

Introduction

This submission by a group of civil society organizations summarizes their assessment on the state of human rights in Armenia, following the first cycle of the UPR review. Five years ago, during the previous review, Armenia was in the midst of a political and human rights crisis caused by fraudulent elections and deadly post-election violence. Since then, neither the electoral fraud, nor the deaths of ten protesters during the dispersal of a peaceful demonstration and the abuse of rights of hundreds of demonstrators have been properly investigated. Indeed, many of the detained individuals were imprisoned for political reasons¹. Furthermore, the individuals convicted for their political views were released only by an act of amnesty, not the due judicial process.

The last three years were marked with a hope that a declared direction towards signing the Association Agreement with EU would provide mechanisms, leverages and tools to curb corruption and oligarchic rule by strengthening democratic governance along with institutions for protecting human rights. President Serzh Sargsyan's decision to join the Customs Union with Russia, Kazakhstan and Belarus instead of initiating the Association Agreement, not only put an end to any democratic advancement, but also demonstrated the depth of the autocratic and unaccountable nature of governance in Armenia.

The legislative and policy frameworks for the protection of human rights are insufficient, as civil society lacks effective mechanisms to influence the policymaking process. The state does not have a comprehensive national plan or policy for the prevention of torture and inhuman or degrading treatment or punishment. While the National Strategy for Protection of Human Rights went into force in 2012 and its action plan was adopted in 2014, recommendations from NGOs were largely disregarded.

Six months after Armenia's first review, due to pressure from civil society, the government formed a working group for UPR implementation. The working group organized several roundtables to discuss with stakeholders the outstanding recommendations and their implementation. The process was an imitation, rather a true attempt to follow up on the recommendations, as it failed to address the most urgent and important issues. Among issues left unaddressed was the provision for an independent and credible investigation into the 10 deaths following the events of March 1, 2008, ensuring that allegations of ill-treatment of persons detained by police are investigated and perpetrators held accountable, or the adoption of a standalone Law on Domestic Violence. We believe that the government did not perceive the UPR process as an opportunity for structural change, but rather approached it solely from a technocratic law-changing perspective. As a result, no real and practical changes have been registered in the realm of rights and freedoms.

¹ The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008). Retrieved from <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12070&Language=EN>

The last political prisoner connected with the events of 1 March 2008, Nikol Pashinyan, was released on 27 May 2011.

ADMINISTRATION/ACCESS TO JUSTICE AND THE RULE OF LAW

Overview and Legislative Framework

According to Transparency International's Global Corruption Barometer, 67% of Armenians view the judiciary as corrupt or extremely corrupt². Despite numerous donor-funded reforms in this area, the situation with access to justice remains problematic. The new Legal and Judicial Reform Program of 2012 -2016 fails to substantiate the reasoning behind its choice of priority areas. It also lacks an assessment on the implementation of past strategies, and largely disregards commitments to secure access to justice and the rule of law. Adoption of a new Criminal Procedure Code (CPC) is imperative, particularly following the violent events of the 2008 presidential elections, which have yet to see a credible investigation and which demonstrate a complete failure of the justice system to ensure a fair trial. Although the CPC was drafted and widely discussed with stakeholders, its adoption is still pending at the National Assembly and still contains problematic provisions. The following issues are of particular concern: the judicial deposition of confessional testimony; the procedure for arrests or alternative means of restraint for persons accused of grave and particularly grave crimes; the provisions, according to which a private party can apply to the Court of Cassation only with the aid of a licensed attorney.

Establishment of an Independent Judiciary

The lack of judicial independence is demonstrated through various controlling practices and legislative loopholes. The president has discretionary power to influence the process of judicial appointments, disciplinary sanctions, and the termination of judicial powers, with few checks and balances. Although the Justice Council proposes the list of judge candidates, it has only recommendatory and no actual decision-making power. The president has the power to choose from a list of "candidates acceptable to him" for appointments³ and promotions⁴. The candidates not selected by the President are disqualified and have to start the process anew⁵.

The lack of judicial independence is also manifested in the established practice of consultations among the judges with colleagues from the same court or the Court of Cassation⁶. The RA Human Rights Defender's ad-hoc report on access to justice⁷ confirmed this practice, and identified a pay scale for bribes for the first instance courts, appeal courts, and cassation courts.

The existing legal grounds and the practice of imposing disciplinary measures for both procedural and substantial breaches of the Law has a constraining effect on judges, and does not correspond to international standards. The decisions on subjecting a judge to disciplinary action, including decisions on terminating the powers of a judge⁸ are not subject to an appeal process of

² Transparency International, Global Corruption Barometer Armenia-2013. Retrieved from <http://www.transparency.org/gcb2013/country/?country=armenia>

³ Article 117 of the Judicial Code

⁴ Articles 137(9) and 138(8) of the Judicial Code

⁵ Article 123 (10)

⁶ American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012

⁷ The Armenian Human Rights Defender's Ad-hoc Report on the Right to Fair Trial. Retrieved from <http://ombuds.am/library/library/page/101/type/3>

⁸ As defined by Article 157 (1) of the Judicial Code, the Justice Council, after considering the matter related to the disciplinary liability of a judge, may apply any of the following types of disciplinary sanctions against the judge:

1) Warning—this is applied for a disciplinary offence that the Justice Council considers an offence of the least gravity, unless the judge has another pending sanction;

any kind, whether administratively or through courts. This practice strips judges of the possibility to appeal, and is a serious threat to the independence of judges against executive power.

Recommendations

- Remove the President's discretionary power in endorsing the list of judges from the Judicial Code; the list proposed by the Justice Council should be deemed as final and the President's signature should simply be a matter of protocol.
- Ensure internal independence in adjudication by removing the pressure placed on first instance courts by the Court of Cassation.
- Modify the grounds for disciplinary liability of judges by establishing clear and precisely defined criteria, in compliance with well-recognized international standards and best practice, including an appeal procedure.
- Abolish depositions of defendant confessional testimonies during criminal proceedings
- Provide effective access to the Court of Cassation, so that private parties of criminal or administrative cases are able to bring complaints to the Court of Cassation without a licensed attorney.

Independence of Courts and Equality of Arms in Trial

The courts routinely violate the principle of equality of arms specifically in cases when one of the parties is a government entity. Despite the government's commitment under UPR⁹ to address this issue, the tradition of a strong prosecutorial dominance persists, resulting in undue interference on the administration of justice. Prosecutorial influence is manifested in the subjective administration of criminal justice, with only 2% of verdicts resulting in a full or partial acquittal during 2012. This influence is further proven by the fact that, in 2013, out of 3,172 motions for detention filed by the prosecution, some 3,011 (94.9%) were granted. Moreover, bail was requested by attorneys as an alternative to detention in 576 cases and only 129 of these requests (22.4%) were granted¹⁰.

Recommendation

- Eliminate conflict of interest by introducing a procedure to resolve possible conflicts between the judiciary and the prosecution.

2) Reprimand – this shall be combined with depriving the judge of 25% of his salary for a six-month period;

3) Severe reprimand – this shall be combined with depriving the judge of 25% of his salary for a one-year period; or

4) Filing a motion requesting the President of the Republic to terminate the judge's powers -- This is applied if the grave disciplinary offence or the regular disciplinary offences committed by the judge renders him incompatible with the judge position.

⁹ See the Report of the UPR Working Group dated 6 July 2010, paragraphs 94.16 and 94.17. Retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/149/42/PDF/G1014942.pdf?OpenElement>

¹⁰ In this context, the influence of prosecution bodies on courts in criminal cases is further proven by the fact that, in 2013, 3,172 motions were filed for detention to be imposed as a preventive measure, and 3,011 of them (94.9%) were granted, while bail was requested as an alternative to detention in 576 cases, and only 129 of those motions (22.4%) were granted. or details, see the Report on the Comparative Statistical Analysis of the Activities of the Republic of Armenia Courts in 2012-2013, 2014. Retrieved from http://www.court.am/files/news/2864_am.pdf

Effective Investigation of the Murders on 1 March 2008

There has not been any effective and comprehensive investigation into the disproportionate use of force by the police¹¹ leading to the murders of at least ten individuals and injuring over 130 others on 1 March 2008¹². The problem was raised during the first round of the Universal Periodic Review, and the Armenian Government approved the relevant recommendations.¹³ Still, in the absence of an investigation, those responsible for the numerous human rights violations and the ten deaths have not been identified or punished, and no adequate reparation has been provided to relatives of the deceased individuals.

Recommendation

- Carry out a complete, thorough, and effective investigation into the murders on 1 March 2008, punish perpetrators, and provide adequate reparation.

Access to Justice for Vulnerable Groups / Free Legal Aid

Free legal aid is provided through the Office of the Public Defender (OPD) of the Chamber of Advocates. At the same time, in 2012, the Republic of Armenia Law on Advocacy was amended, significantly expanding the scope of persons entitled to free legal aid in Armenia (currently, 12 categories of persons). Under a system of limited competition and a heavy workload, securing quality legal aid is unrealistic.¹⁴

Access to justice is particularly problematic for drug users, people with psychosocial disabilities, and members of the LGBT community, as confirmed by HCAV's monitoring¹⁵ conducted in three regions and the capital,. These individuals generally lack access to lawyers and they are assigned ad hoc public defenders, often at the last minute, which puts into question quality defense. These groups also face challenges to the protection of their rights during court hearings, as judges do not take into account the specificities and sensitivities of such cases.

Recommendations

- Amend the Law on Free Legal Aid in order to increase capacity and access to free legal aid.
- Ensure that education and training courses for judges include a special focus on the rights of vulnerable groups.

¹¹ Amnesty International Report 2011: The State of the World's Human Rights. Retrieved from http://files.amnesty.org/air11/air_2011_full_en.pdf

¹² Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?id=1784273>

¹³ See the Report of the UPR Working Group dated 6 July 2010, paragraph 93.27. Retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/149/42/PDF/G1014942.pdf?OpenElement>

See also the Mid-Term Implementation Assessment on the implementation of the UPR recommendations by Armenia, Geneva, 25 March 2013, p. 101. Retrieved from <http://www.upr-info.org/followup/assessments/session21/armenia/MIA-Armenia.pdf>

¹⁴ See the Survey on the Needs of Public Defenders and the Office of the Public Defender, Protection of Rights without Borders NGO, 2013. Retrieved from

http://www.prwb.am/sites/default/files/Hanrayin_pashtpanneri_ev_hanrayin_pashtpani_grasenyaki_kariqner.pdf

See also the Quality and Effectiveness of the Implementation of the Right to Defense in the Context of Public Defense, "Protection of Rights without Borders" NGO, 2013. Retrieved from

<http://www.prwb.am/sites/default/files/Պաշտպանության իրավունքի իրացման որակն ու արդյունավետությունը հանրային պաշտպանության համատեքստում.pdf>

¹⁵ The Report on Access to Justice for Drug Users: based on assessment of criminal cases in Lori, Shirak, Tavush and Yerevan, Helsinki Citizens' Assembly-Vanadzor, 2013. Retrieved from http://hcav.am/wp-content/uploads/2013/07/tmramijoc_book-5.pdf

RIGHT TO LIFE

Overview and Legislative Framework

Legislation guaranteeing the right to life complies with international standards, however, their implementation is problematic. The main problem is the lack of regulation, policy, or mechanism stipulating state liability for the death of persons under state responsibility.

Closed and Semi-Closed Institutions

There are no comprehensive, independent, and effective investigations into cases when persons die in penitentiary institutions, psycho-neurological medical institutions or in the armed forces. Investigations into these deaths are often not initiated, or are discontinued due to a lack of *corpus delicti*. For the period of 2011- 2013 the following death statistics exist: 78 deaths in penitentiaries due to disease and suicides; 141 deaths in neurological-psychiatric institutions due to somatic illnesses; 120 deaths in armed forces with a high rate of suicides or due to health problems¹⁶. Investigations of deaths in closed or semi-closed institutions carried out by the prosecution are incomprehensive, and ineffective. Health checks initially deem conscripts fit for army service, but after some months, they die in the army, usually because of cardiovascular disease or because of failure to receive appropriate health care. No information is available about whether health problems causing deaths in the army were present before conscription or acquired during service.¹⁷

Recommendation

- Carry out effective investigation of each violation of right to life and bring those responsible to account.
- Adopt legislative provisions stipulating state liability for deaths of persons under the responsibility of the State, in the newly developed Criminal Procedure Code, and in the Criminal Code currently being developed.

¹⁶ Resulting from the following as per official data - violations of the ceasefire (28 cases), violations of the statutes (10 cases), violations of security rules (8 cases), accidents (28 cases), health problems (12 cases), intentional murders (3 cases), suicides (29 cases), neglect in service (1 case), and the reason for one death remained unknown to the public. Retrieved from <http://hcav.am/publications/մարդու-իրավունքների-վիճակը-հհ-գիւլած/> , <http://hcav.am/publications/տեղեկանք-2013-թ-գիւլած-ուժերում-մահացու/>

¹⁷ See the Report on Ensuring Right to Life in the RA after Abolition of Death Penalty, Helsinki Citizens' Assembly Vanadzor, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/09/kyanqi_iravunq_h_A5.pdf

RIGHT TO BE FREE FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Overview and Legislative Framework

The problem of torture was highlighted in the previous UPR review as an urgent issue needing to be addressed from multiple perspectives, in the incompatibility with the definition of torture to international standards, in bringing perpetrators to justice, and in the use of evidence obtained through torture in courts. In reality, there has been no improvement in the situation, both legislatively and in practice. While, a new Criminal Code is being developed, which should address this issue of torture definition, the process is being carried out largely behind closed doors.

The definition of torture as stipulated by Criminal Code (articles 119 and 341) does not correspond to the definition of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Specifically, the definition does not allow for public officials to be held accountable for direct involvement in acts of torture, cruel, inhumane or degrading treatment or punishment. Furthermore, it does not prescribe accountability “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” as stipulated by the UN Convention. This loophole results in the prosecution of torture perpetrators under other articles, milder punishments, and results in a heightened atmosphere of impunity.

Police Detention Centers and Penal Institutions

The current definition of torture in Armenian legislation does not allow for the prosecution of public officials. According to official data, in 2013, the Special Investigative Service (SIS) investigated 114 cases for exceeding official authorities through violence, use of weapon or special measures¹⁸. In only 19 of these cases, criminal proceedings were initiated, and 10 of the 19 cases were subsequently discontinued.

The Group of Public Observers Monitoring the Places for Holding Arrested Persons of RA in the Police System of Armenia (Police monitoring group) reports that torture is used to coerce self-incriminating evidence in the investigation rooms, which remain off limits for any civil society monitoring. This data is acquired by them based on their regular and ad-hoc visits to police detention facilities. According to HCA¹⁹, victims of ill treatment and torture are reluctant to file an application because of a fear of pressure or a lack of trust in the credibility of investigations. In cases when an application is filed, the case is either not initiated or is discontinued because of a lack of evidence. There is also no effective investigation into torture allegations made in the courtroom, as self-incriminating evidence continues to be used during trial. Meanwhile, the Police monitoring group has reported an alarming statistic of bodily injuries of detainees for 2013. Of the 719 arrested in Yerevan, 236(32.8%) were admitted with bodily injuries. Similarly, of the 712 arrested in the regions, 88(12.36%) were also admitted with bodily injuries.

¹⁸ Article 309 (2) of RA Criminal Code

¹⁹ Treatment of Detained Persons in Police Departments, Helsinki Committee of Armenia, 2013. Retrieved from <http://armhels.com/wp-content/uploads/2013/04/zekuyc-2013Engl.pdf>

Overcrowding of penal institutions remains a big problem. Indeed, the situation in some penal institutions qualifies as torture by the CPT²⁰. The Armenian government plans to address this situation by building four new establishments over the course of 10 years, partly in order to relieve the existing ones²¹. Moreover, the introduction of probation as an alternative to imprisonment is currently being discussed. On the one hand the government is developing alternatives to imprisonment, and on the other, enhancing and enlarging penitentiary establishments, indicating that incarceration will remain a priority measure of restraint.

According to a study²² conducted by HCA, isolation in a cell and beating with batons are the most common ways of punishment for inmates. The same study reveals systemic corruption and the prevalence of hierarchic relationships in penal institutions.

Recommendations

- Provide criminal liability for torture in line with Article 1 of the UN Convention against Torture.
- Open investigator's rooms of the police for civic oversight.
- Carry out a full and impartial investigation into all torture allegations and punish the perpetrators.
- Safeguard the transparency and accountability of the appointment process for the Head of Probation Service and its activities.
- Improve conditions of places of detentions in accordance with CPT standards and make efficient use of alternatives to imprisonment.

²⁰ 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 10 to 21 May 2010. Retrieved from <http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.pdf>

²¹ "Response of the Armenian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Armenia from 5 to 7 December 2011. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). October 3, 2012. Retrieved from <http://www.cpt.coe.int/documents/arm/2012-24-inf-eng.htm>

²² Imprisonment or Torment? Life in Penal Institutions, Helsinki Committee of Armenia 2013, Retrieved from <http://armhels.com/wp-content/uploads/2013/12/zekuyc-2014Eng-2.pdf>

RIGHT TO LIBERTY

Overview and Legislative Framework

Article 16 of the Republic of Armenia Constitution clearly sets the legal grounds for restricting the right to liberty and security of a person. However, the implementation of these provisions is problematic and results in rights violations.

The Armenian legislation provides no safeguards for the protection of persons imprisoned under administrative procedures. While the Code of Administrative Offences contains provisions on administrative apprehension, it is often abused in practice through the arbitrary restriction of liberty.²³

Arbitrary Detention and Arrest

Civil society data reveals that often activists are called to the police station without an appropriate summons, and are later subject to administrative penalties. The use of detention during the investigation of crimes in the military is particularly problematic. The investigatory service under the Ministry of Defense works closely with military commanders and uses detention and isolation of servicemen to extort self-incriminating evidence from servicemen. In three cases involving violations of the right to life in the army, HCAV revealed that during an investigation seven witnesses were unlawfully deprived of liberty for a period of 1-3 months.

The authorities also impose detention to neutralize their political opponents or individuals that criticize the government. Starting October 31st 2013, Shant Harutyunyan, leader of the “Tseghakron” Party, went on a sit-in strike at Freedom Square in Yerevan. When he and his allies organized a march to the presidential office, provocateurs incited clashes and 20 of the participants were arrested.²⁴ Currently 14 of them are under detention, and it is clear that they are the targets of political persecution as their pre-trial detention is continuously extended without sufficient grounds. They face fabricated charges of “exerting violence against a representative of government,” although evidence of such conduct has yet to be presented.

Recommendations

- Establish in legislation and in practice the right to an effective remedy in court and other state bodies every time the right to liberty is violated.
- Eliminate abuse of administrative apprehension and detention as a measure of restraint, particularly for politically sensitive cases.
- Stop arbitrary isolation of military servicemen during pre-trial investigation for extortion of evidence.

²³ Republic of Armenia Code of Administrative Offences, Articles 182, 185, and 267.

²⁴ Clashes in downtown Yerevan; many citizens were apprehended to the Police. Retrieved from <http://www.azatutyun.am/content/article/25159068.html>

FREEDOM OF ASSEMBLY

Overview and Legislative Framework

The Law on Freedom of Assembly is in line with international standards, however its implementation is marred with numerous restrictions. Often, during peaceful assemblies, there is violence against demonstrators and journalists, and unlawful apprehension by police, followed by administrative charges and proceedings against demonstrators.

Freedom of Peaceful Assembly

With the adoption of the new law in 2011, there has been a positive development in a decrease in the number of rejections of assembly notifications. In 2012, 10% of the notifications regarding assemblies were returned for failing to meet the technical requirements – mostly the requirement to give a 7 day notice. In 2013, the number of notifications about assemblies, as well as the number of actual assemblies increased sharply. Although there have been few official decisions on restricting assemblies and rallies, the police regularly use force to impose arbitrary restrictions, stating that an assembly is “not authorized”.²⁵ In the same context, the police deny basic amenities for holding assemblies, such as installation of tents for long-term protests.

The restrictions imposed on the right to freedom of assembly during 2013 and unlawful police conduct against peaceful demonstrators peaked on 2 December 2013 – the day when Russia’s President Vladimir Putin visited Armenia. On that day, 110 demonstrators, including journalists and minors, were unlawfully and violently apprehended and sent to eight police stations throughout Yerevan.

Notifications about assemblies in Yerevan	2010	2011	2012	2013
Notification acknowledged	38	19	77	241
Amendments/restrictions to the venue or the route	46	55	3	20
Prohibition	3	0	0	0
Return for noncompliance with law		0	12	3
Cancellation by the organizer	1	2	9	0
Total	88	76	101	264

During the period of 2010 – 2014 a number of film screenings were prohibited or denied space to be screened: Specifically the films “Choice” and “Armenia’s Lost Spring” about the 2008 presidential elections; “Parada”, a film on LGBT issues; and Lars von Trier’s film

²⁵ The Law requires a notification rather than an authorization of an event involving more than 100 participants.

Nymphomaniac. Moreover, the organizations “Asparez Journalists’ Club” and HCAV were attacked for providing space for the screening of Azerbaijani films in April 2012.

Recommendations

- Shorten the 7-day notification requirement prior to an assembly to set a reasonable framework for notification of an event.
- Stop police interference and obstruction of peaceful assemblies under the pretense of “not authorized” events.
- Conduct impartial and transparent investigations of incidents where freedom of assembly has been restricted and police has used force; identify and prosecute police officers for excessive use of force, provide effective remedies to the victims.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Overview and Legislative Framework

The current Law on Religious Organizations does not conform to the RA Constitution, to international commitments on human rights, and to the case law of the European Court of Human Rights. The Ministry of Justice is drafting a new law, but the draft has not been made publicly available. Both local civil society and the Venice Commission negatively assessed the two previous drafts that were prepared by the government²⁶.

Limitations of the freedom of thought, conscience, and religion

The secularity of education²⁷ is violated through the mandatory subjects of History of the Armenian Church and Christian Education, which serves to indoctrinate students with the beliefs of the Armenian Apostolic Church. The Church, through its Center for Christian Education, has an exclusive mandate for teaching and developing the curriculum for these subjects, which is anti-constitutional and prohibited by Article 2 of Protocol 1 of the European Convention of Human Rights. Attendance of religious classes is mandatory, also in violation of the Convention.

Several published surveys²⁸ and reports indicate that schools and kindergartens are commonly used for religious propaganda and prayers services. The History of Armenian Church textbook teaches theology, rather than its history, labeling protestant organizations as a “danger to the Armenian nation”. Moreover, teachers from denominations other than the Apostolic Church are arbitrarily fired from their jobs, allegedly for engaging in religious propaganda. Under the newly adopted “Program against Vicious Street Morals” the Ministry of Defense and the Apostolic Church will “work individually with the representatives of explicit members of destructive religious movements and subcultures” in schools and army units.²⁹

Hate speech is widespread in TV and media outlets. Most TV channels deliberately cut the comments made by representatives of other religions and portray them in negative tones. There have been cases when public officials have made statements discrediting denominations other than the Apostolic Church without any repercussions.

²⁶ The main problems of current draft are the following: any preaching can be easily defined as “soul hunting”, which is criminalized; Armenian Apostolic Church (AAA) is given a special status; high threshold and procedure for registration of religious organizations; lack of provisions safeguarding the right to religion or faith to everyone regardless of citizenship, and others.

²⁷ Article 4(3) of Law on Education of the RA stipulates guarantees for secular nature of the education.

²⁸ Analysis of the content of school textbooks of the history of the Armenian Church and their impact on the young generation, H. Hovhannisyan, A. Davtyan, and S. Mkrtychyan, 2013

Issues of Religious Education at Public Schools of the Republic of Armenia, Stepan Danielyan, Ara Ghazaryan, Hovhannes Hovhannisyan, Arthur Avtandilyan, 2012

Religious Tolerance in Armenia, Stepan Danielyan, Vladimir Vardanyan, and Arthur Avtandilyan, ISBN 978-92-9235-846-4, 2009

²⁹ On 26 April, a Practical and Theoretical Conference on the theme of “Destructive Beliefs and Vicious Street Morals as a Threat to Defense Capability” was carried out in the auditorium of the Administrative Building of the Ministry of Defense. During the conference, Minister of Defense Seyran Ohanyan declared: “We are simply obliged to conceive the coverage of destructive faiths and subcultures, and especially their consequences for their followers and other soldiers... One should not live by the dictate of faiths and criminal beliefs, but rather, believe in one’s fatherland and the Armenian Apostolic Church...”

Recommendations

- Resolve the problematic issues in the current Law on Religious Organizations, specifically on the issue of the dominance of the Armenian Apostolic Church, the high threshold for registration of organizations and the labeling of preaching as “soul hunting”, along with its criminalization; conduct broad consultations on the new draft law.
- Preclude preaching in public schools and kindergartens by teachers and/or representatives of any religion or church.
- Address the propaganda and hate speech against other religions and beliefs, and hold perpetrators accountable.

THE RIGHT TO FREEDOM OF OPINION AND MEDIA

Overview and Legislative Framework

The media legislation mostly complies with international standards, with the exception of the Law on Television and the Radio. The current broadcast law, last modified in 2010, still raises many legitimate concerns; it is an obstacle to the liberalization of the broadcasting sector, the development of competition, as well as to the diversity of television programming. The broadcast legislation does not guarantee the independence of the national regulator. Moreover, legislative processes that were aimed at improving the broadcast legislation have been halted for four years.

Media ownership is not transparent; there is no law requiring the disclosure of information on media ownership. The main shareholders of television companies are representatives of either the political elite or large businesses, which leads to full control of broadcast media.

In 2014, Parliament proposed a draft law on addressing the use of pseudonyms (“fakes”) in social media. The draft attempts to prescribe legal punishment mechanisms for social media content that contains defamation. Experts have already highlighted a number of risks with the draft, such as already existing legal mechanisms of the protection from defamation, and possible conceptual confusion, designed to further control the field and allow for an unbalanced protection of the freedom of expression.

The Right to Freedom of Opinion

Changes in the broadcast legislation are not in line with the country’s international commitments aimed at ensuring diversity of broadcast media, and proper implementation of the digital switchover.

The digital switchover process is not transparent and contains risks of corruption. The digitalization licenses granted in December of 2010 under the current legislation are valid for 10 years. These licenses were granted through a tender conducted by a problematic regulatory body with a complete lack of transparency, no clear licensing criteria and no guarantees of fair competition.

Although the legislation prohibits censorship in Armenia, latent censorship is systemic throughout the broadcasting sphere. Violation of the rights of journalists and media especially increased during the elections and post-election periods. There have been no effective and credible investigations into the cases of attacks on journalists.³⁰ The following table shows the violations of rights of media and journalists in Armenia during 2010-2013.³¹

³⁰ Annual Report 2013 on the Situation of Freedom of Speech and Violations of Rights of Journalists and Media in Armenia, Committee to Protect Freedom of Expression. Retrieved from <http://khosq.am/en/reports/annual-report-2013/>

³¹ 2010, 2011, 2012, and 2013 annual reports on the freedom of expression in Armenia and violations of the rights of journalists and the mass media. Committee to Protect Freedom of Expression, Retrieved from <http://khosq.am/en/reports/>

Types of Violations	2010	2011	2012	2013
Physical violence against journalists	9	5	4	10
Pressure on the mass media and their staff	19	49	37	57
Violations of the right to receive and impart information	18	7	23	10

As a result of amendments in the RA legislation on May 18, 2010, slander and offence were decriminalized, and moral damage compensation penalty sizes were legislatively introduced (offence - up to 1 million AMD/1800 EUR slander - up to 2 million AMD/3600 EUR). Slander and offence court cases against journalists and media decreased in 2012 to 18, compared with 37 in the previous year. However, this number again increased to 26 in 2013.³² The amount of compensation prescribed by law for slander and offence is too high, and many use it as a pressure tool against the mass media.

Recommendations

- Amend the Law on TV and Radio to ensure transparency of media ownership, a transition to a simplified licensing procedure, transparency and fairness of tenders, and independence of the national regulator through reforms of the member selection and appointment process.
- Ensure transparency of the digital switchover by informing the public about the most important technical, financial, and social problems and their solutions.
- Reform Article 1087.1 of the Civil Code with a view to preventing its potential use as a pressure tool against the mass media, namely by considerably reducing the cap on the amount of compensation for slander and offence.
- Carry out a full and impartial investigation into attacks against journalists, issuing a public report on the results of each investigation.

³² Report on the Monitoring of Court Cases of Defamation and Insults with the Involvement of the Mass Media, 2013, Committee to Protect Freedom of Expression. Retrieved from <http://khosq.am/en/monitorings/monitoring-of-libel-and-insult-cases-against-the-media/>

THE RIGHT TO NON-DISCRIMINATION

Overview and Legislative Framework

Armenia has ratified most of the international legal instruments, including Protocol No12 of the ECHR, however, legal provisions on non-discrimination are scattered throughout various pieces of legislation and do not create a comprehensive framework for protection. Meanwhile, there is widespread societal and institutional discrimination, intolerance and harassment, victimization and stigmatization of certain groups. The authorities take little proactive action to counter discrimination. A standalone anti-discrimination legislation was discussed within the framework of the EU-Armenia Association Agreement negotiations, but was dropped from the agenda following the President's announcement that Armenia would be joining the Russian-led Customs Union. Adoption of a standalone law is of immense importance, as it will provide a comprehensive safeguard against discrimination on grounds of sexual orientation and gender identity in any area.³³

Discrimination in Practice

Human rights defenders³⁴, activists, and journalists protecting the rights of marginalized minorities are subjected to harassment and attacks, and are labeled traitors. The World Values Survey³⁵ found that tolerance and respect for other people in Armenia is at a level of 56,3%. The survey reveals the highest level of intolerance towards homosexuals (92,7% would not want to have as neighbors), people who have aids (76,9%), people of a different religion(56,6%) people with disabilities(37,0%).

Another survey finds that 71.5% of 1,189 respondents consider that the state should take measures to “fight” against homosexuals.³⁶ According to recent research³⁷ on social perceptions of homosexuality, a majority of health sphere specialists, lawyers and pedagogues (53, 48 and 38% accordingly³⁸) consider homosexuality to be a disease. Authorities fail to carry out credible investigations into cases that involve LGBTI persons; this attitude was particularly evident in light of the bombing of a gay-friendly bar in 2012.³⁹ The persons responsible for the bombing were initially arrested but were later released and charges dropped due to pressure from various political elites. Persons living with HIV, drug users and sex workers are discriminated in the provision of healthcare and in legal protections, because of inaccurate perceptions and a lack of awareness on the impossibilities of transmission.

³³ Negotiations of the EU-Armenia Association Agreement. Retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0128+0+DOC+XML+V0//EN>

³⁴ Report on Situation of Human Rights Defenders, 2013. Retrieved from <http://hcav.am/en/publications/situation-of-human-rights-defenders-in-armenia/>

³⁵ World Value Survey Database 2010-2014, Retrieved from <http://www.worldvaluessurvey.org/WVSONline.jsp>

³⁶ Public opinion toward LGBT people in Yerevan, Gyumri and Vanadzor cities, Socioscope, Societal Research and Consultancy Center and Public Information and Need of Knowledge, 2011. Retrieved from <http://www.pinkarmenia.org/publication/lgbtsurveyen.pdf>

³⁷ Armenian Helping Professionals About Homosexuality and LGBT Community, Yegya Publications, Lusine Karamyan, 2013.

³⁸ Combination of qualitative and quantitative research methods have been used. Survey has been conducted through multistage cluster sampling. Total sample size 500 respondents 255 in Yerevan and 245 in regions. 37% of respondents represented healthcare sector, 25% were lawyers, 20% and 18% of respondents were pedagogues and psychologists accordingly.

³⁹ Aravot online. Retrieved from <http://www.aravot.am/2012/05/17/297457/>.

While legislation stipulates equal rights for men and women, and gender-discrimination persists in all aspects of life. Often, women remain underrepresented in leadership positions and do not enjoy the same professional opportunities. Sex-selective abortions,⁴⁰ discrimination against victims of sexual and domestic violence are a pressing issue.

There are cases of dismissals, refusal to hire, prohibition, and other hindrances to employment based on religious beliefs in certain professional fields. The ill-treatment of pupils of other religions, segregation, and inquiring about religious beliefs is a widespread issue in schools.

Opportunities for education, work⁴¹, and recreation for people with psycho-social, mental and physical disabilities remain limited. The state continues to fail in ensuring the principles of equal opportunities, reasonable accommodation, and universal design. The violations do not trigger any legal mechanisms for redress and liability.

Recommendations

- Adopt standalone legislation and effective mechanism on combating discrimination.
- Adopt standalone legislation on Domestic Violence and set up a referral system for victims of domestic abuse.
- Ratify the Optional Protocol to CRPD.
- Set up a comprehensive system of laws criminalizing hate speech and discouraging homophobic statements by public officials.
- Organize trainings for police, medical and other professionals on rights of minorities and individuals belonging to vulnerable groups.

⁴⁰ Due to sex-selective abortions carried out in Armenia since the 1990s, the male-to-female newborn ratio was 1.14 by 2012, compared to a standard of 1.02 to 1.06 (ratio of newborn males to females). In 2060, about 2,000 baby girls will not be born. For detailed information, refer to http://www.unfpa.am/sites/default/files/Sex-selective_abortions_report_Arm.pdf

⁴¹ 91% of the persons with disabilities in the working age are unemployed. Retrieved from <http://disabilityarmenia.am/am/10/free.html>

ELECTIONS, RIGHT TO VOTE

Overview and Legislative Framework

Elections remain among the most problematic institutions in the system of governance. As such, the right to elect and to be elected is one of the most violated. While contesting the results of 2008 presidential elections, the opposition organized a sit-in, which was violently dispersed by the authorities, resulting in 10 deaths. The investigation of these events lacked credibility, did nothing to restore public trust in elections, and instead served only reinforced the existing atmosphere of impunity. To date, no person using arms or giving orders has been identified or punished.

Since then, Armenia has gone through another round of presidential, parliamentary, and local elections, all of which have served to reinforce the corrupt practices witnessed and documented by civil society for the past 15 years, such as vote-buying, harassment and intimidation of voters, observers and proxies, multiple and “carousel” voting, criminals supervising over polling stations, and ballot-box stuffing.

In theory, the electoral code adopted in 2011 provides basic grounds for ensuring free, fair, and fully democratic elections; however, the lack of political will in its implementation results in the clever use of existing loopholes to cover-up election fraud.

Although the elections of 2012 and 2013 were labeled “a step forward” by the international community, according to many local human rights and democracy building civil society organizations, the nature of violations has changed over time, moving from violent and overt forms of intimidation and harassment to peaceful methods of multiple voting and vote-buying. The presidential elections were marred by an unexplained withdrawal of the top opposition candidate and the abstention of two other opposition representatives, allegedly due to coercion or intimidation. Despite the numerous reports from individuals, organizations and media outlets on falsification and fraud, law enforcement bodies do not adequately investigate these reports or instigate cases. Even in cases pursued by these bodies, there is evidence of using intimidation tactics against whistleblowers and supporting persons engaged in illegal activities⁴². There is a general public reluctance to report electoral offenses due to fear of repercussion⁴³.

Voter Registration and Voter Lists

Article 7 of the Electoral Code regulates voter registration lists, with every eligible citizen in the State Population Register automatically included. The list is seen by many to be extremely inflated, owing to the high level of migration, and is used to facilitate voter fraud on Election Day. Despite efforts to improve the technical process of maintaining the list, there is still an overall distrust on its integrity throughout the electorate. The manipulation of the voter lists was obvious during the Presidential elections in 2013, due to the strange pattern recorded by numerous independent experts and monitoring organizations, according to which Serzh Sargsyan’s advantage was outstanding in precincts with incredibly high voter turnout⁴⁴. This

⁴² Post-Election Interim Report, 19-26 February 2013, OSCE/ODIHR and Human Rights Election Observation Mission, March 2013. Retrieved from <http://www.osce.org/odihr/elections/99931>

⁴³ RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission. Final Report, OSCE, May 2013. Retrieved from <http://www.osce.org/odihr/elections/101314>

⁴⁴ Report of the Armenian National Platform of EaP CSF: Presidential Elections in Armenia in 2013. Retrieved from <http://www.eap-csf.eu/assets/files/Documents/ANP%20report%20on%20elections%202013.pdf>

suggests massive ballot stuffing and inflated voter turnout, which could not be confirmed due to the provision in the electoral code barring the publication of the signed voter lists after an election. The integrity of the electoral process was questioned by the OSCE/ODIHR election observation mission as well.⁴⁵ Nevertheless, there is no effective way for civil society to monitor and address this concern. Various civil society organizations estimate that the voter list includes about 500,000 individuals who are currently living outside of Armenia.

Use of Administrative Resource

Administrative resources are widely abused during the pre-election campaign and on the Election Day by authorities controlling these resources, mainly by the ruling party, and in rare cases by other political factions⁴⁶. The abuse of administrative resources is evident in the selective and discretionary application of legislation and explicit partiality by administrative authorities⁴⁷. Domestic observations revealed that during the pre-election campaign, and on Election Day, the ruling party used administrative resources to garner votes, while the resources of TECs and other administrative bodies were used for concealing this abuse⁴⁸.

Recommendations

- Amend the electoral legislation to safeguard publication of voter lists after an election, in order to mitigate against multiple voting and ballot stuffing, and to provide civil society oversight of the process.
- Ensure the order and transparency of elections through recording and live-streaming the voting process inside and outside the precincts throughout the country.
- Guarantee adequate investigation and condemnation of electoral violations through improving the procedures of appeals to electoral commissions, judicial and law enforcement bodies and allowing the voters and observer organizations to challenge the legality of electoral process.
- Prevent the misuse of administrative resources by increasing restrictions on public officials during elections campaigns and voting processes, removing the electronic voting mechanisms for diplomatic and consular representations and missions, and introducing liability measures for the abuse of administrative resources and for violating the electoral code by electoral commissions.
- Ensure transparency of electoral processes through video-taping and online broadcast.

⁴⁵ Republic of Armenia, Presidential Election, 18 February 2013, OSCE/ODIHR Election Observation Mission, Final Report. Retrieved from <http://www.osce.org/odihr/elections/101314?download=true>

⁴⁶ Joint Final Opinion on the Electoral Code of Armenia, Joint Final Opinion on the Electoral Code of Armenia, May, 2011.

Retrieved from [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)032-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e)

⁴⁷ RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission, Final Report, OSCE/ODIHR, May, 2013. Retrieved from <http://www.osce.org/odihr/elections/101314>

⁴⁸ Report on Observation Mission On The Parliamentary Elections of May 6 2012, Helsinki Citizens' Assembly-Vanadzor, 2012. Retrieved from <http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf>