupted their alternative service in 2004. By the end of 2005, 14 men had been given prison sentences between 24 and 42 months for desertion and/or for leaving their place of duty without permission. Other cases were ongoing at year's end.

There were also numerous cases of authorities violating the right to housing and property rights in the course of implementation of new city planning for the center of Yerevan. Residents were forced to sell their apartments at prices a fraction of market prices, or were evicted.

### **Good Governance**

According to the 2005 "Transparency International Corruption Perception Index," Armenia was ranked 88 out of 159 coun-

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tries - with the 159<sup>th</sup> country representing the most corrupt one - with a lightly improved score since 2004. It appeared, however, that no progress had been made during the last three years.

Compared to findings in 2002, the results of the 2005 Business Environment and Enterprise Performance Survey, conducted by the World Bank and the European Bank for Reconstruction and Development (EBRD), demonstrated that a larger number of companies than before indicated corruption as a problem in Armenian business life. While the frequency of unofficial payments reportedly decreased, the amount of money paid in bribes as a share of the annual sales increased.

The main reasons for unofficial payments were reportedly to ensure lower payments in taxes, customs and other fees involved in imports, to receive favorable rulings in courts, and to obtain permits and licenses. Meanwhile, Armenia is in the lead in comparison with other CIS, European and Central Asian countries with regard to the level of bribes aimed at influencing the content of new legislation and other regulations, and bribery for customs/imports and in courts.

A nationwide telephone survey of 1,500 households implemented by the Center for Regional Development/TI Armenia showed that 62.9% of the respondents believed that the corruption level had increased in Armenia in the last three years.<sup>1</sup> Nearly one percent of respondents viewed the government's anti-corruption efforts as effective, 50% found them ineffective, and 49.1% could not evaluate the effectiveness of the fight against corruption.

The above-mentioned information supplemented by other research data and media publications indicated that the perception of the public and experts with regard to progress made in combating corruption in Armenia is quite negative despite the adoption of the National Anti-

Corruption Strategy Program and its Action Plan and the formation of new institutions and structures to fight corruption. These new structures included the anti-corruption council under the prime minister, and an anti-corruption monitoring commission, and a special department within the office of the prosecutor general. In addition, it appeared that membership in the Group of States against Corruption (GRECO), the ratification of the Council of Europe Criminal and Civil Law Conventions on Corruption and the signing of the UN Convention against Corruption, did not result in any notable improvements.

The main reasons for the failure of the government's anti-corruption initiatives included: a lack of any real political will to fight corruption; interrelated political and economic interests among the small, high-ranking elite; a lack of protection of the basic human rights of average citizens; a lack of accountability and the virtual impunity enjoyed by senior state officials and circles close to them; poor law enforcement and the absence of effective control and disciplinary mechanisms; deficiencies in legislation and lack of conformity with other legal acts; public mistrust toward the state and a high tolerance of corruption within the whole of society; and the absence of a strong and consistent position of the international community with regard to corruption.

## **National Human Rights Protection**

### ***Human Rights Defender (Ombudsman)***

The Armenian ombudsman's institution was established in 2004. Until the adoption of constitutional amendments in 2005, the ombudsman was appointed by the Armenian president. Article 22 of the Law on the Human Rights Defender states that the deputy ombudsman shall be appointed on the ombudsman's recommendation through the same procedure as in the case of the ombudsman. The Armenian ombudsman recommended the pres-

ident a deputy of her choice, however, the president rejected the nomination and suggested that she nominate another person, resulting de facto in the appointment of a person of the president's choice as deputy ombudsman.

As a result of the adoption of amendments to the constitution, the ombudsman's tenure of office expired on 8 January 2006. A new appointment had to be made within one month after the expiration of that term. On 4 January 2006, under a presidential decree, a commission of three persons was appointed to govern the ombudsman office until a new ombudsman was elected. The outgoing ombudsman challenged the constitutionality of the decree but her appeal was rejected by the Constitutional Court. At the time of writing, Armenia did not have an ombudsman.

The criteria and procedures used for hiring the ombudsman's staff lacked clarity, and it appeared that vacancies in the ombudsman's office had never been filled on a competitive basis.

The Law on the Human Rights Defender contains a number of provisions that limit the operation of the ombudsman. In particular, article 7(1) of the law rules out a review by the ombudsman of complaints lodged against judicial bodies and judges, thereby leaving one of the three branches of government beyond the ombudsman's control and denying the opportunity to help persons whose right to a fair trial has been violated. As a result of this restriction, the ombudsman is also not in a position to address issues such as unjustified delays in trials or a denial of the right to legal defense. The restrictions provided by article 7(1) result from a Constitutional Court ruling of 6 May (N 563) which upheld President Kocharian's claim that the ombudsman's right to demand information from and to present recommendations to courts was in violation of the independence of the judiciary and courts, and therefore incompatible with the constitution.

The National Assembly had earlier rejected a legal amendment to this end. In addition, by law, the ombudsman may not engage in the defense of human rights on the basis of a third party application.

The ombudsman's office also faced other problems by authorities.

◆ On 26 May, the National Security Service (NSS) raided the ombudsman's office without a warrant in the wake of the detention on fraud charges of Serob Antonian, one of its employees. NSS officers seized a computer containing confidential data of applicants. This act was in violation of articles 19(1) and 27(1) of the Ombudsman Law, which grant immunity to the ombudsman from criminal prosecution without permission from the president, including confidentiality of his/her documentation and communications devices. The computer was later returned.

◆ On 30 May, two NSS officers went to the NGO "Right Legal Group" and, posing as the ombudsman's staff, demanded information concerning complaints filed by the group's clients to the ombudsman. In a letter to the ombudsman, the NSS notified her that criminal proceedings had been instituted against Vahe Grigorian, the chairperson of the "Right Legal Group."

◆ On 3 June, the *Iravunk* newspaper reported that the ombudsman had allegedly sent a letter to President Kocharian complaining about the fact that the NSS had started to tap her office and to spy on her staff members.

The regular report of the ombudsman on her activities in 2004 published on 4 April reported that in the period of March through December 2004, 1,294 written complaints had been processed and 471 of them had been accepted for review. Of those accepted, 245 cases had been finalized and 99 recommendations had been made. A review had been terminated in 110 cases due to the absence of a viola-

tion, the rest had been terminated upon the applicants' request or because of changed circumstances that had resulted in a positive outcome.

Two topics stood out in the ombudsman's report: human rights violations in the course of rallies staged by the opposition in the spring of 2004 demanding President Robert Kocharian's resignation, and the torture of many participants of the rallies while in police custody. The report stated that both incidents violated basic human rights, including the rights to freedom of movement, peaceful assembly, and to a fair trial. In addition, the police raid on the night of 12 April 2004 of the opposition Justice Alliance's office violated freedom of association. Moreover, the report detailed the case of Grisha Virabian, who lost one testicle as a result of torture in police custody.<sup>2</sup> The third important issue the ombudsman's office dealt with in its report concerned violations of ownership rights in the course of the construction of the northern and main avenues in Yerevan (see Property Rights, below).

The ombudsman's report drew - partly contemptuous - criticism from the minister of justice, the prosecutor general's office and the chairperson of the Cassation Court, claiming that some of the information contained in it was unfounded or even "illusory," and that its interpretation of the law was neither precise nor appropriate.

## Elections and Referenda

### Local Elections

Local elections were held in the period between May and late October. Due to deficiencies in the electoral code, executive authorities continued to have significant influence on the operation of the electoral commissions: their chairpersons and secretaries at all levels represented the ruling coalition, thereby hindering the formation and operation of independent and pluralist electoral commissions.

Electoral fraud and irregularities registered during the 2003 presidential and parliamentary elections were also reported during the local elections. There was a total lack of variety of candidates in many municipalities and communities as only one person was registered as a candidate, and the use of administrative leverage was widespread to promote candidates loyal to the ruling coalition. Irregularities during the polling process included ballot box stuffing, violations of the secrecy of vote, bribery, intimidation of and reprisals against proxies and observers. Local election commission members sealed ballot papers that had not been folded thereby violating the secrecy of vote; failed to require identification from voters; and did not have a list of addresses of voters to crosscheck that they were registered at the given address.

The most widespread violations involved inadequate voter lists: numerous reports were received of names being removed and those of persons long time deceased added. At some polling stations, the election commission members "advised" voters who to vote for, and numerous cases of voting outside booths were registered - especially in Abovian and Ararat such irregularities occurred on a mass scale. Moreover, police officers were present at polling stations, "instructed" voters and interfered in the voting process. Meanwhile, criminals had unimpeded access to many polling stations and obstructed the process.

- ◆ In Avan, Yerevan, the only nominated candidate was Taron Margarian, son of Prime Minister Andranik Margarian, and in the Erebuni community, the only candidate was the incumbent Mher Sedrakian.

- ◆ In Echmiadzin the number of names on the final voter lists suspiciously increased by 7,000 from the original lists,<sup>3</sup> and in polling station no. 19/15, over 60 voters registered as living in one single apartment had voted by 12:30 p.m. - at

the same time others registered at the same address were still waiting to cast their vote.

- ◆ The names of 220 deceased persons were found on a voter list at polling station no. 18/01 in the Ararat region, as well as the names of former residents who now live in the United States. Many of them were signed so as to indicate that the persons had cast a ballot.

- ◆ In the town of Echmiadzin, Yervand Aghvastian and Susanna Harutiunian withdrew their candidacies in the mayoral elections on polling day because by 2 p.m. there had already been massive ballot box stuffing and other serious irregularities in all 21 polling stations of the town. The elected mayor, Gagik Avagian, has close connections with the deputy defense minister, General Manvel Grigorian, and enjoyed the latter's protection. Tensions ran high in Echmiadzin also during the election campaign as Aghvastian's supporters were kidnapped and beaten, reportedly on Grigorian's orders.

- ◆ In Nor Hajen, the town's incumbent mayor and mayoral candidate Armen Keshishian shot and killed Ashot Mkhitarian. Mkhitarian had intended to run in the election but later changed his mind and supported Keshishian's main rival. On 24 September Keshishian was charged and arrested. While in jail, he was re-elected as mayor but resigned later and new elections were announced.

- ◆ On the night of election day, a special police task force used tasers to disperse a rally of about 2,000 supporters of Arthur Shaboyan, the main rival of the incumbent mayor in Hrazdan.

- ◆ In Vanadzor, both the municipal and state bodies were mobilized to campaign for the incumbent, with the Lori Regional Governor Henrik Kochinian heading the campaign.

### Referendum

On 27 November, draft amendments to the constitution authored by the ruling parliamentary coalition<sup>4</sup> and with participation of a member of Justice (*Ardatiun*) Alliance, Shavarsh Kocharian, in cooperation with the Venice Commission, were put to referendum. The Venice Commission of the Council of Europe had evaluated the draft as positive, and it was supported by 18 other political groups, scores of NGOs and artists' unions. Throughout the entire preparation of the draft amendments, the Council of Europe had urged the Armenian authorities to ensure that the constitutional changes be kept in line with European standards. However, from an early stage in the process, the opposition parties refused to endorse the draft amendments and opposed the holding of a referendum on the grounds that the ruling coalition did not have the right to amend the country's constitution because the coalition lacked legitimacy.

Consequently, the amendments became a subject of confrontation between the ruling coalition and nine political parties that make up the Justice Alliance, the National Unity (*Azgayin miabanutiun*) party, and other opposition political forces (Heritage, New Times, Liberal Progressive Party, etc.). The opponents of the referendum formed the "18-8-1" Alliance.

In violation of article 20 of the Law On Referendum, which guarantees "unconstrained campaigning concerning the question placed for referendum," the "18-8-1" Alliance was denied access to both public and private television stations throughout the campaigning period to present its views on the referendum. In addition, the campaigning against the draft amendments was impeded by methods familiar from the 2003 presidential elections: local authorities and police hindered the opposition from meeting with other people. The opposition was neither provid-

ed conference rooms nor were rallies sanctioned, instead, roads were blocked and people intimidated to keep them away from rallies staged by the opposition.

◆ On 24 November, the penultimate day of campaigning, police officers brutally beat Ashot Poghosian, head of the Shengavit territorial unit of the Republic party, during a rally. According to eyewitnesses, traffic police officers tried to impound Poghosian's car under the pretext of a putative traffic violation. When the owner refused to hand over the keys, special police task force members started kicking Poghosian, as a result of which he had to be taken to hospital in Nor Nork with broken ribs and liver damage.

At the final stage of campaigning, the opposition urged the electorate to boycott the referendum, and a few days prior to the referendum, it recalled its representatives from all electoral commissions citing an information blockade and the antidemocratic methods employed by the authorities.

According to the final results of the referendum presented on 30 November by the Central Electoral Commission, 1,514,307 citizens took part in the referendum, of whom 93.2% voted in favor of the amendments. However, the commission's members representing the Justice Alliance and the National Unity political party refused to sign the final report characterizing the referendum as illegitimate, claiming that in reality only 16% of the population went to the polls. According to the opposition, the results were primarily falsified by ballot-box stuffing. They argued that before the polling stations were opened on referendum day, ballot boxes already stuffed with ballot papers were brought to almost all polling stations in the country.

◆ When Vaghinak Petrossian of the National Unity party arrived at polling station no. 23/42 in Vardenis at 7:53 a.m., i.e.

prior to the start of the voting, the ballot box was reportedly already half full.

Numerous opposition observers also reported that already two days prior to the referendum, passport data had been entered in the registration books and on the polling day election commission members were busy writing signatures on behalf of voters next to the data. The "It's Your Choice" NGO reported multiple voting up to four times by one person, and in many regions soldiers and civilians went from one polling station to another and cast ballots.<sup>5</sup>

Gaps in legislation also contributed to massive violations of the principle of the secrecy of vote. Already during the 2005 local elections it was clear that the new polling booths introduced by the Central Electoral Commission did not ensure voting by a secret ballot because they were not separated from one another and did not have curtains to block the view, thereby allowing members of electoral commissions and unauthorized persons to easily monitor the individual casting of votes. In addition, incidents of restricting observers' rights, intimidating and threatening observers, and electoral fraud committed by the authorities and by the electoral commission members were registered. The Central Electoral Commission member Felix Khachatryan announced that in a large number of polling stations the final report on the voting results had been finalized suspiciously quickly, in 20-40 minutes after the voting ended, despite the fact that the process usually takes at least 3-4 hours.

President Kocharian himself displayed his open ballot paper prior to casting it, a gesture that was taken by many as an instruction to rig the elections in favor of the amendments.

The opposition decided not to take the cases of electoral fraud and irregularities to courts because it did not believe that the trials would be fair.

## Freedom of Expression and Free Media

According to the "Freedom of the Press in the World Index" published in October 2005 by Reporters Without Borders (RSF), Armenia ranked 102-105 in year 2005, down from 83 in 2004.

Since the National Broadcasting Commission took A1+ television company off air in April 2002, the company has exhausted all judicial remedies in Armenia to be able to resume broadcasting, and participated in all tenders for vacant wave frequencies, but in vain. At the end of 2005, its application was declared partially admissible by the ECtHR. Its efforts to be granted a frequency as part of the new S Explorer company, established by A+ jointly with the NGO "Collaboration for Democracy," were also unsuccessful.

Since A1+ and Noyan Tapan television companies were taken off air in 2002, all TV channels have been subjected to censorship. Media monitoring has confirmed a lack of variety in media reporting, which is also partly attributable to self-censorship by journalists and editors who fear reprisals for critical reporting.

The 2005 referendum on the draft amendments to the constitution (see above) reflected well the lack of plurality in reporting and restricted access to media by the opposition. The media monitoring conducted by the Yerevan Press Club during the pre-election campaign from 5 to 25 November with regard to the referendum revealed that Armenian legislation did not provide for sufficient guarantees for the provision of equal airtime and newspaper column space for the promotion of varying views in the media. TV companies did not ensure balanced coverage of the issue, generally presenting the amendments in a positive - i.e., pro-governmental - light. TV stations did not comply with the requirement of article 11 of the Law on TV and Radio by failing to announce the rates for

commercial airtime for the promotion of different views, and finally did not provide commercial airtime at all. While the airtime and newspaper space allocated by the mass media for referendum-related advocacy was sufficient, their coverage was biased in favor of the government and so did not help the public to make a judicious choice.

- ◆ On referendum day and the days after it, Radio Liberty broadcasts were affected by technical problems and were jammed from time to time. On 28 November, public TV informed through its website that all radio frequencies functioned normally - with the exception of 107.6, that Radio Liberty used. The reason was allegedly a recently installed transmitter. In the city of Vanadzor, Radio Liberty was broadcast by "Stereo-Studio" radio channel, which was not operational over that period of time. No explanation was given for it being off air.

## Violence against Reporters

Some cases of police violence against journalists were reported. For example:

- ◆ On 24 November, A1+ reporter Diana Markossian tried to videotape the brutal beating by special police forces of Ashot Poghossian, head of the Shengavit branch of the "Republic" party. A police captain stopped her doing so and hit her.

- ◆ On 6 December, the police in Nor Hajen tried to seize cameras, arrested and questioned Naira Mamikonian, reporter of the *Aravot* daily, and Gagik Shamshian, photographer of the *Chorrord ishkhantiun* newspaper. The two journalists were covering a dispute in which high-level authorities had reportedly seized areas that were intended for the use of vulnerable families and for families of freedom fighters killed in action. The reporters were soon released and the police stated that they had been arrested due to a misun-

derstanding, but the reporters continued to be followed and watched.

### Peaceful Assembly

Resolution 1405(2004) adopted by the Parliamentary Assembly of Council of Europe in October 2004 urged the Armenian authorities to amend, no later than March 2005, the law on demonstrations and public assemblies to bring it into full conformity with European standards.

Amendments to the law were drafted, and the OSCE/ODIHR and the Venice Commission expressed the opinion that while the proposed amendments indicated certain progress, the remaining restrictions were very severe and should be removed.<sup>6</sup> On 3 October, however, the amendments were passed with some changes.

Despite certain improvements, the general conceptual framework of the law was not changed: the law seeks to restrict the organization and conduct of public events rather than to strengthen guarantees for freedom of assembly. The law still prohibits a mass public event if two or more events are scheduled for the same time and location, and in case the planned event poses "threat to life or health of persons." Further, public events are prohibited "closer than a proper distance (considered necessary by police for security reasons)" of the presidential residence, again a vague formulation open to interpretation.

What is more, the December 2004 amendments to the code on administrative violations and the criminal code, as well as 4 October 2005 amendments to the criminal code, criminalized the organization and the conducting of a public event without warrant and the making of calls to disobey demands to terminate a non-sanctioned public event.<sup>7</sup> In a similar vein, it is a crime to organize or participate, against "legitimate demands of public officers," in collective actions that "grossly vio-

late the public order" and result in the "obstruction of the operation" of public bodies, or facilities of communications or transportation.<sup>8</sup>

In contrast to 2004, a few opposition and NGO rallies and demonstrations were organized prior to the referendum, but as a rule they were accompanied by arbitrary actions and harassment by the police. During public events related to the local elections, police used tasers against demonstrators and beat them. In particular, this kind of abuse occurred on 9 October during election-related protests in Hrazdan.

◆ A number of NGOs notified the Yerevan city administration about their intention to organize a march in support of the A1+ TV channel, but the event was prohibited. The rally was nevertheless held on 2 April, with the result that traffic police officers impounded an A1+-owned vehicle with posters, loud speakers and other technical devices.

◆ Local authorities in the town of Sevan did not prohibit the 20 April meeting of local residents with Aram Karapetian, the leader of the opposition New Times political party, but just before the meeting was due to start, the electricity supply was shut down at the venue of the meeting, the Culture Palace. As the participants moved outdoors to hold the meeting, police officers and some plainclothes persons initiated a commotion, which resulted in shooting at the participants by one of the inciters of the unrest. A student had to be hospitalized with a gunshot wound to his leg.

Meeting halls were not leased to the Republic party for conducting regional meetings prior to a congress.

◆ On 2 November, a small conference room was allocated for a meeting with residents organized by S. Demirchian, member of the People's Party of Armenia in Talin. However, the police soon closed the

doors of the room claiming that no vacant seats were available. The event was moved to another location, but the head of the territorial department of the police demanded that the participants return to the conference room contending that "permission was not given to conduct an outdoor rally."

◆ Heritage political party notified the Yerevan city administration about its intention to conduct a "Civic Forum" at the Freedom Square on 25 November. The meeting was not sanctioned on the grounds that a concert with participation of pop stars was to start in the same location at the same hour.

The November referendum was a test also for the respect of the right to peaceful assembly.

◆ On 27 November, police beat demonstrators, forced some of them into vehicles and took them to unknown locations or to police departments, did not grant them access to their lawyers, and, having held them for several hours, let them go after recording their "participation in an unauthorized demonstration." Police also stopped cars that took part in a campaign ride organized by the opposition, beat the drivers and impounded the vehicles.<sup>9</sup>

### Judicial System

As in previous years, the courts failed to effectively provide human rights protection and ensure the supremacy of law. The American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) conducted an independent study in 2004 to assess the situation of the Armenian judicial system. Its report published in December 2004 was highly critical of the performance of the Armenian judiciary and courts. The situation did not improve in the course of 2005.

ABA/CEELI assessed as negative, *inter alia*, the selection and appointment pro-

cess of judges, criteria for their promotion, judicial decisions and improper influence on the judiciary, case assignment, and adequacy of judicial salaries. In addition, regression was reported in the field of judicial review, legislation, judicial oversight of administrative practice, and judicial immunity for official actions.

The president appointed and dismissed judges on the basis of the recommendation of the Justice Council, which he continued to chair in 2005. His deputies were the minister of justice and the prosecutor general, and the other 14 members were appointed by the president for a term of five years.

Following the 2005 amendments to the constitution, the council will be composed of nine judges elected for a five-year period by a secret ballot at a general meeting of judges, and by four legal scholars, two of them appointed by the president and two by the National Assembly. The deadline for the National Assembly to appoint two legal scholars was 9 March 2006. As a positive result of changes to article 94(1) of the constitution, the chairperson of the Court of Cassation shall preside the council (without voting power).

On the negative side, under an unamended provision of the constitution, the Armenian president will still officially appoint the judges nominated by the meeting of judges: no provision stipulates what the Justice Council can do if the president refuses to appoint the nominated candidates as judges.

Prior to the 2005 constitutional amendments, citizens were not entitled to take their cases to the Constitutional Court. In 2005 this restriction was lifted (as from 1 July 2006), provided that the applicant has exhausted all other legal remedies, and the case at issue concerns the constitutionality of a legal provision. In addition, now the ombudsman can file a case to the Constitutional Court to ascertain whether

Armenian laws, decisions of the National Assembly, presidential orders and decisions made by the central government and local governments do not contradict the constitution.

### **Torture and Ill-Treatment<sup>o</sup>**

Armenian law and police practices did not provide sufficient protection against torture and ill-treatment. The provisions in the criminal code related to police interrogation were not amended, and no detailed regulations on police interrogation were established. Police training did not include adequate information on professionalism and on international human rights standards.

Armenia has not ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, nor has it made a statement under article 22 of the UN convention, recognizing the authority of the UN Committee against Torture to receive and review individual petitions submitted by persons who claim that a violation of the convention has taken place.

No police who resorted to torture or other ill-treatment were prosecuted in 2005 under criminal law.

Following the transfer of penitentiaries to the Ministry of Justice and the formation of a group in 2004 of NGO observers to monitor conditions in prisons, the latter reported that the use of torture and ill-treatment in penitentiaries was on the decrease. However, during their visits to the Nubarashen penitentiary in May through August 2005, the observers received information about violations of inmates' rights.

◆ On 4 May, the NGO observer group was informed that M.E., a life sentenced prisoner in Nubarashen, had been subjected to violence by a prison guard. The prison director confirmed that he had sanctioned the use of a rubber truncheon against M.E. who had allegedly resisted a penitentiary officer. The prisoner claimed

that he had been chained when the guard had beaten him. It also turned out that the socio-psychological service had not met with the prisoner and that the medical service had given him a painkiller after the incident but failed to record the many injuries he had sustained to his skull, face, and one ear. The NGO observer group concluded that it would have been impossible for the inmate who had been chained up to put up such resistance as to justify the excessive use of force by the guard, and qualified the incident as amounting to torture. They appealed to the responsible authorities to take appropriate measures, including conducting a forensic medical examination without delay. The Ministry of Justice, however, qualified the incident as a commensurate use of force.

◆ In another case concerning the same prison, convict A.A., who had already been subjected to beating by wardens in another prison, told the NGO observers that wardens had beaten him with rubber bludgeons and a metal rod. He showed injuries resulting from torture on his head and other parts of his body. During the meeting, the observers also witnessed a guard kicking another inmate in the adjacent room. The prison director promised to conduct an inquiry and relay its results to the NGO observers but failed to do so by the end of the year.

Usually NGO observers were granted access to medical files and were allowed to take pictures when visiting prisons. However, prior to a 19 August meeting with an inmate that was on hunger strike, the NGO observers were told that they were not allowed to take pictures in the prison, and they were refused access to the medical files of three convicts who had complained about their treatment even though the convicts had submitted their written consent to that effect.

The NGO observer group's experience showed that it was premature to contend

that torture was no longer practiced in Armenian penitentiaries. It noted that the fact that only a few cases about the use of torture were known was apparently not attributable to the absence of torture but probably to other reasons, including fear of inmates to report such cases, and lack of trust in the observers.

In addition, reports continued to be received about the ill-treatment of individuals at the time of arrest and while held in police stations.

### **Arbitrary Arrest and Detention**

As soon as the 27 November referendum results were declared and large-scale protests broke out, police launched orchestrated operations against participants of the protests. According to the opposition political parties, over 40 members of NDU, Heritage and Republic parties were taken to police stations for their participation in protest actions staged against the results of the referendum.

◆ In the wake of the 2 December opposition rally, police officers virtually kidnapped from the streets about 30 demonstrators who were members of the Republic, Heritage and the NDU political parties. In the course of the police operation, Karen Saghatelian, a member of the Republic party, as well as Levon Petrossian and Misha Sukiassian, sympathizers of that party, were forced into a police car. Others who experienced the same fate were Edgar Hakobian, member of Heritage party, as well as Margarita Manukian and her husband Vrezh Yeranossian, both NDU members, who were held for three hours and then released. The chairman of the Armenian Helsinki Committee and an attorney, who went to police stations of the central district and of Malatia district to provide legal assistance to those arrested were not allowed to meet with the arrestees.

◆ On 4 December, Republic party members Sasha Sayadian and Arayik Khalafian were taken to the police station in the town of Charentsavan and held there for 20 hours. They were advised not to take part in the opposition rally due to be held on 9 December.

The police public relations and information department stated that all reports of arbitrary arrests and holding demonstrators and opposition members in police stations without grounds were not true.

On 30 November, the National Security Service searched Raffi Hovhannisian, the first foreign minister of independent Armenia, when he was boarding a plane, looking for documents containing "state secrets." Hovhannisian was on his way to Kiev to attend an international public forum on democratic elections.

### **Conscientious Objection**

The Law On Alternative (Military) Service came into force in December 2003. As per article 5 of that law, the length of alternative military service is 36 months, while that of alternative labor service is 42 months, both under the ultimate oversight of the Defence Ministry. Since the law came into force, all applications to alternative service have been submitted by Jehovah's Witnesses and one from a Molokan.

As of the end of 2005, not a single person was serving alternative labor service. Criminal proceedings were instituted against 22 Jehovah's Witnesses and one Molokan in 2004 who had interrupted their alternative labor service because of its military nature and unacceptable conditions: even though they were working in civilian institutions (such as hospitals), they were under military control and surveillance by military police. They had to work from 7 a.m. to 11 p.m. seven days a week and were not allowed to leave the hospital premises.<sup>11</sup>

By the end of 2005, 13 Jehovah's Witnesses and one Molokan had been given prison sentences between 24 and 42 months for desertion and/or for leaving their place of duty without permission. Hovhannes Aslanian died in a car accident on the way to his trial. As of the time of this writing, the trials of eight persons who had refused to carry out alternative labor service because of its military nature were still underway. Six of the defendants were being held in pre-trial detention.

◆ Criminal proceedings had been filed against 20-year-old Boris Melkumian for refusing to serve in the military, but the charges were dropped after he took up alternative labor service in a mental hospital in Sevan. When he interrupted this service, judicial proceedings were resumed. In the first instance court of Sevan (Gegharkunik region) he stated that he had not correctly understood the law and had assumed that his service would have nothing to do with the military. Had he known that alternative service remained linked to the military, he would not have opted for it and would have been given a milder penalty for draft dodging. Melkumian, and three other Jehovah's Witnesses who had served in the same mental hospital, were sentenced to three years imprisonment.

◆ Another 19 Jehovah's Witnesses from Armenia and one from Karabakh were sentenced to one to four years imprisonment for draft evasion because they had refused to carry out any form of compulsory service. At the end of 2005, Hovhannes Khachatryan was being held in custody and his trial was still ongoing.

### Property Rights

In 2005, there were numerous cases of authorities violating the right to housing and property rights as authorities and private entrepreneurs forced residents of Buzand and Amirian streets in the city cen-

ter of Yerevan to sell their apartments in order to build new houses for private businesses and apartments. Those residents who refused were evicted with a court warrant. According to the Armenian ombudsman, about 176 citizens were forced to sell their property or were deprived of it in 2005.

According to article 28 of the constitution, the alienation of property for public and state needs can take place only in exceptional cases and on the basis of law, with adequate compensation given in advance. The authorities used the land and civil codes as the law in question.

The ombudsman issued a special report on the development of land parcels in Yerevan City center, giving a detailed presentation of the violations of law and human rights, including the right to a fair trial and to protection by court, and the failure of authorities and courts to stop such violations.

The housing project, which continues in 2006, is based on a governmental decree according to which the land plots that had been taken "for state needs" were given without a tender to seven companies, which enjoy protection at the highest level of public officials. President Kocharian is a sponsor of the project. It is common knowledge that one of the shareholders of Vizkon Ltd., one of the seven companies, is the former minister for environmental protection, Gevorg Vardanian, while Grisha Harutiunian is deputy director of the National Security Service of Griar.

Another governmental decree provides for the payment of an additional sum of money for those residents who decide and sign a contract within only five days to sell their apartments. The value of the apartments has been put at only about 33-50% of their market value.

Those who refused to produce any documents or to allow for a valuation of their homes were forced to do so by the

officers from the Department for Enforcement of Writs.

◆ Lilia Ghazarian, a resident in Buzand Street, is one of hundreds who were evicted from their homes before the houses were demolished. She suffered a heart attack when coming home one day, seeing that the staircase had been destroyed and that all her belongings had been taken away by officers of the Department for Enforcement of Writs. Ghazarian was pressed to sell her apartment for EUR 15,170, at less than 25% of the market price - had she decided to sell within five days in the spring of 2005, she would have received an additional EUR 9,800.

Real estate agents outside the project refused to get involved because they were afraid of losing their licenses: agents that had valued the property upon the owners' request in the Northern Avenue, had their licenses revoked.

The measures taken by Armenian authorities with respect to the case at issue have been unconstitutional as no laws have been adopted to justify the forced selling of apartments and evictions. When reviewing the disputes, the courts have ignored the fact that the decrees issued by the government have not been in line with the Armenian constitution. What is more, on 7 October, Vahe Grigorian, an attorney who defended the rights of the former residents of Buzand Street who refused to sell their homes, was detained and charged with extortion and of document forgery in an unrelated old case.<sup>12</sup> Local monitors believed that his detention was a result of his continuous defense of citizens' rights.

### National and Ethnic Minorities

Armenia is party to the European Framework Convention for the Protection of National Minorities (since 1998) and the European Charter for Regional or Minority Languages (since 2002). A draft law on national minorities, will be submit-

ted to the National Assembly in 2006. As of this writing, NGOs or intergovernmental organizations had not commented on it.

According to the 2001 census, ethnic minorities constituted 2.2% of the country's population. This figure encompasses 11 ethnic communities: the Assyrians, Yezidis, Kurds, Russians, Greeks, Molokans, Jews, Poles, Ukrainians, Georgians and Germans. The largest groups are Yezidis (40,620), Russians (14,660), Assyrians (3,409), and Kurds (1,519). All ethnic groups are scattered throughout the country but there are some villages in which minorities constitute a significant part or the majority of an ethnically mixed population.

Ethnic minorities have not formed their own political parties and are not represented in the National Assembly. They are, however, represented in the bodies of local self-government, holding the position of a village head in some localities. In 2004, the government allocated to ethnic minorities a building for cultural events, and a certain amount (equivalent to over EUR 82,000) was included in the 2005 state budget to be used for the renovation of the Center of National and Ethnic Minorities of Armenia. According to government sources, about EUR 16,300 are annually allocated to ethnic minorities' NGOs to be used for the implementation of their projects.

Ethnic minorities are provided the right to learn and teach their mother tongue in secondary schools, and this right is generally respected. For example, Assyrian is taught in some villages. However, almost all ethnic minorities complain about the lack of qualified teachers and adequate school materials. The Russian community is in a better situation since it gets educational materials from Russia, where also the required specialists are trained.

Yezids, Kurds, Ukrainians, Russians and Greeks have newspapers published in their own languages.

## Endnotes

- <sup>1</sup> Of all respondents, 15.5% thought that corruption had remained unchanged, 4.5% assumed it had decreased, and 17.1% stated that it was hard to say if it had increased or decreased
- <sup>2</sup> See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)*, at [www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4057](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057).
- <sup>3</sup> According to the NGO "Choice Is Yours" that observed the elections.
- <sup>4</sup> The ruling coalition consists of the Republican Party of Armenia, the Armenian Revolutionary Federation (ARF), and *Orinats yerkir* (Rule of Law Country) political parties, and President Kocharian.
- <sup>5</sup> Most irregularities mentioned in this section were reported by "It's Your Choice," an NGO operating under the patronage of the US-based National Democratic Institution (NDI).
- <sup>6</sup> Law "On Making Amendments and Addenda to the Republic of Armenia Law 'On Conducting Meetings, Assemblies, Rallies and Demonstrations'; OSCE/ODIHR Comments on the Draft Law of 4 October 2005; Opinion no. 290 / 2004 CDL-AD(2005)018 adopted by the Venice Commission at its Plenary Session, Strasbourg, 8 February 2005.
- <sup>7</sup> Article 225 of the criminal code.
- <sup>8</sup> Article 258 of the criminal code.
- <sup>9</sup> See also Arbitrary Arrest and Detention, below.
- <sup>10</sup> See also Arbitrary Arrest and Detention, below.
- <sup>11</sup> See also IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)*, at [www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4057](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057).
- <sup>12</sup> For details, see [www.vahegrigoryan.org](http://www.vahegrigoryan.org).