

Briefing paper

Administration of justice in the Republic of Armenia

Paris – Yerevan, March 2010

In the perspective of the Forum *Justice: New challenges – The Right to an effective remedy before an independent tribunal* organised by The International Federation for Human Rights (FIDH) and its member organisation the Civil Society Institute (CSI) in Yerevan on April 6-8, FIDH, together with CSI, the Helsinki Committee of Armenia, the Collaboration for Democracy Centre and the Foundation against Violation of Law, wishes to recall the preoccupations concerning the functioning of the justice system of the Republic of Armenia.

Our organisations express their concerns at the various violations of the right to a fair trial that were observed in past years in the Republic of Armenia, including abuses in the recourse to pre-trial detention, violations of the presumption of innocence, of the rights of the defence. Many occurrences of partiality on the part of judges were also reported, in particular during the trials of the opposition leaders arrested in the wake of the March 2008 events. Moreover, there are numerous cases of the use of testimonies obtained illegally through torture and ill treatment. Our organisations recall that torture and ill treatment are still practised by the police, and that detention conditions do not meet international standards nor are they in conformity with the national legislation. The lack of transparency of the “Independent Committees on Early Conditional Release from a Sentence or the Substitution of the Remaining Portion of a Sentence with a Lighter Sentence” and the absence of separate justice for juveniles are also issues of concern.

Our organisations recall that the international Forum dedicated to Justice, with the support and participation of international experts such as the Prosecutor of the International Criminal Court (ICC), Mr Luis Moreno Ocampo, and of major international organizations, is a crucial opportunity for Armenia to improve its justice system. It is also an occasion for the Republic of Armenia to foster a positive international dynamic in ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court, thus setting an example for the international community and the region in particular.

Investigation into events of March 1, 2008

In the aftermath of the March 2008 demonstrations relating to the results of the presidential elections, many clashes following the excessive use of force by law enforcement bodies occurred between the police and opposition activists causing a large wave of arrests and detentions. Ten people were killed and two hundred were injured as a result of the clashes. On 2 March 2008 criminal proceedings were instituted under Article 225 part 3 of the Criminal Code (mass disorders accompanied by deaths). Although this article was amended and its part 3 was decriminalised in March 2009, the investigation instigated criminal cases under Article 104 (Murder) of the Criminal Code of the Republic of Armenia in March 2009. Moreover, the investigation mainly targeted the organisers of the demonstrations. At the same time, the authorities failed to establish the exact

circumstances surrounding the ten deaths and the perpetrators enjoy full impunity. Even though the investigative authorities insist that the investigation be conducted, that witnesses are interrogated and measures taken to identify eye-witnesses and instructions have been given to law enforcement authorities to intensify investigative and operative actions, to this day, no one has been officially accused or charged with the deaths. Consequently, there is no public confidence and trust in the investigative authorities due to the lack of transparency and independence of the investigation. For instance, the fact finding mission appointed by the RA President on October 23, 2008 was dismissed on June 6, 2009 without making any valuable contribution to the investigation.

Political prisoners in aftermath of the events of March 1 and the right to fair trial

More than a hundred opposition activists were arrested and tried after the March 1 events. Most of them were accused on trumped up criminal charges and were convicted in what appear to be politically motivated proceedings. The main charges in the trials were based on the Article 225 (Mass disorders) and 316 (Use of violence against a representative of authorities) of the Criminal Code of Armenia.¹ In its Final Report published on March 8, 2010, the Trial Monitoring Project (April 2008 – July 2009) of OSCE/ODIHR identified numerous shortcomings in the justice system involving in particular “the right to liberty, the right to a public hearing, the presumption of innocence, equality of arms, adversarial proceedings and the extent of reliance on police evidence, the right not to be compelled to testify and the exclusion of unlawfully obtained evidence, the right to defend oneself or through legal counsel, accelerated proceedings, contempt of court, and the impartiality of judges and their professional conduct.”² Although many of them were released following the Amnesty Act passed by the Armenian National Assembly on June 19, 2009, more than ten political prisoners still remain behind bars.

Abusive recourse to pre-trial detention

According to the information received, the decisions relating to detentions and arrests which were inappropriately documented, were often not in conformity with international standards nor with national legislation. Rather than being the exception, pre-trial detention has been widely put into practice without proper legal grounds. “Remanding in custody should not be justified exclusively by the severity of the alleged offence. (...) Independent judicial review of arrest and detention is particularly important in ensuring the legality and lawfulness of the deprivation of liberty in every case. In this regard, project findings indicate that the Armenian judiciary is not performing all the functions necessary to ensure such an effective judicial review – this in particular relates to the judicial review of the grounds for arrest and the authorisation of detention.”³

A biased judiciary: violations of the presumption of innocence and the right to a defence

Repeated reports have been made of violations of the principle of presumption of innocence. According to the local NGOs and the OSCE/ODIHR monitoring missions, judges displayed hostile attitudes towards defendants, implying guilt while often having a favourable disposition towards the prosecution, which is an obvious violation of the principle of equality before the court. Moreover, in many cases preference was given to the testimonies of the police, while the defence was sometimes deprived of its rights: “In some cases defence lawyers were effectively deprived of an opportunity to prepare a defence. A number of defence counsels resorted to walk-outs from the courtroom in protest. Concerns were noted regarding the quality and the effectiveness of public

¹ Right to a fair trial in the Republic of Armenia: Preliminary conclusions from the observation of the trials ensuing from the March 2008 wave of arrests and from recent changes introduced in Armenian legislation, joint position paper, FIDH and CSI, June 2009, <http://www.fidh.org/FIDH-CSI-Joint-Position-Paper-on-the-right-to-a>, p 2.

² Trial Monitoring Project in Armenia (April 2008 – June 2009), OSCE/ODIHR Final Report, March 2010.

³ Trial Monitoring Project in Armenia (April 2008 – June 2009), OSCE/ODIHR Final Report, March 2010, p 26.

defenders.”⁴ .

Our organisations also recall the legislative changes which came into force in March 2009. Some provisions in the amendments to the Judicial Code and the Criminal Procedure Code have threatened the right of the accused to be present at his own trial proceedings.

Cases of torture and ill treatment

The Criminal Code of the Republic of Armenia adopted in 2003 displays articles criminalizing torture. However, the definitions of the two articles 119 and 341 of the Code do not correspond to the definition of torture envisaged by Article 1 of the UN Convention against Torture ratified by Armenia in 1993. In particular, Article 119 does not specify that torture is an unlawful act committed by those who act in a state capacity. And Article 341 on “Forcing testimony by the judge, prosecutor, investigator or other person in charge of an inquiry” fails to include in the definition not only the direct involvement of a public official in the acts of torture, cruel, inhumane or degrading treatment or punishment but also the instigation by or the consent of a public official to these acts. Torture is considered as a crime of medium gravity in the legislation of the Republic of Armenia. Moreover, there is a period of prescription under articles 119 and 341, of 5 years and from 1 to 10 years respectively, which does not comply with the UN Convention against torture which stipulates that no period of prescription should apply in cases of torture.

Ill treatment and torture by the police and in penitential institutions are regularly reported, which is an issue of great concern.

The case of Arshaluys Hakobyan, a member of the Armenian Helsinki Association and a press photographer, is typical of the general situation. Souhayr Belhassen and Arman Danielyan, respectively Presidents of FIDH and CSI, visited him on June, 26, 2009. They reported that Arshaluys Hakobyan was subjected to acts of ill-treatment during his arrest at the police station⁵. Indeed, after he was denied access to polling station no. 8/23 in Malatia-Sebastia district while he was observing the municipal elections in Yerevan on May 31, 2009, and was threatened with being beaten up along with the team of observers, Mr Hakobyan lodged a complaint with the special investigation department.

On June 5, 2009, he was summoned by the Investigation Department to give testimonies. Nevertheless, he refused going there and stated that he would only go to the Investigation Department provided they would hand over an official summons. Later on, two police officers went to Mr. Hakobyan's with a "summons", which nevertheless contained no information about the criminal case or the reason as to why he was being summoned. Mr. Hakobyan refused to sign the paper alleging it was not valid. However, after pressuring him, the police officers eventually forced him to sign. In spite of asking the police officers to leave, the officers asked for police reinforcement, and took him to the Police Department of Kentron District, in Yerevan, where he underwent beatings and other ill-treatments. He was handcuffed and then taken to the Investigation Department of Kentron District, where he was denied access to a lawyer. He was subsequently charged with "violence against a Government representative", under Article 316 part 1 of the Armenian Criminal Code.

On June 6, 2009 the Court of First Instance of general jurisdiction of Kentron and Nork Marash Districts approved the investigator's sanction of Arshaluys Hakobyan's detention. On October 16,

⁴ Ibid, p 7.

⁵ Joint Statement on June 12, 2009 of the Observatory for the Protection of Human Rights Defenders, Civil Society Institute, Helsinki Citizens' Assembly Vanadzor Office, Helsinki Committee of Armenia, Collaboration for Democracy Centre, Transparency International Anti-Corruption Centre and Foundation Against Violation of Law, <http://www.fidh.org/ARMENIA-Deep-concern-over-ill-treatments-against>

2009, the Court of First instance of General Jurisdiction of Kentron and Nork Marash Districts of Yerevan decided to release Mr Hakobyan on bail, and he was acquitted on grounds of lack of evidence on February 5, 2010. Our organisations welcomed this decision but called for the need to launch a comprehensive investigation into the ill treatment suffered by him.⁶

Testimonies obtained illegally under torture and ill treatment

Last years, constant reports were made about the practice of illegally obtaining testimonies through torture or ill treatment. This concerns witnesses in politically motivated trials, for example in those of the six opposition leaders arrested after the demonstrations of March 2008, as well as victims or witnesses as in the cases of Levon Gulyan or of Sasha Davtyan.

Testimonies of witness obtained under pressure

During the trials of the six opposition leaders, many witnesses reported to the court that they had been forced to give false testimonies against the accused opposition leaders during the course of the investigation. According to them, many witnesses were subjected to serious psychological and physical pressure by the police. Yasha Melqonyan, a witness in the case of Sasun Mikayelyan, told the court on May 6, 2009 "I have written false things during the pre-trial phase. I apologize for that. I was in a very bad situation. They were telling me what to write and I wrote it. I wanted them just to leave me, so that I could leave and go to bed. I was in pain. Lots of things were dictated by the investigators". Yasha Melqonyan also said that he had been beaten by masked men in the Hrazdan City Police Station, including Sergey Markosyan, head of the criminal department."⁷ Moreover, some witnesses reported having been called to police departments prior to the trial and being ordered there to confirm their pre-trial testimonies during the trial.⁸

The case of Levon Gulyan: death in police custody of a witness

The case of Levon Gulyan, to which FIDH and CSI have referred on many occasions, remains unchanged and still no one has been held accountable for his death. Mr Gulyan was called on May 12, 2007 to the Police Headquarters of the Republic of Armenia as a witness in a murder that took place near his workplace. A few hours later, his death was announced to his family, who believes that Mr Gulyan died after being beaten and tortured. On April 16, 2009, the Special Investigatory Service of the Republic of Armenia put an end to the two-year-long investigation into his death due to lack of evidence. No one has been held responsible or accountable for his death in police custody.

The case of Sasha Davtyan

In September 2008, criminal proceedings were instigated relating to the rape in August 2008 of an under-age girl, S.D., a resident of the village Katnaghbyur, in Aragatsotn region. On February 6, 2009 the case was suspended due to lack of identification of the perpetrator of the crime. In May 2009, the investigation into the case was reopened under another investigator. Sasha Davtyan, the girl's father, was charged with the rape of S.D. and with ill-treatment of his two daughters, S.D. and T.D., under articles 138. 2(3) and 119.2 (1) of the Republic of Armenia Criminal Code respectively.

⁶ Joint Statement of the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation of Human Rights (FIDH) and the World Organisation Against Torture (OMCT), along with the Civil Society Institute, Helsinki Citizens' Assembly Vanadzor Office, the Helsinki Committee of Armenia, the Collaboration for Democracy Centre, Transparency International Anti-Corruption Centre, as well as the Foundation Against Violation of Law,
<http://www.fidh.org/Acquittal-of-human-rights-defender-Arshaluys>

⁷ Right to a fair trial in the Republic of Armenia: Preliminary conclusions from the observation of the trials ensuing from the March 2008 wave of arrests and from recent changes introduced in Armenian legislation, joint position paper, FIDH and CSI, June 2009, <http://www.fidh.org/FIDH-CSI-Joint-Position-Paper-on-the-right-to-a>, p 2.

⁸ *ibid*

In August 2009, S.D. and T.D. refuted their testimonies and submitted a claim to the Chief Prosecutor's office. S.D., who had turned 18 in April 2009, testified during one of the trial sessions as to how these testimonies had been forced from her. She asserted that S.D. and her sister T.D. had been taken to the Kentron Police station in Yerevan on May 7, 2009 where they were subjected to torture, inhuman and degrading treatment by the police over a period of four days and forced to testify that Mr Sasha Davtyan had indeed tortured them and raped S.D.. The testimonies received under physical duress served as the basis for the accusation.

As for Mr Sasha Davtyan, he was repeatedly beaten and was also subjected to torture. Mrs Souhayr Belhassen, FIDH President who visited him in prison together with Mr Arman Danielyan, CSI President, on 5 February, 2010, documented his testimony on the ill treatment he was subjected to and certified that he had lost 8 teeth as a result of being beaten. They also met with the head of "Nubarashen" prison and the prison doctor who presented the documents, certifying Mr Davtyan's very poor state of health upon his arrival in prison.

On December 17, 2009, the Court of First Instance of Aragatsotn Marz decided to acquit Sasha Davtyan of the rape of his daughter. However, despite the obvious physical pressure he and his daughters faced during his custody, he was found guilty by the Court of committing of the crime of ill-treatment against his daughters and was convicted for 4 years of imprisonment under on Article 119.2 (1).

On February 26, 2010, the Court of Appeal shortened his sentence from 4 years of imprisonment to 3 years. Later, the Amnesty Act passed by the Armenian National Assembly on June 19, 2009 was applied to Mr Sasha Davtyan and he was immediately released.

An investigation into the acts of torture and inhumane treatment inflicted upon Sasha Davtyan and his daughters has yet to be opened.

Conditions of detention

The Armenian penitentiary system has been undergoing reforms designed to make a transition from the Soviet-era colony system to a European penitentiary model. However, there are many problems relating to this transition as well as to established "negative traditions" which still cause concern for our organisations. In particular, the changes in the system will require modifications to the building structures. There are still prisons where the physical conditions conflict with both Armenian legislation and international standards. The Annual Report 2008⁹ of the Public Observers conducting public monitoring of penitentiary institutions and bodies of the Ministry of Justice of the Republic of Armenia pointed out major issues of concern such as early conditional release procedures and overcrowding, lack of effective investigation into torture and ill-treatment cases, and unsatisfactory levels of food and medical care within the penitentiary system of Armenia.

Juvenile justice

The Initial Report of Armenia on the implementation of the Convention on the Rights of the Child (CRC) was prepared in 1997 and examined by the Committee on the Rights of the Child ("the Committee") in 2000.¹⁰ A second report was presented in 2002 and examined in 2004.¹¹ On both occasions, the Committee expressed concern about "the absence of a system of juvenile justice, in particular the absence of specific laws, procedures and juvenile courts."¹² Although several changes were made in the legislation and practice, there are still issues of serious concern. In particular, the excessive use of pre trial detention for juveniles, the length of pre trial detention, the

⁹ http://hra.am/content/library/pmg_report_2008_eng.pdf

¹⁰ CRC/C/28/Add.9; CRC/C/15/Add.119

¹¹ CRC/C/93/Add.6; CRC/C/15/Add.225

¹² CRC/C/15/Add.119, para.56 and CRC/C/15/Add.225, para.70

level of isolation in pre trial detention and the poor conditions of imprisonment, the termination of secondary education in pre trial detention, the absence of rehabilitation and reintegration programmes for juveniles after their release, and the absence of alternative justice measures for juveniles implemented in practice.

Independent committees on Early Conditional Release

Several concerns were raised by a number of Armenian NGOs in March 2009¹³ relating to the lack of transparency of the “Independent committees on Early Conditional Release from a Sentence or the Substitution of the Remaining Portion of a Sentence with a Lighter Sentence”. The decisions of those committees, whose criteria are unclear, are reported to have obvious political motivations. Moreover, the group of NGOs noted three major issues of concern. Firstly, the criteria for the committee decision-making process are not properly defined in its regulating documents, which seriously impacts on the transparency of their decisions. Secondly, there is no possibility of appealing the decisions of the committee. Thirdly, the composition itself of the committee is highly questionable, since, according to the group of NGOs, many members of the committee, including heads of the committees, are also members of national security and law enforcement agencies.

Ratification of the United Nations Protocol to Abolish the death Penalty

Armenia has never carried out any executions and is an abolitionist country. As a member of the Council of Europe, it ratified the Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and signed Protocol No. 13 to the ECHR to abolish the death penalty under all circumstances.

Armenia already fulfils the obligation incumbent upon the ratification of the United Nations Protocol to abolish the death penalty, i.e. it has acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1993, has prohibited executions and has withdrawn the death penalty from its internal criminal law. Therefore, Armenia can accede to the Protocol, which is an essential and symbolic step towards the ratification of the Protocol by abolitionist countries.

Ratification of the Rome Statute of the International Criminal Court

Our organisations call for the ratification by the Republic of Armenia of the Rome Statute of the International Criminal Court.

Recommendations

- to carry out a thorough and independent investigation into the ten deaths which occurred during the March 1 events;
- to release immediately political prisoners;
- to implement measures to keep the practice of pre trial detention in conformity with the legislation and international standards, in particular so that pre-trial detention is the exception rather than the rule;
- not to use evidence obtained through maltreatment in criminal proceedings, in accordance with Article 6 of the European Convention on Human Rights and Article 15 of the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment;

¹³ Joint Statement of Civil Society Institute, Helsinki Committee of Armenia, Foundation Against Violation of Law, Collaboration for Democracy Centre, Helsinki Citizens' Assembly Vanadzor office, March 25, 2009, <http://www.hra.am/en/point-of-view/2009/03/25/statement>

- to develop mechanisms to enable the effective collection of unbiased evidence and reduce the reliance on witness testimonies and confessions in criminal proceedings;
- in cases where evidence against suspects has been obtained through recourse to unlawful methods, to take all necessary steps to ensure that those responsible for using such methods are brought to justice in accordance with the 1990 UN Guidelines on the Role of Prosecutors;
- to ensure the right of the accused in criminal proceedings to be present at the trial hearing, and his right to defend himself in person or through legal counsel of his own choosing in terms of to Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights.
- more generally, to guarantee the right to a fair trial and implement all necessary measures to this effect;
- to conform fully with the provisions of the European Convention on the Prevention of Torture and the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment and to make all necessary efforts, including the improvement of legal, technical and professional resources to ensure that torture and ill-treatment by the Police is eliminated;
- to investigate thoroughly and impartially all the cases of allegation of torture and ill treatment by the security forces, in particular the cases of Levon Gulyan, Sasha Davtyan and his daughters, as well as of Arshaluys Hakobyan; the perpetrators of torture have to be identified and held accountable;
- to make all necessary efforts in order to improve detention conditions so that they reach conformity with the national legislation and with international standards;
- to implement the recommendations on the penitentiary system made by the Group of Public Observers conducting public monitoring of penitentiary institutions and bodies of the Ministry of Justice of the Republic of Armenia penitentiary in 2008;
- to set out a system of juvenile justice, to limit the length of pre trial detention for juveniles, to review conditions in pre trial detention for juveniles and to provide the possibility of continuing their secondary education, and to take measures for preparing and implementing effective reintegration programmes for juveniles;
- to review the legislation regulating the composition and activities of the “Independent Committees on Early Conditional Release from a Sentence or the Substitution of the Remaining Portion of a Sentence with a Lighter Sentence”, to provide more transparency;
- to bring the definition of torture as stipulated in the Armenian legislation into line with Article 1 of the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment;
- to ratify the United Nations Protocol to Abolish the death Penalty;
- to ratify the Rome Statute of the International Criminal Court.

FIDH is a federation of 155 non-governmental human rights organizations operating in more than 100 countries. FIDH has a consultative status before the United Nations, UNESCO, and the Council of Europe, and observer status before the African Commission on Human and Peoples' Rights.

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