Implementation of selected articles of ICCPR[1] and UNCAC[2] in Armenia: 2016

Report

This report has been prepared in the joint effort of several civil society organizations of behalf of the Partnership for Open Society Initiative. The report looks at the implementation of selected articles in the International Covenant on Civil and Political Rights and in the United Nations Convention against Corruption. Reporting timeframe is January 2017.

Partnership for Open Society is an open coalition of over fifty civil society actors striving towards democratic reform promotion in Armenia. Partnership for Open Society Initiative has been actively engaged in monitoring, reporting, advocacy and mobilization of social capital to promote implementation of EU led reform, viewed as a major channel for institutional development of Armenia. For the full list of organizations directly engaged in the preparation of the paper see the list below.

Organizations

Armenian Helsinki Committee
Helsinki Citizens' Assembly Vanadzor
Journalists' Club Asparez
Open Society Foundations-Armenia
Transparency International Anticorruption Center

[1] International Covenant on Civil and Political Rights.
[2] United Nations Convention against Corruption

Preface

Armenian civil society has considered the country's European integration as the most consistent and holistic agenda for Armenia's democratic reformation and economic development. The Partnership for Open Society supported integration processes by conducting monitoring of their implementation and formulating recommendations for more consistent, not manipulative reforms in the diverse areas of programming including justice, anti-corruption, human rights and fundamental freedoms.

We believe that the GSP+ is one of the most effective frameworks for advancing these values as it provides substantial and much needed benefits to the country's struggling economy and advances its good governance and democratic institutions by grounding its eligibility in proper honoring of the UN Conventions. Importance and value of this framework is further augmented by the fact that this is the most ambitious remaining engagement of Armenia with the EU after Armenia's unilateral decision to withdraw from signing the Association Agreement and joining EEU.

The dynamics of past four years provide conclusive evidence how harmful for human rights and freedoms and for democratic aspirations of the country was withdrawal of the EU's normative presence after September 3, 2013. In the course of these four years, systemic backslide in democratic standards, human rights and rule of law were registered. Tolerance towards political, civic dissent and minority groups is at its low. The unaccountable, non-participatory process of constitutional reform and the uniquely fraudulent referendum epitomized the nature of concentrated, unaccountable political power, holding vast assets and economic control. Anti-democratic discourse is on the rise due to securitization of civic issues and spread of populist propaganda.

To make any economic and democratic advancement the country needs real separation of power and immediate improvement of justice and curbing systemic corruption. Thus, we urge the EU to condition provision of GSP+ regime to Armenia with systemic changes in justice and accountability areas. We believe that since the measures we identify are fully in line with the minimal standards required by the UN Conventions, such conditionality is consistent with the policy as recently reinstated in the first report of the Commission on the concrete effects of the GSP+, referring to it as "the EU trade policy instrument devised to encourage third countries to comply with core international standards in the areas of human rights, labour rights, environmental protection and good governance".

Unfortunately, we have to state that the current situation of rights and good governance is in violation of Armenia's commitments under the core UN conventions that GSP+ is based on. Indeed, the report does mention persisting human rights problems, gender discrimination and fight against corruption as remaining challenges. We certainly agree with this assessment, however, we want to underline that the tendencies in the country where political and civic dissent are under siege with activists and political opponents being detained, harassed and intimidated at unprecedented level, persistent and demonstrative impunity for high profile corruption cases, police brutality, electoral fraud, human rights and governance problems go well beyond those mentioned in the report and need urgent and more radical measures. These measures do not necessarily need years or large financial resources, but they do need political will to reinstate values of respect for human rights and fundamental freedoms and those of the rule of law.

Below we provide collegial civil society assessment of the most critical and urgent shortcomings in honoring the UN commitments and standards and provide recommendations for immediate measures that can be taken to improve the situation.

International Covenant on Civil and Political Rights.

Article 7 Right to be Free from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

In 2015 the definition of torture was brought in compliance with the Article 1 of the UNCAT, use of torture continues to be a systemic problem, as reported by local civil society organizations (CSO), as well as Council of Europe Committee for the Prevention of Torture (CPT)[3] and UN Subcommittee on Prevention of Torture (SPT)[4]. Use of torture by police to extract self-incriminating evidence, poor conditions in prisons, inhumane and degrading treatment in psychiatric institutions, elderly homes and orphanages, right to health in closed institutions, ineffective investigation of the cases of domestic violence remain unaddressed. There are no effective mechanisms to respond to these systemic problems through effective and impartial investigation, prosecution of perpetrators or by reverting to the courts as a last resort to exclude evidence obtained through torture. The state does not provide rehabilitation services for victims of torture and ill-treatment.

While, the Criminal Code brought definition of torture into compliance with the UNCAT, it does not criminalize inhuman and degrading treatment, despite the fact that these acts fall within the scope of Article 3 of the European Convention of Human Rights ("Prohibition of torture"). This essentially makes the Criminal Code inapplicable in reality, since there are no legally prescribed criteria for differentiation between the mentioned three forms of ill-treatment. Under these circumstances, the alleged perpetrators are given the benefit of doubt, and thus their actions are considered as either inhuman or degrading treatment, which are not classified as torture. Finally, the Criminal Code does not prohibit application of amnesty for those convicted under Article 309,[1] which is important criteria for proving state's willingness to eradicate the use of torture.

The state does not provide effective investigation into allegations of torture. Specifically, the national legislation, as well as judicial and law enforcement practices are designed and established in a way that effectively precludes any possibility of calling the perpetrators of torture to criminal liability. Stark absence of any case of effective prosecution of torture speaks in support of such assertion. Moreover, as a rule the Armenian judges exclude evidence obtained via torture. In the stage of evaluation of admissibility of the evidence, allegedly gained through torture, the judge either postpones the examination of evidence in order to address it in the judgment (which results in conviction in 98% of cases), or relinquishes his/her jurisdiction to the Special Investigation Service. Both scenarios work not in favor of the victim of torture. Such judicial practice serves as yet another "link" of the vicious circle, preventing eradication of the practice of torture.

The Special Investigation Service, a designated body to investigate crimes allegedly committed by the state officials, does not ensure effective investigation into the cases of torture. Taking into account that the SIS is not provided with operational mechanisms to conduct impartial investigation, investigation of the torture cases by the SIS does not comply with the ECtHR requirement for efficiency, i.e. conducting investigation so that it gives reasonable prospects for establishment of the facts and calling those responsible to criminal liability. The courts, in their turn, employ an interpretation of presumption of innocence that is unique to torture cases, corruption and electoral fraud allegations[5]. Thus, the hypocrisy and intellectual dishonesty of the Armenian judiciary effectively gives the final say on the admissibility of evidence back to the investigators.

No accountability mechanisms, such as video/audio recording of the facilities and interrogation places are put in place. Furthermore, not all the facilities of the police and interrogation bodies, where a person may be detained, including the investigators' rooms, are open to monitoring through independent civilian oversight.

Persons who have sustained bodily injuries in police detention facilities are often pressured by the police to make a written statement that they had been accidentally injured before detention. This under-reporting practice is exacerbated by the fact that there are no effective mechanisms for documentation of injuries either in police or in penitentiaries in accordance with the international standards, i.e. those defined by the Istanbul Protocol, leading to loss of the relevant evidence.

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[3] http://www.cpt.coe.int/documents/arm/2016-31-inf-eng.pdf.

[4] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARM%2fCO%2f4&Lang=en.

[5] Decision of the Court of Cassation no. ԵԷԴ/0058/01/10, December 22, 2011.

Detention continues to be a primary measure of restraint with the prosecution granting almost all the motions for pre-trial detention[7]. In this context, introduction of the probation service does not serve its purpose for the time being, as it has no involvement in selection of preventive measures at pre-trial stage. Subsequently, the functions of the Probation Service are limited to control over the implementation of the appointed alternative measure.

Despite some efforts made by the government to address overcrowding in prisons[6], the issue still persists and amounts to torture in some penitentiary institutions. The data published by the Penitentiary Monitoring Group show that 9 out of 12 operating penal institutions were overcrowded in 2014 and four in 2015 respectively. Nubarashen, Vardashen and Kosh institutions are in the gravest situation, about which the Monitoring Group has been reporting since 2008. In one of the registered cases 14 inmates lived in the cell designed for 4 persons16. Similarly, despite the legal ban on keeping more than 6 inmates17 in one cell in a semi-closed prison, up to 45 inmates lived in one cell/dormitory in Artik and Kosh institutions at the time of the monitoring visits. Penitentiary Monitoring Group's observations of 103 cells in all prisons during 2014-2015 show that the cells, where the conditions were good had been renovated by prisoners on their own means, while the cells or dormitories, where the prisoners did not have adequate financial resources (8%) were found in poor condition.

Health services in penitentiary system are not adequate and accessible as the institutions have neither sufficient and qualified medical staff nor up-to-date equipment. The adoption of the Concept of Improvement of the Healthcare Services in the Penitentiaries in January 2017 has been an essential step forward in this regard. However, the existing situation leads to serious health-related problems for inmates. Most of the deaths in penal institutions are linked to health issues, which were not handled timely[7]. Simultaneously, there are no effective complaint mechanisms in these institutions. The medical service of penitentiaries is totally dependent on the jurisdiction of the Penitentiary Department of the Ministry of Justice, which leads to conflict of interests in cases of reporting instances of torture, as well as to poor qualification of the medical servicemen, who are outside of the general system of the healthcare. There is no access to mental health services in majority of these institutions. There is a psychiatrist only in Nubarashen and Artik institutions and the psychiatric ward- in the Hospital for Convicts, yet quite often the prisoners with severe mental disturbance are not transferred there to get professional services, which leads to ill-treatment.

The situation with the life-sentence prisoners has not improved during recent years. There are about 100 persons sentenced to life imprisonment, vast majority of who are kept separately from other convicts. The law stipulates the possibility of a conditional release for the life-sentence prisoner after 20 years of imprisonment, however none of the eligible prisoners have been released yet. In February of 2017 the government came up with progressive law amendments concerning regulations on early and early conditional release, which are thought to solve the issue in case of adoption by the Parliament.

LGBTI people are particularly vulnerable in penitentiaries. They often face physical and psychological violence, exploitation, degrading treatment and discriminatory attitude displayed both by prison officers and inmates. Most often they are segregated in penitentiaries, being placed in separate cells which are usually in comparatively worse conditions. The food is also served to homosexual people separately. The exploitation of homosexual detainees remains a major issue.

According to the studies of the Helsinki Citizens' Assembly Vanadzor Office, the death rate in the armed forces during the period of 2012 to 2016 October is 349, out of which 189 is resulting from cease-fire violation (of which 77 during the hostilities from the period of April 1 to 5, 2016), 160 are not related to the ceasefire violations[8]. In the course of last years, the number of non-combat deaths at armed forces has grown. Thus, during 2015 there were 35 non-combat deaths out 76 not related to the ceasefire violations. During the period of 2016, 51 soldiers died in comparatively non-combat situations[9]. No adequate measures are undertaken to ensure complete, comprehensive and objective investigation

[6] The closure of certain old penal institutions, construction of a new one in Armavir and introduction of the probation service.

[7] Assessment is based on official inquires of Penitentiary Monitoring Group. In the period of 2011-2016 overall 167 deaths were registered in the prisons related to health problems.

[8] Reports on death cases in RA Armed Forces and NK Defense Army (available in Armenian), 2012 http://hcav.am/publications/16483/; 2013 http://hcav.am/publications/teghekanq2013/; 2014 http://hcav.am/publications/09-01-2015/; 2015 http://hcav.am/publications/%D5%BF%D5%A5%D5%B2%D5%A5%D5%AF%D5%A1%D5%B6-09-01-2016/; 2016 http://hcav.am/publications/04-10-2016-03/.

[9] Helsinki Citizens' Assembly Vanadzor Office, "2016 Reference on the death cases in the armed forces"; (available in Armenian) http://bit.ly/2lyoEdi.

for cases of deaths at armed forces. Moreover, as a rule, the only persons charged with the direct action of the crime are the ones who committed the crime or inflicted harm to health, but not the state representatives who were responsible for the life and health of the soldiers. Apart from incidents of death, hazing and other mistreatment of conscripts by officers and fellow soldiers still remains an issue in the armed forces, which amounts to inhuman treatment towards them.

Torture, cruel, inhumane or degrading treatment remain a serious issue in the psychiatric institutions, where the mental health services are mainly provided. Apart from physical and psychological violence, labor exploitation, excessive use of restraints in these institutions, the patients do not receive necessary health care services there. The right of persons to live independently and be included in the community is violated due to lack of legal mechanisms and alternative community-based mental health services throughout the country. The administration of mental health institutions, as a rule, does not ensure provision of legal aid. Cases of deaths in psychiatric institutions are not effectively investigated.[10]

Absence of a standalone law to prevent and combat domestic violence has left the victims unprotected and allowed perpetrators to act with impunity for many years[11]. Manifestations of domestic violence which do not result in death or serious bodily injury imply responsibility in the form of fine or imprisonment of not more than 5 years. These are qualified as crimes of 'private accusation', which can be initiated upon the victims' reports and are terminated if the victim reconciles.

Recommendations

- Amend the Criminal Code to criminalize all forms of ill treatment, namely – inhuman and degrading treatment;
- Provide the Special Investigation Service with the capacity to conduct operational-search activities to guarantee functional independence and impartiality of their work;
- Exclude the discriminatory approach in application of standard of proof while launching criminal proceedings and charging a public official committing torture or ill-treatment;
- Provide civilian oversight to ensure transparency and accountability of all premises of the police and investigative bodies, where people are detained;
- Ensure accountability of investigator's activities through audio and/or video recording of interrogation facilities; provide access to records on the basis of interrogated person's request or strong ground for the suspicion of torture/ill treatment, in full respect of national legislation and international standards of data protection.
- Implement the effective investigation and reporting mechanisms of torture and, in particular, the UN Istanbul Protocol requirements for multidisciplinary documentation of torture and ill treatment;
- Incorporate mechanisms mandating the use of measure of restraint alternative to detention in the RA Criminal Procedure Code;
- Extend the mandate of Probation Service to the pre-trial stage;
- Transfer the medical service of penitentiary institutions to the oversight of the RA Ministry of Health;
- Address the intolerance, discrimination and hate speech against homosexual prisoners by increasing the awareness and sensitivity of penitentiary staff on LGBTI rights and LGBTI issues;
- Provide effective investigation of non-combat deaths, ensuring the state responsibility for the health and life of the soldiers in the armed forces;
- Develop and implement effective programs to eradicate the practice of hazing and other mistreatment of conscripts by officers and fellow soldiers.
- Adopt regulations permitting the use of physical restraints only for medical purposes and with medical justification;
- Ensure independent civilian oversight over the institutions providing government-supported care and treatment services.
- Adopt a comprehensive and effective standalone law on domestic violence in line with Istanbul Convention and CEDAW General Recommendation N19;

[10] During 2014-2015 there were 58 deaths in psychiatric institutions, and only one criminal case was open.

[11] According to the "Femicide in Armenia: A Silent Epidemic", 2016, 30 known murder cases involving domestic violence have been reported by authorities from 2010-2015, and several more have gone unreported or wrongly recorded as suicides or accidents.

- Amend the CPC to exclude the veto power of victims of domestic violence over the investigations into domestic violence and to mandate the law enforcement (investigators/prosecutors) to continue investigation regardless of non-reporting or withdrawal of criminal complaints by the victims.

Article 9 Right to Liberty and Security of a Person

Arbitrary detentions and deprivation of liberty is a widespread practice of pressure and intimidation aimed at suppressing any kind of civic activism. Since 2013 more than 1100 people were detained while exercising their right to peaceful assembly[12]. In all of these cases the victims were not provided their rights under the *due process,* as well as there was no effective investigation into the actions of the respective public officials.

On July 17-30, 2016 police exerted disproportionate violence towards participants of peaceful assemblies, who gathered in different parts of Yerevan, to prevent use of force against the armed group called "Sasna Tsrer" ("Daredevils of Sasun"). Throughout this period more than 700 citizens were apprehended by police and some of them remained in police custody for up to 32 hours without food, water and opportunity to satisfy other basic needs. At least 20 lawyers reported that state officials hindered their work to provide legal assistance to their clients, threatened and humiliated them[13]. Such detentions are applied mostly under the administrative procedure.

The detention and especially the practice of arrest under the criminal procedure are applied in accordance to the legal interpretation of the Cassation Court (the decision of the Court of Cassation's from 18.12.2009). The cassation court established that the duration of the arrest should be calculated not from the moment of detention of the person but from the moment when the arrest protocol is presented to a person. In practice, there were several cases, where a person was detained, taken to the police station and deprived of liberty for up to 20 hours; however, this was not calculated within 72 hours' duration of lawful arrest prescribed by the law. The 72-hour restriction was not complied with y the officials also in the cases of transferring persons deprived of their liberty from a police station to a detention facility or to the court. This pattern of limiting the liberty of a person by police was vividly demonstrated during the peaceful protests of July 2016, as well as June 2015.

Recommendations

- Undertake prompt, thorough, impartial and independent investigations into all allegations of unlawful conduct by law enforcement officials in connection with the dispersal of the protests, including events in June 2015, and July 2016;
- Ensure that the practice of calculation of duration of arrest starts from the moment of factual deprivation of liberty, in accordance with international standards.

[12] Helsinki Committee of Armenia, *Report on monitoring of peaceful assemblies, Chapter 13 Cases of intervention into the right to peaceful assemblies*, 214-2015 June, available at https://goo.gl/ByZejy.

[13] OSCE/ODIHR Human dimension implementation meeting 2016, Statement on the right to freedom of peaceful assemblies in Armenia, http://www.osce.org/odihr/266281.

Article 19 the Right to Hold Opinions and the Right to Freedom of Expression.

In the reporting period freedom of expression and pluralism of opinions were significantly suppressed both in media and wider civic spaces. A number of cases of violence against journalists and obstruction of their professional activities were registered in 2016.

During the July protests in support of the "Sasna Tsrer" group police used violence against media representatives and hindered their professional activities, which was unprecedented in its severity. According to reports of the Committee to Protect Freedom of Expression (CPFE), 3 media representatives were targeted by attack over the period of 17-29 July. The attacks on media personnel by the police and by individuals directed by the police peaked on the night of July 29 and in the early hours of July 30, while taking action against rally participants. On that day 16 employees of various media outlets were subjected to physical violence. In sum, during the July events 19 reporters and cameramen were subjected to physical violence. Professional activities of other 8 media people were unlawfully obstructed, even though without the use of violence. Journalists were attacked with sound- and light-emitting devices and tear gas grenades. Then media representatives were subjected to assault and battery, persecution and various obstructions. As a result of violent actions, a number of reporters and cameramen sustained bodily injuries.

In connection with the July events, the Special Investigations Service instituted a criminal case and already brought charges against 8 individuals. The preliminary investigation of the parts that were separated from the main criminal case and that deal with 7 of those individuals who had obstructed legitimate professional activities of personnel of Radio Liberty, Armenia TV Company and News.am web-site has been finalized and sent to court with an indictment. It is clear, however, that the scale and scope of violence committed against journalists are disparate. Besides, no high-ranking policeman who had organized and coordinated those actions has been held adequately liable.

In addition to the July events, 6 more instances of physical violence against reporters were recorded in 2016, with 7 media people becoming a target of an attack. Thus, on the whole, in 2016, the CPFE registered 10 instances of physical violence against 26 reporters and cameramen. Besides, The CPFE also registered 52 facts of pressure brought to bear on media outlets and their personnel and 30 facts of violation of the right to receive and impart information[14].

Pressure, intimidation and detention were used as tools to curb the activity of political opponents of the government. Political persecutions on the grounds of political opinions have been registered also in 2016. Namely, on the night of 31 December 2015, Gevorg Safaryan, a member of the New Armenia political alliance, together with other activists attempted to put up a Christmas tree in Liberty Square. That attempt ended in clashes with the police. Consequently, five citizens were arrested. While 4 of them were released later, Gevorg Safaryan was arrested on 3 January 2016 on charges of violence against a policeman and was sentenced to 2 years of imprisonment in 2017. Local human rights groups consider his prosecution politically motivated[15].

In June 2016, Jirair Sefilyan and six other members of "Founding Parliament" were arrested on charges of illegal acquisition, transportation and possession of weapons and ammunition by a group of people. According to the RoA Investigations Committee, Jirair Sefilian with a group of people planned to seize buildings and structures, means of communication. Jirair Sefilian has since been under arrest. Sefilyan denied the accusations and considers them to be a retaliation by the government for his political views[16].

Political persecution became particularly obvious against participants of the peaceful rallies following the seizure of the Patrol Police regiment unit by the "Sasna Tsrer" group. On 20 July 2016, Karo Yeghnukyan, a member of the 'Founding Parliament", was detained and later charged with assisting in taking hostages and in occupation of buildings, facilities, means of transportation or communication and other communication lines. He considers the charges as ill-grounded. Other persecutions have also been reported against Hovsep Khurshudyan, Armen Martirosyan, David Sanasaryan and Andrias Ghukasyan, all of whom participated in peaceful protests after the seizure of the Police Patrol Service Unit in July of 2016. Following the arrests, except Andrias Ghukasyan, the other three activists were released on bail. In August of 2016, the case of Andreas Ghukasyan was being heard in the Court of Criminal Appeals, during which

[14] CPFE, 2016 Annual report on The Situation with Freedom of Expression and Violations of Rights of Journalists and Media in Armenia.
http://khosq.am/en/reports/annual-report-of-cpfe-on-the-situation-with-freedom-of-expression-and-violations-of-rights-of-journalists-and-media-in-armenia/.

[15] https://www.hrw.org/world-report/2017/country-chapters/armenia.

[16] http://armhels.com/wp-content/uploads/2017/01/Ditord-2017-01EngWeb-1-1.pdf .

the judge asked him whether he would continue his oppositionist activities after the release. After receiving a positive answer, the judge dismissed the motion for replacing the detention with other measures of restraint.

Recommendations

- Carry out a full and impartial investigation into attacks against journalists, issuing a public report on the results of each investigation;
- Release all political prisoners and bring the respective judges to responsibility for their illegal decisions.

Article 21 Right of Peaceful Assembly

The legislative framework regulating assemblies in Armenia is mostly in line with international standards. However, the practice is marred by numerous violations including denials to authorize peaceful assemblies, interventions by law enforcement agencies, use of unnecessary force, and violence to curb peaceful protests. In practice the authorities often manipulate the respective legislation to put artificial impediments on participants of public events. Specifically, the Law prohibits holding events in the vicinity of certain institutions to protect them from disturbance. This prohibition is often abused by the police to restrict even the smallest public event in the vicinity of presidential administration, National Assembly and other government institutions, thus making impossible to deliver the message of protesters in the "sight and sound" of target audience. The Armenian authorities have largely abused the rhetoric of maintaining public order to impose arbitrary restrictions on freedom of assembly of protestors, activists and reporters.

Different threats, attacks, and initiation of criminal cases against participants of protests were registered during 2016. There was significant rise of violence against journalists and reporters. During demonstrations over a variety of social and human rights problems observed by the Armenian Helsinki Committee[17] the police forcibly took rally participants to police departments in order to disperse the rallies and used special means of crowd control.

Escalation in police violence was outstanding during the Erebuni protests[18] on July 20 and 29 when police used tear gas and stun (flash-bang) against peaceful protests[19]. There were several allegations of violence and torture against the protesters in police departments and vehicles. Many citizens who left police stations on those days had obvious traces of violence on their bodies and even serious injuries. Several citizens reported degrading treatment.

Only during these two days 33 civilians received fractures, 47 had shrapnel wounds, 7 civilians had severe burns, one citizen poisoning from tear gas, another (underage) lost his eye. The total number of citizens who applied for medical assistance was 101. While many of the injured protesters refused to seek medical treatment, many of those who applied for medical assistance reported that their injuries were not properly recorded for forensic examination.

On July 29, dozens of police officers and people in civilian clothing attacked and severely beat up demonstrators and entered neighboring homes, chasing the protestors in Sari Tagh district of Yerevan. During the incident at least 80 people were injured and hospitalized[20]. There were credible reports that the attackers in civilian clothing were bodyguards of high ranking police officers and people known for criminal behavior. None of those attackers has been identified and prosecuted so far.

As a result, during the July 17 and August 4 protests, about 700 demonstrators were apprehended unlawfully[21] and kept in police departments and other locations that were not intended for undertaking administrative actions (The Police Academia, Police unit 1032) up to 20 hours without water and food. They were subjected to cruel treatment and beating and were denied of access to attorney's services. Journalists and even individuals who were not rally participants were subjected to violence during the actions taken by the police to stop rallies.

On July 20, 2016, the Special Investigation Service launched an investigation into allegations of excessive use of force by police. Within the framework of the criminal case at least 39 citizens were arrested, while no criminal prosecution started against police officers. The Head of the Yerevan City Police was dismissed from their positions and two heads of district police departments and dozens of other police officers faced disciplinary sanctions.

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[17] http://armhels.com/wp-content/uploads/2017/01/Ditord-2017-01EngWeb-1-1.pdf.

[18] On July 17 2016 an armed group of representatives of the opposition group "Sasna Tsrer" occupied Police Patrol Service Regiment located in Erebuni District, Yerevan, calling on the Armenian people to take to the streets, to demand resignation of the President and secure the release of imprisoned opposition politicians. Demonstrators participated in peaceful protests to demonstrate their support of the group as well as their discontent with the political leadership of the country. "Burnt, beaten and betrayed: Armenians awaiting accountability for police violence", http://iphronline.org/wp-content/uploads/2016/09/Beaten-Burned-and-Betrayed-Armenia-report-Sept-2016.pdf.

[19] According to information received by the Union of Informed Citizens, police used 3 shots of tear gas, 26 shots of 40mm flash-bang grenades, "Svirel" and 71 hand flash-bang grenades during those two days.

[20] Hetq.am, *Զինված պայքարի 15 օրերը. Ամփոփում*, 1 օգոստոսի, 2016, 17:50, http://hetq.am/arm/news/69457/zinvats-payqari-15-orery-ampopum.html.

[21] Helsinki Citizens' Assembly Vanadzor Office, Reference to the actions of the law enforcement bodies following the seizure of the Police Patrol Service by the "Sasna Tsrer" group; http://bit.ly/2kTyK9U.

As a rule, no substantive restrictions are posed on demonstrations organized by traditional opposition, meanwhile the police routinely impede demonstrations by civic activists and other opposition groups demanding radical changes. In such cases, the police detain people allegedly for "disobeying police's lawful demands", without any specification as to what these demands are. On the night of 31 December 2015, Gevorg Safaryan, a member of the oppositional New Armenia political alliance, together with other activists attempted to put up a Christmas tree in the Liberty Square of Yerevan. That attempt ended in clashes with police, during which five citizens were forcibly brought to police departments. Later on Gevorg Safaryan was convicted for 2-year imprisonment. On March 21, the rally that was held in Republic Square of the capital by the Armenian Women's Front Initiative featuring the slogan "Freedom to Political Prisoners" was terminated by the police, while rally participants were forcibly taken to police departments. The police claimed that it was prohibited to hold a rally in the central section of the Republic Square. On March 23, the same Initiative staged another rally featuring the same slogan in the street in front of Mashtots small public garden. The police removed the rally participants from the street and in result 14 participants were forcibly taken to police departments, while Ruzanna Yeghnukyan, a member of the Armenian Women's Front Initiative, was taken to hospital with a head injury. In regard to the incident, the Special Investigations Service filed a criminal case on the grounds of abuse of official powers, but later the case was discontinued.

As a rule, investigation of police misconduct and use of force by police does not happen unless there is a wide public outcry and demand for such investigation. The investigation of attack against peaceful protesters and reporters during the #ElectricYerevan protest on June 23, 2015 showed some signs of progress only in August 2016, presumably to moderate the growing discontent with police violence during the Erebuni events. The practice of disciplining officers for violation of laws has not become part of culture in law enforcement; on the contrary, impunity for such violations remains widespread. While police officers are often not held responsible for their unlawful actions, participants of peaceful protests face numerous administrative penalties.

Recommendations

- Amend the Law on Freedom of Assembly to remove the blanket prohibition on holding assemblies nearby governmental buildings,
- Conduct impartial and transparent investigations of incidents where freedom of assembly has been restricted and police has used force;
- Identify and prosecute the respective police officers for excessive use of force, provide effective remedies to the victims.

Article 25 Participation in Public Affairs and the Right to Vote

Several fundamental Constitutional amendments were adopted as a result of the December 6, 2015 referendum. Armenia switched from a semi-presidential system to a parliamentary system and the new amendments stipulated that elections to the local government could be direct or indirect. Constitutional amendments were followed by amendments in electoral legislation. International Election Observation Missions often emphasize that adequate legislative provisions, though important, are not sufficient for concluding that elections are well administered. The determination of the authorities to conduct fair and democratic elections and to increase public trust toward electoral processes is what counts as most essential and ensuring participation in their drafting process are important indicators of the political will for electoral reforms.

The New Electoral Code adopted on May 25, 2016 was meant to remedy the distrust; however, concerns regarding the new Code expressed by the Armenian civil society and by the Venice Commission and OSCE/ODIHR were essentially the same and the majority of them were left without due consideration.

The proportional system introduced for parliamentary elections introduces national and district lists of candidates on the same ballot. Thus if the previous system allowed to select a party and a candidate independently from each other, now voters will have to vote for a certain party if they want to vote for a district candidate from the said party. The main issue of concern for oppositional political parties in Armenia with the district lists of candidates is that it will create more incentives for local tycoons to use their administrative and other resources to garner votes for the political they represent thus the vote buying and intimidation of voters ahead of the elections will become uncontrollable.

The New Code significantly cuts down on the rights of observers and reporters; however, it removed the mandatory testing of observers. Within the short timeframe allocated for drafting and revision of the new Code the government and opposition managed to reach an agreement that signed voter lists would be published and polling stations would be video monitored, but on the other hand, video monitoring was reduced to monitoring of 1500 polling stations with one camera in each.

A notable regress were the amendments to the Criminal Code that stipulate criminal responsibility for making false statement on voting on behalf of other person. This was strongly opposed by civil society organisations due to its potential of restricting the effectiveness of measures to protect electoral right and in general, the possible willingness to take such measures.[22]

It should also be noted that the new Electoral Code in general did not adequately reflect the earlier recommendations by International Election Observation Missions, namely the OSCE/ODIHR and PACE. Thus while the Code adds points of monitoring it does not provide effective leverages to follow-up on identified violations.

The Electoral Code did not address the discriminatory provisions for absent voters. The electoral code allows only families and staff of diplomatic missions, families and employees of Armenia-registered companies operating abroad and military servicemen studying abroad vote electronically, while all other citizens included in the general voters' lists, but away on the Election Day are deprived of the opportunity to vote.

The local elections held after the adoption of Electoral Code showed that there was not enough time for voter education in communities where the system was changed (Gyumri and Vanadzor). The election results were challenged in both Vanadzor and Gyumri. The results in Gyumri echoed the concern of the Venice Commission regarding the low threshold of 40% needed to receive bonus mandates and to gain the majority in the city council. This was rightly regarded as an unnecessary stability measure which undermined popular vote.

Another concern for the upcoming Parliamentary elections is the large number of technical issues identified during the pilot testing of electronic registers[23] and short period of time left for elimination of these issues in time for the elections.

Recommendations

- Extend the campaign period to three months before the Election Day to ensure prohibition of abuse of administrative resources and illegal campaigning;
- Allow active registration of absent voters with respective diplomatic missions to allow voting abroad;

[22] http://www.osf.am/2016/10/.

[23] Press Release of 'Independent Observer' Public Alliance, http://hcav.am/en/events/13-02-2017-010-en/.

- Introduce purely proportional system of voting by eliminating district lists;
- Allow Observer organizations and voter groups dispute electoral violations, including challenging election results;
- Lift restrictions against media and cut the accreditation period to 10 days before the Election Day;
- Exclude from the Criminal Code criminal liability for making false statement on voting on behalf of other person.

Article 26 Rights to Equality and Non Discrimination

The national legislation on anti-discrimination is not comprehensive and lacks practical mechanisms for effective protection against discrimination. Legal provisions prohibiting discrimination are scattered throughout the legal system. However, they neither define discrimination, nor provide for regulations. The provisions of the Criminal Code indicate only national, racial, or religious grounds as aggravating circumstance for serious crimes disregarding other manifestations of discrimination and hate crime. The procedural norms of proving differential treatment in the court are not regulated by the law. Court's approaches to evidential issues, particularly, the burden of proof, do not comply with international standards of anti-discrimination law further undermining the possibility for victims to claim effective legal protection and prosecution of perpetrators.

The Ministry of Justice introduced the draft 'Law on Equality' in February, 2015 in response to UPR recommendations and EU budget support conditionality requiring adoption of a comprehensive and effective anti-discrimination legislation. The draft law formally addresses the gaps in current legislation, however it fails to provide mechanisms for prevention and combating discrimination and to establish an effective and independent national equality body.

2014 - 2016 Action Plan for the National Strategy on Human Rights Protection, which was developed for enforcement of state policy on human rights, was not effectively implemented in areas of inclusive education, mental health, rights of ethnic and religious minorities. The Strategy also completely disregards the discrimination faced by LGBT people, and the Action Plan implies no activities in this regard.

Discrimination and violence against women

The effective enforcement of the legal and policy regulations of gender inequality and gender-based violence is significantly lowered due to the absence of functional implementation mechanisms. Particularly, there are no authorized duty-bearers with clearly defined functions and necessary resources.[24]

Gender-based discrimination is especially evident in the spheres of political representation, employment, education and health. Political participation of women is low, as only 10% of Members of Parliament are women. Even though the government has a commitment to increase the proportional representation of men and women to 70/30, the new quota system will not be enforced until 2022. The rate of economic activity for women is lower than compared to that of men: about 55% vs. 72%, and this proportion has remained almost unchanged over the last decade.[25] Gender pay gap persists, as women still earn about 34% less than men.[26] As for the sexual and reproductive health, Armenia has the third highest level of sex-selective abortions (SSA) in the world with a ratio of 114 boys – 100 girls.[27] The new legal regulations initiated by the government aimed at preventing SSA threaten to create undue burdens for women seeking safe abortion. Additionally, women in rural areas are vulnerable to HIV infection, as the growing number of new HIV cases is connected with male labor migration to Russia (75% of registered HIV cases).[28] As for the education, the State continuously fails to ensure adequate gender-sensitive education. Furthermore, the teachers usually transfer (or often impose) gender stereotypes and the textbooks also include descriptions of stereotypical roles of men and women.[29]

At the same time, domestic violence increased without due redress from the part of authorities. In the last 6 years, 40 women were killed because of violence committed by a current or former intimate partner.[30] The national statistics reveal that 17% of the total homicides recorded in Armenia in 2015 were committed by family members.[31] Due to the absence of legislation, the cases of domestic violence are still investigated as other criminal cases, with no accent on

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[24] Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Country Visit Report, 2014, https://goo.gl/I6Iw0w .
[25] Center for Gender and Leadership Studies, Economic activity of women and men in Armenia, 2016 https://goo.gl/KVoOEr.
[26] UNFPA, Diagnostic Study of Discrimination against Women in Armenia brief report 2016, https://goo.gl/XXRN0K.
[27] UNFPA, Sex Imbalances at Birth in Armenia, 2016, https://goo.gl/tDYoaU.
[28] NGOs' shadow report on the 5th and 6th periodic reports submitted by Armenia on the implementation of CEDAW, available at https://goo.gl/EH1QQj.
[29] Society Without Violence, "Integration of gender component into social science subject: Recommendation package (2014), available at https://goo.gl/j2cUFC.
[30] Coalition to Stop Violence Against Women, 2016, "Femicide in Armenia: A Silent Epidemic"; available at https://goo.gl/chd1jH; Legalizing the stereotypes: women victims' access to justice and gender stereotyping in the framework of gender based violence judicial proceedings, Coalition to Stop Violence against Women, 2017, short summary in English available at https://goo.gl/v9XNmv.
[31] A study by RA Investigative committee, summary of findings available at: https://goo.gl/0PgHFP.

gender sensitivity. This not only leads to impunity of perpetrators, but also to further victimization of women subjected to domestic violence, as the battered women refrain from reaching out for assistance from authorities.

Since Armenia's accession to Russia-led Eurasian Economic Union in September, 2013, the "anti-gender" movement in Armenia has become more influential. Nowadays, Russia-sponsored entities are working very actively on hindering the work of human rights organizations by disseminating populist messages through traditional and social media.[32] They successfully sabotaged adoption of laws on discrimination and domestic violence and created widespread misperceptions on gender equality. Meanwhile, the government fails to educate public on the concept of 'gender' and the principle of equality between men and women. Furthermore, an internal decision was made to avoid using the term 'gender' in legal documents.

Discrimination against LGBTI people

Armenia was named the 3rd worst country in Europe for LGBTI people by ILGA-Europe due to the lack of effective protection mechanisms and highly negative societal attitude toward LGBTI people.[33] LGBTI people lack legal recognition as sexual orientation and gender identity (SOGI) are not included in Armenian legislative framework thus limiting legal recourse for many crimes against them.

LGBTI people and human rights defenders and activists face bias-based speech and violence, while the authorities fail to carry out efficient, prompt and impartial investigation of such violations. In 2015 civil society reported 9 cases of hate crime (5 violent attacks, 4 threats) on the grounds of SOGI to OSCE/ODIHR, while the government 'has not reported reliable statistics on hate crimes'.[34] Existing legislation does not provide a definition of "hate speech" and does not imply liability for hate speech. The Criminal Code does not consider SOGI grounds as aggravating circumstance for serious crimes. Professional communities, such as doctors, lawyers, and teachers predominantly view homosexuality as a disease.[35] At the same time, representatives of the ruling political party and media affiliated with them spread and endorse hate speech towards LGBT persons and defenders of their rights labeling them as 'traitors' and 'enemies of the state' and strengthening the environment of impunity in the country. The recent amendment to the marriage definition in the Constitution has limited the union to different-sex couples only.

LGBT persons are frequent targets for discrimination in closed institutions such as prisons and the army. Homosexual prisoners face physical and psychological violence, degrading treatment and discriminatory attitude displayed both by prison officers and inmates. They are segregated in penitentiaries, being placed in separate cells, which are usually in worse conditions, and are forced to implement the most 'humiliating' duties in penitentiaries, such as cleaning of penitentiary territories, toilets and restrooms, and dumping of garbage.[36] Being unable to ensure the safety of LGBT people in the armed forces, the state exempts them from mandatory military service. However, as there is no relevant legal provision, the military applies a legal provision qualifying homosexual persons for exclusion from service under the mental disability exception. The soldiers, whose homosexuality is discovered during military service, are immediately separated and isolated from the rest of the troops. Eventually, they are sent to a military hospital, where they are assigned the most degrading tasks and are segregated.[37]

Religious freedom

The current law on Freedom of Conscience and Religious Organizations implies limitation for religious minorities. Specifically, it has restrictions regarding registration and practice of religious organizations. On the other hand, it gives privileges to the Armenian Apostolic Church: the latter has exclusive access to hospitals, orphanages, boarding schools, military units, and penitentiaries. Furthermore, in 2011 the government introduced a draft law, which would have implied mandatory registration and undue burdens on registration of religious organizations, discriminatory

[32] Union of Informed Citizen, Russian Trace behind Groups Fighting against Domestic Violence Law, 2016 http://uicarmenia.org/en/2288.
[33] ILGA-Europe, Annual Review of the Human Rights Situation of LGBTI People in Europe, 2016 https://goo.gl/wzi5M6.
[34] OSCE/ODIHR, Hate Crime reporting, http://hatecrime.osce.org/armenia.
[35] Lusine Karamyan, Armenian Helping Professionals about LGBT Community, 2013.
[36] Penitentiary Monitoring Group, Annual report, 2014-2015 https://goo.gl/sCGq0C.
[37] Society Without Violence, The Human Rights Situation of LGBTI Individuals in Armenia: A Practical Assessment, 2016 https://goo.gl/dgiAk1.

limitations and unreasonable requirements regarding the membership, funding of religious organizations, and other limitations of religious practices. The draft was frozen, as it was heavily criticized by the CoE Venice Commission.[38]

The amendments in the Constitution indicate a concerning intention to define different legal statuses for "religious organizations" and the "Armenian Apostolic Church" (AAC). While the amended Constitution provides that religious organizations shall be separate from the state, it proclaims the 'exclusive mission of the Armenian Apostolic Holy Church as the national church in the spiritual life, development of the national culture, and preservation of the national identity of the people of Armenia'. The current Law on Religious Organizations does not regulate this issue, while the 2011 draft law mentions 'religious organizations' and the 'Armenian Apostolic Church' as separate legal categories.[39]

Another concerning amendment in the Constitution allows restrictions on the expression and practice of freedom of religion in order to protect state security. This provision not only contradicts the case law of the European Court of Human Rights, but also may lead to negative developments considering the numerous statements of the public officials and the AAC calling for limitation of rights of religious organizations to protect 'national security'.[40]

The preferential government support for the AAC and its exclusive presence in public education and closed institutions leads to discrimination in these fields. Particularly, the AAC holds religious classes and prayers in the army, to which conscripts are forced to attend. Moreover, soldiers who have religions other than the AAC or are atheists forcefully undergo baptism into the Armenian Apostolic faith. As for the education, students have to take a mandatory class named "History of the Armenian Church". The latter comprises religious propaganda, which is against OSCE Toledo principles and has prompted religious intolerance among students. The Ministry of Education stated that the government had no intention of following the 2013 recommendation by the UN Committee on the Rights of the Child to revise school curricula to eliminate the course.[41] Religious minorities also encounter the following discriminatory regulations. Firstly, they face restrictions for renting spaces and getting building permits for places of worship, as the permission is granted by AAC. Secondly, they are required to pay VAT on donations that were imported from abroad, though there is a legal exemption.[42]

It is challenging for the Armenian civil society to push forward changes concerning these issues, as the general public attitude towards religious minorities is negative, which is reinforced by media outlets and politicians labeling these minority groups as "sects" and "enemies of the state."

People with disabilities: Mental Health

Armenia has developed and adopted Mental Health Strategy for 2014-2019 and an Action Plan for Delivery of Alternative Care and Social Services for persons with psychosocial disabilities. Nevertheless, the existing mental health care practices in Armenia prevent people with psychosocial disabilities from living independently and being included in the community. Furthermore, they are often subject to forced psychiatric interventions, violence and abuse.

Persons in psychiatric institutions are subjected to ill-treatment, namely physical and psychological violence, labor exploitation, excessive use of restraints, and are not provided with proper and qualified health care. Deaths in institutions are not investigated fully and effectively. In 2006-2015 the number of death cases in eight psychiatric institutions totaled to 373. Out of them, 7 were ruled as suicide, but criminal cases were initiated only in the case of 42 deaths. All 42 criminal cases were closed without completion under the pretext of "absence of criminal evidence".

Many patients undergo compulsory treatment in psychiatric hospitals, which they cannot challenge on their own: there are no direct mechanisms for an affected individual to seek review of hospitalization. A court decision on their release might be sought only by the hospitals. In the meantime, applications for compulsory hospitalization are numerous and they are overwhelmingly granted by the courts. In the period of 2010-2014, courts throughout Armenia received 252 requests for compulsory treatment of citizens in psychiatric institutions: 194 of the applications were granted and only one decision was appealed.

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[38] Venice Commission and OSCE/ODIHR, Joint Opinion on the Draft Law on Freedoms of Conscience and Religion, 2011, https://goo.gl/Bm2jAh.
[39] Helsinki Committee of Armenia, Observer: Human Rights in Armenia in 2015, https://goo.gl/gmRpf2.
[40] Ibid
[41] US Department of State, International Religious Freedom Report for 2015, https://goo.gl/pTBkoe.
[42] Ibid

Under the current legislation, persons with mental health problems may be recognized legally incapable by thus being deprived of the possibility to exercise their rights fully and properly and to make decisions about their life independently. There are no effective mechanisms for restating person's legal capacity. The court trials of cases challenging the person's legal incapability fail to ensure the "equality of arms," and a guardian is appointed for the person declared as legally incapable without consulting the person.

The right of persons to live independently and be included in the community is violated as mental health care and treatment are performed in closed institutions. As of July 2016, 50,000 people were registered as patients with mental disabilities. According to the assessment of physicians 50% of institutionalized individuals do not need to be confined in an institution, but rather need social support and inclusion into community. Yet, mental health services continue to be provided mainly in psychiatric institutions,[43] which also increases the instances of ill-treatment and abuse of patients.

Recommendations

- An effective and comprehensive anti-discrimination legislation should be adopted in line with European and international standards anti-discrimination law ensuring provision of effective prevention and protection mechanisms;
- Civil, administrative and criminal codes should be amended according to ECRI General Policy Recommendation N7;
- Comprehensive and effective standalone law on domestic violence should be adopted in line with Istanbul Convention and CEDAW General Recommendation N19;
- Effective mechanisms should be developed for enforcement of the law on equal rights and equal opportunities for men and women;
- A multi-sectoral referral mechanism should be established to assist victims of domestic and gender-based violence through timely and appropriate support services;
- State-funded support centers, covering all regions of Armenia and the capital, delivering services to victims of domestic and gender-based violence should be established;
- Structured policy of gender mainstreaming should be developed and implemented in education system primarily in terms of revision of content as well as awareness and sensitivity of teachers and students;
- Effective legal and policy measures, including strong state oversight mechanisms should be adopted to overcome gender pay gap and ensure equal access to employment for men and women;
- Existing legislation regarding hate speech and hate crime should be reviewed, including providing definitions and defining liability for hate speech as well as considering the committal of a crime on the basis of sexual orientation and / or gender identity of a person as a circumstance aggravating the crime and punishment;
- Human rights violations of LGBT people should be effectively and comprehensively investigated ruling out any discriminatory and biased approach towards LGBT people in the investigatory bodies;
- Appropriate measures should be undertaken to ensure the safety of LGBT people in closed institutions and to prevent cases of inhuman and degrading treatment against them;
- The 2011 Draft Law on Religious Organizations should be reviewed based on Venice Commission/ODIHR commentary to rule out preferential government support for the Armenian Apostolic Church in law and in practice;
- The teaching practice of religious course "History of the Armenian Church" should be aligned with OSCE Toledo Principles;
- Ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- Ensure the proper, effective, and accountable implementation of the Mental Health Strategy for 2014-2019 for persons with mental health issues and the Concept Paper and Action Plan for the Delivery of Alternative Care and Social Services to Persons with Mental Health Issues, including allocation of necessary funding from state budget;
- Introduce legislative provisions requiring the participation of an advocate from the very beginning of the process of admitting a person to a psychiatric medical institution;
- Ensure independent civilian oversight over the institutions providing government supported care and treatment services.

[43] National data reveals that, at present, only 2.7% of the total health care spending is allocated to mental health, and the lion's share (88%) of such spending is allocated for psychiatric treatment.

United Nations Convention against Corruption (UNCAC)

Corruption in Armenia is systemic and includes all governance institutions. It has pervasive nature exacerbated by merge and highly consolidated political power with monopolistic economy. Latest nation-wide survey data reveals that corruption remains one of the most important problems in Armenia thus threatening economic development, government credibility and political stability of the country[44]. Only 14% of Armenians believe that the government is effective in its anti-corruption efforts[45] and for the fifth year in the row, Armenia's score for the category of Corruption in Freedom House's "Nations in Transit" 2016 study is 5.25[46]. Armenia moved down by about 18 points in the list of Transparency International Corruption Perception Index ranked 113 out of 176 counties in 2016. The corruption perception score has gone down by 2 points (from 35 to 33), suggesting that corruption was perceived as more prevalent in 2016 than in 2015.[47] According to Global Corruption Barometer 2016 Survey, 63% of the Armenians think that ordinary people do not make difference in the fight against corruption, which is the lowest number among CIS countries. 52% of the respondents in Armenia think that the ordinary person cannot do anything to help combat corruption. This is the highest number across the region among 42 countries. Finally, 67% of Armenian respondents will not be obliged to report about corruption, even if he/she will witness the act of corruption. Fear of reprisal is the most frequently stated reason (41%) for not reporting.[48]

No serious progress had been recorded in the fight against corruption in Armenia despite the operation of the Anti-Corruption Council and implementation of Anti-Corruption Strategy. Since the establishment of the Council, the Armenian government initiated a series of changes to legislative and regulatory activities aimed at fight against corruption, including criminalization of illicit enrichment. The steps taken by the Armenian government to handle the fight against corruption are rated fairly well or very well only by 14% of the respondents, whereas 65% of the respondents rated those steps as very badly od fairly badly.[49]

Article 6. Preventive anti-corruption body or bodies

The Anti-Corruption Council (Council) established in February 2015 does not function as a specialized preventive, law-enforcement or multi-purpose agency, and is simply meant to consult the government on how to target the most sensitive areas and coordinate implementation of anti-corruption policies. Main functions of the Council include discussion and approval of Anti-Corruption Strategy; suggestion of changes to the anti-corruption action plan; discussion and approval of sectoral action plans based on Anti-Corruption Strategy; oversight in the implementation of the Anti-Corruption Strategy, and several other consultative functions.

Membership of the high ranking officials in the Council compromises its reputation with en engraved conflict of interest. Public perception of the council is further affected by reporting of on-line media outlets, when they publish on alleged government corruption, embezzlement of state funds, corrupt practices in procurement, involvement in businesses of high-ranking officials and others.

On 29 December 2016, a decision was made by the Government to double the number of representatives of civil society in the expert group adjunct to the Anti-Corruption Council from 2 to 4. Nevertheless, this is seen as only a partial contribution to the participation of civil society in the Anti-Corruption Council, since the latter still remains a consultative body composed mainly of high level state officials. Institutional framework of the monitoring division of the government staff at the prime minister's office, acting as the secretariat of the Anti-Corruption Council, continued to lack the financial and human resource capacity necessary to effectively monitor and coordinate the future implementation of the 20152018 Anti-corruption Strategy and Action Plan.

Another institutional structure, the Commission on Ethics of High-Ranking Officials (Commission) is responsible for collection and review of asset and income declarations, consulting of high-ranking executive officials on conflict of interest situations, issuing conclusions on their ethical misconduct. Members of Ethics Commission are also

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[44] Transparency International. 2015. The State of Corruption. Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Full report available at http://transparency.am/files/publications/1436175393-0-361397.pdf.
[45] Global Corruption Barometer 2016 Survey in Armenia https://transparency.am/en/gcb.
[46] https://freedomhouse.org/report/nations-transit/2016/armenia.
[47] CPI 2016 Results for Armenia and Other Countries of the Region https://transparency.am/en/cpi.
48 Global Corruption Barometer 2016 Survey in Armenia https://transparency.am/en/gcb.
49 Ibid.

appointed by the President from among the candidates presented by the Prime Minister, head of the National Assembly, chair of Constitutional court, chairman of the Court of Cassation and Prosecutor General. The President also has the power to terminate the work of any Commission member without any consultation with the above mentioned officials in case where no legislative regulation exists on criteria for removal. Additionally the Commission resides in the President's office and is financed from the budget of the President's staff, implying indirect control of Commission's actions.

In practice, the Commission is restrained in its functions and capacity of verification and investigation into the asset and income declarations of high-ranking officials and, moreover, has no sanctioning powers in case of data fraud. The Commission does not have proper mechanisms to implement its own decisions and conclusions because its documents lack the mandatory force of law. Members of Ethics Commission are appointed by the President; the President also has the power to terminate the work of any Commission member. In September 2016, the Parliament adopted in its first reading corresponding provisions to the acting Criminal Code to put in place mechanisms for punishmen of the high-ranking officlas and affiliated persons intentianally failing to submit declarations on assests and inclome, as well as submitting false delarations or hiding data subject to declaration.

Reccommendations

- Establish an independent, specialized anti-corruption body, void of conflict of interest, vested with authority to investigate and render normative decisions on corruption-related crimes. Members of the anti-corruption body shall be appointed based on the criteria of their integrity, apolitical stance, impartiality, neutrality and competence.
- Develop a mechanism for monitoring of implementation of the 2015-2018 Anti-Corruption Strategy Action Plan with a special focus on performance indicators and use of input from a wide spectrum of specialized civil society organizations as a constituent part of the monitoring mechanism and conditional funding by the EU.
- Strengthen the operational independence of the Commission on Ethics for High-Ranking Officials, giving it a clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated.

Article 20 Illicit enrichment

The Armenian Government has adopted amendments to the Criminal Code that introduce illicit enrichment as a criminal offence. According to new rules, an official whose wealth exceeds their annual salaries by at least 5 million AMD ($10,500) will have to substantiate this discrepancy or will otherwise be subject to prosecution. The crime is punished with imprisonment from 3 to 6 years, along with deprivation of a right to hold certain positions or engage in certain activities for up to five years and with confiscation of property. It is envisaged that the amendments will become effective from 1 July 2017. According to the amended Criminal Code, criminalization of illicit enrichment does not have retroactive effect.

Recommendations

- Apply criminalization of illicit enrichment not only on the high-ranking officials, but also on the low-ranking officials;
- Provide effective examination of publications and reports of media and NGOs on luxurious lives of high-ranking officials with the involvement of press and civil society organizations.

Article 30. Prosecution, adjudication and sanctions

Systemic corruption and impunity for corruption crimes in the country manifest not only via dangerous consolidation of political and business elites, but largely via systemic capture of core democratic institutions, undermining the effective enforcement of laws. It is also important to note that prosecutions for grand corruption crimes are more likely to be politically motivated, demonstrating consolidating fusion of government and business elites in the country.

In comparison with the previous year the number of criminal cases on corruption-related crimes increased by 102 cases. 670 corruption cases were initiated in 2016 by the Office of the Prosecutor General; in 2015 the number was

568. In 2016, 83 cases were sent to the court, out of which 42 had final judgement and 100 persons were found guilty of corruption crimes.[50] Meantime, the number of people giving bribes reduced from 97 in 2015 to 71 in 2016. The less public officials abused his/her office in 2016 than in the previous year; 136 officials in 2016 vs. 168 public officials in 2015.[51]

Article 33. Protection of reporting persons

The legislation does not provide a cohesive framework for the protection of reporting persons. Protection mechanisms for reporting persons exist only for participants of criminal proceedings. The most relevant participants are witnesses and victims. This is a problem because reporting person does not get status of witness or victim automatically. Only if the reporting person (whistleblower) will be granted status of witness or victim, then s/he will be entitled to protection mechanisms provided by the Code. Thus, it is essential to stipulate possibility of granting protection measures to reporting persons (whistleblowers) immediately at the moment when they report about crime. Otherwise it may be too late.[52]

Recommendations

- Stipulate by law, that the reporting persons shall enjoy the same means of special protection prescribed by the criminal-procedure legislation, as the victims, witnesses and experts.
- Foresee criminal liability for those persons, who inflict damage to the property or health of the reporting person or his/her affiliated persons for his/her reporting, as well as for those law enforcement officials, who unlawfully shall disclose the reporting person and his/her information.

[50] http://hetq.am/arm/multimedia/videos/334/.
[51] Statistical Service of RA http://www.armstat.am/.
[52] K. Harutyunyan and V. Hoktanyan "UNCAC Civil Society Review 2013", http://transparency.am/files/publications/uncac_cso_report.pdf.