PARTNERSHIP FOR OPEN SOCIETY

ARMENIA'S ENP IMPLEMENTATION IN 2011

PARTNERSHIP FOR OPEN SOCIETY PERSPECTIVE

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Preface

In this volume, we are presenting the fifth consecutive monitoring annual report of the European Neighborhood Policy (ENP) Action Plan implementation. The report covers AP implementation in 2011, the last year of the 5-year Action Plan.

The year 2011 featured a series of transitions as political earthquakes shook the ground beneath the feet of Arab dictators and appeared to reaffirm confidence in democracy. In contrast to political changes sweeping the EU's Southern neighborhood the Eastern neighborhood has (with the exception of Moldova) witnessed an alarming trend of authoritarian consolidation. Conforming to this trend the Armenian government continues to ignore the need for fundamental change and we witness a tightening of the monopoly of power amid intensifying efforts to maintain state capture.

While there was more backsliding than improvement during the five years of EU-Armenia relations within the ENP framework, in 2011 gains were registered in some key reform areas such as freedom of assembly and access to justice and fair trial. Fundamentally, however, the quality, depth and logic of reforms serve as a bleak reminder that the government lacks real commitment to democratic institutions, rule of law and human rights standards. With lack of political will to pursue effective reformist steps, Armenian policy makers are placing an increased priority on legislative-drafting activities, particularly, illusory box-ticking reforms that in practice fail to transform the domestic political landscape.

Unfortunately, this fifth monitoring report leaves the reader with an argument similar to last year's reporting. It rates the quality of reforms in key areas as insufficient at best and regressive at worse. Recent discussions in Brussels that have shifted the ENP review process from the margins to the centre of the EU foreign policy agenda reflect the EU's struggle to preserve its status in the neighborhood. The question of to what extent the ENP objectives have been met is an important one in itself for obvious reasons, specifically considering the substantial effort and resources the Policy had used, as well as the expectations it raised.

In the context of an overall economic and governance crisis, high emigration rate and continuous unhealthy undemocratic practices, genuine implementation of ENP commitments might have reversed authoritarian consolidation in Armenia. The current trend of reform imitation is particularly alarming and disturbing in the lead up to closing the negotiations of the Association Agreement and the upgrading of relations through the Eastern Partnership. We do believe that there is still time to yield valuable lessons from the continuous underperformance within the ENP reform agenda and the negative impact of inconclusiveness of democratic and economic objectives. Both the EU and the Armenian government would do well to adjust their attitudes towards the reform process in general, and provide coherent and nuanced safeguards for its conclusiveness.

While this report provides topical analysis and progress assessment of ENP priority areas, here we would like to stress that the functioning of political institutions generally falls short of democratic standards. The most positive development in 2011 is the long-awaited release of all political prisoners, which fulfills a fundamental opposition demand and, therefore, paves the way for moving beyond the socio-political polarization, which has characterized political life in Armenia since 2008. The

development and passage of a new Electoral Code has been the only measure undertaken to guarantee free and fair elections following the 2008 electoral failure. However, the Code does not address any of the key problems of "voters' lists", tabulation, and administrative abuse, toppling the myth about this government's commitment to competitive and democratic elections and clearly demonstrating determined political will to prioritize status quo of partial reform over tangible political transition. In addition, as feared and predicted earlier, the changes in the broadcast legislation of 2009-2010 have had a substantial negative impact on the outcome of frequency tender and evermore decreased diversity on air. Less scalable and yet equally indicative is the draft of the Law on Freedom of Conscience and Religious Organizations that repeatedly fails to meet international standards and guarantee fundamental rights.

The 2011 monitoring report covers the following areas: reform of the judiciary, fight against corruption, human rights and fundamental freedoms, gender equality and domestic violence, civil society, media freedom, economic development, tax administration, customs and environment. It ends with consolidated recommendations.

The analyses and recommendations compiled in this document have been prepared with the support of the OSF- Armenia by the following experts:

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ENP AP Priority Area 1: *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

REFORM OF THE JUDICIARY

Overview of the Situation

In 2011, separation of powers continued to remain problematic, as there are no genuine safeguards for independence of judges and prosecution. The problem persists in both legislation and practice. The executive continues to have leverage in exerting pressure on the process of judicial appointment, sanctioning and dismissal. Implementation of judicial decisions, particularly against the executive, remains an area of concern. Such dependence raises doubts as to the possibility of having a fair trial. While legislative amendments removed investigative functions from the Prosecutor's office, in reality loopholes allow the procuracy to influence investigation process. Amendments were passed in first reading of the Law on Advocacy regulating free legal aid, but it still does not provide effective access to justice for most vulnerable groups.

The major development of the year was the initiative of the government to embark on the development of a new draft of the Criminal Procedure Code (CPC). The new Code aims at solving the following critical issues: raising the role and significance of the judicial power and the Court in criminal justice establishing a court-centered criminal procedure, providing a balanced protection of public and private interests during investigation and conclusion of criminal cases; establishing practical mechanisms for an effective justice system and ensuring fair trial, guaranteeing protection of rights and freedoms of individuals involved in criminal procedures, and elaborating equal and transparent mechanisms for limitation of those rights as per international standards, etc.

The Concept of a new Criminal Procedure Code was approved by the Government on March 10, 2011. Drafting of the General Part of New Criminal Procedure Code has also been accomplished. The text is posted on the official website of the Ministry of Justice. However, no public debate on the draft has been organized, nor has it passed any review by international experts.

At the end of 2010, the European Court for Human Rights delivered twenty-five judgments concerning Armenia, of which twenty-four found at least one violation of the European Convention on Human Rights, primarily of the right to a fair trial under Article 6 (34%), and one case found no violation.[1]

JUDICIAL INDEPENDENCE

Action Plan: Specific Actions under Priority Area 1

Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government.

[1] http://www.echr.coe.int/NR/rdonlyres/E0FB96BF-90B6-439C-BCB1 5FF86CD0029B/0/PCP_Armenia_en.pdf?

Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006).

ENP Implementation Tools, measure 25: *Effective continuation of the reforms foreseen by the Constitutional amendments, including better separation of powers.*

ENP Implementation Tools, measure 27: *Take practical steps to ensure independence of the judiciary and increase public trust towards the judiciary.*

Dependence of the judiciary on the executive remains a problem. The Judicial Code vests the President with undue authority in appointment, promotion and in taking disciplinary measures against the judges[2]. Loopholes in the legislation allow the executive to exercise control and put pressure on the judiciary.

The mechanisms for judicial accountability and independence in adjudication are not adequate. Criteria for starting disciplinary proceedings against judges are broadly formulated resulting in an arbitrary application of sanctions[3]. Disciplinary measures are not in favour of achievement of legitimate aims but rather are used to "punish" judges who attempt to go against executive's control. A recent example of arbitrariness of using disciplinary measures was removal of Judge Samvel Mnatsakanyan, who granted the defense attorney's request for bail rather than use detention in a specific case[4].

Strong links exist between judiciary and prosecution as close relatives serve in both camps and there is no discrete conflict of interest regulation between these two structures. All newly appointed judges in 2011 were former prosecutors or police servicemen. The Council of Justice by its decision on 15.07.2011 endorsed a list of judicial candidates for civil and criminal specialization. Out of nine candidates for criminal specialization, eight are former prosecutors or investigators. Among them is the son of the Prosecutor General, and the son of the Deputy Head of National Security Service. Such dependence is also illustrated by the rate of acquittals, which is not increasing and stands at less than 1% of all rulings.

Dependence of the judges of first instance and appeal courts over the Court of Cassation remains problematic as well.[5] Other issues of serious concern are non-transparent judicial administration, composition of judicial councils, competences of self-governing bodies and participation of judges in these bodies.[6]

RECOMMENDATIONS

- Improve the procedure for selection and nomination of candidates of judges as well as appointment of judges by removing President's discretionary power in endorsing the list of judges from the Judicial Code;

[2] For detailed information please refer to Partnership's 2010 report on ENP Implementation www.partnership.am
[3] Ibid.
[4] Later the body of inquest confirmed innocence of the accused and terminated criminal proceedings against that person. However, Judge Mnatsakanyan was subject to most serious disciplinary measure for "the failure to reason court decision".
[5] The situation remains unchanged since the last report, for more information please refer to Report on ENP implementation on www.partnership.am
[6] For detailed analysis see Legislation of the Republic of Armenia on the Judicial Power in Light of the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.

- Modify the grounds for disciplinary liability of judges by establishing clear-cut and precisely defined criteria in compliance with well-recognized international standards and best practice;
- Introduce a conflict of interest procedure for removal of dependence and links between judiciary and prosecution;
- Ensure internal independence in adjudication by removing pressure on first instance courts by the Court of Cassation. Preclude the Court of Cassation from giving legal qualification to the nature of "violation of law" by a lower court, which should remain within the exclusive competence of the council of justice;
- Establish a mechanism that will ensure equal participation of judges in self-governing bodies, clarify the competences of these bodies, as well as the role of court chairs, which should be limited to representative and court managerial functions;
- Avoid court presidents from interfering with the adjudication by other judges by imposing disciplinary sanctions on them for such interference.

PROSECUTOR'S OFFICE

Action Plan: Specific Actions under Priority Area 1

Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers.

ENP Implementation Tools, measure 30: *Implementation of reforms in judicial system and modernization of Prosecution Law aiming at strengthening prosecutors' independence, impartiality, procedures of appointment and promotion.*

Since the Constitutional Amendments of 2005, the reform process in Armenia was aimed at creating an independent prosecution. The major part of the reform was to be aimed at removal of investigative functions from the prosecutor's office. Whilst there have been legislative improvements, these functions de-facto were not removed and investigators lack considerable degree of functional independence from the prosecutor. Simultaneously, the prosecution does not stand as independent and holds excessive powers in protecting state interests in civil and administrative matters, which leaves room for interferences and arbitrariness.

Although a new, formally independent Special Investigative Service was developed,[7] in fact it operates under the full control of the Prosecution General[8]. There has been no progress in this area in 2011.

There have likewise been no improvements of the Law on Operative Investigation and it does not prescribe safeguards to protect the rights, freedoms and lawful interests of persons subjected to operative investigative actions. [9]

RECOMMENDATIONS

[7] The function of this Service is to conduct pre-trial investigation of cases related to crimes committed by or with participation of senior officials of legislative, executive and judicial authorities or persons performing special state service in connection with their official position, as well as cases related to the electoral processes

[8] For more information please refer to ENP Implementation 2010 report on www.partnership.am

9 Ibid.

- Ensure independence of prosecution from other state bodies and individuals;
- Ensure de-facto elimination of investigative functions from the Prosecution and functional independence of investigators;
- Ensure independence of Special Investigative Service;
- Accelerate the finalization of the Criminal Procedure Code and its adoption;
- Clarify the role and functions of the Prosecution in protecting state interest.

EFFECTIVENESS OF IMPLEMENTATION OF JUDICIAL ACTS

Action Plan: General objectives and actions: Political dialogue and reform: Judicial reform

Increase the effectiveness of implementation of judicial acts envisaging alternative bodies (services) for enforcement of these acts.

ENP Implementation Tools, measure 27: *Ensure effective execution of court decisions pursuant to national legislation.*

ENP Implementation Tools, measure 27*: Modernization of service for the compulsory enforcement of judicial acts and adjustment to EU standards.*

Enforcement of a judgment given by any court is regarded as an integral part of "fair trial." Although there is a Service for Compulsory Enforcement of Judicial Acts[10] (Service), it fails to execute court decisions, particularly in the cases where one of the parties is the executive.[11]

Analysis of legislation and practice demonstrates that major cause for this Service's failure is its weak organizational structure, as well as ineffectiveness of criminal and administrative liability for non-enforcement. As it is established within the Ministry of Justice, it acts within the overall control of the executive and judiciary does not have any authority over it. Despite the fact that some legislative amendments were made clarifying the terms for carrying out decisions, there are no positive changes in practice. After the elapse of period for execution of court decisions, responsible state officials are not being held liable for their misconduct[12].

As concerns the execution of court decisions in criminal matters, the legal framework is patchy. The execution of court decisions adopted in the framework of judicial control over the pre-trial stage (appeals against unlawful acts, actions and omissions of investigative authority) is not regulated by law. This means that in practice execution of final court decisions on the mentioned matters is heavily dependent on the "good will" of the investigative authority. If the investigator fails to execute the court decision, obliging the investigator to provide to the victim copies of all procedural decisions, the only mechanism that can induce him/her to do so is the threat of criminal liability. However, this mechanism

10 In 2004, the Law on the Service for compulsory enforcement of judicial acts was adopted, on the basis of which a Service was established within the Ministry of Justice.

11 For more information please refer to the Summary of Monitoring Report on Administrative Court conducted by Protection of Rights Without Borders NGO http://prwb.am/wp-content/uploads/2011/05/Zekuyc-HH-varchakan-ardaradatutyan-vorosh-himnaxndirneri-veraberyal.pdf; p. 122

12 For more information refer to the English version of the summary in the monitoring report by Protection of Rights Without Borders NGO http://prwb.am/wp-content/uploads/2011/05/Zekuyc-HH-varchakan-ardaradatutyan-vorosh-himnaxndirneri-veraberyal.pdf

also appears to be ineffective, as there is no independent investigation against the abuses of investigative authorities. In fact, police and prosecution are reluctant to open criminal cases against their own colleagues.

RECOMMENDATIONS

- Ensure effective execution of court decisions in civil and administrative matters by modifying the institutional structure of the Service for Compulsory Enforcement of Judicial Acts
- Increase the role of the judiciary in enforcement of judicial orders by establishing a procedure for immediate execution of the order through the judiciary where possible;
- Reinforce criminal liability for non-execution of court decisions, especially for persons acting in an official capacity and responsible for the execution.

FREE LEGAL AID

Action Plan: Specific Actions under Priority Area 1

Improve the legal and particularly free legal aid system by improving and strengthening the system of advocates and develop a school of professional practice for young graduates in law.

ENP Implementation Tools: *Ensure access to justice in line with EU standards (measure 26), expansion of free legal aid (measure 32).*

Free legal aid is regulated through the Law on Advocacy, which does not provide an effective access to justice for vulnerable groups.[13] Despite civil society's push for adoption of a standalone Law on Legal Aid, on 23.05.2011 the National Assembly instead passed in a first reading amendments to the Law on Advocacy. Although the amendments will be a step forward, it will not place Armenia in full compliance with international standards for ensuring access to justice. The expanded list of cases qualifying for free legal aid, is still not inclusive (for instance there is no room for free legal aid for child victims of sexual abuse). On the other hand, the system for the assessment of the financial situation of a person is underdeveloped.

The professional school of advocates has not been established yet. There is no compulsory training for public defenders or other advocates and special requirements for quality assurance are not defined.

Civil society's monitoring of this area reveals problems undermining effectiveness of the right to defense in criminal cases, including unawareness of the right to free legal aid, lack of information on the procedure of application, public distrust towards free legal aid services, delayed involvement of lawyers, extraction of confessions in the absence of lawyers, attorney shadow collaboration with investigators, provision of insufficient quality of legal services by attorneys.

Section 7 of the draft law is devoted to public defense and the Public Defender's Office. However, without structural and institutional changes within the Public Defender's Office, such as increase in the number of staff attorneys, wider availability of public defenders through establishment of regional branches, modification of remuneration schemes, the latter cannot ensure provision of qualified free legal aid.

[13] For additional information please refer to ENP implementation in Armenia in 2010 report on www.partnership.am

RECOMMENDATIONS

- Improve the free legal aid system by adopting a standalone law on free legal aid;
- Promote access to legal assistance by establishing national authority to put into practice reliable legal aid;
- Establish a mechanism for monitoring the quality of services provided by legal aid lawyers.

ENP AP Priority Area 1: *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

CORRUPTION

Overview of the Situation

In 2011, certain important legal acts were adopted and some went into force. The Law on Procurement was adopted on December 22, 2010 and entered into effect on January 1, 2011 and Law on Public Service adopted on May 26, 2011 and will enter into effect on January 1, 2012. Despite of a number of serious setbacks, the new Electoral Code (adopted on May 26, 2011 and entered into effect on June 26, 2011) strengthened mechanisms of prevention of corruption in campaign finance.

On April 11, 2011 GRECO Third Evaluation Round Report on Armenia[14] was published. It has two Themes – Incrimination of Corruption (Theme 1) and Transparency of Party Funding (Theme 2) – and contains 19 recommendations, among them 11 on Theme 1 and 8 – on Theme 2. Armenian authorities shall present a report on the implementation of these recommendations by June 30, 2012. Also, on October 20, 2011, in the framework of Istanbul Action Plan of OECD Anti-corruption Network for Eastern Europe and Central Asia the Second Round Monitoring Report for Armenia (adopted on September 29, 2011 at the OECD Headquarters in Paris), was published.

In this reporting period, a number of high ranking police officers were arrested, among them, notably, Head of the Traffic Police (who was ex officio Deputy Head of Police) and Head of the RA Criminal Investigation Administration. Both were arrested on charges of abuse of power (the first one – also for embezzlement of budgetary funds), however, the trials on these cases are still pending. In 2010 Special Investigation Service (SIS) investigated 63 corruption cases, out of which 28 were sent to court with resolutions on criminal incriminations. Forty one officials were convicted, out of whom twenty-two were police officers, eight were officers of penitentiary institutions and bailiffs, three were officials from the National Security Service, two were from State Revenue Committee (tax and customs bodies), two were from the Ministry of Emergency Management, two were from the Ministry of Nature Protection, one from court and one from local self-administration bodies.[15] For the first half of 2011 the numbers were following: thirty corruption cases were investigated, out of which eleven were sent to court and thirteen public officials were convicted[16].

Despite all these measures taken by the authorities, no positive changes in the perceptions of corruption by different segments of Armenian population were registered. Since 2008 Transparency International's Corruption Perception Index (CPI) for Armenia is slowly, but smoothly and persistently declining from 3.0 in 2007 to 2.9 in 2008, 2.7 in 2009 and 2.6 in 2010 (on the 0 to 10 scale, where 0 is a perception of absolutely corrupt and 10 – of absolutely clean from corruption country).[17]

[14] adopted by GRECO at its 49th Plenary Meeting on December 3, 2010

15 see www.investigatory.am/am/News/item/82

16 see www.investigatory.am/am/News/item/116

17 CPI 2011 data will be released on December 1, 2011.

Action Plan: Specific actions under Priority Area 1

Review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of civil society and business representatives in monitoring implementation

ENP Implementation Tool, Priority Measure 29: *Continue fight against corruption, join international anti-corruption structures, continue the implementation of the international obligations.*

Four specific actions are foreseen within this Measure with each one of them having a concrete output. The only exception is the action on RA draft Law about Making Amendments and Changes to the RA Law on Registration of Legal Persons, which has an output only for the year 2009. [18] For the remaining actions, analysis is below.

Continue meeting requirements of the National Program of Corruption Combat provisions, if required arrange for and carry out additional day-to-day-preventive measures; as a specific outcome the following is mentioned:

- Implementation of the Anti-corruption Strategy 2009-2012 Action Plan
- Implementation of anti-corruption action plans for each area mentioned in the Strategy, stemming from the Anti-corruption Strategy and Its Action Plan

The government neither posted nor published any official information on the implementation of the measures enlisted in the 2009-12 Action Plan of the national Anti-corruption Strategy. This is a violation of the government's obligation by the named Action Plan (see Measure 120.2) to regularly submit reports on the implementation. As of October 28, 2011 the relevant pages of the government web-site (www.gov.am) still contain information on the drafts of the new Strategy and Strategy Implementation 2009-12 Action Plan, and activities carried out during the implementation of the previous (2003-07) Strategy Action plan (see http://www.gov.am/am/councils/reports/2/) and the official texts of the adopted new Strategy and its Action Plan(see http://www.gov.am/am/anticorruption/).

At the same time, according to OECD Second Round Monitoring Report on Armenia[19] two monitoring reports were developed after the adoption of the Anti-corruption Strategy and its 2009-12 Action Plan. One was for the first quarter of 2010 and the other was the 2010 annual report. So far, neither of them have been made public. In addition, there was no public information on the meetings of the Council on the Fight against Corruption and Anti-Corruption Strategy Monitoring Commission. Neither the Council nor the Monitoring Commission regularly met during the reporting period. According to the OECD Second Round Monitoring Report on Armenia, the Council met once on December 12, 2010. The Monitoring Commission also met once – on August 30, 2011. There is no information in print media about these meetings.

[18] The mentioned draft law was adopted by NA on December 21, 2010 and entered into effect on January 1, 2011. The significance of the introduced changes and amendments is that the legal persons now can be registered based on the "one window" principle, meaning that all necessary documents for their operation they will receive from one place, namely, the corresponding territorial unit of the RA State Register.

[19] see http://www.oecd.org/document/17/0,3746,en_36595778_36595861_37187921_1_1_1_1,00.html

The government still does not establish the permanent body (Secretariat) affiliated to the Council on the Fight against Corruption, foreseen to be established by Measure 123.3 of the Action Plan at the beginning of 2010. Thus, one of the actions from the **Specific Action under Priority Area 1,** namely, on the review of the progress made in the implementation of the Action Plan with active participation of the civil society and businesses in its monitoring was failed.

RECOMMENDATIONS

- Update relevant pages on anti-corruption at the Government web-site – www.gov.am;
- Publish the Report on the implementation of the 2009-2012 Anti-corruption Strategy Action Plan;
- Create permanent structure, as foreseen by the 2009-2012 Action Plan, to monitor the implementation of the Action Plan, coordinate the implementation of the Action Plan measures by state institutions and involve civil society in its monitoring;
- Develop and publish action plans for the areas mentioned in the Anti-corruption Strategy;
- Start the development of new Action Plan.

Adopt RA Draft Government Decree About Setting the Order for Assessing Consequences of Enforcing Normative Legal Acts and Assessing Impact of Regulations in Anti-Corruption Domain. The specific outcome mentioned is implementation of the decree.

The mentioned Decree was adopted by the October 22, 2009 Government Decree N1205-N and was promulgated on January 1, 2011. As it can be seen from the relevant page on the government sessions (https://www.e-gov.am/sessions/) it seems that anti-corruption impact assessment is carried out regularly (though not always).[20]

RECOMMENDATIONS

- Establish similar unit on anti-corruption impact assessment also in the National Assembly;
- Cooperate with civil society organizations in conducting of the activities of such units;
- Make the corresponding references (see *Footnote 13*) more informative, mentioning specifically how the *possible* corruption risks are addressed in the draft.

Draft and adopt RA Draft Law About Organization and Implementation of Control at Individuals' (natural persons) and Draft Government Decree About Approval of the Order for Substantiating Availability of the Property Subject to Be Declared by Declarant, the Right on the Property Ownership, Source of Income and Its size: the specific outcome for this measure is:

- Legislative regulation of the integrated process of control over accuracy, reliability and integrity of data contained in declarations of property and incomes, and of rights and duties of persons participating in the process of control over legislation which regulates declaration of property and incomes by declarants.

[20] The examination of the www.e-gov.am/sessions page reveals only that the drafts of the Government decrees to be discussed and adopted at the forthcoming Government meeting are supplemented with a short reference saying that the mentioned decree does not contain corruption risks.

With the adoption of the Law on Public Service (May 26, 2011), the RA Law on the Declaration of the Income and Property of Physical Persons will be revoked effective from January 1, 2012. Starting from 2012 declarations on income and property will be submitted only by high-ranking public officials[21] and persons related to them. These declarations should be submitted to the Commission on the Ethics of the High-Ranking Public Officials. The Law on Public Service regulates[22] establishment and functioning of this Commission stipulating that is should be established no later than November 1, 2011 and operate starting January 20, 2012.

There are a number of concerns with independence and powers of the Commission, disclosure and public availability of data. The law states that the Commission should be an independent body, whereas in practice members are appointed by the President, which raises doubts as to the Commission's true independence. It is also the President, not the Commission, who will be imposing sanctions in cases of violations.[23] Disclosure of data from declarations will be regulated by a government decree not the Law. This creates additional leverages for non-disclosure of important information. Article 37 of the Law does not provide adequate guarantees for public access to the declarations registry. Also, there are no clear mechanisms for citizens to inform the Commission about undeclared income and/or property of high-ranking officials.

RECOMMENDATIONS

- Amend the Law to make public the registry of declarations;
- Establish mechanisms to ensure that citizens also can inform about the undeclared income or property of high-ranking officials;
- Amend the Law in order to oblige those high-ranking officials, who receive reports on ethical violations, take sanctions against the offenders;
- Amend the Law to allow judicial and executive branches to not only nominate, but also appoint some of the members of the Commission on Ethics of High-Ranking Public Officials.

To conclude, so far the political will to fight corruption claimed by Armenian authorities has been limited to adoption of a number of legal documents, including those prescribed by Armenia's international obligations. It is obvious that the lack of implementation and enforcement are correlated with the root causes of systemic and widespread corruption in Armenia, on which Transparency International Anti Corruption Center is persistently cautioning.

[21] defined by Article 5 of the Law on Public Service

22 Chapter 8 (Articles 38-44)

[23] According to Article 44 of the Law, resolutions on ethical violations, including failure to declare properly the income and property, revealed by the Commission, shall be submitted to the President of the Republic and the direct supervisor of the violator

NP AP Priority Area 2: *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN)*

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Overview of the Situation

The release of political prisoners and opening up of the Liberty Square were long-awaited positive developments of 2011. Despite these developments and government's attempts to embark on legislative improvements, most of the issues identified within last year's report remain valid. Although improvements were made to the Law on Rallies, Meetings and Demonstrations, in practice, the exercise of this right remained an issue.

In 2011 the authorities proposed changes to the Law on Freedom of Conscience and Religious organizations, changes that were highly criticized for being excessively restrictive by human rights and religious organizations as well was the Venice Commission. Despite some proposed improvements in the Law on Alternative Service, two fundamental issues - length of service and truly civilian control over it – remain unaddressed.

No improvement was registered on the human rights situation in closed institutions – penitentiary, police and army. Overcrowding remained a serious issue of concern within the penitentiary system. Lack of access to interrogation facilities of the police precludes civil society's monitoring and revealing of ill-treatment and torture cases. Impartial and public investigation into the non-combat deaths in the army continued to be demanded and expected by the public from authorities.

FREEDOM OF ASSEMBLY

Action Plan: Specific actions under Priority Area 2

Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations.

There is no reference to freedom of assembly in the ENP Action Plan, nevertheless we find this area, and recent developments in this area an important indicator of Armenia's democratic development

The exercise of the freedom of assembly has improved in 2011. The Liberty Square, a traditional site for opposition's rallies, was re-opened after closure for nearly three years following the tragic events of March 2008[24]. As of May, the Armenian National Congress has been regularly holding meetings and rallies in the Square without undue police interference. Despite this improvement, the police continued to intervene and restrict small-scale demonstrations by non-partisan activist groups. To ensure full guarantee of this freedom further improvement of legislation and particularly of practice is needed.

[24] Following the 2008 post-election violence the Liberty Square was closed for a construction of underground parking lot. The square was re-opened in 2010, but ANC's requests for holding events there were rejected

In an effort to bring the Law on Rallies, Meetings and Demonstrations closer to international standards[25] a new Law was adopted on April 14th, 2011 voiding the law of 2004. Despite overall improvement of this legislation, some provisions within the new Law give authorities undisputed discretion to grant or deny permission for conducting meeting and rallies. Particularly, the law contains prohibitions for organization of public events in the vicinity of decision-making bodies[26], creates additional bureaucratic burden for event notification[27] and bans public outreach for prohibited rallies[28].

Despite legislative improvements regulating this field, the practice remains far from internationally accepted standards. Particularly, the government continued systematic restrictions on freedom of movement by blocking the roads from the regions to the capital on the days of opposition's rallies. In the period of September 30 – October 7, during the sit-in organized in the Liberty Square by the Armenian National Congress, regional transportation did not operate properly. According to Helsinki Citizens' Assembly – Vanadzor's (HCAV) data, transportation partially did not work in the period of 30.09.2011-05.10.2011 and fully did not work in the period of 06.10.2011 until 08.10.2011. The official explanation for the block-out was that the transport was either out of order or sent for technical inspection.

Throughout 2011, authorities continued to restrict small-scale demonstrations, which were usually outburst of public discontent with government's new regulations or social developments in the country.Taxi drivers from Gyumri and Vanadzor organized a series of rallies in protest of amendments to the RA Customs Code. On the days of planned rallies, authorities restricted both freedom of movement and assembly by blocking the roads in between these cities. Similarly, skirmishes followed the pickets organized by Yerevan city street vendors as police forced them away from the municipality building claiming that they are distributing the activities of the municipality.

The authorities actively use the "disturbance to ordinary activities of the institution" as an argument to restrict access to the Government building, a traditional venue for small-scale demonstrations and pickets[29]. Cases of intimidation and harassment of outspoken activists through detentions continued, either under the charges of hooliganism and insult to police officers or without any legal justification at all.[30]

The practice of not renting out halls continues as some opposition groups, religious organizations continue to encounter difficulties in securing conference rooms for their events. In several instances

[25] Particularly in specifying that restrictions can only be prescribed by law and in pursuit of legitimate aims, stipulating State's positive obligation to protect assemblies, laying out the principle of proportionality

[26] Article 19(1)(3)) of the law contains a prohibition for organization of mass public in the vicinity of decision-making bodies such as National Assembly, Government building, court buildings if "*organized in such a distance, which threatens their ordinary activities"*. Against the notion that assemblies should be organized in "sight and sound" of target audience

[27] Article 16(3) requires a by Ministry of Culture if planned nearby historical or cultural monuments, where historically most of central venues are located

[28] Article 19(5) of the Law

[29] Currently, this argument is used to restrict access for the activities organized by "The Real Face of the Army" initiative, which evolved in response to outburst of public discontent with the continuous non-combat deaths in the military.

[30]Cases of Lala Aslikyan, Vardges Gaspari, Tigran Arakelyan; Levon Barseghyan and Arno Kur http://www.epress.am/en/2011/10/27/armenia-government-building-blocked-human-rights-activist-detained-by-police.html ; http://www.arminfo.info/english/politics/article/24-10-2011/09-51-00 ; http://www.azatutyun.am/archive/news/20111110/2031/2031.html?id=24386550 ; http://www.a1plus.am/en/politics/2011/09/21/release

when the venue was initially available, later, sometimes at the last moment, it was withdrawn, claiming technical difficulties for the venue's availability. The Sardarapat movement, a non-partisan critical entity, continuously encountered difficulties throughout the year in securing venues for indoor events in Yerevan. Similarly, denials of indoor venues for religious organizations continued, particularly Jehovah's Witnesses who had to cancel events in Vandzor and Yerevan, due to pressure on venue owners and reluctance to rent despite initial agreements.[31]

RECOMMENDATIONS

- Remove prohibitions on holding assemblies nearby governmental buildings; there should be no restrictions on organizing assemblies within "sight and sound" of their target audience;
- Ensure that in principle, all public spaces are made available for assemblies by revising Article 19(1)(3) of the Law;
- Improve the regulatory practice of freedom of assembly by ensuring that reasons for ban of an assembly refers to imminent threat of violence;
- Immediately abandon the practice of restricting freedom of movement on the days of rallies and demonstrations by ensuring unhindered work of public transport;
- Abandon the practice of unlawful detention and intimidation of activists;
- Ensure immediate access to a lawyer and drawing up of protocols without delay following detention;
- Stop the practice of denying indoor venues to critical groups and religious organizations.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

There is no reference to freedom of religion in the ENP Action Plan, nevertheless we find this area, and recent developments in this area an important indicator of Armenia's democratic development

Freedom of thought remained problematic in 2011 in both legislation and practice. For the third time the authorities embarked on legislative changes to the Law on Freedom of Conscience and Religious Organizations, this time by developing a new draft Law[32]. Prepared by the Ministry of Justice, the draft was sent to the attention of Venice Commission without any consultation with civil society or the religious community despite Justice Minister's assurance and public promise to share the draft with stakeholders prior to sending to the Venice Commission.[33]

In general, the new amendments aim to scrutinize every aspect of religious life and communities other than the Armenian Apostolic Church. If passed, these amendments will pose serious restrictions on religious freedom. The amendments include a ban on "soul hunting" which can be punished by imprisonment, denial of registration to small communities, introduction of compulsory registration, limitations on funding to religious communities and registration denials and liquidation made very easy for the Armenian Government.[34]

[31] Forum 18, *"It Would have Ended Badly, For Them and For Us"*; http://www.forum18.org/Archive.php?article_id=1592
[32] The previous two times amendments to the Law were proposed, which were criticized by the Venice Commission . The current draft also received critical feedback
[33] Venice Commission's review of the draft http://www.venice.coe.int/docs/2011/CDL-AD(2011)028-e.pdf
[34] More information is available on Forum 18, http://www.forum18.org/Archive.php?article_id=1593

Religious intolerance does not receive adequate response from the government. The media continues to play an important role in instigation of religious intolerance. In 2010 December Jehovah's Witnesses lodged a court case against Armenian Public Television for defamatory reports aired on the channel.

ENP Implementation Tool, Priority Measure 52: *Evaluate and improve opportunities for alternative service of civilian nature in line with the Council of Europe recommendations*

In mid-2011, the National Assembly embarked on a process of legislative amendments to the RA Law on Alternative Service. Instead of developing a new law that would adhere to international standards in writing and in spirit, amendments were proposed. Although these Amendments would enhance the law's conformity with international standards they do not fully address the main issues, namely establishment of a truly civilian control of the service and length of service. In its assessment the OSCE/ODIHR also pointed out to the need to address these issues.[35] The same amendments were also sent for the review of Venice Commission.

As of November 2011, sixty Jehovah's Witnesses are convicted for refusal of military service on religious grounds and one more person in pretrial detention[36]. In its landmark decision - *Bayatyan v. Armenia* - the European Court of Human Rights ruled that right to conscientious objection is protected under Article 9 of the Convention[37]. Application of this ruling in Armenia is yet to be seen.

RECOMMENDATIONS

- Guarantee freedom of thought by developing and adopting a new Law on Freedom of Conscience and Religious Organizations in line with international standards ; ensure broad consultation with civil society and all relevant stakeholders;
- Give an adequate and timely response to instances of instigations of religious hatred;
- Ensure the right to conscientious objection by adopting a law that guarantees truly civilian service;
- Release currently imprisoned conscientious objectors.

REFORM OF PENITENTIARY

Action Plan: Specific actions under Priority Area 2

Further reform of the penitentiary system in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions

ENP Implementation Tool, Priority Measure 35: *Further reform of the penitentiary system: in this regard, take concrete measures in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN*

[35] http://www.osce.org/yerevan/84996

[36] Jehovah's Witnesses official media website http://www.jw-media.org/arm/20111101rpt.htm

[37] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=887947&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

Committee against Torture, particularly through adoption of a program of actions for the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, as well as through facilitation of public oversight over the penitentiary institutions and preliminary detention facilities.

In 2011, there have been no legislative developments for improvement of the penitentiary system. Corruption, deteriorating conditions, overcrowding, access to vital medication and healthcare, food quality, granting of early conditional release all remained an issue of concern.

On 17 August 2011, CPT released its report[38] on the visit to Armenia from 10 to 20 May, 2010. The report raises and reiterates the concerns identified by the Monitoring Board over Penitentiary, namely the need for a more humane prison system, with improved management and practices. CPT also highlighted overcrowding as an issue with large negative impact on all aspects of prison life – inmates taking turns to sleep, unhygienic accommodation, restrictions on provision of outdoor exercise, all of which creates additional tensions between the inmates and occasionally between prisoners and staff.

Overcrowding remained a serious issue in 2011. In order to reduce the prison population, the government planned on building new prisons – an endeavor delayed due to the global economic and financial crisis. The Presidential amnesty, suggested and approved by the National Assembly on May 26, 2011, only partially addressed the issue of overcrowding. As of September 21, 590 convicts were released from penal institutions and the term of punishment for 424 convicts was reduced[39]. Nevertheless, overcrowding remains the most serious problem in the penal system.

Access to general health services in prisons is problematic due to the limited number of health professionals and adequate equipment. The lack of these services puts the prison population at risk, especially those who continue illicit drug use, unsafe injecting practices and unprotected sex during imprisonment. Harm reduction programs, such as needle exchange and methadone substitution treatment (MST), are limited creating additional risks in the overcrowded and high-risk environment for transition of infectious diseases within the penitentiary system. MST was introduced within the penitentiary system in mid-2011[40]. Currently thirteen detainees receive MST in only two sites (Nubarashen prison and Prisoner's Hospital) and a Commission decides upon enrollment[41]. The demand on MST is higher than the supply, which is not available for opioid-dependent detainees in institutions other than Prisoner's hospital and Nubarashen prison. Moreover, Articles 97 and 98 of the Criminal Code prevent detainees sentenced to compulsory drug treatment from applying for MST as the latter is not seen as a type of compulsory treatment and the detainees will disqualify from receiving such legal remedies as early release, amnesty, etc.

Human rights groups continue to report early conditional release as a problem. The decision to refuse early conditional release by the Commission (established by a Presidential decree) is not subject to an appeal. The criteria for decisions upon granting parole are not clear and leave room for arbitrariness in the work of the Commission.

[38] http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.htm
[39] http://www.hra.am/en/events/2011/09/26/amnesty
[40] Initiative introduced under the Global Fund supported National Programme on HIV prevention
[41] Commission composition from medical professionals – 1 from NGO, 3 from penitentiary and 1 from medical department of Criminal-Executive Department.

RECOMMENDATIONS

- Address prison overcrowding by making efficient use of non-custodial measures;
- Ensure access to health services for inmates by increasing the number of medical personnel, ensuring essential equipment and medications in prisons;
- Extend methadone substitution treatment availability within the penitentiary system;
- Ensure access of injecting drug users to methadone substitution treatment by Amending Articles 87 and 98 of RA Criminal Code and develop effective mechanisms for excluding interruptions and providing continuous treatment to MST patients when they are arrested;
- Guarantee the right to early conditional release by establishing procedural safeguards for the decision on granting, postponing or revoking conditional release in compliance with Council of Europe Recommendations.

ILL TREATMENT AND TORTURE

Action Plan: Specific actions under Priority Area 2
Closely cooperate with OSCE and CoE to reform the police, in order to eliminate the use of torture, other mistreatment and corruption and to set up more trust between police and society.

ENP Implementation Tool, Priority Measure 51: *Secure investigation into ill-treatment and torture, ensure the criminal prosecution of torturers, including in the armed forces, secure practical legal measures for victims suffering from ill-treatment and torture, their compensation and restoring them in their human rights.*

Police System

In 2011, no notable progress was registered within the police system. Police brutality, ill-treatment and torture, unlawful detention and lack of access to investigator's rooms all remained an issue. The practice of detaining persons without immediate drawing up of the protocol continued to be a regular practice, justified by the police that these persons are called in for "a conversation" as opposed to being detained. In many instances, such "conversations" lasted up to three hours without protocols and without access to a lawyer. Such arbitrariness of the system and continuation of this practice increases the risk of ill-treatment.

In its 2010 report on Armenia CPT recommended that Armenian authorities deliver a firm message of "zero-tolerance" of ill-treatment. At the same time, the attitude of senior police officials leaves doubt on their willingness to follow that recommendation. Despite the acknowledged human rights problem within the police system, senior police officials are reluctant to even consider and discuss the possibility of opening up interrogation facilities of the police for public oversight. Human rights organizations report interrogation facilities as the place for ill-treatment and torture[42], and the only independent civil society monitoring entity over Police detention facilities has repeatedly been denied access to these facilities[43].

[42] Please refer to last year's report at www.partnership.am

[43] The Monitoring Group over RA Police Detention facilities was established in 2006 by RA Head of Police's Decree with an aim to do civic monitoring over detention facilities of the police. For more information on the Group please visit http://policemonitoring.org/index.php?lang=eng

Army

Deteriorating human rights situation in the army was in the spotlight during 2011. The armed forces remain one of the most closed structures in Armenia with frequent reports of abuse, ill-treatment, hazing and non-combat fatalities. Following his visit to Armenia, Thomas Hammarberg, expressed his concerns with the grave human rights situation in the Armenian army[44].

According to HCAV's data, in the period of January- November 20, 2011 thirty-five death cases were registered. Out of these, eleven cases were a result of violation of the ceasefire regime, six were a result of violation of statutory relations, six were due to accidents, seven due to suicide, three because of violation of security rules, one was due to a health condition, and the reason for one of the deaths was unclear. Although the statistics shows a decrease in the number of fatalities within the military, the nature of claimed violations resulting in fatal outcomes is worrying.

Despite the government's stated determination to carry out a full and impartial investigation into the army death cases, nearly all family members of the deceased express distrust towards investigation effectiveness and the prospect that all perpetrators are the in end held accountable. Throughout 2011, the family members of these servicemen have embarked on a series of protests in front of the Government building demanding justice and accountability as the only means to make their concerns heard by the authorities.

Although several structures[45] carry out some form of civilian oversight over the army, civil society has repeatedly been denied access to the army for regular human rights monitoring. Although the Public Council of the Ministry of Defense is comprised of civil society organizations yet their accountability and trustworthiness is an issue; none of the renowned and trusted human rights organizations or activists are engaged in that Council. The practical oversight of these institutions remains very limited and none of them have reflected on the public's discontent with the army situation, particularly on the non-combat deaths, or pledged more scrutiny in their oversight function

At the same time, in mid-2011 the Ministry of Defense gave access to monitor army regiments to a newly established civic initiative called "We Will Not Be Silent". The Ministry of Justice did not back up this decision with any reasoning or reporting procedure and the initiative has no expertise or practice of monitoring closed institutions. While giving access to this one group may be regarded as a positive development, access should be given to a broader group of NGOs with the competence in monitoring closed institutions. Those doing monitoring should also have substantive training and knowledge of human rights standards and experience in monitoring of closed institutions.

RECOMMENDATIONS

- Adopt a strategy of "zero-tolerance" of ill-treatment or torture by guaranteeing full and impartial investigation into allegations of torture, punishment of officials committing torture;
- Ensure that the protocol be drawn up without delay following detention with reference to time of detention and of admission to police establishment;

[44] Commissioner's report is available here https://wcd.coe.int/ViewDoc.jsp?id=1784273

[45] Human Rights Defender, Public Council under the authority of the Ministry of Defense, the Standing Committee on Defense, National Security and Internal Affairs of the National Assembly

- Ensure access to a lawyer from the earliest stage of deprivation of liberty, as suggested by ECtHR jurisprudence access should be guaranteed irrespective of any interrogation;
- Extend the mandate of the Public Monitoring Board over RA Police Detention Facilities to include all premises within the police where persons may be kept;
- Increase army transparency by establishing a civil society body to monitor human rights situation in armed forces based on the positive experience of Penitentiary and Police monitoring groups.

GENDER EQUALITY AND DOMESTIC VIOLENCE

Overview of the Situation

In May 2011 the National Assembly of Armenia took an important step in the direction of improving the legislative environment with the aim of reducing oppressive gender hierarchies at the level of policy making. Successful advocacy by women's rights NGOs led the National Assembly amending Article 108 of the Electoral Code of the Republic of Armenia that now guarantees that one gender does not exceed the 80 % limit in the party lists during the Parliamentary elections. Therefore, this provision ensures 20 % quota for women's representation in the party lists. The 20% gender quota also applies to the representation of women in Yerevan Council of Elders. Another positive development was recorded in May 2011 when the government adopted a 2011 action plan and an implementation strategy for the Gender Policy Concept. This represents a significant step forward in the promotion of gender mainstreaming since the local government structures are to set up gender policy units to tackle inequalities on the policy and legislative levels. However, despite the above-mentioned legislative efforts by the government to fulfill the 2009-2011 measures of the ENP Action Plan, the existing alarming gender relations and structural violence in social, economic, and political areas continue to keep women in subordinate position.

Fundamentally, women suffer disproportionately from violence in the private sphere as well. Given the fact that the government does not recognize violence against women as a human rights violation involving state responsibility, the issue remains unaddressed on a systemic level and no comprehensive steps are being taken today to prevent violence or bring perpetrators to justice. While the authorities have made an effort to tackle the most pervasive form of gender-based violence by designing a Strategic Action Plan against Gender-Based Violence (GBV) during 2011-2015 and the National Action Plan to Combat GBV for 2011, the Law on Domestic Violence is still pending and the state referral system for identification and provision of services to victims of domestic violence is missing.

GENDER EQUALITY

Action Plan: General objectives and actions: Political dialogue and reform: Strengthening of respect for human rights and fundamental freedoms

Continue efforts to ensure the equality of men and women in society and economic life by implementing the adopted "National Plan for Improving the Status of Women and Enhancing their Role in Society."

ENP Implementation Tools, measure 53.B.30: *Adopt a Concept Paper on National Gender Policy and implement measures towards improvement of legal relations in this area;*

ENP Implementation Tools, measure 53.B.30: *Submit the draft Law on Ensuring Equal Rights and Opportunities for Men and Women to the National Assembly of Armenia by the government of Armenia*

As part of its five-year long commitment to gender equality within the framework of the ENP Action Plan, in 2011 the government of Armenia designed an action plan for the implementation of the Gender Policy Concept and strategic plan for 2011-2015, which so far has not succeeded in adjusting policies in practice and providing strong grounds for equal social inclusion in the policy making process and labor

market. Women remain under-represented in local and national politics, and are systematically excluded from the leadership or managerial positions. In 2011 a negative trend was registered in the political participation of women in the legislative branch since the total number of female MPs fell from 9.2 % to 8.6 %. Given the fact that effective measures are not being taken to challenge the political orthodoxy and gender imbalance in municipal and local governance structures, the number of women in leadership positions remains the same. Moreover, the disparity between male and female policy makers is reinforced in the capital city, where there are no female representatives among 5 deputy mayors and 10 municipal authorities.

Women are under-represented in managerial positions in workforce and, on average, earn 60 % of men's earnings. Horizontal and vertical segregation in the labour market continues to obstruct equal distribution of economic power forcing women choose caring professions or "light" occupations. Fundamentally, the government has not done much to meet its obligations under section 119 of the Implementation Measures on female unemployment that remains alarmingly high – with more than 60 % among economically active women in age group of 30-39. Increased participation of women in the service and business sector does not actually enhance women's position in the workforce, but rather puts them in a vulnerable position because of the absence of written contracts. Gendered constructions of the meaning of labor that characterize women as supplemental wage earners continue to reinforce the outflow of women from well-paid jobs, especially in the financial and banking areas. The failure to adopt the law on Ensuring Equal Rights and Equal Opportunities for Men and Women, which is still being reviewed by the National Assembly, brings into question the authorities' commitment to gender equality.

By sapping women's potential to occupy leadership positions, undermining their confidence, limiting their choices, and compromising their right to engage in the policy making process, gender-based discrimination deprives the society of women's full participation serving as a direct break on socio-economic development and democratic transition.

DOMESTIC VIOLENCE

ENP Implementation Tools, measure 53.B.30: *Prevent and combat family violence by determining relevant prevention measures and punishment*

While the Law on Domestic Violence was to be adopted in 2010 with other legal acts ensuring its enforcement in 2011, it is currently pending at the Prime-Minister's office. Therefore, in 2011 the government failed again to adopt the legislation required by this paragraph.

ENP Implementation Tools, measure 132: *Enhance public awareness and promote the efforts for the prevention of domestic violence*

Activities aimed at awareness raising on gender-based violence through production of leaflets, posters, TV debates and initiation of public discussions have not been carried out although scheduled for implementation in the National Action Plan against GBV in 2011. So far only the awareness raising trainings component has been carried out, which provided grounds for local self-government bodies to design local GBV prevention plans.

Recommendations

- Incorporate gender issues into government's development programs
- Build the capacity of state officials for gender monitoring, gender research, and policy outcomes evaluation
- Adopt the Law on Ensuring Equal Rights and Equal Opportunities for Men and Women and set up a working group to provide a gender analysis of the legal act and implementation measures
- Incorporate the principles of gender sensitive education in public education areas
- Adopt the Law on Domestic Violence (and set up a referral system for victims of domestic abuse)
- Initiate and launch general public awareness raising campaigns to prevent gender-based violence especially in rural communities using public TV channels and social advertising

CIVIL SOCIETY PARTICIPATION

Implementation Tools, measure 19*: Improvement and stimulation of co-operation with NGOs, with application of comprehensive lawmaking procedures and stakeholder participation*

Implementation Tools, measure 42*: Further improve and activate cooperation with public organizations, particularly in the framework of drafting new legislation specifying lawmaking procedures, which will ensure participation of all stakeholders in the process.*

As a specific outcome, ENP Implementation Tools mention developing and adopting the Decree "About Specifying the Order to Organize and Run Public Consultations."

The Decree on Defining the Order to Organize and Run Public Consultations, adopted by the government in March 2010, went into force in 2011. This, however, has not prompted any formal or substantial change in the consultative process or lawmaking procedures, and the assessment of the situation in the 2010 Report remains largely valid. The consultative process is ad-hoc at best and mostly happens for certain cases where there is concerted push for that coming from civil society and international donor community. This happens on some occasions such as the latest stage of the Electoral Code discussion. The format and the timeline, as well as the feedback on such consultative process are case-based and never predictable or accountable.

The only platform for institutionalized and systemic participation of non-governmental entities in high politics, the EaP Civil Society Forum and formation of the National Platform, is in deep crisis[46] and to-date has paradoxically led to further polarization of the Armenian civil society.

Government bodies remain highly dismissive of the society's watchdogging activities. However, while in previous years this attitude did not go beyond ignoring the critique and recommendations by civil society, in 2011 the government's response has become more aggressive and intolerant towards the critical civil society. It is particularly worth noting a concerted attack[47] on a few civic organizations and activists who spoke up against continuing human rights violations in the army and the atmosphere of impunity.

The organizations were publicly accused of lack of patriotism and ill-intended criticism of armed forces by high-ranking officials and threats towards civic activists were voiced. Such discrediting and intimidating attitude hardly contributes to "Improvement and stimulation of co-operation with NGOs," but it certainly undermines freedom of expression and government accountability.

RECOMMENDATIONS

- Amend the decree from March 25, 2010 on Defining the Order for Organizing and Implementing Public Consultations with provisions for real consultations with the civil society, namely establish a simple and transparent mechanisms for consultations and feedback from and to civil society;
- Stop all attempts of intimidation and discrediting of civic activists for fulfilling their mission and duty of holding the government accountable and protecting human rights

[46] http://www.eap-csf.eu/en/news-events/news/steering-committee-statement-on-the-situation-of-the-national-platform-of-the-eap-civil-society-forum-in-armenia/
[47] http://www.tert.am/am/news/2011/10/16/army-incident/

ENP AP Priority Area 2: *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).*

MEDIA

Overview of the Situation

The main developments of the year that had a significant impact on freedom of media and raised much concern of the civil society and international organizations were the unprecedented number of libel and slander cases against print media and the new frequency tender. The latter not only left "A1+" TV company without a license but also resulted in a reduction in the number of existing broadcasters at a time when media is going digital.

The broadcast law, modified a few times in the five-year period, and on June 10, 2010 the last time, still raises many legitimate concerns.[48] The digitalization process[49] so far has only resulted in diminishing pluralism on air by de-facto decreasing the number of TV companies on air. The results of the international audit on the number of available frequencies have not been made public by the government. The results of the audit have not been made public. While the government's position about having one national digital broadcasting network managed by the state is understandable, given the amount of funds it requires, it is not clear why entrance of private multiplexes is excluded at least until 2015.

The new broadcast licenses granted in December of 2010 under the current legislation and valid for 10 years will have a negative impact on freedom of expression, especially in view of the upcoming parliamentary, followed by presidential elections. These licenses[50] were granted through a tender conducted by a problematic[51] regulatory body with no real transparency, no clear licensing criteria and no guarantees of fair competition. The results of the tender are still being contested, as "A1+" took the NCTR decision to court[52]. In view of these processes, the decision of the European Court to close the examination of "A1+" case[53] was heavily criticized by local and international media organizations.

Action Plan: Specific actions under Priority Area 2

Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision;

[48] See the review by the OSCE Representative on Freedom of the Media/RFOM, available on http://www.osce.org/fom/68579

[49] The process was first coordinated by the Ministry of Transport and Communications, then by the Ministry of Economics and very recently transferred to the Ministry of Transport and Communications, has been far from being transparent.

[50] The TV companies that received the licenses do not have sufficient information on the digitalization process or expectations from them, financial or technical. As a positive step, the government allowed the regional TV companies that failed to get licenses to continue analogue broadcasting till 2015 but it is not clear what will happen to them afterwards.

[51] Please refer to 2010 ENP Implementation in Armenia report at www.partnership.am

[52] A group of experts conducted a professional review of all the proposals, revealing numerous problematic issues in the proposals that were selected. The expert review is available on http://www.ypc.am/upload/Analysis%20of%20the%20Broadcast%20Licensing%20Competitions2010_eng(2).pdf

[53] https://wcd.coe.int/ViewDoc.jsp?id=1799109&Site=DG4#P188_4019

Implementation Tools, measure 19 : *Successive steps to strengthen freedom of mass media, open and transparent process affiliation to appoint members of regulatory body in private and public broadcasting sector, license granting, enhance freedom of controlling body, ensure measures to develop mass media freedom and pluralism, take stricter measures to mass media representatives slender and offence, prosecution in cases of violence to mass media representatives, other measures to secure safety in mass media.*

On May 18, 2010 amendments were made in the Civil, Criminal and Criminal Procedure Codes of Armenia that decriminalized libel and insult, a welcome step by the international community. This, unfortunately, became a tool for restricting freedom of expression and media[54].

If previously rare defamation suits were observed, during 2011 the courts received around 25 cases against print media (29 cases since May 2010). In the vast majority of cases the plaintiffs were representatives of political and business elites and the fines claimed for moral damages and inflicted by the courts were the maximum amounts envisaged by the law. [55] This undermines the financial viability of newspapers, putting them on the verge of bankruptcy and is regarded as a new leverage in the hands of the authorities to greatly hamper freedom of expression.

On October 13, 2011 Armenia's Human Rights Defender appealed to the Constitutional Court questioning the constitutionality of the respective provisions of the Civil Code. This was followed by a statement by heads of 8 newspapers on October 19 demanding suspension of the court proceedings on defamation until the Constitutional Court discussed the issue. On November 15 the Constitutional Court upheld the legality of the clause but issued several significant instructions[56] on how it should be enforced by the judiciary. In particular, it ruled that media outlets could not be held liable for their "critical assessment of facts" and "evaluation judgments." It remains to be seen whether the Constitutional Court's comments will translate into changes in practice.

"False crime reporting" still remains in the Criminal Code and lacks proper definitions, which may cause vague interpretation and gives grounds to assert that we do not have a complete decriminalization of defamation.

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[54] In the course of draft law discussion the media organizations repeatedly pointed out that the hasty introduction of the institute of moral damage compensation would create financial risks for the very existence of media, critical towards the authorities.

[55] Only the family of ex-President Kocharian filed three suits against various newspapers. One of the newspapers, *Haykakan Zhamanak*, had to organize fundraising to be able to pay off about 9000 USD for moral damage to three well known oligarchs. Almost in all the cases the plaintiffs demanded and received the highest amount for moral damage compensation, in addition to the court expenses.

[56] The ruling stressed that broadcasters, newspapers and online news services found guilty must be ordered to issue an apology or provide other "non-material compensation" to plaintiffs. If the courts decide that there should be compensation for the moral damage, the amount should depend on the financial capabilities of media outlets facing legal action and should in no way put them at risk of bankruptcy. Earlier, on November 10, 2011, the OSCE Representative on Freedom of the Media in a letter to Armenia's Foreign Minister had expressed concern over the growing number of libel suits filed against Armenia's news outlets, and called upon the authorities to further reform the legislation to adequately protect the media in civil defamation cases.

Action Plan: General objectives and actions: Cooperation in specific sectors, including transport, energy, environment

Switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standard

The digital switchover, a process that started in 2008[57] has been an effort to curtail freedom of expression and freedom of media. First, it served as a justification to impose the Moratorium in 2008 and stop the tenders until 2010, then it was used to justify cutting the number of frequencies for TV companies, referring to an international audit that was never made public. The changes in 2010, introduced to ensure proper implementation of the digital switchover and further improvement of media legislation in line of the country's international commitments, were far from meeting these objectives. The amended version of the Law contains a number of significant shortcomings, mentioned in the ENP Implementation Report in 2010. [58] There are currently two draft laws in the National Assembly (NA) for consideration[59].
The process of digitalization has unfortunately served the purpose of further curtailing freedom of expression and media.

RECOMMENDATIONS

- Amend the provisions on the Civil and Criminal Codes on libel and slander to ensure they are in line with the principles of the European Human Rights Convention to prevent confusion and misinterpretation of the respective articles that may lead to curbing freedom of expression and media;
- Publish the results of the international frequency audit.[60] If the situation proves misrepresented, a new frequency tender must be organized;
- Develop a comprehensive document envisaging the leading principles and activities to be undertaken in the course of digital switchover, as well as after the complete digital switchover in 2015;
- Amend the Law "On Television and Radio" for it to provide solid and real guarantees of pluralism and diversity, during the digital switchover in line with the OSCE/RFOM and civil society recommendations:
    - Provide clear distinctions of regulating satellite, mobile, Internet-provided broadcasting and nonlinear audiovisual media services. Deregulate internet and mobile broadcasting, establish a simplified procedure for satellite broadcast licensing.

[57] It was under the pretext of the digitalization process that Amendments to RA Law "On Television and Radio," prescribing a two-year moratorium on broadcast licensing competitions, were passed in September 2008, cutting off any potential applicant broadcasters from entering the market until 2010 and diminishing limited pluralism in Armenia's broadcasting sector. See ENP Implementation Reports in 2009 and 2010 on http://www.partnership.am/en/European_Neighborhood_Policy
[58] Please see the ENP Implementation Report in 2010 for more analysis on amendments and recommendations.
[59] The first one was developed by a working group under the previous Ombudsman and sent to NA in March 2011. The organizations involved in drafting it worked on it further and submitted another draft in October 2011. This draft addresses the shortcomings of the current law. As of date, neither of the drafts has been included on the agenda or seriously considered by NA.
[60] The response of the government to the civil society request to make the document public was that it had deficiencies and was sent back to the organization that had carried out the audit for necessary corrections.

- Provide legal grounds for establishing non-state operators of digital broadcasting.
- Provide guarantees of independence of NCTR members by reforming the system of member selection and appointment.
- Have a clear provision in the Law entitling NCTR to duly substantiate its decision to grant *and* reject grant broadcast licenses[61].

[61] This was the main demand imposed to the Armenian Government by the ECHR ruling on the case of "Meltex" LLC, founder of "A1+" TV company

ENP AP Priority Area 3: *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

ENVIRONMENT

Overview of the Situation

In 2011 the Government of the Republic of Armenia continued its practice of intensive exploitation of natural resources in contradiction to it its declared course of sustainable development. Most of the environmental and natural resource management decisions continue serving the interests of small groups rather than stem from long–term public interests. Those decisions are generally made behind closed doors without adequate justification and participation of stakeholders. The activities that have negative environmental impacts and are usually illegal are associated with the names of high-level officials.

Implementation Tools, measure 119/E2*: Improve mechanisms for poverty reduction and gradual poverty eradication, ensured implementation of the provisions of the Sustainable Development Program 2008-2021.*

- Develop the action plan for the sustainable development program 2009-2011
- Develop the conceptual framework of the SDP monitoring indicators system and institutional capacity building for implementation of the monitoring

This measure has not been implemented.

Implementation Tools, measure 143/E26: *Follow the best EU experience to envisage and implement necessary reforms aimed at improvement of environmental management*

- Elaboration of drafts of RA Law «On Environmental Review (Expertise)» and regulatory sublegal acts.
- Development of a program on development and enforcement of the strategic environmental assessment system of state environmental review and environmental impact assessment, implementation of the EU requirements pertaining thereto.
- Realization of actions aimed at development of the national legislation to ensure implementation of UN ECE Espoo Convention in accordance with the decision of 4th Conference of Parties to the Convention.

The government developed a draft law "On Making Amendments and Additions to the Law "On Environmental Review," which along with some positive provisions, leaves in place or introduces new significant problems. Public hearings were not organized, as prescribed by the legislation, prior to submission of the draft to National Assembly.

The National Assembly passed in the second reading the draft of a new RA Mining Code, which does not envisage environmental impact assessment (EIA) and respective public participation at an early stage of decision making.

The quality of EIA and the state environmental review remains unacceptably low. Some decision-making bodies issue permits ignoring mandatory requirements for EIA.

Implementation Tools, measure 146/E29*: Enforcement of further economic development, increase in the efforts aimed at poverty reduction and social harmonization, thus contributing to long-term goals of sustainable development*

- Agreement for the vision of the sustainable economic development of the country, implementation of a respective program

One of the main directions of economic growth of Armenia remains mining that develops intensively and extensively disregarding the principles of sustainable development and reducing the opportunities for alternative development of the lands.

Implementation Tools, measure 147/E30*: Activation of efforts aimed at protection of the environment, for the purposes of eliminating environmental degradation and protecting human heath, in accordance with the agreements reached at the International Summit in Johannesburg*

- Implementation of the actions approved by the RA Government Decision of October 30, 2008, #1207-N on "Approval of the Program of Sustainable Development"

The Sustainable Development Program is simply the renamed document for Poverty Reduction Strategic Program (PRSP), hence never served the purpose to guide country's sustainable development. The government does not take active efforts aimed at environmental protection and budget allocations for addressing environmental issues lessen from year to year.

Implementation Tools, measure 148/E31: *Advance in the reforms in the environmental sector, in accordance with EU requirements, Aarhus Convention, Kyoto Protocol, continuation of reporting activity on implementation of provisions inscribed in Kyoto Protocol.*

- Submission of national reports in accordance with implementation of the Aarhus Convention and decision III/6b by the Third Meeting of Parties to the Convention held in Riga on June 11-13, 2008.
- Deepening of reforms in accordance with EU standards in the field of environmental monitoring, development of national environmental indicators and methodology for comprehensive reflection of the state of environment to ensure effective environmental management, based on that development of national state-of-environment reports.

No obvious progress is registered towards implementation of the Aarhus Convention, despite periodic reports submitted by the country as envisaged by the Convention. The 4th Meeting of Parties to the Aarhus Convention held in Chisinau on June 29 - July 1, 2011 endorsed the conclusion of the Aarhus Convention Compliance Committee from December 2010[62] regarding the failure of Armenia to comply with the Convention's requirements in respect with public participation in decision-making regarding Teghut Copper Mine exploitation. The Compliance Committee proposed recommendations to RA Government in this respect. [63]

The government does not pro-actively publish information on the use of natural resources and the general state of environment. Provision of information in a passive regime is limited too due to the

[62] http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-43/Findings/ece_mp.pp_2011_11_add.1_as_submitted.pdf

[63] http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Post_Session/ece.mp.pp.2011.2.Add.1-as_submitted_adv.pdf

deficiencies of legal acts or enforcement practices, e.g. those of RA State Committee of Real Estate Cadastre[64] and RA State Committee of State Revenue[65]. Public participation in decision-making is often imitated, whereas in several cases public hearing reports and citizens' signatures have been falsified.[66] RA Court of Cassation has established a precedent, according to which the possibility for applying to courts in respect with environmental violations or failures in implementation of the Aarhus Convention are obstructed for NGOs as well as individuals. A national state of environment report was planned to be developed in 2011, but it has not been prepared.

Implementation Tools, measure 149/E32: *Improvement of the work of structures in the fields of protected areas, waste management, combating desertification, nature protection, environmental impact assessment.*

- Development and maintenance of a cadastre of protected natural areas, realization of measures aimed on protection of flora and fauna.
- Development and maintenance of registers for items of formation, processing and utilization of waste and locations of its removal.
- Development and maintenance of state cadastre of waste.
- Development of principles of safe management of tailings.

Although certain measures planned by the Action Plan have been carried out, the actual condition in the mentioned spheres and the performance of state authorities does not serve the purpose of protection of protected areas, safe waste management, combating desertification or improving the work of environmental impact assessment structures. Examples include the decision-making on construction of a hydropower station upstream Trchkan waterfall,[67] construction of an entertainment center in the center of "Khosrov Forest" reserve[68], and illegal operation of a breaking-sorting facility on the gold mine in "Sevan National Park."[69] Legislation does not recognize the existence of 'mining waste' and 'tailing dumps' hence leaving out respective legal regulation and taxation.

Fields left out from the list of measures:
Armenian forest resources remain endangered. The continuous increase in the gas price has boosted the illegal use of natural wood and the volume of planned tree-cutting.[70] The Forest Monitoring Center has disclosed a number of discrepancies and inaccuracies in the forest management plans that may contribute to further forest destruction.[71]

[64] RA Ministry of Nature Protection, *Third National Report on Aarhus Convention Realization* (Yerevan, 2010) and RA State Committee of Real Estate Cadastre under RA Government 14/07/2010 letter N SA- 2/2676 to Transparency International Anti-corruption Center
[65] RA State Committee of State Revenue under RA Government 03/09/2010 letter N 27368/6-2 to Transparency International Anti-corruption Center
[66] http://www.azatutyun.am/content/article/2334206.html
[67] http://hetq.am/eng/articles/6219/skinheads-take-oath-to-protect-armenia%E2%258
[68] http://ankakh.com/2011/06/128816, http://www.yerkir.am/am/news/10717.htm
[69] http://tert.hayatsk.am/215.html
[70] http://www.ecolur.org/hy/news/forest/armforest-and-agriculture-ministry-plans-include-to-triple-forest-felling/2104
[71] http://www.ecolur.org/hy/news/forest/state-center-for-forest-monitoring-proposes-to-refuse-from-sanitary-harvesting/2505

RECOMMENDATIONS

- Improve the legal framework for environmental protection ensuring separation of funcitons of policy-making, resource managment, use and oversight and prevention of ambiguities of different legal acts. Simplify legal documents, ensure proper implementation of environmental legislation and improve the enforcement of sanctions/penalties for law infringements according to EU Environmental Liability Directive.
- Improve the environmental assessment legislation, taking into consideration the best international practices in Strategic Environmental Assessment and Environmental Impact Assessment. Bring to life recommendations of respective bodies of the Aarhus and Espoo Conventions. Create effective mechanisms for implementation of SEA Protocol. To revise the hierarchy of decisions in order to ensure environmental impact assessment and effective public involvement in the early stages of decision-making. Implement a pilot for implementation of Espoo Convention and carry out transboundary EIA for the second stage of exploitation of Teghut mine.
- Design methodologies for the assessment of impacts of economic activities on forests, plants, animals and human health, as well as for analysis of costs and benefits. Improve the system of environmental and natural resource payments, particularly applying the 'polluter pays principle' to the mining sector. Use separately the 'command and control' and 'market-based mechanisms' tools of environmental policy making.
- Take as basis of decision-making the principles of sustainable developement and green economics, the existing information regarding available resources and long-term strategic programs. Complete inventories of all resources and publicize in an active regime the comprehensive information about their availability and use. Stop the practice of changing land categories and allocating forests and other public areas for business activities. Include the forest management within the framework of future EU-Armenia cooperation programs.
- Revise Sustainable Development Program to make it consistent with its aims. Develop a system of indicators of the program and conduct regular monitoring. Publicize periodical analytic reports on the state of the environment in a user-friendly format. Ensure the effective operation of the national Sustainable Development Council.
- Enhance the role of the Ministry of Nature Protection in the processes of environment-related decision-making and oversight.
- Develop the scope of opportunities for environmental education by including environmental discipline in the list of mandatory subjects of all educational institutions and providing appropriate resources and modern educational technologies. Carry out periodic training of personnel and introduction of new methodologies/technologies.

ENP AP Priority Area 3: *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

ENP AP Priority Area 4: *Further improvement of investment climate and strengthening of private sector-led growth*

ECONOMIC DEVELOPMENT

According to the Doing Business 2012 global index, Armenia[72], 55th this year, rose six places in the global ranking from 61st in 2011 based on revised methodology and a new indicator on getting electricity, which resulted in recalculation of last year's 48th rank.

The 2011-2012 country competitiveness index of World Economic Forum ranked Armenia 92nd among 142 countries reviewed, as opposed to 98th ranking last year. This index measured the level of local competitiveness (ranked 139), extent of market dominance (ranked 138), effectiveness of anti-monopoly policy (ranked 138), extent and affect of taxation (ranked 132), independence of judiciary (ranked 108).

International Living Journal's Quality of Life Index comparing 192 countries, rated Armenia 110 as opposed to last year's 68.

The volume of foreign trade turnover by the prices of January-September 2011 was 1461.2 billion AMD or 3949.2 million USD, growing by 16.6% compared with the same period last year. The export of goods amounted to 358.8 billion AMD (by FOB prices) or 969.7 million USD, growing by 33.5% while the import amounted to 1102.4 billion AMD (by CIF prices) or 2979.5 million AMD, growing by 12%. The foreign trade balance was negative by 743.6 billion AMD (2009.8 million USD), and, excluding the goods received through humanitarian aid – by 726.7 billion AMD (1964.1 million USD).

In 2011, the RA Service of Statistics amended the procedure for submitting regular reports, the methodology of which is now different from the one applied in the past. Instead of the GDP, the Service of Statistics calculates the Economic Activity Index and, for that matter, it is impossible to carry out a comparative analysis of the GDP data of the same period of this and last year.

The revenues of the RA state budget in the first 9 months of 2011 amounted to around 620.6 billion AMD securing the 9-month program of the RA Government by 100.5%. Out of the above amount 577.6 billion AMD and 92.6 billion AMD, respectively, were the tax revenues and mandatory social fees. In the same period, the state budget expenditures amounted to around 636.9 billion AMD ensuring the full performance of the obligations duly undertaken by the public authorities in the framework of the state budget expenditure programs and only 91% of performance of the RA Government's 9-month program.

Around 50 actions were foreseen in the EU-Armenia ENP Action Plan to improve the economy of Armenia and the bodies in charge of these actions are the RA Ministry of Economy and the State Revenues Committee.

[72] http://siteresources.worldbank.org/ARMENIAEXTN/Resources/110811_03_pr_arm.pdf

The RA Ministry of Economy was in charge of 41 actions, of which 20 were implemented in the course of the first 9 months.

The number of actions foreseen for the RA State Revenues Committee was 10 and not all of them have been completed so far. At the same time, a positive development took place in May 2011 when the 2011-2013 Programs on Tax and Customs Reforms were approved by the RA President Order PO-92. This reform package was envisaged under Measure 175 and 181 of the List of Actions to Ensure the Implementation of the ENP AP. However, it should be noted that a number of actions of the previous program (about 30 %) were not implemented due to the global economic crisis and these actions were not included in the new 2011-2013 reform program.

Part of the reforms initiated during last year remained on paper. Particularly, the quality infrastructures reform strategy of Armenia was approved by the government decision N1693 in December 2010. Nevertheless, up to date the government has not allocated or actually spent any money to implement this objective.

A major development has been registered in customs area in 2011. Based on government's decision N853, in order to establish a customs value, based on the transaction value, the businessman applies to the RA Customs Committee. If the Committee does not reply within two business days, the application is deemed accepted. At a first glance, this may seem as a progressive approach aimed at minimizing administrative burden. In reality, this decision contradicts the Customs Code and international norms regulating customs value, which define the customs value as the transaction value and do not require any additional applications or explanations.

In order to start the negotiations on the Deep and Comprehensive Free Trade Agreement, which forms an integral part of the Association Agreement initiated by the EU, the Republic of Armenia is to meet a number of requirements that are suggested based on studies carried out by the EU. Fundamentally, majority of these requirements were also included in the ENP AP and were subject to implementation in the period of action of the ENP AP.

Recommendations

In order to improve the economic situation of the RA, as well as ensure the enforcement of the legislation regulating the area of trade and economy, it is recommended to:

- Design specific benchmarks for carrying out the programs for improvement of the tax and customs administration (175,181), rather than define legislative compliance criteria;
- Exercise an anti-trust policy, state-of-the-arts system of control over the calculation of the cost price of the provided goods and services supplied to organizations that have a monopoly or a dominating position in the market and introduce a system of progressive taxation of excess profit.

ENP AP Priority Area 4: *Further improvement of investment climate and strengthening of private sector-led growth*

TAX ADMINISTRATION

Overview of the Situation

The strategy for improvement of tax administration via the tax system reform package focuses on the creation of a fundamentally new system of administration. The tax authority is expected to align the administration with the new trends and challenges typical of a given stage of economic development, as well as with the new standards and requirements posed by society. Regarding the implementation of the reform package in recent years, major success is visible in the following areas:

- Streamlining of administration procedures and considerable reduction of reports and documentation;
- Laying the groundwork for an e-governance system and introducing an automated system of risk-based audits;
- Increased access to information needed for taxpayers and major reforms in the arrangements for clarifications and appeals; and
- Perceiving the irreversibility of the reforms and a transition from tight controls and rough compulsion to targeted and flexible administration.

However, pronounced setbacks have been registered in the following areas:

- Effective control over large businesses and transaction documents and informality;
- Improvement of mechanisms for identifying tax evasion cases; and
- Cooperation with the private sector and introduction of the practice of tax mediators.

It is also worth mentioning that, as a consequence of the economic crisis, the imperative of state revenue collection somewhat slowed down the process of reforms.

Action Plan: Specific actions under Priority Area 4

Continue the modernisation and simplification of the tax administration in order to simplify the tax system, to improve coherence and reliability of the system and to reduce corruption risks and shadow economy. Define the necessary administrative structures and procedures, including a fiscal control strategy, audit and investigation methods, co-operation with the tax payers in order to increase tax compliance and effectiveness of tax collection. Identify all needs in terms of financial, human, logistic and IT resources.

Implementation Tools, measure 57.C.3: *Reinforce the IT Capacity of the Tax Authority. The Expected Specific Outcome for 2010 is "100 percent automated processing of the reports received".*

Due to the development of the e-reporting and e-invoicing systems, the time and resources required for these procedures, as well as contacts with the tax authority have been cut significantly. According to the law, starting from 1 January 2011, e-reporting is required of entities that have an annual turnover in excess of AMD 58.35 million.

Implementation Tools, measure 181.F.27: *Full implementation of the system of risk-based selectivity of taxpayers to be audited*

Towards the implementation of this action, the government initiated legal regulation reforms. The amendments to the Republic of Armenia Law on Organizing and Conducting Audits, entered into force in August 2011, introduced a system of risk-based audits, which focuses on sectors and entities of greater risk. In terms of the risk criteria, entities are classified into either the high-risk (audited once a year), medium-risk (audited once every three years), and low-risk (audited once every five years) categories. Moreover, to ensure the transparency of the audit process, the auditing authorities are required to draft by December 1st of each year and post on their website the audit plan for the following year (provided that at least 70 percent of the entities in the list had to be high-risk entities, and at most 5 percent low-risk entities). After the end of each year, but prior to January 20, the auditing authority must publish on its official website a report on the audits and reviews carried out during the preceding year. An automated system of risk-based assessment has been implemented by the tax authority; a plan developed on the basis of this system has been posted on the official website of the State Revenue Committee.[73]

Implementation Tools, measure 181.F.27 : *Reduction of tax arrears by 20 percentage points in 2011*

There is no published information on the tax arrears figures for 2011. The information forms published in the "Tax Statistics" section of the official website of the State Revenue Committee[74] have been changed. However, it is necessary to note that the Republic of Armenia Law on Granting Exemptions from Taxes and Other Mandatory Payments for Organizations and Sole Entrepreneurs allows taxpayers that had tax arrears as of 31 December 2009 to apply to the tax authority and to agree on a timetable for the repayment of their arrears. In case of agreeing on a timetable and actually paying the tax arrears, the entity is relieved of the fines and penalties accrued. Naturally, this measure will significantly reduce the tax arrears. Although the State Revenue Committee[75] does not consider this measure "a tax amnesty," but rather as a rehabilitation program for businesses and the tax system, one has to consider the fact that such measures normally lead to a deterioration of the payment discipline.

Implementation Tools, measure 181.F.27: *Implementation of the risk-based VAT refund software*

The amended Tax Administration Strategy Program provides that by yearend 2011 the automated risk-based system of tax credit refunds, about which no information has been disclosed yet, will be fully operational. According to the findings of the monitoring of large taxpayers,[76] the tax credits as of September 1, 2011 were AMD 86.5 billion, of which AMD 52 billion were VAT credits. During the first eight months of 2011, AMD 14.7 billion of VAT credits were refunded. Considering that the Large Taxpayer Inspectorate served 343 taxpayers in 2010 and 440 in 2011, it is hard to assess the VAT refund patterns definitively. In 2011, the Government of the Republic of Armenia adopted the procedure of accruing and paying penalties for delaying the refund of tax credits beyond the deadlines stipulated by law, which is expected to help to resolve the issue of tax credit refunds.

[73] *http://www.taxservice.am/index.php?menuID=366&tid=2&pid=&lng=9*
[74] *http://www.taxservice.am/index.php?menuID=360&tid=2&pid=&lng=9*
[75] http://www.taxservice.am/index.php?menuID=0&tid=0&pid=customs_news_section&lng=9&url=&newsID=452
[76] *http://www.taxservice.am/index.php?menuID=295&tid=2&pid=&lng=9*

Implementation Tools, measure 180.F.26 : *Increase the share of large businesses in state revenues collected under the Tax Administration Strategy Program*

As of August 2011,[77] the 440 taxpayers served by the Large Taxpayer Inspectorate have secured taxes of about AMD 20.9 billion, which was 58.5% of the total tax revenues collected. It is also worth noting[78] that the largest 100 taxpayers have paid AMD 209.2 billion during the first six months of 2010 and AMD 232.5 billion during the same period in 2011. Moreover, according to the same information, several large companies accounted for the bulk of the increase in tax revenues. Hence, it can be concluded that the higher share of taxes paid by large taxpayers in total taxes is due to the higher number of taxpayers filing with the Large Taxpayer Inspectorate and other reasons that largely did not depend on the administration by the tax authority.

Implementation Tools, measure 180.F.26 *Lenient tax administration of SMEs under the Tax Administration Strategy Program, regulation of the documentation of transactions and self-declaration, and improvement of the quality of taxpayer services*

- With the introduction of the "One Stop Shop" principle from April 2011, the state registration of business is fully performed by the State Register, which also issues the Taxpayer Identification Number;
- Effective from 1 January 2011, companies do not submit their financial reports to the tax authority;
- Resident companies now make quarterly payments of profit tax advances and the minimum profit tax;
- The calculation of revenues paid to non-residents is now presented once a year;
- Employers now present reports on the mandatory social security payments on a quarterly basis;
- Entities that issue only electronic tax invoices are no longer required to file delivery journals;
- The documents submitted to the tax authority have been reduced;[79]
- Six centers for taxpayers services are already operational in Armenia;[80]
- Electronic terminals for the electronic submission of reports and calculations to the tax authority are now operational in the tax inspectorates;
- Payment terminals are now functioning, through which taxpayers can pay the penalties ordered for administrative infringements on the spot, and in the future, they will be able to make all tax payments via these terminals; and
- The taxpayer telephone service center became operational in 2011.[81]

Implementation Tools, measure 29.F.6 : *Legislative regulation of a consistent process of asset and income declaration and controls*

This action was included in the 2010 Activity Program of the Government of the Republic of Armenia back in 2009, but it was removed from the Program in view of the contemplated legislative amendments. The Republic of Armenia Law on the Declaration of the Property and Income of Natural Persons was

[77] *http://www.taxservice.am/index.php?menuID=295&tid=2&pid=&lng=9*
[78] *http://www.taxservice.am/index.php?menuID=295&tid=2&pid=&lng=9*
[79] *http://www.taxservice.am/index.php?menuID=0&tid=0&pid=customs_news_section&lng=9&url=&newsID=452*
[80] *http://www.taxservice.am/index.php?menuID=0&tid=0&pid=customs_news_section&lng=9&url=&newsID=508*
[81] *http://www.taxservice.am/index.php?menuID=0&tid=0&pid=customs_news_section&lng=9&url=&newsID=480*

repealed in 2011. The Law on Public Service was enacted (due to enter into force in 2012), which now requires only a limited number of senior officials to present declarations of property, income, and affiliated persons to an Ethics Commission. This law, therefore, covers issues related to the conflict of interests only for senior officials.

RECOMMENDATIONS

- Implement a risk-based automated system for refunding VAT and other tax credits;
- Adopt a clear framework for managing tax arrears, which should contemplate classification, analysis, and monitoring of arrears, as well as actions to prevent the buildup of arrears;
- Develop analytical capacity parallel to implementation of a risk-based system of taxpayer selection for audits;
- Improve the effectiveness of measures against tax evasion by reviewing the current framework for indirect tax estimation and implement legislation on transfer pricing;
- Expand the range of services rendered by the tax authority electronically, and make the system of electronic payments operational;
- Integrate tax authority's processes with other e-governance systems;
- Make operational the new taxpayer service centers based on unified standards of taxpayer service;
- Improve the mechanisms aimed at reducing informality by means of developing the mechanisms and systems of tax administration, and evaluate their quality

CUSTOMS

Overview of the Situation

All of the last year's comments regarding Paragraph 4.1.1 of the EU-Armenia ENP Action Plan, as well as Measures 175-178 of the List of 2009-2011 Actions to Ensure the Implementation of the ENP EU-Armenia Action Plan remain unchanged[82].

In comparison with previous years, no reductions of paperwork required by the customs authorities for customs registration and controls have been recorded; the minimum control prices continue to apply and to grow consistently; the customs authorities continue the policy of attaching codes and prices to a vast number of goods notably household goods and technology.

In case of a transaction based on invoices, permission by the State Revenue Committee is mandatory despite the fact that the declarer is both the one determining and declaring the customs value and the one importing goods. Often the declarers are required to submit additional documents that are not foreseen by law. The Committee also requires a special permission for customs registrations of exports, which again is not foreseen by law. Apart from this, the Committee requires a special permission to import domestic technologies and other identical goods when the special sub-division issues codes and prices for imported goods, which again is not foreseen by any law.

No steps to simplify the customs registration procedures are being taken. Under such circumstances, the system of the post-clearance checks in conformity with international standards is nothing but formality. It has a punitive nature rather than one supporting and simplifying foreign trade or preventing violations. The customs registration procedures related to the clearance of goods at the border customs checkposts have not been reviewed. Up until now the customs registration procedures in two customs checkposts are different from each other. Queues are an ordinary practice, and reasons for this are the imperfect procedures, numerous documents and forms to be filled in, absence of cooperation with other subdivisions, rather than the exercise of customs controls itself. However, it should be noted that important steps are taken in the direction of full reconstruction of the customs checkposts bordering with Georgia notably Bagratashen and Gogavan. The company that has won the tender for the reconstruction of these customs posts is already known, but no other works are being carried out so far.

Action Plan: Specific actions under Priority Area 4

Strengthen the overall administrative capacity of the customs administration, in particular , to increase transparency of customs rules, procedures and tariffs, to ensure the correct implementation of customs valuation rules, to implement the principles of risk based customs control and post clearance control; provide the customs administration with sufficient internal or external laboratory expertise as well as sufficient operational capacity in the IT area;

Implementation Tools, measure 175.F.21*: improvement of customs administration in accordance with the EU standards and simplification of the customs legislation.*

This implies in the first place enabling good faith transporters of goods to carry out registrations on the basis of simplified procedures. It is high time that such good faith companies are granted the status of an *Authorized Economic Operator* following the example of the European Union. At the same time, it is

[82] Please refer to 2010 ENP Implementation in Armenia on www.partnership.am for more information

necessary to develop fully simplified procedures for such companies when relationships are built exclusively on the basis of mutual trust. A system of electronic declarations has to be introduced.

Implementation Tools, measure 176.F.22 anticipates enhancement of efficiency of customs checks based on a risk assessment, which refers to the balance between procedures in which goods (the red channel) or the documents accompanying them (the yellow channel) must be checked. At the moment, the customs examination of goods is carried out in an unnecessary detail. Frequent are the cases when for a minor mistake that has no impact whatsoever on the customs fees, serious sanctions are imposed on the importer – a fine in the value equal to that of the goods.

- The customs brokerage: the processes of granting of licenses and certificates to customs registration specialists are far from being transparent and tend to be unclear in some cases. The large-scale customs brokers have merged with the officials in the customs authorities while the broker offices belong directly or indirectly to the latter. This leads to unhealthy competition and, as a consequence, to excessively high tariffs for the delivered services (for instance, for the customs registration of one promotional printed catalogue a brokerage fee in the amount of 20-30 000 AMD has to be paid to the customs broker). Often, those who wish to carry our the registration by himself/herself have to overcome serious hurdles and finally have to have the registration carried out by the broker indicated by the customs official.

All of the above-mentioned processes and trends significantly slow down and complicate the movement of goods across the customs border increasing considerably the time spent on the customs registration of goods as well as the costs for businessmen. The majority of costs are of informal nature, which in its turn makes the businessmen resort to the grey.

Recommendations

- Abolish the institute of customs brokerage by a decree and fundamentally transform the self-declaration system in order to exclude the merger of the customs authorities with brokers
- Introduce selective examinations on the basis of a risk management system to exclude unnecessary interferences, and ensure clearance of goods through the green channel without additional examination or documentation checks;
- Determine the customs value based on declarer's criteria with no imposition of control prices;
- Establish the institute of AEO (Authorized Economic Operators) by means of certain simplified procedures taking into account the experiences of the EU countries; introduction of electronic declarations;
- Introduce a system of post-clearance checks complying with the international standards, especially for large importers, to identify the shortcomings and to indicate solutions to these rather than to impose sanctions;
- Improve customs administration by actually defining the powers, rights and responsibilities of the subdivisions accepting the customs declarations and exercising customs controls, clearly differentiating between and delineating their functions;
- Review the whole procedure for customs registration at the border customs checkposts and introduce uniform procedures, state-of-the-art technological schemes, and infrastructures meeting the requirements of the Kyoto Convention, as well as deepen cooperation among all border customs services.

CONSOLIDATED RECOMMENDATIONS

JUDICIAL INDEPENDENCE

- Improve the procedure for selection and nomination of candidates of judges as well as appointment of judges by removing President's discretionary power in endorsing the list of judges from the Judicial Code;
- Modify the grounds for disciplinary liability of judges by establishing clear-cut and precisely defined criteria in compliance with well-recognized international standards and best practice;
- Introduce a conflict of interest procedure for removal of dependence and links between judiciary and prosecution;
- Ensure internal independence in adjudication by removing pressure on first instance courts by the Court of Cassation. Preclude the Court of Cassation from giving legal qualification to the nature of "violation of law" by a lower court, which should remain within the exclusive competence of the council of justice;
- Establish a mechanism that will ensure equal participation of judges in self-governing bodies, clarify the competences of these bodies, as well as the role of court chairs, which should be limited to representative and court managerial functions;
- Avoid court presidents from interfering with the adjudication by other judges by imposing disciplinary sanctions on them for such interference.

PROSECUTOR'S OFFICE

- Ensure independence of prosecution from other state bodies and individuals;
- Ensure de-facto elimination of investigative functions from the Prosecution and functional independence of investigators;
- Ensure independence of Special Investigative Service;
- Accelerate the finalization of the Criminal Procedure Code and its adoption;
- Clarify the role and functions of the Prosecution in protecting state interest.

EFFECTIVENESS OF IMPLEMENTATION OF JUDICIAL ACTS

- Ensure effective execution of court decisions in civil and administrative matters by modifying the institutional structure of the Service for Compulsory Enforcement of Judicial Acts
- Increase the role of the judiciary in enforcement of judicial orders by establishing a procedure for immediate execution of the order through the judiciary where possible;
- Reinforce criminal liability for non-execution of court decisions, especially for persons acting in an official capacity and responsible for the execution.

FREE LEGAL AID

- Improve the free legal aid system by adopting a standalone law on free legal aid;
- Promote access to legal assistance by establishing national authority to put into practice reliable legal aid;
- Establish a mechanism for monitoring the quality of services provided by legal aid lawyers.

CORRUPTION

- Update relevant pages on anti-corruption at the Government web-site – www.gov.am;
- Publish the Report on the implementation of the 2009-2012 Anti-corruption Strategy Action Plan ;
- Create permanent structure, as foreseen by the 2009-2012 Action Plan, to monitor the implementation of the Action Plan, coordinate the implementation of the Action Plan measures by state institutions ; and involve civil society in its monitoring;
- Develop and publish action plans for the areas mentioned in the Anti-corruption Strategy

- Start the development of new Action Plan
- Establish a unit on anti-corruption impact assessment in the National Assembly
- Cooperate with civil society organizations in conducting of the activities of such units
- Provide concrete information as to how the possible corruption risks are addressed in the draft Government Decree About Setting the Order for Assessing Consequences of Enforcing Normative Legal Acts and Assessing Impact of Regulations in Anti-Corruption Domain.
- Amend the Law on Public Service to make public the registry of declarations;
- Establish mechanisms to ensure that citizens also can inform about the undeclared income or property of high-ranking officials;
- Amend the Law on Public Service to oblige those high-ranking officials, who receive reports on ethical violations, to take sanctions against the offenders;
- Amend the Law on Public Service to allow judicial and executive branches to not only nominate, but also appoint some of the members of the Commission on Ethics of High-Ranking Public Officials.

FREEDOM OF ASSEMBLY

- Remove prohibitions on holding assemblies nearby governmental buildings; there should be no restrictions on organizing assemblies within "sight and sound" of their target audience;
- Ensure that in principle, all public spaces are made available for assemblies by revising Article 19(1)(3) of the Law;
- Improve the regulatory practice of freedom of assembly by ensuring that reasons for ban of an assembly refers to imminent threat of violence;
- Immediately abandon the practice of restricting freedom of movement on the days of rallies and demonstrations by ensuring unhindered work of public transport;
- Abandon the practice of unlawful detention and intimidation of activists;
- Ensure immediate access to a lawyer and drawing up of protocols without delay following detention;
- Stop the practice of denying indoor venues to critical groups and religious organizations.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

- Guarantee freedom of thought by developing and adopting a new Law on Freedom of Conscience and Religious Organizations in line with international standards ; ensure broad consultation with civil society and all relevant stakeholders;
- Give an adequate and timely response to instances of instigations of religious hatred;
- Ensure the right to conscientious objection by adopting a law that guarantees truly civilian service;
- Release currently imprisoned conscientious objectors.

REFORM OF PENITENTIARY

- Address prison overcrowding by making efficient use of non-custodial measures;
- Ensure access to health services for inmates by increasing the number of medical personnel, ensuring essential equipment and medications in prisons;
- Extend methadone substitution treatment availability within the penitentiary system;
- Ensure access of injecting drug users to methadone substitution treatment by Amending Articles 87 and 98 of RA Criminal Code and develop effective mechanisms for excluding interruptions and providing continuous treatment to MST patients when they are arrested;
- Guarantee the right to early conditional release by establishing procedural safeguards for the decision on granting, postponing or revoking conditional release in compliance with Council of Europe Recommendations.

ILL TREATMENT AND TORTURE

- Adopt a strategy of "zero-tolerance" of ill-treatment or torture by guaranteeing full and impartial investigation into allegations of torture, punishment of officials committing torture;
- Ensure that the protocol be drawn up without delay following detention with reference to time of detention and of admission to police establishment;
- Ensure access to a lawyer from the earliest stage of deprivation of liberty, as suggested by ECtHR jurisprudence access should be guaranteed irrespective of any interrogation;
- Extend the mandate of the Public Monitoring Board over RA Police Detention Facilities to include all premises within the police where persons may be kept;
- Increase army transparency by establishing a civil society body to monitor human rights situation in armed forces based on the positive experience of Penitentiary and Police monitoring groups.

GENDER EQUALITY AND DOMESTIC VIOLENCE

- Incorporate gender issues into government's development programs
- Build the capacity of state officials for gender monitoring, gender research, and policy outcomes evaluation
- Adopt the Law on Ensuring Equal Rights and Equal Opportunities for Men and Women and set up a working group to provide a gender analysis of the legal act and implementation measures
- Incorporate the principles of gender sensitive education in public education areas
- Adopt the Law on Domestic Violence (and set up a referral system for victims of domestic abuse)
- Initiate and launch general public awareness raising campaigns to prevent gender-based violence especially in rural communities using public TV channels and social advertising

CIVIL SOCIETY PARTICIPATION

- Amend the decree from March 25, 2010 on Defining the Order for Organizing and Implementing Public Consultations with provisions for real consultations with the civil society, namely establish a simple and transparent mechanisms for consultations and feedback from and to civil society;
- Stop all attempts of intimidation and discrediting of civic activists for fulfilling their mission and duty of holding the government accountable and protecting human rights

MEDIA

- Amend the provisions on the Civil and Criminal Codes on libel and slander to ensure they are in line with the principles of the European Human Rights Convention to prevent confusion and misinterpretation of the respective articles that may lead to curbing freedom of expression and media;
- Publish the results of the international frequency audit[83] If the situation proves misrepresented, a new frequency tender must be organized;
- Develop a comprehensive document envisaging the leading principles and activities to be undertaken in the course of digital switchover, as well as after the complete digital switchover in 2015;
- Amend the Law "On Television and Radio" for it to provide solid and real guarantees of pluralism and diversity, during the digital switchover in line with the OSCE/RFOM and civil society recommendations:
    - Provide clear distinctions of regulating satellite, mobile, Internet-provided broadcasting and nonlinear audiovisual media services. Deregulate internet and mobile broadcasting, establish a simplified procedure for satellite broadcast licensing.

    - Provide legal grounds for establishing non-state operators of digital broadcasting.

[83] The response of the government to the civil society request to make the document public was that it had deficiencies and was sent back to the organization that had carried out the audit for necessary corrections.
[83] This was the main demand imposed to the Armenian Government by the ECHR ruling on the case of "Meltex" LLC, founder of "A1+" TV company

- Provide guarantees of independence of NCTR members by reforming the system of member selection and appointment.
- Have a clear provision in the Law entitling NCTR to duly substantiate its decision to grant *and* reject grant broadcast licenses[84].

ENVIRONMENT

- Improve the legal framework for environmental protection ensuring separation of funcitons of policy-making, resource managment, use and oversight and prevention of ambiguities of different legal acts. Simplify legal documents, ensure proper implementation of environmental legislation and improve the enforcement of sanctions/penalties for law infringements according to EU Environmental Liability Directive.
- Improve the environmental assessment legislation, taking into consideration the best international practices in Strategic Environmental Assessment and Environmental Impact Assessment. Bring to life recommendations of respective bodies of the Aarhus and Espoo Conventions. Create effective mechanisms for implementation of SEA Protocol. To revise the hierarchy of decisions in order to ensure environmental impact assessment and effective public involvement in the early stages of decision-making. Implement a pilot for implementation of Espoo Convention and carry out transboundary EIA for the second stage of exploitation of Teghut mine.
- Design methodologies for the assessment of impacts of economic activities on forests, plants, animals and human health, as well as for analysis of costs and benefits. Improve the system of environmental and natural resource payments, particularly applying the 'polluter pays principle' to the mining sector. Use separately the 'command and control' and 'market-based mechanisms' tools of environmental policy making.
- Take as basis of decision-making the principles of sustainable development and green economics, the existing information regarding available resources and long-term strategic programs. Complete inventories of all resources and publicize in an active regime the comprehensive information about their availability and use. Stop the practice of changing land categories and allocating forests and other public areas for business activities. Include the forest management within the framework of future EU-Armenia cooperation programs.
- Revise Sustainable Development Program to make it consistent with its aims. Develop a system of indicators of the program and conduct regular monitoring. Publicize periodical analytic reports on the state of the environment in a user-friendly format. Ensure the effective operation of the national Sustainable Development Council.
- Enhance the role of the Ministry of Nature Protection in the processes of environment-related decision-making and oversight.
- Develop the scope of opportunities for environmental education by including environmental discipline in the list of mandatory subjects of all educational institutions and providing appropriate resources and modern educational technologies. Carry out periodic training of personnel and introduction of new methodologies/technologies.

ECONOMIC DEVELOPMENT

- Design specific benchmarks for carrying out the programs for improvement of the tax and customs administration (175,181), rather than define legislative compliance criteria;
- Exercise an anti-trust policy, state-of-the-arts system of control over the calculation of the cost price of the provided goods and services supplied to organizations that have a monopoly or a dominating position in the market and introduce a system of progressive taxation of excess profit.

[84] This was the main demand imposed to the Armenian Government by the ECHR ruling on the case of "Meltex" LLC, founder of "A1+" TV company

TAX ADMINISTRATION

- Implement a risk-based automated system for refunding VAT and other tax credits;
- Adopt a clear framework for managing tax arrears, which should contemplate classification, analysis, and monitoring of arrears, as well as actions to prevent the buildup of arrears;
- Develop analytical capacity parallel to implementation of a risk-based system of taxpayer selection for audits;
- Improve the effectiveness of measures against tax evasion by reviewing the current framework for indirect tax estimation and implement legislation on transfer pricing;
- Expand the range of services rendered by the tax authority electronically, and make the system of electronic payments operational;
- Integrate tax authority's processes with other e-governance systems;
- Make operational the new taxpayer service centers based on unified standards of taxpayer service;
- Improve the mechanisms aimed at reducing informality by means of developing the mechanisms and systems of tax administration, and evaluate their quality

CUSTOMS

- Abolish the institute of customs brokerage by a decree and fundamentally transform the self-declaration system in order to exclude the merger of the customs authorities with brokers
- Introduce selective examinations on the basis of a risk management system to exclude unnecessary interferences, and ensure clearance of goods through the green channel without additional examination or documentation checks;
- Determine the customs value based on declarer's criteria with no imposition of control prices;
- Establish the institute of AEO (Authorized Economic Operators) by means of certain simplified procedures taking into account the experiences of the EU countries; introduction of electronic declarations;
- Introduce a system of post-clearance checks complying with the international standards, especially for large importers, to identify the shortcomings and to indicate solutions to these rather than to impose sanctions;
- Improve customs administration by actually defining the powers, rights and responsibilities of the subdivisions accepting the customs declarations and exercising customs controls, clearly differentiating between and delineating their functions;
- Review the whole procedure for customs registration at the border customs checkposts and introduce uniform procedures, state-of-the-art technological schemes, and infrastructures meeting the requirements of the Kyoto Convention, as well as deepen cooperation among all border customs services.