

MONITORING OF DEMOCRATIC REFORMS IN ARMENIA

FOREWORD

By becoming a fully-fledged member of the Council of Europe on January 25, 2001, the Republic of Armenia assumed certain commitments as laid down in Armenia's Application for CoE Accession and PACE Opinion No. 221 (June 28, 2000) on the Application (see Appendix 1). Progress towards honoring of these commitments has been discussed in the Parliamentary Assembly of the CoE on several occasions, and resolutions have been passed (see Appendices 2, 3, and 4).

This study, initiated by the Yerevan Press Club (in collaboration with several non-governmental organizations that are members of the "Partnership for Open Society" initiative) in October 2004, is aimed at revealing Armenia's progress towards honoring its commitments and obligations in the field of human rights and democracy since Council of Europe accession; the monitoring gauges performance against not only the actual commitments, but also the resolutions of the PACE concerning their honoring.

The monitoring of each commitment covers the background of the issue, legislative amendments, practice, progress, and suggestions on how to make the reforms more effective. Laws, legal amendments, and various other legal acts adopted since 2001 have been reviewed, alongside with the correspondence between citizens and various structures. Relevant statistics and publications concerning the honoring of obligations, and facts of human rights violations have been studied. Surveys, individual interviews, mass media monitoring, institutional reform analysis, and monitoring of various institutions have been made.

The most significant event for Armenia in 2005 was the finalization of the draft Amendments to the Constitution of Armenia and their adoption in the Referendum. The authorities, the opposition, and international organizations equally viewed the 1995 Constitution as an obstacle to democratic reform in Armenia, and the amendments as the key to the promotion of such reform. However, from a certain point in the drafting of amendments on, the opposition refused to cooperate with the authorities; during the referendum campaign, the opposition was first calling for a "No" vote to the amendments, which it subsequently replaced with a call for a boycott. Lack of transparency in the constitutional amendments process was pointed out by the Partnership for Open Society, which considered that the Armenian public was not sufficiently involved in the constitutional amendments process, and that a number of suggested essential alternatives had not earned any attention, which had caused serious dissatisfaction about certain provisions in the draft. The voting on the draft put to the Referendum on November 27, 2005 gave rise to numerous concerns. In the opinion of experts, laws were violated during the process and, despite the apparent low turnout, the Central Electoral Commission published numbers that raised serious doubt. Oversight of the actual voting process was hampered by the opposition calling upon electoral commission members appointed by the opposition to refrain from attending the polling stations on voting day. Suspicion about the reported voter turnout was also expressed by the 14-member observer mission of the Council of Europe Congress for Local and Regional Authorities, which mentioned in its report that the Referendum was generally in line with the international standards, but took place with serious abuse. Both CoE observers and, later, the US Department of State expressed regret that the Armenian authorities had not invited OSCE observers. Local observers

believe that the Referendum took place with numerous violations, in empty polling stations, and that the high voter turnout was ensured by means of ballot stuffing.

Anyhow, the draft Constitutional Amendments are officially considered to have been adopted, and this analysis is based on the reality thereof.

An interim version of this report was published in March 2005, covering an overview of Armenia's democratization process as of March 1, 2005. This report assesses the status of democratic reform in Armenia as of December 15, 2005.

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EXECUTIVE SUMMARY

The adoption of a new or improved Constitution was expected to be an important step towards democratic reform in Armenia. Though the commitments assumed upon accession to the Council of Europe did not directly require the Constitution to be amended, the honoring of a number of commitments was contingent upon the Constitutional amendments, among other factors. The National Assembly approved the draft Constitutional Amendments in third reading on September 28, and the Referendum was held on November 27, 2005; subsequently, the draft was deemed adopted by a decision of the Central Electoral Commission.

Though the amended Constitution, on the whole, represents progress compared to the 1995 Constitution (replacing hyper-concentration of power with an effectively semi-presidential system, and enhancing institutional safeguards of judicial independence and respect for human rights), the Amendments have addressed only a part of the obstacles to Armenia's democratic development and the construction of a state based on the rule of law.

Since Armenia's accession to the Council of Europe, none of the elections (as well as the November 27, 2005 Referendum) conducted in Armenia have been assessed by observers as fully free and fair; moreover, the public remains doubtful of the outcome. In effect, the Republic of Armenia lacks three conditions necessary to organize and conduct free and fair elections and referenda, including: electoral legislation in line with democratic standards, culture of elections, and will of authorities to conduct proper elections.

Respect for and protection of other rights and freedoms (freedom of expression, freedom of assembly, right to free movement, etc.) supporting free and fair elections.

The 1995 Constitution promulgated safeguards of judicial independence. However, judicial appointment (as well as termination and disciplinary sanctions) was performed by the President of Armenia upon nomination by the Justice Council, which was also headed by the President (the Deputy Chairmen of the Justice Council were the Minister of Justice and the Prosecutor General).

The 2005 Constitutional Amendments changed the composition of the Justice Council. However, the President remains the final decision-maker in these matters, and there is no provision as to what the Justice Council can do if the President fails to accept the nomination or suggestion of

the Justice Council. Though a positive step, the Constitutional Amendments fall short of providing institutional safeguards to judicial independence.

In 2004, the Law on Holding Meetings, Demonstrations, Rallies, and Protests was adopted: this Law allowed the authorities to prohibit the holding of demonstrations near administrative buildings located in downtown Yerevan. At the requirement of the Council of Europe, this Law was amended. However, it conceptually remains a law that restricts the freedom to organize and hold public events. During political tension both prior and after the adoption of this Law, the authorities have obstructed the holding of public events (prohibiting such events on the alleged ground of their failure to comply with the law, or restricting the provision of buildings for meetings); moreover, the police arbitrarily prosecute participants of demonstrations. Citizens' constitutional right to freedom of movement has been violated, too, by blocking highways and taking vehicles away from their owners to police sanction sites.

A Group of Public Observers over penitentiary institutions has been functioning since 2004, i.e. since three years after the transfer of penitentiary institutions to the Ministry of Justice. The Group, as well as a number of non-governmental organizations, have found during their monitoring of penitentiary institutions that such institutions have been reformed and renovated with the support of various international organizations. However, the detention facilities continue to suffer from inadequate medical services, food, and access to information. In 2005, the Group of Observers revealed some cases of violations of the rights of detainees. The Group believes that the scarcity of torture facts in penitentiary institutions is due to the reluctance to report, rather than the lack of such cases.

In October 2003, a Law on the Human Rights Defender was adopted, which provided that pending constitutional amendments, the Defender would be appointed by the President upon consultation with the groups and factions of the National Assembly. However, the President appointed the Human Rights Defender in February 2004 without consulting with the groups and factions of the National Assembly. Subsequently, the Deputy Defender that was appointed was the President's preferred candidate, rather than a nominee of the Defender—as is required by the Law on the Human Rights Defender. Under the Law, the Human Rights Defender is deprived of the right to examine complaints against judicial bodies and judges, as well as complaints regarding cases pending before court. The first Annual Report of the Human Rights Defender of the Republic of Armenia was criticized by the authorities; a number of questions raised in 2005 were not answered. Moreover, there was some pressure on the Defender. Under the Amended Constitution and the Republic of Armenia Law on the Human Rights Defender, the National Assembly shall, prior to February 9, 2006, elect a new Human Rights Defender for a 6-year term by 3/5 majority vote of the total number of MPs, *“from among candidates nominated by the President of Armenia and at least 1/5 of the Members of the National Assembly.”*

The Republic of Armenia Law on Freedom of Faith and Religious Organizations was adopted on June 17, 1991, on the basis of a 1990 USSR law that had the same name. Since then, the Law was amended twice—once in each of 1997 and 2001. The Law has many shortcomings. Some of its provisions are contradictory. The Government of the Republic of Armenia has undertaken to draft a new Law on Religious Organizations. The Armenian press and television periodically publish calls of intolerance or even violence against certain religious communities. During 1992-1995, there were attacks on the offices of some religious organizations in Armenia, causing the infliction of physical injury upon members of different religious communities. Since 1995, such attacks have not been reported.

Notwithstanding the serious drawbacks of the Armenian legislation, the Government has shown positive moves since 2004 in the area of protecting the rights of national minorities more

actively than before. A new draft law has been commended by experts of the Helsinki Committee of Sweden and the Center for Ethnic Minority Affairs (ECMI). Most probably, the year 2006 will be decisive for determining how serious the Government is about its declared intentions.

Instead of alternative civil service, the Law on Alternative Service introduced alternative military service for a term of 36 months and alternative labor service for a 42-month term. Alternative labor service is undertaken in organizations named by the Government (psychiatric hospitals, homes for the disabled and the elderly, neuro-psychiatric hospitals, and the “Nork” hospital for patients with infectious disease). Alternative servants are supervised by agencies of the Ministry of Defense. Sanctions of alternative military servants are handled in the same procedure as those prescribed for regular military servants. As a consequence, citizens referred to the aforementioned institutions for their service during the 2004 fall draft declared their unwillingness to continue performing the service from May 2005 on. 13 of them have been convicted to imprisonment sentences of various lengths. Others are still pending trial. No one applied for alternative service during the drafts of 2005. 19 Jehovah’s Witnesses have been convicted to imprisonment for evading the regular military draft.

Though Armenia has adopted a number of progressive laws regulating the freedom of expression and information (such as the Law on the Freedom of Information and the Law on Mass Media), there still remain numerous negative phenomena in this sphere. The Republic of Armenia Law on Television and the Radio continues to obstruct broadcast media progress and development. The Public Television Company of Armenia remains the microphone of the authorities. Even the Constitutional Amendments adopted on November 25, 2005 will not have a considerable impact on the composition of broadcast media regulators. The Amended Constitution contemplates the existence of only one regulatory body, whereas the procedure of its formation (with 50% being appointed by the National Assembly, and 50% by the President) restricts the possibility of further amending the Law on Television and the Radio. There are concerns about the freedom of broadcast media. Since 2002, the results of tenders for television and radio frequency licensing and the activities of regulatory bodies in this sphere suggest that in several respects, these bodies and, therefore, also broadcasters are guided by political and other vested interests, rather than the requirements of laws; there is clearly selective application of laws. Another dangerous trend is the article on “Restriction of Information on Anti-Terrorist Activities” in the Law on Fighting Terrorism, which can become another one of the obstacles to the media representatives’ freedom of expression and freedom to receive information. Finally, the free dissemination of information has been hindered since late-2005 by the Law on Postal Communication and the Amended Law on Licensing, which require licensing of companies engaged in print press subscription and dissemination. In addition to the Laws being imperfect, there are dangerous phenomena such as intimidation of mass media and journalists and impunity (or superficial punishment) of perpetrators, excessive concentration of ownership in the information sphere, latent censorship of television, and the lack of pluralism.

1. CONSTITUTIONAL AMENDMENTS

Originally, the Council of Europe did not specifically impose a requirement of constitutional amendments upon Armenia, because Armenia had already officially launched the constitutional reform process, and the authorities were closely cooperating with the Venice Commission of the CoE on this matter. In its Opinion No. 221 (June 28, 2000) on Armenia’s Application for membership in the CoE, the PACE only noted that “Armenia ... intends ... to grant access to the Constitutional Court, within two years of accession, also to the government, the Prosecutor-General,

courts of all levels, and - in specific cases - to individuals; to reform the Justice Council in order to increase its independence within three years of accession...”.

In Resolution No. 1304 adopted on September 26, 2002, PACE invited the Armenian authorities, in view of their commitment to adopt a new Constitution in 2003, to collaborate with the Venice Commission and to follow its recommendations. The Armenian authorities, which, in effect, stopped collaborating with the CoE Venice Commission in constitutional reform matters after receiving the July 2001 Opinion of the Commission, failed to adhere to PACE’s suggestion: on May 25, 2003, the Armenian authorities held a referendum on a draft, the text of which was unknown to the Commission. Moreover, Resolution 1304 invited the Armenian authorities to consider the possibility in the draft Constitution of enhancing the oversight function of the National Assembly.

The constitutional amendments did not pass the referendum of May 25, 2003. In Resolution 1361 of January 27, 2004, PACE noted that the honoring of a number of legislative commitments by Armenia was still conditioned by the revision of the Armenian Constitution. PACE highlighted such issues as increased local self-government, introduction of an independent ombudsman, establishment of independent regulatory authorities for broadcasting, modification of the powers of and access to the Constitutional Court, and reform of the Justice Council. PACE once again called the Armenian authorities to speed up constitutional amendments and to hold a referendum as soon as possible and not later than June 2005. In Resolution 1405 of October 7, 2004, PACE noted progress in the constitutional reform process and called for the referendum to be held not later than June 2005. In its new Resolution 1485 of June 23, 2005 concerned only with the process of constitutional amendments in Armenia, the PACE urged the Armenian political forces and civil society to ensure the success of constitutional reforms that would be fully in line with Council of Europe standards.

In collaboration with the Venice Commission during 2000 and 2001, a draft was produced, on which the Venice Commission issued its opinion (CDL-INF(2001)17) during the 47th Plenary Session of the Commission held on July 6-7, 2001. Later, on September 8, 2001, the draft was submitted to the National Assembly by the President with virtually no modification.¹ Following debates in the National Assembly, the President submitted his supplemented draft to the National Assembly on March 27, 2003,² which was considerably different from the first draft. On April 2, 2003, the National Assembly endorsed the draft, after some revisions. On May 25, 2003, a referendum was held on the draft amendments, which did not pass.

During the summer and fall of 2004, three drafts of constitutional amendments were submitted to the National Assembly: (i) the draft of the three ruling coalition parties (August 8, 2004); (ii) RoA NA deputy Arshak Sadoyan's draft (August 16, 2004); and (iii) United Labor Party's draft (September 17, 2004). In its 61st Plenary Session held on December 3 and 4, 2004, the Venice Commission adopted its Interim Report (CDL-AD (2004)044) on these three drafts.

In this document, the Venice Commission mentioned that the presented drafts were not fully in line with the European standards and that the reforms should have been based on the 2001 draft.

Despite the Commission's opinion, the National Assembly decided on May 11, 2005 to use as a basis the Coalition Draft, which had in many important respects ignored the Venice Commission's opinion issued in December 2004. On May 27, the Press Service of the Council of Europe disseminated a press release in which the Venice Commission's Working Group for constitutional amendments in Armenia expressed profound disappointment about the draft adopted in first reading and emphasized that the draft needed fundamental revision.

The round table intended for the Venice Commission Working Group and the Armenian political forces to discuss the draft constitutional amendments on June 1 and 2 in Yerevan did not take place. Instead, the Venice Commission representatives arrived in Yerevan to communicate their profound dissatisfaction to the Armenian authorities. On June 2, the Venice Commission Working Group and the representatives of the Armenian authorities adopted a memorandum. In this document, the Venice Commission took note that the draft adopted in first reading still contained important flaws in three core issues, including checks and balances, independence of the judiciary, and the procedure of appointing the Mayor of Yerevan. In the Memorandum, the Armenian authorities undertook to harmonize the draft with the requirements of the Venice Commission on these matters.

According to the timetable enshrined in the Memorandum, a meeting between the Armenian authorities and the Venice Commission Working Group took place in Strasbourg on June 23 and 24, 2005, as a result of which agreement was reached on the principles based on which to resolve the outstanding issues in the draft. Under the approved new timetable, the Armenian authorities undertook to implement these principles before July 7. A draft was then submitted to the Venice Commission, on which the Commission issued its draft opinion on July 21 (CDL(2005)054), which was mainly a positive assessment of the revisions made. The amended draft was adopted by the National Assembly in second reading on September 1, and in third reading on September 28. The President of Armenia issued a decree on October 3, which scheduled the constitutional referendum to take place on November 27, 2005.

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Comments on the Second Chapter of the Amended Constitution on Fundamental Rights and Freedoms of Humans and Citizens

One of the most important achievements of the Amended Constitution is the constitutional provision on abolishing the death penalty. This provision will have effect in any situation, including a state of war.

The Amended Constitution enshrines the principle of respect for human dignity, which essentially means that the state is for humans, and not the other way around. A constitutional provision enshrining the principle of respect for human rights means that activities and goals of the authorities may be justified only if they serve humans.

Another improvement is its enshrining of the right to general freedom. This principle allows a person the freedom to do anything that is not prohibited by law and does not violate the rights and freedoms of others.

Unlike the extant Constitution, the Amended Constitution defines an exhaustive list of all the cases in which a person may be deprived of liberty. It means that there may be no grounds for depriving a person of his liberty other than those specified in the Constitution.

Amended Constitution prescribes the human right to have access to information on his person held in central and local government bodies. A person will have the right to correct inaccurate information on him or eliminate such information, if it has been obtained unlawfully.

Amended Constitution more precisely defines the right to express one's opinion freely. The state will safeguard the existence and activities of independent public radio and television offering a diversity of information, educational, cultural, and entertainment content.

Everyone will have the right to present applications or suggestions to central and local government bodies and officials regarding the protection of personal or public interests and to receive a proper response within a reasonable period.

Amended Constitution provides that persons who do not have Armenian citizenship may also participate in local government elections and local referendum.

The extant Constitution groundlessly reserves a number of rights only to Armenian citizens. The constitutional amendments will eliminate this discrimination. The Draft gives the rights to employment, assembly, and free movement within the country to all those that lawfully reside in Armenia.

Though the extant Constitution does enshrine a number of fundamental human and civic rights and freedoms, the safeguards of respect for such rights and freedoms are lacking, because a person whose fundamental human rights and freedoms have been violated may not appeal to the Constitutional Court to find remedy of such rights: Amended Constitution enshrines everyone's right to appeal to the Constitutional Court to challenge the constitutionality of laws on the basis of which a final court decision was taken in respect of the person (Article 101, Point 6). However, it unnecessarily restricts the scope of the Constitutional Court's review, because sub-legislative acts will not be the subject of a constitutional appeal.

A person will be able to defend his constitutional rights also through the Human Rights Defender. The Human Rights Defender, too, will have the right to appeal to the Constitutional Court (Article 101, Point 8) and to other competent authorities. The Amended Constitution considerably strengthens the safeguards of the Human Rights Defender's independence. Under the Amended Constitution, the Defender will be appointed by 3/5 of the National Assembly, rather than the President of the Republic (Article 83.1). This appointment procedure will allow a person enjoying the confidence of various groups of society to be appointed as the Human Rights Defender.

Alongside the improvements in the Amended Constitution, however, there are numerous shortcomings and omissions.

The Amended Constitution will amend the formation procedure of the independent body regulating the sphere of broadcasting (National Television and Radio Commission- NTRC) by providing that half of its members will be appointed by the National Assembly, and the other half—by the President of the Republic (Article 83.2). Ignoring the urge of the PACE, the Amended Constitution does not require the incumbent National Television and Radio Commission

composition to be replaced immediately. The members of the incumbent Commission will stay in their offices until the end of their respective terms (Article 117, Point 11).

The Amended Constitution contains a number of declarative provisions, which cannot be implemented and protected directly on the basis of the Constitution. The Constitution cannot directly provide housing, a healthy environment, and other conditions to people: in other words, these rights will never be implemented.

The Amended Constitution does not differentiate between civil and political rights, on the one hand, and social rights, on the other. The Chapter on Human Rights and Freedoms should only contemplate the rights backed by judicial remedy. The Chapter on Human Rights and Freedoms should contemplate economic, social, and cultural rights only to the extent to which the state is able to ensure judicial protection of such rights. Otherwise, such economic, social, and cultural rights should be prescribed in the special chapter on the obligations of the State.

The Amended Constitution does not clearly prescribe the grounds for limiting human rights, as such grounds have not been enshrined in the articles that provide the specific rights. This omission can create wide possibilities for abuse.

There is no direct reference to the principle of proportionality, which is crucial for human rights protection in a state where the rule of law is established. The principle of proportionality implies that a law may prescribe only such limitations of human and citizen's fundamental rights, which pursue a constitutional purpose and are relevant, necessary, and appropriate for attaining such a purpose.

By abolishing the absolute ban on dual citizenship, the Amended Constitution, however, does not provide a constitutional solution to the political rights of dual citizens. This is rather dangerous, because the legislature may decide to grant voting rights to dual citizens that do not have permanent residence in the Republic of Armenia. It means that the presidential and parliamentary elections can be decisively influenced by the votes of those that reside outside Armenia and are not subject to the jurisdiction of Armenia.

The article in the Amended Constitution concerning the deprivation of ownership is a step back compared to the extant Constitution. Under the extant Constitution, a separate law must be adopted for each case of depriving a person of ownership. The Amended Constitution, however, does not contain such a requirement.

Separation of Powers; Checks and Balances (Chapters 3-5)

The Amended Constitution has taken a number of important steps towards enhancing the Government's role and eliminating the complete dependence of the Government on the President. The Government's role has been clearly prescribed: the Government will develop and implement domestic policies, whereas foreign policies will be developed and implemented jointly with the President of the Republic (Article 85 Part 1). The Government will also acquire organizational autonomy in that the Government's sessions will be summoned and chaired by the Prime Minister (Article 86 Part 1), and its decisions will be taken by the members of the Government, and there will be no longer a requirement for the President to endorse the Government's decisions. Considering the semi-presidential government principle whereby a directly-elected President has a strong influence over foreign policy, national security, and defense, the Amended Constitution provides that the President may summon Government sessions on these matters and chair such sessions (Article 86 Part 2), while the decisions will be adopted by the Government members and signed by the Prime Minister. The structure of the Government will be defined by law, rather than a presidential decree.

The most important improvement in the chapter in the Amended Constitution on the government system is that the Government will no longer be subject to double responsibility before both the President and the National Assembly. The Prime Minister will be responsible only before

the National Assembly and the President will in no case be able to dismiss him. The President may only propose to dismiss the Prime Minister, while the National Assembly will have the exclusive power to take such a decision (Article 84).

However, the Amended Constitution has not fully eliminated the Government's dependence on the President. The provision of Article 85 Part 3 adopted in first reading still remains in the Draft, which provides: "On the basis of, and in order to ensure the implementation of, the Republic of Armenia Constitution, international treaties, laws, or presidential decrees, the Government shall adopt decrees that shall be subject to enforcement throughout the Republic." This provision is redundant. On the one hand, Articles 5 and 6 of the Amended Constitution make the law in effect (the Constitution, laws, and international treaties) binding for the Government, and on the other, the President does not have any powers regarding domestic policies, which means that he cannot adopt any decree on domestic policies that would be binding for the Government. Although the President will no longer have the power to endorse Government decrees, there is still a provision that provides that the President will have the power to suspend any governmental decision or decree and to challenge their constitutionality and lawfulness before the Constitutional Court (Article 86, Part 4). The President of the Republic may use this possibility not only in extraordinary substantiated cases, but also as a political tool against Government decisions that do not fit his political objectives. Moreover, involvement of the Constitutional Court is dangerous in the sense that the Constitutional Court may become engaged in urgent and politically important disputes between the President and the Government, which may undermine the reputation of the Court.

The Amended Constitution does not stipulate any participation of the Government in the decision-making by the President. The Venice Commission emphasized back in 2000 that if the constitutional reforms are designed to increase parliamentary oversight of the President's activities, then it can be achieved by involving ministers in the process of decision-making by the President and by requiring that Presidential decrees be signed also by the respective minister. The President could also be required to consult with the respective state bodies, such as the National Security Council.

In a semi-presidential system, it would be logical for the Government to enjoy the confidence of the parliamentary majority. Therefore, the Parliament would need to be involved in the formation of the Government at the very early stages so that the Government, based on the support of the parliamentary majority, could efficiently carry out domestic and foreign policies. Since the President of the Republic will no longer be the de-facto head of the executive branch, the influence of the Parliament over the formation of the Government will grow considerably. On the basis of consultations with the Members and factions of Parliament, the President of the Republic would appoint a Prime Minister that enjoyed the confidence of the majority of MPs and, if it is impossible, then a person that enjoys the confidence of the largest number of MPs. The Amended Constitution, however, does not clearly define the mechanisms of the Government's formation, which may create difficulties in practice.

It does not clearly define the degree to which the President of the Republic is bound to follow the Prime Minister's proposals on the appointment and dismissal of ministers.

The Amended Constitution does not address the provisions of Article 49 of the extant Constitution regarding the functions of the President. The Draft does not clarify the legal significance of Article 49 and the linkage between Article 49 and the list of the President's powers under Article 55. The present text of Article 49 of the Constitution could be interpreted as an additional authority for the President. Clearly, this uncertainty in the Constitution could be used to expand the President's authority beyond the powers defined in Article 55. Such a situation would undermine the principle of the separation of powers, because it would distort the political balance between the President and the other constitutional bodies, including the Parliament, the Government, and the courts. Since the provisions of Article 49 regarding the President's functions could be a source for constantly expanding his powers, it is necessary to add to this Article that the President shall exercise his functions through the powers vested in him by the Constitution and the laws. Such a provision would clarify that Article 49 is a description of the general function of the

President's office and does not give him the right to undertake any measure required to perform his functions under Article 49.

The Amended Constitution maintains the language of Article 56 of the extant Constitution: "The President of the Republic publishes decrees and instructions that may not contradict the Republic of Armenia Constitution and laws and shall be enforceable throughout the Republic of Armenia." Taken alone, this Article enables the President to be the primary law-maker in any sphere in the absence of legislation. Such a power of the President is not consistent with the amendment proposed in Article 6 Part 6 of the Draft, which provides that normative legal acts shall be adopted on the basis of the Constitution and the laws to ensure their implementation. Therefore, the provision requiring that the President's acts not contradict the Constitution and the laws is redundant, because any sub-legislation must be adopted on the basis of the Constitution and the laws to ensure their implementation. Article 56 should be understood and interpreted jointly with Articles 49 and 55, i.e. in accordance with the separation of "functions" and "powers." In its opinion of 2001, the Venice Commission mentioned that the general provision in Article 49, which provides that the President of the Republic will ensure the normal operation of the legislative, executive, and judicial branches, cannot serve as a ground for the law-making activity of the President. Article 56 should be worded clearly in order to prevent abuse of power by the President. Therefore, Article 56 should provide that the President shall issue decrees and instructions to further the exercise of his powers.

In April 2000, when the constitutional reform activities were launched jointly with the Venice Commission, both the Commission and the Armenian side believed that the President had broad powers of appointment (Article 55 Parts 5, 8, 10, and 11), and that the Government and the Parliament should be engaged in the appointment process. The Commission also noted that the President's power to appoint civil servants may be limited only to the appointment of senior administrative officials, whereas Article 55 Part 5 of the Amended Constitution represents a step in the opposite direction, because it refers to a much broader category of servants, i.e. "public servants" instead of "civil servants."

There can be no logical justification for maintaining the existing procedure for the appointment and dismissal of Governors, which provides that the President of the Republic will endorse Government decisions on the appointment and dismissal of Governors. Since the primary function of Governors is to implement the regional policies of the Government, and the President is not a part of the Government, the requirement of endorsement is groundless. If the President does not endorse a Government decision on the appointment or dismissal of a Governor, then this power of the President may become especially dangerous in conditions of "co-existence," because the new Government will be unable to carry out its regional policy.

The Amended Constitution clarifies the issue regarding the immunity of the President (Article 56.1), but a major omission in the Draft is that the grounds for real accountability of the President are limited to state treason or other grave crimes (Article 57). Since the President does not carry political responsibility in a semi-presidential system, almost all of the constitutions in Eastern Europe prescribe a violation of the constitution as a ground for impeaching the President, as a way of somewhat mitigating the inconsistency between the large political authority of the President and his political immunity.

The Amended Constitution has not addressed Article 62 Part 3, which unduly restricts the powers of the Parliament by stating that the Parliament's powers shall be limited to those defined in the Constitution. This restriction is not typical of a Parliament, because it is clear that the Parliament, as a representative body of the people, should have the authority to define its powers by law in accordance with the principles of democracy. It is understandable that in defining its powers, the legislature will be bound by the Constitution in the sense that any new powers may not contradict the Constitution. If such a restriction remains, there arises a danger that if new political challenges necessitate augmentation of the powers of the Parliament, it may require constitutional amendments.

The Amended Constitution maintains another anti-parliamentary principle of the extant Constitution, i.e. the limitation on the number of standing committees in the Parliament (Article 73 Part 1). This provision limits the right of the people's representatives to define the internal procedure of the Parliament's activities independently. Insofar as the number of committees and the purposes of their creation are concerned, the people's representatives should have the freedom to take decisions independently in order to be able to effectively exercise control over the executive. The Amended Constitution follows the approach of the extant Constitution by defining the core functions of standing committees, but the list of functions does not include a key function such as parliamentary oversight. It would be appropriate either for this function to be clearly enshrined in the Constitution or for the definition of standing committees' functions to be reserved for the Regulations of the Parliament, like many democratic countries have done.

Since the Amended Constitution strengthens the role of the Government based on the parliamentary majority in the development and implementation of country policies, and the political struggle will mostly take place between the parliamentary majority and minority, it would be appropriate to follow the example of Article 44 of the German Constitution by defining the right of the minority to create investigating commissions (in Germany, one quarter of the MPs may exercise this right). Besides, protection of the rights of the minority could be facilitated by following the example of Article 91 of the Croatian Constitution, which provides that the chairman of an investigating commission shall be appointed by the parliamentary majority from among opposition MPs.

Article 69 of the Amended Constitution has abolished the provision on the length of regular sittings and provides that this matter will be regulated by law. It would be more appropriate to maintain the constitutional provision defining the length of parliamentary sittings, which is the case in the constitutions of many other states. Since the experience of the Armenian Parliament has shown that the length defined in the extant Constitution is too short, it would be appropriate to define that the length of a regular sitting of the Parliament is 9 or 10 months.

An important amendment is proposed to Article 70, which states that an extraordinary session or sitting of the Parliament may be convened by the Chairman of the National Assembly at the initiative of the President of the Republic, at least one third of the total number of MPs, or the Government. An extraordinary session or sitting shall be held with the agenda and length defined by the initiator. On the one hand, this amendment deprives the President of his right to convene an extraordinary session or sitting. On the other it gives the President the right to demand that an extraordinary session or sitting be convened to discuss an issue proposed by the President.

Article 74.1 Part 2(a) of the Amended Constitution provides that the Parliament may be dissolved if during three months of the regular sitting, the Parliament does not reach a decision on a draft law that was deemed urgent by a governmental decision. Such a provision is too vague. First of all, it is unclear what the word "decision" encompasses: only positive decisions or negative decisions, as well? Secondly, the wording "draft law that was deemed urgent" is not found in any other provision of the Draft, and it is not clear what draft laws are meant here and at what frequency the government may decide that various draft laws are urgent.

The Amended Constitution maintains the provision in the extant Constitution whereby the Government may define the sequence of discussing draft laws submitted by the Government and demand that they be voted only with amendments acceptable to the Government. In connection with this power, the Venice Commission mentioned in its opinion of 2004 that in this way, the Government can decide the way in which the Parliament should exercise its legislative power and decisively suggested removing this provision from the final text.

Similar to the extant Constitution, the Amended Constitution provides that in a state of war or state of emergency declared by the President, the Parliament may declare the measures already undertaken as null and void (Article 81 Part 2). However, the Parliament has no right to abolish a state of war or state of emergency, which may result in conflicts between the President and the National Assembly. The necessity of providing this power to the Parliament was mentioned in the 2001 Opinion of the Venice Commission (CDL-INF(2001)17, para. 45).

Article 83.3 of the first Draft has seen almost no amendment. Under the 2001 draft, this provision was intended to broaden the scope of the exclusive legislative regulation by the Parliament and the powers of the Parliament. In its Opinion of 2004, the Venice Commission noted with regret that the number of matters pertaining to the exclusive legislative authority of the Parliament was reduced (37 matters in the 2001 draft, and 18 in the draft as of August 2004); moreover, in the Amended Constitution that has been put to the Referendum, there are only 11 matters over which the Parliament will have exclusive legislative authority.

The Amended Constitution continues to ignore the issue of independent commissions, as a result of which unconstitutional bodies will remain, because under Article 2 Part 2 of the Constitution, central and local government bodies must be prescribed by the Constitution. Moreover, the Constitution exhaustively defines the powers of the Parliament (Article 62 Part 3), which precludes the involvement of the Parliament in the formation of any independent commission. The only exception in the Amended Constitution has to do with the National Television and Radio Commission, which shall be formed jointly by the Parliament and the President.

Chapter 7 on Local Self-Government

The Amended Constitution contains a number of important amendments to Chapter 7 of the Constitution, which is concerned with local self-government. The provisions on state government have been moved to the chapter on the Government. The Amended Constitution no longer contains the unnecessary constitutional restriction on the number of community council members and increased the term of office of local self-government bodies from 3 to 4 years. Local self-government bodies will have the right to appeal to the Constitutional Court challenging the constitutionality of normative acts of state bodies that violate their constitutional rights (Article 101, Part 1(5)). Article 107 Part 4 of the Amended Constitution provides that community members may directly participate in the governance of community affairs by means of deciding community matters in local referendum. The provisions of Parts 2 and 3 of Article 106 of the Amended Constitution regarding the financing of community functions are crucial. Article 105.1 enshrines the important principle whereby land within the administrative boundaries of a community, with the exception of land necessary for state needs and land owned by individuals and legal entities, shall be the ownership of the community. In order to ensure the fully-fledged exercise of this constitutional provision, it would be important for the transitional provisions to specify the period during which the state would transfer land to communities as ownership.

The local self-government chapter of the Amended Constitution contains some omissions and shortcomings, which are due to conceptual misperceptions of local self-government as an autonomous and independent system of democracy. Such an approach is not found in Article 109, which maintains the institutional possibility for the Government to dismiss an elected community head. In this respect, the Venice Commission emphasized in its 2004 Opinion that “**the exercise of this power may undermine the principle of local self-government, especially because there is no longer a requirement for the Government to make an inquiry with the Constitutional Court before taking such a decision.**” Though the requirement to make an inquiry with the Constitutional Court was added to the Amended Constitution on July 20, it still does not resolve the issue. It is clear that this recommendation of the Venice Commission has the nature of a compromise, because in the same Opinion, the Venice Commission suggested in respect of the NDU draft completely removing Article 109 of the extant Constitution.

The conflict between Article 2 Part 2 and Article 3, on the one hand, and Article 109, on the other, will continue to exist due to maintaining the institution of dismissing the community head. Article 3 provides direct elections of the community mayor, whereas Article 109 gives the Government the right to remove a community mayor from his office upon recommendation by the Governor. Article 2 Part 2 divides the power of the people between state government and local self-government bodies. The bodies mentioned in Article 2 shall be elected by citizens of the state and

the community residents, respectively. It means that in principle, an official may only be dismissed by the constituency that elected him. Under Article 4 of the Amended Constitution, the community residents have the right to elect the community mayor. If the community mayor does not properly address community and state issues, then the mayor should face administrative oversight and disciplinary sanctions. If the community mayor does not honor his obligations in accordance with the requirements of law, then the principle of proportionate state interference implies that the mayor should be required to perform his obligations by less severe means at first than dismissal. Such less severe means could include an instruction of the competent authority to perform his obligations or, as a more severe measure, the temporary appointment of a state delegate in the community, which will address the flaws incurred by the community mayor during his term of office.

By ratifying the European Charter on Local Government, Armenia has adopted the binding force of the principle (Article 3 Part 2 of the Charter) that provides that a community head shall be responsible before the community council, because the community council is the primary representative body of the community. Such a provision must be enshrined in the Constitution to define what will happen if the community council expresses no confidence in the mayor. Since both the community council and the mayor are elected by direct suffrage, it would be appropriate to define that in the event the community council expresses no confidence in the community mayor, concurrent elections of both the council and the mayor shall be held. Another possible solution would be for the council to be given the right to initiate dismissal of a community mayor by means of a local referendum.

The Amended Constitution finally clearly defines the status of Yerevan as a community. Under Article 108 of the Amended Constitution, the Mayor of Yerevan may be elected directly or indirectly. However, this Article ignores the other problems of local government in Yerevan, including the issue of the levels of local government. Essentially, the Amended Constitution abolishes the constitutional basis for the district communities within Yerevan, which means that the district communities may later be abolished by law. It would be appropriate for the Constitution to enshrine two levels of local government in Yerevan—community level and district level. The distribution of functions could be done in such a way as to ensure that the city bodies (the city council and the city mayor) took decisions on issues of “city-wide significance,” whereas the districts, through district councils and district mayors, would be entitled to take decisions on issues of “district-wide significance.” Moreover, one could prescribe that certain city-wide functions could be delegated to the districts in order to maintain direct contact with the citizens.

The Amended Constitution prescribes the possibility of creating inter-community unions, but does not regulate this issue in sufficient detail.

Article 108.1 of the Amended Constitution regarding administrative oversight (legal and professional oversight) over the activities of community bodies is not sufficiently clear and needs to be elaborated further.

Since about 40% of Armenia’s territory is currently not included in any community, the Constitution should have defined that local government shall be performed throughout the territory of the Republic of Armenia.

2. ELECTIONS, REFERENDA: LEGISLATION AND PRACTICE

By becoming a fully-fledged member of the Council of Europe and ratifying [on December 30, 2000] the Charter of the CoE signed in London on May 5, 1949 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (on March 20, 2002), which provides in Article 3 of the First Protocol that “the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot”, the Republic of Armenia has undertaken to harmonize elections held in the country with the requirements of the Council of Europe since ratification.

The Code of Good Practice In Electoral Matters adopted by the Council of Europe’s European Commission for Democracy Through Law, known as Venice Commission (adopted in the 52 Plenary Session of the Venice Commission in Venice during October 18 and 19, 2002, and endorsed by PACE in 2003) defines the CoE’s standards on democratic elections with which elections held in the Member States must comply.

After signing the aforementioned documents, the legitimacy of elections held in Armenia and their compliance with international standards have been assessed primarily on the basis of these documents.

The first presidential and parliamentary elections held since accession to the CoE (i.e. the 2003 elections) were assessed by CoE Parliamentary Assembly as an “electoral process which as a whole had not complied with international standards [for democratic elections].” (See PACE Resolutions 1361 (2004) and 1374 (2004).) This was also the assessment of the OSCE Observer Mission.

Here are the main political and legal obstacles to the administration of free and fair elections in the Republic of Armenia in line with international standards:

- The Armenian authorities do not have the will to conduct elections in line with international standards in the Republic of Armenia;
- There are no democratic traditions in Armenia; civil society and a multi-party system are just emerging, there is no legislative stability, and the existence of mass media independent of the state is questionable;
- As a consequence of fraud, elections in Armenia do not become a means for expressing the majority will, addressing political conflict, and forming the political elite; thus, the authorities do not become legitimized;
- Neither stakeholders nor society have ever concluded that elections were fair in Armenia (with the exception of the 1990 parliamentary and the 1991 presidential elections); as a consequence, elections in Armenia exacerbate in-country tension instead of fostering political stability;
- The political regime that has emerged in the Republic of Armenia as a consequence of regular election fraud, among other things, is characterized as a “nomenclature democracy,” i.e. a democracy of limited possibilities, where there are restrictions on all the rights the exercise of which may hinder “self-reproduction” of the authorities;

- As a consequence of fraudulent elections, the people and political forces that come to the power are unknown and have a suspicious past; most often, they do not have much in common with the collective will of society;

- The outcome of elections is decisively influenced by the administrative and financial resources, rather than the collective will of the voters;

- In Armenia, elections have been transformed from a democratic institution to an institution that serves the personal interests of individuals or inner circles;

- As political parties remain underdeveloped at best, campaigns turn into a struggle between individuals, with virtually no debate on core values and alternative paths of development;

- Those who perpetrate crimes during elections go unpunished. Even when the perpetrator is known and evidence is available, nothing is done about it. On the days following both the presidential and parliamentary elections in 2003, *Haikakan Jamanak* and *Aravot* published a long list of irregularities many of which contained elements of crime; however, no criminal cases were instigated in response. Even if any administrative penalties were ordered, they were ordered mostly against opposition representatives. To date, nothing has been done about the calls of the international community and the opposition to punish the perpetrators of electoral violations (which could have mitigated both political tension and the conclusions of the international community). The public conscience still fails to treat as crimes the criminal acts against electoral rights (forcing a voter to say how he voted - in order to violate the secrecy of the vote; checking the voted ballot to find out how the voter has voted; entering into the voting booth; violating secrecy of the vote in other ways; intentionally miscalculating the votes in the referendum or in elections; approving manifestly erroneous “results” of elections or the referendum; stealing ballot boxes; forging election or vote results in various ways; voters’ producing fake documents and misrepresenting themselves to vote instead of someone else or to vote more than once; obstructing the free administration of elections or referendum; impeding the activities of the electoral or referendum commissions; obstructing the exercise of their rights by members of electoral or referendum commissions, or members of initiative groups, or candidates or their proxies, or observers, the mass media representatives, or party (party alliance) proxies. The persons who committed these crimes still do not receive the due public attitude.

Shortcomings of the electoral legislation, too, hinder the administration of free and fair elections in the Republic of Armenia. Since the adoption of the Electoral Code in 1999, over 100 amendments have been introduced into the text. Interestingly enough, these amendments are typically made on the eve of elections.

In order to conduct elections in accordance with the standards established by the Council of Europe, the electoral legislation needs to be amended to ensure the impartiality, professionalism, and transparency of electoral commissions.

- Under the previous (prior to the adoption of the May 19, 2005 Law on Amending the Electoral Code) procedure of electoral commission formation (Chapter 8 of the Electoral Code), the

executive branch of government, led by its de-facto head, the President, continues to have a predominantly biased impact on the performance of electoral commissions. There are no guarantees for the activities of independent, impartial, and professional electoral commissions. During both presidential and parliamentary elections held in 2003, virtually all of the chairmen of electoral commissions were those members that had been appointed by the incumbent President or the parties, currently represented in the ruling coalition. Thus, the procedure of electoral commission formation should be modified fundamentally. Electoral commissions must be balanced, impartial, and professional. All of the political forces represented in the National Assembly should have their members in the electoral commissions; however, it must be ensured that no one has a predominant role, that the authorities and the political opposition are equally represented, and that non-parliamentary parties that are running in the elections also be represented in the electoral commissions by members that would have a consultative vote. In order to have balanced and impartial electoral commissions, nomination of electoral commission chairmen, deputy chairmen, and secretaries by lottery draw could be practiced (for both territorial and precinct commissions).

The Law on Amending the Electoral Code, adopted on May 19, 2005, not only failed in resolving the outstanding issues, but also introduced some provisions conflicting with the Constitution.

As a result of these Amendments, the following procedure for the formation of Electoral Commissions was prescribed:

The Central Electoral Commission (CEC) shall be formed in the following way:

- Each of the parties (alliances) that have factions in the National Assembly shall appoint one member of the CEC;
- The President of the Republic shall appoint one member;
- Each group of parliamentarians, which exists in the National Assembly, shall appoint one member of the CEC (however, starting from the next elections of the National Assembly, the Council of Court Chairmen shall make such appointment from among the judges of the universal courts of Armenia); and
- One member appointed by the Cassation Court from among the Cassation Court judges (Article 35).

The members of the Territorial Electoral Commissions shall be appointed by the CEC members. The CEC members appointed by the Cassation Court and the Council of Court Chairmen shall appoint the members of Territorial Electoral Commissions from among universal court judges.

The established procedure for commission formation, similar to the procedure that existed previously, does not ensure the balanced and impartial nature of electoral commissions; moreover, the inclusion of judges in the commissions directly contradicts Article 98 of the Republic of Armenia Constitution, which provides that “judges and Constitutional Court members may not hold other public office...” Surprisingly, such an amendment to the commission formation procedure was assessed by the Venice Commission and ODIHR experts as “an improvement, because it enhances political pluralism in the formation of the Central Electoral Commission and the Territorial Electoral Commissions” (Strasbourg, Warsaw, 13.05.2005, Opinion N 310/2004 of the Venice Commission and ODIHR). The Venice Commission and ODIHR experts may, perhaps, have not noticed the conflict between the inclusion of judges in electoral commissions and the Republic of Armenia Constitution, but it is even more difficult to explain why the Venice Commission members would disregard the concerns expressed earlier by the Council of Europe and the very same Venice Commission about the dependent condition of the Armenian judiciary. In its interim report of December 6, 2005 concerning the constitutional amendments, the Venice Commission clearly states that “providing constitutional safeguards for the establishment and operation of an independent and impartial judiciary is recognized as a key issue of constitutional reforms in Armenia.” In other words, Armenia still does not have an independent and impartial

judiciary. Therefore, the inclusion of a judiciary that is dependent upon the executive in the electoral commissions cannot be seen as “a positive step towards achieving a greater degree of political pluralism.”

- Under this procedure of electoral commission formation, the power play during the 2005 fall local government elections was in the better cases 3-6, and in the worse cases, 2-7 in favor of the authorities.

Even if one were to set aside the issues of anti-constitutional provisions and the power play within electoral commissions, the inclusion of judges into electoral commission may have irreversible consequences. In accordance with the procedure, a total of 82 judges will be involved in the electoral commissions, which will make up about 50-60% of the total number of judges in universal courts and may disrupt the activities of the judiciary during elections.

The amendments provide a theoretical possibility for a situation in which all the members of the CEC would be Cassation Court judges (Article 35 Part 2), and the members of Territorial Electoral Commissions would be universal court judges (Article 36 Part 1). In such a case, even all the judges of Armenian universal courts would not be sufficient in number to fill all the positions in the Central and Territorial Electoral Commissions.

- The 2005 May 19 Law on Amending the Electoral Code has also amended Article 35(3) of the Electoral Code to provide that the composition of the CEC will be approved by a decree of the President of the Republic: it is not clear whether the President will have the right to refuse to approve any candidate nominated by any of the sides.

There is another unacceptable provision, which states that during the 20 days prior to the voting day in presidential elections, if the powers of a CEC member are terminated prematurely, and if the number of vacancies is greater than 1/3 of the total number of commission members, then the vacancies will be filled by the President of the Republic, rather than the entity that appointed the member whose place is vacant (Article 38).

There has been no proof to the claim that the inclusion of judges in electoral commissions will enhance the professionalism of electoral commissions. The results of elections of the mayor in the Kanaker-Zeitun district of Yerevan were declared null and void by Territorial Electoral Commission number 2, and the results of elections of the community council members in the same district were partially annulled by the Territorial Electoral Commission: the results were appealed to and quashed by the court. The Territorial Electoral Commission had taken its decisions with the participation of the judge-member of the Commission, who had voted for the decisions and had not issued a separate opinion on the decisions.

- Voter lists have a crucial role in ensuring the exercise of voting rights. Similar to the past, the voter lists were far from perfect in the local government elections held in the fall of 2005, and thousands of people were actually deprived of the possibility to take part in the elections.

The 2005 May 19 Law on Amending the Electoral Code has defined a new procedure for the compilation of voter lists (see the amended text of Chapters 9-14 of the Electoral Code). At first sight, this procedure may seem like it represents progress, but in practice, it causes a number of problems.

The procedure of compiling voter lists is problematic and still not very clear: if the voter lists are compiled at the regions and communities, then it is unclear how the lists will include names of individuals who have registered voting rights abroad (Article 9).

The transparency of the voting process is breached by the non-public and closed nature of the lists of servicemen and prisoners (Article 13). In essence, the voter lists compiled in military detachments fall outside of any control, and can at least undermine confidence in the process. It is unclear whether the voters included in these lists will be included in the National Register of Voters or not. If yes, then the provision on the non-public nature of such lists will be breached. If not, then it is unclear how the CEC will be able to publish the total number of voters on the day preceding the voting day: if the final number should include also servicemen and prisoners, then the difference between the voter number as per the register and the total number of voters published between the CEC will be the number of servicemen and prisoners, which means that the

requirement to keep the lists closed will be respected only partially, and will therefore become meaningless. If the voter lists of military servicemen are closed, it will become almost impossible to conduct oversight of servicemen being included in several lists and voting several times.

- Though no restriction of the rights of proxies was permitted even before the adoption of the 2005 May 19 Law on Amending the Electoral Code, there were numerous cases of forcing proxies of opposition candidates out of the polling stations during the 2003 elections. In cases when the proxies were not forced out of the polling stations, their involvement in the work of commissions was minimized, and they were not allowed any access to voting documents, including voted ballots.

The 2005 May 19 Law on Amending the Electoral Code brought some clarity to this issue, and one may think that as a result of these amendments, the aforementioned problems will be precluded. Under Article 27 of the amended Electoral Code, proxies will have the right to be physically present next to the commission members registering voters and controlling the ballot box and to observe their work, without interfering with the work of commission members; when the voting results are finalized, proxies will have the right to look at the voted ballots and the marks on such ballots during the vote count in the presence of the electoral commission chairman, deputy chairman, secretary, or any member of the commission instructed by the commission chairman, and to be present in the ballot count and summarization.

As a safeguard of the rights of proxies, the Electoral Code now defines: “No restriction of the rights of proxies shall be permitted. No one, including the electoral commissions, shall have the right to take proxies out of the voting room or to preclude their presence in the activities of the commission in any other way, with the exception of cases of arresting or detaining them.”

- Lack of electoral commission members’ legal knowledge remains another cause of poor electoral administration in Armenia. Training is the key to both proper enforcement of the electoral legislation and the exercise of voting rights.

Having a certificate confirming that the person has adequate knowledge on voting rights must be a precondition for anyone to become a member of an electoral commission.

Under the 2005 May 19 Law on Amending the Electoral Code (Article 34), individuals who have attended professional training and hold qualification certificates in accordance with the procedure established by the CEC may become members of electoral commissions. Though progressive at first sight, this provision may, in the absence of any criteria in the law regarding attendance of the training and the granting of qualification certificates, serve as a basis for precluding the most active representatives of opposition parties from becoming members of electoral commissions.

- A number of provisions of the 2005 May 19 Law on Amending the Electoral Code directly contradict other laws of the Republic of Armenia, in particular, the provision on appealing the various decisions of electoral commissions immediately to an appellate court (Article 40 Parts 3 and 10). This provision contradicts the Republic of Armenia Civil Procedure Code. In such cases, the National Assembly By-Laws (Article 47) require such amendments to be presented to the National Assembly in a package, which was not done. According to Article 24(3) of the Republic of Armenia Law on Legal Acts, “a new legal act adopted by the same body shall not contradict the earlier-adopted legal acts of equal legal force that are already in effect. In case of conflicts between legal acts of legal equal force adopted by the same body, the provisions of the legal act that entered into effect earlier shall prevail.” Therefore, it is clear that unless the aforementioned laws are amended, the provisions in question will not have any effect.

- The 2005 May 19 Law on Amending the Electoral Code has also amended the procedure of reviewing appeals against the decisions, actions, and inaction of electoral commissions. Prior to adopting this Law, the appeals had to be reviewed in a short (5-day) period in view of the peculiarities of electoral rights (especially the difficulties associated with restoring such rights); in some cases, the appeals had to be reviewed immediately. Under the amendments, appeals

(complaints) and suggestions shall be reviewed by electoral commissions and responses shall be provided in the time period specified under the Republic of Armenia legislation, with the exception of cases prescribed by the Code. Under these provisions, a complaint regarding the failure to provide the protocol of voting results to a proxy within a Precinct Electoral Commission may be heard, for instance, after 29 days, when the voting process will have ended.

- Article 30 of the 2005 May 19 Law on Amending the Electoral Code adds Article 40d to the Electoral Code to provide a procedure for reviewing appeals and suggestions (Article 40d, para. 3), which does not create favorable conditions for the proper review of appeals and contradicts the principles of reviewing public disputes in a country ruled by law, including the principle of *ex officio* review and the principle of banning the abuse of formal requirements (Article 6 of the Republic of Armenia Law on Foundations of Administration and Administrative Proceedings). The amendments provide that an electoral commission shall accept, admit, and review only appeals (complaints) and suggestions (hereinafter, “appeals”) addressed to that same electoral commission, or that an appeal must be signed by the appellant and contain his name, surname, residence address, and the date of submitting the appeal. An appellant must clearly define his demand, provide justification, and attach possible evidence to the appeal. Unless such information is included, appeals and/or appeals containing false information on the appellant shall be deemed anonymous and shall not be reviewed. There can be no justification for such provisions in a country ruled by law.

- The 2005 May 19 Law on Amending the Electoral Code adds a new Article 40² to the Electoral Code entitled “Procedure of Re-Counting Voting Results of the Precinct Electoral Commission at the Territorial Electoral Commission (although the title would make more sense if it were worded as follows: “Procedure of Re-Counting the Results of Voting in a Precinct at the Territorial Electoral Commission”), which provides that the re-count activity shall start in Territorial Electoral Commissions two days after the voting day, from 9am. When performing the re-count, a Territorial Electoral Commission shall work without days-off, from 9am to 6pm, unless a decision is taken by the Commission to extend the working hours. The re-count of voting results shall be performed in the same order in which appeals are received and shall end at 2pm on the 5th day following the voting day. This procedure does not provide favorable conditions for oversight of the work of Precinct Electoral Commissions. During the period currently defined by law, the Territorial Electoral Commission will hardly be able to go over results of 5-6 precincts. It would not take much of an effort to make sure the 5-6 reviewed precincts are actually the precincts in which there were no violations, whereas the others will not be reviewed, and so, no violation of law will be found.

- The procedure for determining errors defined in Article 62(1)(2) of the Electoral Code cannot be understood, especially the provision whereby “if the sum of valid and invalid ballots in the ballot box is smaller than or equal to the number of voters’ signatures in the voter list, then the second error margin shall be equal to zero.” This situation would indicate either that at some stage, ballots disappeared from the ballot box, or that additional signatures were added to the voter list: either case is a violation that influences the voting results, which should be recorded as an error.

- There still remain problems with the procedure of nominating and registering candidates for the parliamentary and presidential elections. Though the 2005 May 19 Law on Amending the Electoral Code (Article 59 amending Article 99(8) of the Code) defines the provision on party alliances nominating parliamentary candidates in the majority contest of National Assembly elections, there still remain problems. The absence of this provision in effect impeded the formation of electoral alliances and the possibilities for parties that are members of an alliance to act as one team in the majority contest.

The 2005 May 19 Law on Amending the Electoral Code has eliminated the requirement that signatures must be collected in order to support the nomination of candidates and candidate lists. The version adopted in first reading proposed replacing the signatures requirement with a

requirement of high electoral deposits: for instance, it proposed raising the electoral deposit for presidential candidates to 1,000-fold the minimum salary, the electoral deposit for candidate lists in the proportional contest—to 5,000 fold the minimum salary, and the electoral deposit for a candidate in the majority contest—to 200-fold the minimum salary. However, subject to the pressure that such deposits are requirements on property, this provision was later removed from the draft, and the requirement on collecting signatures to defend nominations was not restored. Under this procedure of nomination, there may be an excessive number of candidates and an increase in cases of obstructing fair elections.

- During the 2003 presidential and parliamentary elections of 2003, especially, there were obvious violations of the principle of equality expressed in the form of using the state resources in favor of one candidate and several parties.

The 2005 May 19 Law on Amending the Electoral Code has somewhat clarified this issue. It is now defined that candidates that hold political and discretionary offices or are public servants shall conduct the campaign on general terms; however, they are subject to certain restrictions, for instance, they may not conduct the campaign during the performance of their official duties, and any abuse of official position to gain an advantage in elections shall be prohibited. Moreover, premises, vehicles, communication means, and material and human resources made available for the performance of official duties may not be used for the campaign, with the exception of measures performed in respect of senior officials subject to state protection under the Republic of Armenia Law on Ensuring the Security of Special Protected Dignitaries of the State; the activities of such candidates may not be broadcast over the mass media, with the exception of cases enshrined in the Constitution, official visits and receptions, and measures performed at times of disasters. However, the effectiveness of this provision will mostly depend on application.

- Conditional division of voters into two groups is only one example of how equality of voting rights was violated: one group—military servicemen and those who were abroad on voting day—were deprived of the right to vote in elections to local self-governments bodies and in the single-mandate contest of parliamentary elections. As a consequence, some voters had only one vote during the voting, whereas others had two votes in the same voting in parliamentary elections.

- There still remain questions as to whether the electoral legislation of Armenia truly ensures universal suffrage. In the absence of any form of alternative voting, dozens of thousands of voters, who cannot show up to the polling station and vote on voting day, are practically deprived of possibilities to exercise their voting right.

The procedure of forming electoral territories should also be considered a breach of the principle of equality.

When electoral territories are formed under Article 17¹ of the Electoral Code, it is possible that difference between the number of voters in two territories be as great as 20% or, in some cases, even 30%. Under this procedure, it is possible that the votes of voters in one territory have a 30% greater weight than those of another.

This article does not in any way restrict the timeframe of formation of territories in future elections, but only defines the timeframe of electoral territory formation immediately after the amendments become effective. Therefore, if the number of voters in any territory changes, it will be impossible to change the boundaries of electoral territories without amending the Electoral Code for each such case. Under such conditions, it is possible in theory that the number of voters in any one territory be 100%, rather than 20% or 30% greater than the number of voters in another territory.

- During the 2003 elections, a large share of irregularities had to do with the unauthorized use of ballots. Several days before the voting, unlawfully-printed ballots were circulating. Ballots with special protective signs could be used to avoid this problem.

In order to avoid such situations, it is possible to apply ballots with security features.

The 2005 May 19 Law on Amending the Electoral Code has made such an attempt, but it has not been completed. Article 49¹ of Electoral Code:

“The ballot must be perforated and contain the name of the printing house and notification of how to fill the ballot. The ballot shall be made of non-transparent paper.

Above the cutting line of the ballot—on the edge, the number of the ballot shall be specified...” Considering that ballot edges shall be separated from the ballot before giving the ballot to the voter, the numbering of ballots does not serve any control purpose.

- The 2005 May 19 Law on Amending the Electoral Code has also amended the voting procedure (Article 57). In the past, the ballot was sealed by a commission member before the voter’s entry into the voting booth, i.e. before the voting, but under the amended procedure, the ballot shall be sealed after it has been voted. During the local government elections in September and October 2005, a local organization called “The Choice is Yours” reported that this amendment was almost massively the reason for violating the secrecy of the vote, because the commission members sealing ballots also check how the ballot was voted when they seal the ballot.

- In order to prevent cases of multiple voting observed in the elections, it would be appropriate to mark the voters’ fingers with indelible ink, although this provision, which existed in the amendments that passed the first reading, was later removed from the final text.

- Especially during the 2003 elections, the decisive impact of finance became clearer than ever before, including the handing out of money in the form of electoral bribe. Commitment on the part of the authorities is necessary to punish the perpetrators. The existence of a body, independent from the electoral commissions, to monitor candidates’ expenses would improve the situation, provided that proper arrangements are put in place.

In the Republic of Armenia, referendum and related matters are regulated by the Electoral Code and the Republic of Armenia Law on Referendum adopted on September 12, 2001. The most recent amendments to this Law were made on October 28, 2005.

All of the aforementioned circumstances regarding the decisive influence of the authorities over the electoral legislation and practices hold true in the case of the referendum, as well. After each election, the authorities scapegoat the electoral legislation and try to improve it with a view to somewhat mitigating dissatisfaction within society; the same would not hold true for the referendum legislation.

Unlike the electoral legislation of the Republic of Armenia, the Republic of Armenia Law on Referendum does not safeguard the right to free campaign time on the Public Television and the Public Radio. Proxies have a number of rights under the electoral legislation to exercise during elections (such as the right to stand by the side of and observing the work of commission members allocating ballots and watching the ballot box, the right to examine voted ballots, and the like), which observers (effectively, observers of the referendum are the equivalent of proxies in elections) do not enjoy during the referendum.

During the constitutional referendum of November 27, 2005, all of the negative phenomena (with the exception of distributing voter bribes, which were not necessary) found previously in any voting process or election were expressed rather acutely.

The Referendum was scheduled and held in a very tense political atmosphere. The political opposition had long ago declared its intent to turn the constitutional referendum into a “referendum of confidence.” Consequently, the referendum became a matter of keeping (strengthening) the power or taking over the power for the political authorities and the opposition, respectively. During the campaign, professional campaign work was replaced with political judgment of the other side’s actions.

Like in all previous elections, the authorities used all of the administrative tools available to them in order to obstruct the “No” campaign. The Public Television and other television stations, universities, and other institutions did not open their doors in front of opposition leaders

campaigning the “No” vote, whereas the doors were open and all the administrative capacity was used for the sake of the “Yes” campaign.

As for the campaign coverage over the mass media, there was express bias in the coverage, especially the television coverage.

The “No” campaign was mainly taking place in the regions and in Yerevan by means of meetings with the public, and such meetings were not incident-proof. The vehicles of the “No” campaigners were regularly towed to the Road Police sanctioning unit.

From the very beginning, opposition parties were advocating a “No” vote to the constitutional draft, based primarily on the argument of the authorities proposing the draft being illegitimate. However, on the eve of the referendum, it became clear to the opposition that they would be unable to ensure the correct count of ballots in polling stations, and the opposition called for a boycott of the referendum. During the days immediately preceding the voting day, there was word in the air that the opposition-appointed members of local commissions had agreed on certain conditions to cooperate with the other commission members. This was followed by the decision of opposition parties to boycott the activities of commissions, as well.

The Prosecutor General of Armenia made a statement in which he stated that anyone boycotting the work of commissions would be punished, including by criminal means. Such a statement did not effectively make an impact. The absolute majority of precinct electoral commission members appointed by the opposition parties boycotted the work of commissions on the voting day.

Having boycotted the commission work, the opposition parties were unable to monitor or predict electoral fraud in the commissions. Moreover, considering that only 17 observers of European structures were carrying out a short-term observer mission during the Referendum (the Armenian authorities were unable to justify why the OSCE had not been invited to observe the Referendum), it becomes clear that fertile ground had been laid for electoral violations. Observers appointed by opposition parties were the only ones able to observe what went on in the commissions.

The opposition set up a center that monitored the referendum: the center maintained contact with the local representatives in order to receive and publish information on the turnout. After the voting was over, the Center published information that stated that the turnout did not exceed 300-400 thousand. However, nothing was mentioned about the method by which such information had been collected.

The referendum was experiencing an extremely low turnout. It did not require professionals to realize that there was mass indifference toward the referendum. The voters that did visit the polling stations said that the voting was taking place in virtually empty polling stations. The President of the Republic voted openly, which was a violation of the Electoral Code of Armenia and the international standards regarding voting rights.

At noon on voting day, the Central Electoral Commission declared the number of voters as of 11am, claiming the turnout had been about 260,000. It was already clear at that point that the reported turnout figure had been inflated. The inflation trend was sustained until the end of the voting: the reported turnout of 1,514,307 was unprecedented (according to the CEC, there were 1,411,711 “Yes” and 82,018 “No” votes).

Clearly, such a turnout figure could not be credible, regardless of legal proof as to the contrary. In the public conscience, there is virtually no doubt that the voting and, consequently, the referendum results were rigged.

The period that followed the Referendum was extraordinary in the sense that a ruling coalition party was reluctant to call the voting “free and fair.” Chairman of the “Country of Laws” Party, Speaker of the National Assembly Arthur Baghdasaryan went so far as to speak of ballot stuffing and other irregularities in the voting.

After the voting, the observers of the Council of Europe declared that there had been violations in the voting, including ballot stuffing.

The voting was followed by opposition demonstrations that continued until December 10, 2005. However, the demonstrations are attended by no more than 4,000-5,000 people. The opposition declared it would not follow the constitutional path and, naturally, refused to challenge the outcome of the Referendum before the Constitutional Court (perhaps, because it did not have the one-fifth of the Members of Parliament necessary to file such an appeal).

3. Judicial Reform

The legal grounds for the formation of the Armenian judiciary were laid in the 1995 Constitution, which provided that the Republic of Armenia shall have a three-instance judiciary of universal jurisdiction, as well as a Constitutional Court. The Constitution promulgated the safeguards of judicial independence, providing, in particular, that “state power shall be exercised in accordance with the Constitution and laws on the basis of the principle of the separation of legislative, executive, and judicial powers” (Article 5); “in the Republic of Armenia, justice shall be administered only by courts, in accordance with the Constitution and laws” (Article 91); “judges and Constitutional Court members shall be irreplaceable,” and “while executing justice, judges and Constitutional Court members shall be independent and shall abide only by the law” (Article 97).

However, the 1995 Constitution also enshrined that the Justice Council shall be headed by the President of Armenia, and that the Minister of Justice and the Prosecutor General shall be the deputy chairmen of the Justice Council. The Justice Council comprised 14 members appointed by the President of Armenia for a 5-year term (including 9 judges selected from among 27 candidates nominated by the General Assembly of Judges, plus 3 prosecutors, and 2 members of the legal academia). The Justice Council was given the power to make recommendations to the President of Armenia regarding judicial appointment and dismissal, and to order disciplinary sanctions against judges.

As a consequence, judges are in reality not independent from the executive. The aforementioned powers of the executive are tools for intimidating and putting pressure on judges in the performance of their duties; the arbitrary targeting of judges for prosecution (disciplinary sanctions, prosecution for corruption, and termination of office) causes judges to be directly or indirectly engaged in unlawful activities.¹

To evaluate the general effectiveness of justice, numerous factors have to be taken into consideration.

In 2004, *the American Bar Association Central and Eastern Europe Legal Initiative* (ABA/CEELI) undertook a survey based on independent expert assessment of 30 factors, leading to the development of an assessment of the present situation of the Armenian judiciary. As a result of the assessment, 13 out of 30 factors were evaluated “negative,” 15 were “neutral,” and only 2 were “positive.”² The negative factors included the Judicial Selection/Appointment Process, Objective Judicial Advancement Criteria, Judicial Decisions and Improper Influence, Case Assignment, and Adequacy of Judicial Salaries. For a number of factors (Judicial Review of Legislation, Judicial Oversight of Administrative Practice, and Judicial Immunity for Official Actions), the indices worsened in 2004 compared to 2002 (positive correlation became neutral, or neutral correlation became negative).

Upon accession to the Council of Europe on January 25, 2001, Armenia undertook “to fully implement the reform of the judicial system, in order to guarantee ... the full independence of the judiciary...”, “to reform the Justice Council in order to increase its independence within three years of accession...”, and “to grant access to the Constitutional Court, within two years of accession, also

¹ Judicial Reform Index for Armenia. December 2004. ABA CEELI. Volume II, 2005, 30, 33 p.p. See also on the web <http://www.abanet.org/ceeli/publications/jri/home.html>

² Judicial Reform Index for Armenia. December 2004. ABA CEELI. Volume II, 2005, 7 p. See also on the web <http://www.abanet.org/ceeli/publications/jri/home.html>

to the government, the Prosecutor-General, courts of all levels, and - in specific cases - to individuals...”³

The Constitution needed to be amended in order to honor these commitments. The draft Constitutional Amendments were put to the Referendum in 2003, but did not receive sufficient votes in order to pass.

By the November 27, 2005 Referendum, the Constitution was amended. Some steps were taken towards more effective separation of powers and ensuring the independence of the judiciary from the executive.

In particular:

1. Article 94 of the Constitution was amended to provide that judicial independence is guaranteed by the Constitution and laws, rather than the President of the Republic; and
2. The composition and powers of the Justice Council—a body with an essential role in judicial appointment/dismissal—were changed.

As a result of the Constitutional Amendments (Article 94.1), the Justice Council will no longer be headed by the President of the Republic. Sessions of the Justice Council shall be chaired by the Cassation Court Chairman, who shall not have the right to vote. The Justice Council shall be composed of nine judges elected by the General Assembly of Judges in camera for a five-year term, and two members of the legal academia appointed by each of the President and the National Assembly of Armenia. As a result of the Constitutional Amendments, the incumbent judge and legal academia members of the Justice Council will remain in the Justice Council (until the end of their respective terms). The new members (2 members of the legal academia) will be appointed by the National Assembly prior to March 9, 2006.

The Justice Council shall, under Article 95 of the Constitution amended in the 2005 Referendum:

- Autonomously prepare and submit to the President for approval the judicial candidacy and advancement lists, on the basis of which appointments shall be made (before the amendments, the lists were prepared upon recommendation by the Minister of Justice);
- Issue an opinion on the nominated candidates for judge positions in the appellate, first instance, and specialized courts. *Prior to the amendments, it was provided that judge candidates would be nominated by the Minister of Justice. The amended text no longer specifies the entity that should make the nomination.*

However, the Amended Constitution has retained the provision of the 1995 Constitution whereby the President of the Republic has the power to terminate the powers of judges nominated by the Justice Council or to appoint nominated candidates as judges. In other words, the final decision-maker is the President, and there is no provision in the Constitution as to what the Justice Council can do if the President does not appoint a candidate nominated by the Council.

Though the aforementioned constitutional amendments are a positive step, they still cannot be considered sufficient to safeguard the institutional independence of the judiciary.

The effectiveness of justice is also influenced by the degree of access to justice.

In criminal and civil cases, citizens have a broad legal possibility to go to court. The Constitutional Amendments have abandoned the requirement whereby cassation appeals against final judgments could be lodged only through the Prosecutor General, his deputies, or advocates holding a special license.

In practice, however, judicial access problems arise due to the unfavorable economic status of the population.

The Armenian legislation currently provides two financial arrangements to support judicial access:

1. Some exemptions regarding judicial costs;⁴ and
2. Citizens' right to free legal aid in certain cases.

³ PACE Opinion 221 (June 28, 2000) on Armenia's Application for Accession to the Council of Europe.

⁴ Article 70 of the 1998 Civil Procedure Code of the Republic of Armenia and Articles 21 and 22 of the 1997 Law on Stamp Duties.

Free legal aid is given mainly in criminal cases. In civil cases, free legal aid is given only for cases that relate to two articles of the Civil Code. Civil cases currently account for about 90% of all cases pending before courts. Due to economic difficulties, the majority of the public cannot afford to pay for legal services.

In Armenia, there used to be other problems connected with access to justice, as well. Citizens and the Human Rights Defender acquired the right to bring cases before the Constitutional Court only under the 2005 Constitutional Amendments.

As a result of the 2005 Constitutional Amendments (Article 101 of the Constitution), “the following shall have the right to appeal to the Constitutional Court in accordance with the procedure defined in the Constitution and the Law on the Constitutional Court:

... 6^α Everyone—in a specific case, when there is a final court act, all judicial remedies have been exhausted, and the challenge concerns the constitutionality of the provision of the law applied in respect of the person in the court act.”

Citizens will be able to exercise the right to bring cases before the Constitutional Court from July 1, 2006 (Article 116 of the Constitution).

Courts, too, have been given the right to appeal to the Constitutional Court “regarding the constitutionality of provisions of legal acts related to specific cases pending before them.”

4. DEMONSTRATIONS, MEETINGS, AND FREE MOVEMENT OF PERSONS

Article 29 of the amended Republic of Armenia Constitution currently provides: “Everyone has a right to hold peaceful assemblies without arms”.

Prior to April 2004, no law had been adopted on rallies and processions. There were no procedures on conducting rallies, demonstrations, and processions, and the constitutional provision on freedom of assembly was in direct effect. However, based on the Presidential Decree on Public Administration in the City of Yerevan (1997), the Yerevan Mayor would authorize or prohibit demonstrations (though the Decree did not vest such authority in the Mayor).

5 of the 6 opposition-requested demonstrations were refused. In his letter (01/03-3331h) on refusal, for instance, the Mayor stated:

“...taking into consideration the Message of Yerevan’s “Center” District Community Council from its extraordinary session convened on 01.04.04 urging to refrain from demonstrations, rallies, and processions in the territory of the “Center” District to the extent possible, we find it inappropriate that a demonstration be conducted near the Matenadaran (Ancient Manuscript Museum) at 7pm on May 21...”

The rallies and demonstrations conducted by the opposition during 2003 and 2004 were followed by mass arrests. Demonstration participants were arrested for participation in an unauthorized demonstration, rally, or procession, or for violating the established procedure; once arrested, they would be subjected to administrative sanctions in trials behind closed doors, without advocates and with procedural violations.

Article 22 of the extant Constitution guarantees the right to freedom of movement, as well. However, during the demonstrations, the roads between Yerevan and the regions were blocked, traffic was disarranged, and people could not get either home or to work. Drivers who transported citizens to the demonstration in Yerevan were terrorized.

In particular, Nver Barseghyan (from Vardenis) and Karen Bayburdyan (from Malatia-Sebastia District in Yerevan) were apprehended to the Police and their bus license plates taken off. Vazgen Abrahamyan (driver from Masis) was subjected to an administrative fine. The vehicle of a driver from Nor Hachn was taken to the Police Fining Station, and he himself was subjected to an administrative fine.

When citizens tried to exercise their right to freedom of movement, disorder was provoked, entailing instigation of criminal cases against such citizens.

When the Armavir Highway was blocked, like usual, a criminal case with charges of public disorder was instigated against Karlos Harutyunyan, Vachagan Harutyunyan, Azat Grigoryan, and Nahapet Tamanyan (living in Ejmiatsin), and they were charged with the crime of causing public disorder (Article 206.3 of the Criminal Code).

There are numerous facts in this respect in the Armenian press and in the reports and statements of Armenian and international human rights organizations.⁷

In response to the allegation of the Constitutional Court⁸ that the ordering of administrative detention against demonstration participants did not correspond to the standards of a legal state, the Council of Court Chairmen of Armenia issued a clarification on April 25, 2004,⁹ where it asserted that the procedure of organizing and conducting demonstrations and rallies was defined by the USSR Law “On Organizing and Holding Meetings, Demonstrations, Rallies, and Street Processions” (October 28, 1988).

It must be mentioned that such a law does not exist altogether. On October 28, 1988, a Decree of the USSR Supreme Council Presidency on the Procedure of Organizing and Holding Meetings, Demonstrations, Rallies, and Street Protests was adopted.¹⁰ On September 25, 1991, the Republic of Armenia Supreme Council adopted a special law on preserving the validity of certain legislative acts pending the adoption of the new code. The legal act discussed here was not included in the list. Moreover, under Article 11 of the CIS Founding Treaty (September 21, 1991), legal rules of third countries, including those of the USSR, shall not apply in the territory of the member-states.

In an extraordinary session, PACE discussed the political situation in Armenia and adopted Resolution 1374 on April 28, 2004 (Document 10163) that required Armenia to take all the possible legal and practical actions to ensure the exercise of the right to freedom of peaceful assembly and to avoid unjustified restrictions.¹¹

On April 27, 2004, the Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations was adopted, and became effective on May 22. PACE described this Law as “highly restrictive.” Before the Law was adopted, the draft was characterized as “unacceptable and failing to comply with the European standards” by OSCE¹² and experts of the Venice Commission (CDL(2004)022); PACE called upon the authorities to harmonize it with CoE principles and standards (PACE Resolution 1361, *ibid* 15, January 27, 2004, Document 10027).

In a conceptual sense, the Law defines the powers of competent authorities, rather than the safeguards of the exercise of the right to freedom of assembly; in effect, the Law is restrictive of the organization and holding of public events, because:

1. Under Articles 2, 10, and 12 of the Law, mass events (defined as events with up to 100 participants) may only be held after giving at least 3 days’ advance written notice to the competent authorities. As a consequence, holding a protest with over 100 participants becomes impossible, even if there is an urgent and unexpected issue.

2. The respective international standards and Article 43 of the Constitution of the Republic of Armenia (Article 48 of the pre-amended Constitution) provide an exhaustive list of the grounds upon which fundamental rights and freedoms may be restricted. However, this Law lays down additional wide grounds for prohibiting demonstrations. Under Article 13 of the Law, the bodies that review notification of a mass public event (i.e. the Mayor in Yerevan, and the community head in the regions) may prohibit the holding of a mass public event, if:

□ Some other mass event or other event that precludes convention of the first event takes place on the mentioned date, time and location...” In effect, the competent authorities have the discretion to determine whether events can be held concurrently, and the meaning of “precludes” has not been clarified.

□ There is reliable information that convention of the event poses a real threat to the life or well-being of persons...” The notions of “reliable information” and the degree of threat have not been clarified. According to the international standards, using assumptions is not acceptable. Causing inconvenience upon others should not be construed as a situation in which the demonstration stops to be peaceful.

It is prohibited to conduct public events:

□ In the territory or within 150 meters of national, special, and vital facilities, cultural and sports complexes (if other events are being held inside such complexes).” Under the respective decree of the Armenian Government on “State Protection of Special, Vital, and Historic-Cultural Facilities,” the administrative buildings located in the center of Yerevan are considered such facilities, which renders it impossible to hold such events in the center of Yerevan.

□ If other events are being conducted in the territory or within 150 meters of cultural and sports complexes.” It is not clear how the body reviewing the notification would have advance knowledge of “other events,” because notification for such “other events” is not required. Why are events held in the territory and within 150 meters of cultural and sports complexes considered superior to the constitutional right to freedom of assembly?

□ If holding a rally will disrupt either the traffic within that settlement or the inter-state road traffic.” Under international standards, the mere fact that holding a demonstration or a rally may disrupt road traffic cannot serve as a justification for terminating or prohibiting such an event. The Police are directly responsible for addressing these concerns by means of performing efficiently. OSCE characterized the traffic disruption clause as “extremely vague,” and the means available for compulsory termination of an event-“unclear.”¹³

In its 60th Session (Venice, October 8-9, 2004), the Venice Commission issued the opinion (CDL-AD(2004)039), (CDL(2004)42) that the Republic of Armenia Law “On the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations” did not correspond to the general requirement that laws on the right to assembly should be limited to defining the legislative bases of permissible interference by state authorities. Rather, the Law lays down inappropriate “permissible grounds” for restricting events.

In Resolution 1405(2004) adopted in October 2004, the Parliamentary Assembly of the Council of Europe called upon the Armenian authorities “to amend, no later than March 2005, the law on demonstrations and public assemblies to bring it into full conformity with Council of Europe standards to ensure freedom of assembly in practice.”

The authorities have prepared a Draft Law on Amending the Republic of Armenia Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations. The Draft has been reviewed by experts of OSCE/ODIHR¹⁴ and the Venice Commission.¹⁵ Their opinions on the Draft coincide. Both of these institutions consider the proposed Draft amendments to the Republic of Armenia Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations to contemplate some progress; however, they note that the restrictions remain excessively onerous, and recommend taking additional steps in this direction.

In its Opinion No 290 / 2004 CDL(2005)018) of February 8, 2005, the Venice Commission (Strasbourg) called to amend the unacceptably long list of restrictions that have been kept (Article 9) (Opinion CDL(2004)42).

On October 3, 2005, the Republic of Armenia Law on the Procedure of Holding Meetings, Demonstrations, Rallies, and Protests was amended. Despite the amendments, however, the overall concept of the Law has not changed. It continues to remain a law that restricts, rather than safeguard the freedom to hold and conduct public events.

In particular, prior to amending the Law, public events were in all cases prohibited in some areas. However, under the amendments, the mandatory restriction applies also to public events to be held within 150 meters of military detachments, defense units, penitentiary institutions, and pre-trial detention facilities. In the other places mentioned in the Law, holding a public event “may be prohibited” by the authorized body, but it may also not.

Article 6 of the Law on amendments sets additional preconditions for holding public events on bridges, in tunnels, in under-ground places, in hazardous buildings, and at construction sites: public events in such places may be restricted, “if they endanger public security and the health of participants and others...”

The positive change is that if a non-mass event spontaneously turns into a mass event, it may then be carried out without prior notification (Article 10).

The grounds for restricting mass public events, which were prescribed under the original Law have been retained: i.e. a mass public event may be prohibited if it is impossible to hold events concurrently, or if there is credible information that “holding the event poses an imminent threat to the life or health of persons.”

Whereas previously, it was prohibited for mass public events to be held in the premises of or within 150 meters of central and local government bodies and special vital facilities designated as such by the Government, the amendments have introduced the notion of a list that may define places in which mass public events may not be conducted.⁵ The only state body included in the list is the Office of the President of Armenia: the police may determine the distance from the Office of the President, within which a mass public event shall be prohibited on grounds of security.

Whereas prior to amending the Law, mass public events could not be held at the premises of or within 150 meters of cultural and athletic facilities (when other events were being conducted in such facilities), the holding of such events may now only be limited to outside the territory of the cultural and athletic facilities. However, the term “limit” is not clarified in the Law, and the authorized agency has discretion to determine the form of limitation.

The following grounds for prohibiting a mass public event have been removed from the Law: previously, it was provided that a mass public event could not be held, “if the rally would dismantle the traffic in a settlement or the traffic along the inter-state road”, or “if another mass public event will be conducted by opponents of the organizer at the same and on the same date, within immediate proximity of a mass public event.”

On December 24, 2004, the Republic of Armenia Criminal Code and the Code of Administrative Infringements were amended. Then, on October 4, 2005, the Criminal Code was amended once again. The amendments *criminalized* “the organizing or holding of unlawful public

⁵ The Republic of Armenia Government Decree on Protection of Facilities of Special, Vital, and Historical-Cultural Significance defines administrative buildings located in downtown Yerevan as such “facilities” in the meaning of the Law.

events or other public events” and “the calls urging to disobey the decision on terminating an unlawful public event.”¹⁹ Article 258 of the Criminal Code, which criminalized the organization of or active participation in group acts violating the public order, which “cause disturbance of the work of central or local government bodies, communication organizations, or transport, and are accompanied with explicit disobedience to the lawful demands of the representatives of the power, unless features of a more grave crime are present,” has been revoked.

These provisions, too, have been criticized by OSCE and the Venice Commission. The Venice Commission questioned the compatibility of these new provisions with the principle of legality, which is a key principle of criminal law that prohibits arbitrary enforcement of laws. The Commission considers criminal sanctions feasible only in cases in which persons participating in the demonstration exert violence or inflict physical harm.

The Criminal Code or other legal acts did not provide a definition of the notion of an “unlawful” public event. Under the amendments to the Criminal Code in October 2005, the notion “unlawful” was replaced with the notion “in violation of the procedure defined by law.”

In Opinion CDL(2005)018, the Venice Commission concluded that the Draft Law on Amending the Republic of Armenia Law “On the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations” and the amendments to the Armenian Criminal Code and Code of Administrative Violations “would prohibit and make illegal and subject to criminal and administrative sanction the organization and holding of demonstrations which should, in fact, be permitted.”

Since the Law entered into legal force (May 22, 2004), the Yerevan Mayor may only acknowledge holding of a demonstration, or prohibit it based on the grounds defined in law. The Mayor’s Office has come up with an odd interpretation of this provision, as described below.

Here is the text of the Mayor’s Decision 05/1 dated June 1, 2004 “On Prohibiting the Holding of a Mass Public Event”: “Having examined the 31.05.2004 notification by citizens Koryun Arakelyan, Albert Bazeyan, Victor Dallakyan, and others, and taking into consideration that criminal cases have been instigated in prosecutorial authorities of Armenia in relation to past demonstrations, and guided by Article 13(1)(3) of the Republic of Armenia Law “On the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations” and Yerevan Mayor’s Decision No. 856-A of 17.05.2004, citizens Koryun Arakelyan, Albert Bazeyan, Victor Dallakyan, and others shall be prohibited from holding a demonstration in the area adjacent to the Matenadaran from 6pm to 9pm on June 4 of this year.”

The June 16, 2004 demonstration was the only one that was not prohibited (during June 11-15, a co-rapporteur of the CoE Monitoring Committee was in Yerevan).

In 2005, unlike 2004, prior to the Constitutional Referendum, few demonstrations and rallies were held. However, the ones that were held were accompanied with arbitrary acts of authorities and prosecution by the police.

A number of non-governmental organizations had applied to the Mayor’s Office to notify about holding a rally in support of the TV station “A1+.” The Mayor’s Office banned the rally. Nevertheless, the rally and demonstration commenced on the 2nd of April, during which the Road Police took the vehicle owned by “A1+”, which contained banners, loudspeakers, and other equipment, to the Penal Facility.

On April 20, 2005, the meeting of the people of Sevan with Aram Karapetyan—the leader of the “New Times” (“Nor Jamanakner”) party, ended with an incident. The meeting had been authorized by the local authorities, but 20 minutes prior to the event, the power was cut in the Cultural Center in which the meeting was going to take place. During the meeting, which had to be held near the Cultural Center, police officers and others dressed in civilian clothes provoked a brawl with the meeting participants. The clash lasted about 15-20 minutes, after which, according to

eyewitnesses, one of the people disturbing the meeting fired shots in the direction of the attendees. Garegin Petrossyan, a Yerevan State University student, a member of the Youth Branch of the “New Times” party, was hospitalized with a shot wound on his leg.

During mass events related to local government elections (especially during the demonstration of October 9, 2005 held in front of the Administration Building in Hrazdan in connection with the elections of the Hrazdan Mayor), electrical shock was applied, and demonstration participants were battered.

The Republic Party was not given any buildings to hold its regional meetings prior to its nationwide meeting.

On November 2, 2005, a small hall was provided to S. Demirchyan (leader of the Republic Party) for his meeting with the population, the doors of which were later closed by the police, which claimed that there were no more seats inside. The meeting was moved to outside the hall. The head of the regional police department, claiming that “there is no permission for holding the meeting outdoors,” demanded to return indoors.

The Heritage Party notified the Yerevan Mayor’s Office of its intention to hold a “Civic Assembly” at 3pm on November 25, 2005 in the Freedom Square (adjacent to the Opera building). The Mayor’s Office prohibited the event, claiming that a pop concert was scheduled to begin in the same place at the same time.

On November 23, the Yerevan Mayor’s Office acknowledged receipt of the notification of the Republic Party to hold demonstrations in the square adjacent to the Matenadaran (Ancient Manuscript Museum) on November 27, 28, and 29. Thereafter, late in the evening of November 28, the Yerevan Mayor’s Office revoked its decision on “acknowledging receipt of the notification of the November 29 demonstration.” Irina Grigoryan, Deputy Head of the Organizational Department at the Mayor’s Office, informed that the revocation was due to the November 27 statement of the opposition, whereby the opposition declared its intention to start a lawful struggle against the authorities. In its decision, the Mayor’s Office invoked Article 13 of the Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations, which in reality does not prescribe a procedure for revoking permission. Article 13 provides that as a result of reviewing the notification, a mass public event may be prohibited, if there is credible information that the conducting of the event will pose an imminent threat to the life or health of individuals.

Once again, police officers started to batter the participants of a protest against the November 27 Constitutional Referendum, to force them into cars and take them in an unknown direction, to move them police stations, to prohibit them meeting lawyers, and after holding them in police stations for several hours, the police officers filed protocols on “participation in an unauthorized rally” and let them free. Moreover, the police officers stopped cars taking part in an automobile protest held by the opposition, battered the drivers, and took the cars to penal stations.

The December 2 demonstration of the opposition was prohibited by the Mayor’s Office on the ground that Prime Minister of the Russian Federation Mikhail Fradkov was visiting Yerevan on the same day.

During those events, the citizens’ right to freedom of movement was violated: on November 4, 2005, the local police was present in the crossroads of the Alapars, Solak, and Arzakan villages of the Kotayk Region, where they stopped and sent back cars moving towards the town of Charentzavan. On November 11, in the Zovuni Village, the police demanded people to leave the cars that were taking them to an opposition meeting from the nearby villages, and took the cars to the penal station. On November 1, the roads leading from villages to the town of Talin were blocked.

In order to ensure the exercise of the rights to freedom of assembly and freedom of movement, it is necessary:

1. To amend the Law on the Procedure of Conducting Gatherings, Meetings, Rallies, and Demonstrations in line with international standards, in particular:

- To make conceptual changes in the Law to make it a law that contains safeguards of the right to freedom of assembly;
- To eliminate prohibitions on organizing and holding public events, and to allow such prohibitions only in special cases (state of emergency and state of war); and
- To rule out arbitrary interpretation of the Law by public agencies by means of prescribing all of the demonstration-related procedures by law.

2. Rule out administrative and criminal liability for organizers and participants of demonstrations.

3. Prohibit demonstrations and rallies only in premises of and within a certain distance from military significance and high danger (such as the Nuclear Plant). The list of such facilities should be prescribed by law.

4. Punish the police officers that obstructed the free movement of citizens.

5. TORTURE AND ILL-TREATMENT

Since declaring independence in 1991, the Republic of Armenia has taken the following steps in respect of preventing torture and other cruel, inhuman, or degrading treatment and punishment: Armenia has joined the UN's Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (in 1991), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (in 1993), the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 2002), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and its 1st and 2nd protocols (in 2002), thereby reiterating its commitment to rejecting torture and degrading treatment, and has undertaken to prevent, prohibit, and fight against torture and ill-treatment. Article 17 of the Amended Constitution (Article 19 of the pre-amended Constitution) prohibits subjecting anyone to torture and cruel or degrading treatment and punishment, whereas Article 22 (Article 42 of the pre-amended Constitution) prohibits "the use of evidence obtained in violation of law."

The timetable of commitments assumed by Armenia in respect of Council of Europe accession clearly provides: "...To institute, without delay (*i.e., immediately after January 25, 2001*), a follow-up procedure which conforms to Council of Europe standards to complaints received on alleged ill-treatment in police custody, pre-trial detention centers, prisons and the army, and to ensure that those found guilty of such acts are punished in accordance with the law." However, this commitment has still not been honored.

The transfer of the penitentiary system, including the pre-trial detention facilities, from the Ministry of Interior and of National Security system to the Ministry of Justice, which was among the commitments related to CoE accession, was completed in January 2003. Normative legal acts have been adopted to improve the penitentiary system, including the Republic of Armenia Law "On Holding Detainees and the Arrested" (February 6, 2002), the Republic of Armenia Law "On Penitentiary Service" (December 15, 2003), and the Penitentiary Code (December 24, 2004), which provides: "Anyone deprived of liberty on the basis of a court judgment shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. No circumstance may serve to justify torture or other cruel, inhuman or degrading treatment or punishment"(Article 6).

In 2004, the Council of Europe's Committee for the Prevention of Torture published the first report on Armenia, which was based on the findings of a visit to Armenia during 2002.

The Report notes that during their visit, CPT's representatives obtained an abundance of credible information on arrested persons allegedly being subjected to ill-treatment in pre-trial

detention facilities. Beating and other torture by kicking, punching, and using hard objects were allegedly used during police interrogation (by operational officers of the police) to extort confession and other information. In a few cases, it was found, in the records of the medical examination of the persons concerned upon their arrival at pre-trial establishments, entries which mentioned injuries consistent with allegations made. The Report noted that information on torture had been obtained by the Human Rights Committee operating in attachment to the President (prior to 2004).

Article 47 of the Law on Holding Detainees and the Arrested provides the creation of a Group of Public Observers by the Ministry of Justice (MoJ). On May 14, 2004, the RoA MoJ Penitentiary Administration issued IDs to 11 members of the Group of Public Observers. The Group comprises a number of NGO representatives, including some from human rights NGOs, as well as a representative of the Armenian Apostolic Church. The Group was created by a decree of the Minister of Justice in accordance with the Law "On Holding Detainees and the Arrested" and the By-Laws "On Activities of the Public Observers' Group in the Penitentiary Institutions of the RoA Ministry of Justice." According to these By-Laws, the Group is defined as a monitoring body over respect for the rights and freedoms of those confined in detention institutions. According to the By-Laws, members of the Group may visit penitentiary institutions without any hindrance, have access to various documents (including, with the consent of the prisoner, his personal file and correspondence, with the exception of classified documents), and the conditions in the institution, and meet with detainees. The members of the Group are nominated for a 3-year period.

Both this Group and a number of non-governmental organizations have been monitoring penitentiary institutions. They have found that penitentiary institutions have been reformed and renovated with the support of various international organizations. In the "Prisoners' Hospital" Penitentiary Institution, a separate ward (building) for tuberculosis patients was built; the surgical and general practice wards were reconstructed in 2004. The "Vardashen" penitentiary institution has been reconstructed and upgraded to international standards. In the "Nubarashen" penitentiary institution, a number of cells have been renovated, and the former punishment cells, which used to be in the basements, are no longer being used. The Vanadzor pre-trial detention facility could be recalled as an example of inhuman conditions of detention; there, cell humidity is several-fold above the standard, and the walls have been depleted because of dampness. The Republic of Armenia Government had adopted a decision on moving the Vanadzor institution to another building, but according to the staff of this institution, this work is not done due to the shortage of funds. There are funds in the 2005 State Budget for constructing a new building to be used by the Vanadzor pre-trial detention institution (construction is currently underway).

Penitentiary institutions mainly lack medical service. The institutions do not have medical equipment and medication; prisoners often receive expired drugs. Medical screening and injury reporting are not properly done. The psychological service is inadequate. In the Goris penitentiary institution, there is no psychological service at all; in 2004 alone, two suicides were reported in this institution. Food provided to prisoners is insufficient: surveys suggest that those who afford use food brought by relatives. Prisoners are often deprived of meat courses. Surveys suggest that there is no longer any torture in pre-trial detention institutions, though about 60% of the detainees said they had been battered either during arrest or while in police custody. However, the pre-trial detention institutions' entrance registers either do not report injuries, or report injuries only superficially. Prisoners' access to information is limited; prisons do not receive newspapers and magazines, and the main source of information is television, though not all the cells have TV sets (the ones that do have TV sets got them from relatives). The prison libraries are scarce and outdated; new books have not been received for several years already.

In Armenia, torture is mainly used to extort self-incriminating confession, rather than to punish suspects or the accused. At later stages, courts mainly base their judgments on evidence produced by the charging

authority, the bulk of which is self-incriminating testimony of the accused. Monitoring suggests that during trials, about 80 percent of the accused reject the testimony they gave during the pre-trial investigation claiming that they testified under the influence of torture and violence. However, their allegations do not lead to any consequences, and the perpetrators of torture and violence are not subjected to criminal liability. Even when violence exerted by pre-trial investigation authorities has led to death, a criminal case will not necessarily be instigated. Even if a case is instigated, the perpetrators are rarely convicted to a proportionate sentence. Some of these cases are dropped because of the lack of crime elements or because of the failure to reveal the perpetrators. In the better cases, the perpetrators are charged with abuse of power.

In 1999, 23-year old shepherd Armen Poghosyan from the Saratovka Village of the Lori Region was convicted to 15 years in prison on charges of murder; though he was later proven not to be involved, he served 5.5 years in prison instead of the actual murderer. In convicting him, the court had invoked his self-incriminating testimony as the only evidence, which had in fact been obtained through brutal torture. After some years, the real murderer was caught in a similar crime (rape and murder of a juvenile) and confessed also to the 1999 murder. Thereafter, the Republic of Armenia Cassation Court acquitted Armen Poghosyan on April 2, 2004. Prosecutor General Aghvan Hovsepyan received him (Aghvan Hovsepyan had incidentally been the Prosecutor General when Armen had been convicted) and released him after presenting him the Count of Monte Cristo book. Around the same time, they declared that a criminal case was instigated and that all the guilty ones would be found and punished. It has been almost a year since, but the guilty ones are yet to be punished.

At times of domestic political tension in Armenia, torture is also used as a punishment for one's political conviction. Here are some examples:

During the night of April 12 to 13, 2004, when the law-enforcement officials attacked the offices of the Armenian People's Party, the Republic Party, and the National Unity Party and arrested a large number of people, violence and degrading treatment was exerted against women, among others. Ani Kirakossyan, Varduhi Shahbazyan, and Gayane Ashughyan were battered in a particularly cruel way. Naira Aghababyan, Gohar Kurazyan, Ani Khachatryan, and others were subjected to degrading treatment.²¹

A 45-year old resident of Artashat, teacher-historian Grisha Virabyan, a member of the APP's Board, was apprehended by the Police to the Artashat Police Station on April 23 for taking part in the opposition meetings; after five hours of battering, he was thrown into an isolator. On April 24, an emergency vehicle took him to the hospital, where doctors operated him and removed his left testicle. However, a criminal case was not instigated against the police officers and investigators that had inflicted grave physical injuries upon him, though he had appealed to the Prime Minister, the Prosecutor General, the Police Chief for Armenia, and the Police Chief for the Ararat Region; rather, a criminal case was instigated against the victim himself for hitting a police officer in an act of self-defense (charged under Article 316(3) of the Criminal Code - "violence against a representative of the power", threatening 5-10 years in prison).²²

On May 26, the First Instance Court of the Kentron and Nork-Marash Districts of Yerevan (judge Pargev Ohanyan) convicted 24-year old Edgar Arakelyan, a member of the Armenian People's Party, to 1.5 years of imprisonment for hitting a police officer in the head with an empty bottle of mineral water during the night of April 12 to 13 at the site of the demonstration on Baghramyan Avenue during a clash between law-enforcement officers and the demonstrators. The Court refused to take into consideration the statement by E. Arakelyan during the hearing that law-enforcement officers "were battering him to death till he fainted" during the pre-trial investigation in order to extort testimony. Moreover, the Court failed to take into consideration the fact that the

traces of E. Arakelyan's physical injuries and the degrading treatment against him were seen and documented by representatives of the CoE and the Red Cross.

After the transfer of penitentiary institutions to the Ministry of Justice and the creation of the Group of Public Observers, there was an impression that the incidence of torture declined in penitentiary institutions. However, during May-August of 2005, the members of the Group of Public Observers visited the Nubarashen Penitentiary Institution and revealed cases of violating the rights of prisoners:

On May 4, 2005, the Group of Public Observers of the Penitentiary Department of the Ministry of Justice received a warning that M.E., a life prisoner detained in the Nubarashen Penitentiary Institution, had been subjected to violence.

On the same day, members of the Group M. Aramyan, A. Danielyan, and M. Baghdasaryan had a meeting with the Deputy Governor of the Nubarashen Penitentiary Institution responsible for security, the Head of the Social-Psychological Service, the Head of the Medical Service, and the prisoner in question. During the meeting, the governor of the prison confirmed that he had taken a decision ordering to use a rubber truncheon in respect of M.E., because the latter had resisted a prison staff member.

During the meeting with the prisoner, it was discovered that he had been wearing handcuffs when the physical force had been applied in respect of him.

From the meetings, it also became clear that before and after the incident, the social-psychological staff of the prison had not had any meetings with the prisoner and had not conducted any work with him.

According to the head of the medical unit, M.E. received medical assistance after the incident (pain relief medication), but no protocol was filed about the injuries sustained. According to him, they never file medical protocols regarding physical injuries discovered on the bodies of prisoners during their detention in the prison.

Based on these facts, the Group concluded that a prisoner who was handcuffed could not resist in such a way that it would be necessary to use the measure that caused the injuries in question.

The Group appealed to the Minister of Justice and the Prosecutor General urging to take appropriate measures in respect of the violence fact, including a motion to immediately order forensic examination.

The Ministry of Justice qualified the incident as proportionate use of force.

After this incident, on August 18, the Head of the Group Temik Khalapyan and a member of the Group Michael Aramyan, having received a report, visited the same Nubarashen prison, where they discovered another incident.

Prisoner A.A., who had been battered by the guards of the "Prisoners' Hospital" Penitentiary Institution, was being detained in the Nubarashen prison. The group members had a meeting with A.A. in Nubarashen, during which he insisted that the guards had battered him using a rubber truncheon and an iron bar. The observers saw signs of torture on the head and other parts of the body of the victim.

At that time, Michael Aramyan (a member of the Group) heard voices from a neighboring room and, having approached the door, saw how the prison staff were kicking and beating another prisoner. M. Aramyan tried to find out what was going on. V. Ohanyan—a senior security officer at the prison—was very unhappy about such attempts, and demanded not to interfere and to leave the institution. The prison governor—A. Sargsyan, promised to carry out an internal investigation and to provide a written response, which still has not been done.

Prior to an August 19 meeting with prisoner R.S., who had been on a hunger strike, the Nubarashen prison governor A. Sargsyan informed group members M. Baghdasaryan and A. Sakuntz that he would not allow them to take photos. Moreover, after the end of the visit, the prison governor did not grant the observers access to the medical records of prisoners R.S., M.S., and A.Z., though the prisoners had provided their written consent to the prison governor.

On August 18, 2005, the Group again sent a letter to the Minister of Justice and demanded to conduct an internal investigation of those who had abused their power.

Thus, it is too early to say that there is no torture in the penitentiary institutions. The scarcity of facts is due to the reluctance to report such cases, rather than the lack of any torture.

In 2004, the Council of Europe's Committee for Prevention of Torture urged Armenia to engage in intensive action to overcome the practices of torture.

In its response to the CoE's CPT, the Armenian Government stated that it was exerting efforts to improve police training, and that during 2001-2003, only 17 cases of procedure violations were reported in the penitentiary institutions (however, this number points to the inadequacy of complaint procedures, rather than to such cases being rare); the investigation of these 17 cases, according to the authorities, had resulted in 12 staff members undergoing disciplinary fines, and 5 being fired.

We believe intensive urgent action is required to rectify the situation, including, in particular, the following measures:

1. Changing the procedural practice, including:

- Applying the respective provisions of the criminal legislation, which provide that any time an accused alleges torture, the court must immediately demand an investigation;
- Abolishing the practice of admitting self-incriminating testimony as primary evidence;

2. In cases of torture, enforcing criminal sanctions against the police officers involved;

3. Making a statement in accordance with the procedure defined in Article 22 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, whereby Armenia will recognize the authority of the UN Committee against Torture to receive and investigate personal complaints of individuals who allege violation of the aforementioned Convention;

4. Improving the criminal legislation, including:

- Amending and supplementing the provisions of the Criminal Procedure Code on interrogation of suspects, the accused, and witnesses to define an exhaustive regulation on how the police should manage the interrogation;

5. Training police officers and requiring professionalism and knowledge of the international standards in respect of new appointees;

6. Enhancing the transparency of police stations for non-governmental organizations;

7. Ratifying the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment

8. Facilitating the institution of public monitoring over the conditions of convicted persons.

9. Expanding the powers of the Public Monitoring Group that already conducts monitoring in penitentiary institutions so that its mandate applies to police stations and temporary detention facilities, as well.

6. HUMAN RIGHTS DEFENDER INSTITUTION IN ARMENIA

The need for the Human Rights Defender institution had matured since the 1990s, but the

Armenian authorities did not include a provision on the Human Rights Defender in the text of the Constitution adopted in 1995. The lack of such a provision was later used by them to justify the reluctance and failure to adopt a law on the Human Rights Defender.

On January 25, 2001, Armenia became a fully-fledged member of the Council of Europe. By PACE Opinion 221 (June 28, 2000), Armenia undertook to adopt a law on the Ombudsman (Human Rights Defender) prior to July 25, 2001. According to the Principles on the Status of National Institutions, adopted by the UN General Assembly on December 20, 1993 (“Paris Principles”), the Human Rights Defender is an independent parliamentary institution. One of the independence safeguards is the appointment of the Defender by the Parliament and the provision of opportunities for the Defender to function independently.

In 2001, the Republic of Armenia Ministry of Justice drafted a Law on the Human Rights Defender (the Law on the Ombudsman), which, among other shortcomings, stipulated the appointment of the Human Rights Defender by the President of Armenia. The draft was criticized by a number of Armenian human rights NGOs. The Council of Europe agreed that the honoring of this commitment be postponed until the adoption of a new Constitution.

However, in late 2002, several deputies of the Republic of Armenia National Assembly circulated a new version of the draft Law on the Human Rights Defender, Article 27 of which provided that the Human Rights Defender would be appointed by the President of the Republic, pending amendment of the Constitution.

The draft constitutional amendments put to the Referendum on May 25, 2003 did not receive the necessary number of votes.

On September 2 and 3, 2003, a workshop on the draft Law on the Human Rights Defender was held at the National Assembly with the participation of the OSCE Yerevan Office, the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), and the Armenian NGO community. According to the presenters of the draft, Article 62 of the Armenian Constitution, by exhaustively defining the powers of the National Assembly, did not allow the National Assembly to appoint the Defender, which was the reason for vesting this power in the President of Armenia. The Draft provided that after the Constitution was amended, the Defender’s mandate would be terminated, and a new Defender would be elected by the National Assembly.

Some claimed that Article 62 of the Constitution exhaustively defined the powers of the National Assembly, but not its members, and therefore, they claimed it was possible to stipulate that a person approved by a vote of a certain number of MPs be appointed Defender by a presidential decree.

On September 3, 2003, the Monitoring Group of the Council of Europe Committee of Ministers (known as the “Ago Group”) issued a report stating, among other things, that during the last 18 months, the honoring of commitments by Armenia was slowing down. The Monitoring Group differentiated the commitments that were linked with the constitutional reform and suggested to the Armenian authorities finding practical interim solutions.

The Ago Group, too, mentioned that the Constitution of Armenia did not restrict the possibility of the Ombudsman’s appointment by the Parliament, and that it was possible for the National Assembly to reach consensus on the person of the Defender, and the President’s signature being just a formality.

In September 2003, the National Assembly, without any regard for the recommendations of international and national experts, adopted the Law on the Human Rights Defender in second reading, claiming it had to do so in order to avoid criticism by the Council of Europe.

15 Armenian organizations made a statement in which they named this process of creating the Ombudsman’s institution “an untimely measure.”⁶

On October 21, 2003, the National Assembly finally adopted the Republic of Armenia Law on the Human Rights Defender, which was signed by the President on November 11, 2003 and became effective on January 1, 2004.

⁶ See *Aravot* daily of September 3, 2003

Under the Law, the Defender would, pending constitutional amendments, be appointed by the President of Armenia after consultation with the groups and factions of the National Assembly. However, the President appointed the Human Rights Defender on February 19, 2004 without any consultation with the National Assembly groups and factions.

Article 22 of the Law provides that the Deputy Defender shall be appointed upon *nomination by the Defender*, by the same body and in the same procedure as the Defender. The Defender nominated a candidate to the President, but the President suggested nominating a candidate that was nominated by the President. After the Defender nominated the candidate suggested by the President, the President appointed him as the Deputy Defender.

The Law on the Human Rights Defender contains a number of provisions restricting the possibilities for the Defender's activities. For instance, Article 7.1 of the Law on the Human Rights Defender rules out any review by the Defender of appeals against judicial bodies and judges. In other words, the Defender is deprived of the possibility to help those that suffered a violation of their fair trial rights under Article 6 of the European Convention on Human Rights and Article 19 of the Armenian Constitution. The Defender will be unable to respond to issues of undue delays or denial of the right to have an advocate in judicial proceedings. The right to a fair trial is a fundamental right and a precondition to the exercise of all other rights and freedoms. Thus, the Defender cannot oversee one of the three branches of power.

According to the Law on the Human Rights Defender, "only proxies of such persons and family members and heirs of deceased persons may appeal to the Defender for the protection of the rights of another" (Article 8). This provision does not enable the Defender to protect human rights on the basis of a third party appeal (by, for instance, a human rights NGO).

The Armenian authorities tried to turn the Defender's staff into civil servants. The Defender was opposed to this move. Had this initiative been realized, the Defender would have become completely dependent upon and controlled by the executive. However, it is unclear what criteria and procedures were applied to select the Defender's Staff (one cannot know whether staff was recruited competitively).

In its session of February 10, 2005, the Government reviewed draft amendments to the Law on the Human Rights Defender, which provided eliminating the following paragraph after the words "The Defender may not interfere with judicial proceedings": "The Defender may demand information on any case pending before court and make suggestions to the court by safeguarding the exercise of citizens' right to a fair trial under the Armenian Constitution and principles of international law." The National Assembly rejected these amendments. In April, the President of Armenia went to the Constitutional Court challenging the constitutionality of Article 7.1 of the Law on the Human Rights Defender, claiming that the Defender's right to demand information from courts and make suggestions to courts is not driven by the need to execute independent and impartial justice, and represented interference with the functioning of the judiciary.

The Constitutional Court sustained the challenge and ruled that the aforementioned provision was not in conformity with the Constitution of Armenia. However, the Constitutional Court also mentioned in its ruling that the Defender had the right to receive information from courts, and that "the exercise of such right had to be facilitated, unless it concerned the administration of justice in a specific case or substantive and procedural matters of a case pending before court."

On May 26, 2005, the National Security Service (NSS) arrested Serob Antinyan (secretary of the Defender's Expert Council, staff member of the Research and Analysis Unit of the Defender's Office) on charges of fraud: according to the NSS, Mr. Antinyan had taken a US \$300 bribe from a restaurant owner whose restaurant was making noise disturbing the residents of the building in which the restaurant was located, in return for a promise to refrain from considering the complaint of the residents. On the same evening, the Public Television of Armenia broadcast a video record of the money being taken and the arrest as it had been shot by the NSS.

On the night of the arrest, NSS staff, without notifying the Defender and without submitting the documents required by law, invaded into the Defender's office, and seized a computer that stored office information and confidential complaints of citizens.

Subsequently, the computer was returned.

S. Antinyan was convicted to 1.5 years of imprisonment on charges of fraud and was released after serving 1/3 of the sentence.

According to Articles 19.1 and 27.1 of the Law on the Human Rights Defender, “the Defender shall enjoy immunity throughout the term of her office.” Criminal prosecution of the Defender may not be instigated without the consent of the Republic of Armenia President (see the transitional provisions of the Law). The Defender’s immunity also applies to her correspondence, communication means used by the Defender, and documents that belong to the Defender.

On May 30, two officers of the NSS visited the “Right Legal Group” law firm and presented themselves as staff of the Defender, demanding information on complainants. In the opinion of the Defender, the NSS officers were interested in information regarding the cases of two citizens that had applied to the Defender. In a letter to the Defender, the NSS informed that a criminal case had been instigated against Vahe Grigoryan, the President of the “Right Legal Group” firm.

On June 3, the media (*Iravunk* daily of June 3, 2005) disseminated information whereby a source that stood close to the Defender’s Office had allegedly sent a letter to the President stating that recently, NSS officers had started to wiretap office telephones and space and to conduct surveillance of the Defender’s staff.

On April 4, 2005, the Human Rights Defender published an Annual Report on the Activities of the Human Rights Defender during March-December 2004 and Violations of Human Rights and Fundamental Freedoms in the Country (as per Article 17 of the Law on the Human Rights Defender).

According to the Annual report, 1,294 written applications and complaints had been lodged with the Defender, of which 471 were found admissible.

Of the 471 complaints found admissible, the review of 245 had been completed with the following outcome:

1. *Recommendation made on the basis of review—93 cases;*

2. *Review terminated:*

- *In connection with the case being taken to court—33 cases;*

- *Due to the lack of a human rights violation or a claim—110 cases;*

- *At the request of the complainant, due to a change in the circumstances invoked in the complaint—9 cases;*

Whereas 85 cases had a positive outcome.

Of the numerous infringements upon human rights mentioned in the Report, two are worth mentioning here. The first case is related to police torture and other violations of the rights of the participants of demonstrations held in the spring of 2004 by the opposition demanding the resignation of President Kocharyan.

The Report notes that people’s right to free movement and the right to assembly were violated. According to the Report, the demonstrators also suffered violations of their right to a fair trial while in court. Another alleged violation of the right to assembly and association was the fact that on the night of April 12, 2004, the police invaded into the offices of the Opposition Faction “Justice” and damaged its assets. The Report provides a detailed overview of Grisha Virabyan’s story, who lost one testicle due to torture while in police custody.

The second case was related to the infringements of people’s right to property during the development project of the Northern and Main Avenues of Yerevan. The Defender’s office has been consistently defending the rights of those residing in the areas under development.

The Annual Report was criticized by the Minister of Justice, the Prosecutor General’s Office, and the Cassation Court Chairman. They claimed that “several episodes specified in the Report were not justified; the reported facts were in some cases illusionary; the interpretation of laws was not precise; many of the issues raised already had answers in the legislation, and so on.” The criticism also contained insulting expressions.

Six months after the Annual Report was published, the Human Rights Defender published an Extraordinary Report, presenting in detail all the violations of and infringements upon human rights, which had been found during the development projects in downtown Yerevan.

The new report entitled “Report on Violation of Rights to Property, Fair Trial, and Judicial Protection,” continued to address the violations mentioned in the Annual Report, which had not been remedied. It was mentioned in this 24-page Report that the Report had been prepared in view of the fact that the violations of the right to property, the right to fair trial, and the right to judicial remedy had not been addressed and, in fact, were continuing, which had made it necessary to revisit the problem in a special report addressing the authorities and the public.

In the special report, invoking the Universal Declaration of Human Rights, the Armenian Constitution, the Civil Code, the Land Code, the Housing Code, and the respective judgment of the Constitutional Court, the Defender provided a detailed overview of all the human rights violations incurred during the development projects in downtown Yerevan.

It was also mentioned in the Report that courts did not protect the citizens in these cases and did not remedy their rights, in turn violating citizens’ right to a fair trial and judicial protection. In the conclusion of the Report, the Human Rights Defender mentioned that it was an attempt at once again drawing the attention of all layers of government to the need to respect human rights.

Under the Constitutional Amendments adopted on November 27, 2005, the term of office of the Human Rights Defender expires on January 8, 2006 (i.e. on the 30th day after the Constitutional Amendments enter into force). The Defender’s power shall terminate on the day that follows the expiration of her term. New appointment must be made within one month of such termination, i.e. before February 9, 2006. Until such time, the Defender’s duties will be performed by her deputy.

Under Article 83.1 of the Constitution, the National Assembly shall, by at least 3/5 majority of the votes of the total number of deputies, elect the Human Rights Defender for a 6-year term. Under the Law on the Human Rights Defender, “*the Human Rights Defender shall be appointed by the National Assembly by more than 3/5 majority of the votes of its members, from among candidates nominated by the President and at least 1/5 of the Members of the National Assembly.*” It is not clear whether the President and 1/5 of the MPs should each nominate their own candidates, or whether one should nominate, subject to approval by the other; or, who should nominate, after all?

The elected Human Rights Defender must be a person that enjoys a strong reputation and complies with the requirements concerning MPs. The Defender shall enjoy the immunity granted to MPs. Under Articles 100 and 101 of the Constitution, the Defender may bring a case to the Constitutional Court regarding the conformity of laws, National Assembly decisions, presidential decrees, and decrees of the government, prime minister, and local government bodies with Chapter 2 of the Constitution (“Fundamental Human and Civic Rights and Freedoms”).

In order for the Human Rights Defender institution to become stronger in terms of independence and technical and financial conditions, it is necessary to amend the Law on the Human Rights Defender and the Law on the State Budget to provide, among other things, that the budget of the Defender’s Office shall be a separate line of the State Budget in the amount proposed by the Defender (such a safeguard of independence currently exists for the Constitutional Court). The Law on the Human Rights Defender should enshrine the Defender’s right to recruit the Defender’s staff and Expert Council based on principles of publicity, professionalism, and competitiveness.

Under the Law on the Human Rights Defender, the right to nominate a candidate for the position of the Defender should belong only to 1/5 of the Members of Parliament.

7. FREEDOM OF CONSCIENCE AND RELIGIOUS ORGANIZATIONS

Another obligation assumed by Armenia upon joining the Council of Europe was to ensure non-discriminated activities of all faiths and religious communities, especially those that are considered non-traditional.

The Republic of Armenia Law “On Freedom of Conscience and Religious Organizations” was passed on June 17, 1991 on the basis of the 1990 USSR law of the same name. The law was amended twice since its passage - in 1997 and 2001.

Paragraph 2, added to Article 17 of the Soviet law proclaims that “the government shall not hinder the carrying out of the following missions considered the privilege of the national church (Armenian Apostolic Church - Ed.)” (i.e. others are forbidden to carry out those missions), and then it defines privileges, which contradicts, one way or another, international documents on human rights and fundamental liberties ratified by the Republic of Armenia, Articles 8.1, 26, and 27 of the Amended Constitution of the Republic of Armenia, other provisions of the same law, a number of other laws and legal acts of the Republic of Armenia. However, despite the inconsistencies, these provisions often serve as a ground for limiting the activities of some religious organizations registered by the Ministry of Justice. In particular, obstacles are posed to the rental of space for religious practice. There have been cases in which the administration of halls would refuse to provide their premises claiming that the law-enforcement bodies might give them trouble later on. Some mayors in the regions have asked the leaders of religious communities to terminate their activities, explaining that the security agencies had instructed them to prohibit such activities.

It is considered to be the prerogative of the national church “to build new churches, reopen historical monuments-churches in its possession (both at the request of the congregation and at its own initiative) and engage in benevolent and charity activities,” which contradicts Article 7(j) of the same law, which clearly indicates that religious organizations have the right to “engage in charity work and proselytize publicly, also through the media.”

On September 10, 1997, the RoA National Assembly passed the Law on Amending the RoA Law on Freedom of Conscience and Religious Organizations, which increased the minimum number of followers necessary to register a religious organization from 50 to 200. This provision is stricter than the one in force in the Soviet times that required 10 followers.

On April 3, 2001, the RoA National Assembly passed another Law on Amending the RoA Laws “On Freedom of Conscience and Religious Organizations” and “On Press and Other Media Outlets,” whose Article 1 replaced Article 14 of the 1991 law. It stipulated that, from now on, “a religious community or organization is considered a legal entity from the moment of state registration by a central government registry agency in accordance with procedures set in the law.” To be registered, a religious organization is required to submit an expert conclusion to the authorized government agency in charge of religious affairs.

Until 2004, Jehovah’s Witnesses used to be denied state registration mostly on the grounds of their members’ refusal to serve in the army. The Law “On Alternative Service” was passed on December 17, 2003. Jehovah’s Witnesses were officially registered by the Ministry of Justice in the fall of 2004, after a second attempt, in accordance with new registration procedures.

The Constitution of November 27, 2005 (Article 8.1) enshrines the following added provision: “The Republic of Armenia recognizes the extraordinary mission of the Armenian Apostolic Church—as the national church—in the spiritual life of the Armenian people, the developments of its national culture, and the preservation of its national identity.”

This new provision could be abused to restrain the activities of other religions. Moreover, the restrictions based on the “extraordinary mission” of the Armenian Apostolic Church may be elaborated in a future law on religious organizations.

A few days after the Constitutional Referendum, the Public Television of Armenia went on air to demand restricting the activities of religious organizations that “fracture our nation”: such demands were based on the aforementioned provision of the Amended Constitution.

During its December 28, 2004 session (attended by the Prime Minister) the RoA Prime Minister’s Council on Religious Affairs approved the principles of a new draft law on freedom of conscience and religious organizations, which should serve as guidelines for the RoA Government’s Department on National Minorities and Religious Affairs for developing the new law. These “principles” will in many cases limit the activities of religious organizations even more, make registration criteria even stricter, and generally serve as a cause for gravely violating fundamental human rights. However, the situation has changed in recent months. These principles have in effect been set aside, and the Government’s Department for National Minorities and Religious Affairs, which is responsible for drafting a new law, has started to operate in an open and transparent manner. The Head of this Department—Hranush Kharatyan—has taken the initiative to create a Task Force made up of various stakeholders, including registered religious organizations and NGO representatives. However, the religious organizations have adopted a very passive stance.

The “Center of Collaboration for Democracy” NGO has organized open discussions of some crucial parts of the draft law with the involvement of the Head of the Government’s Department for National Minorities and Religious Affairs—Hranush Kharatyan. The discussions were attended by representatives of various religious organizations and other stakeholders. The Second Television of Armenia held a series of round tables on this topic, which were attended by the leaders of a number of religious communities present in Armenia, as well as senior clergy of the Armenian Apostolic Church, independent experts, and public officials. Some understanding has been reached on continuing the open and transparent discussions.

In 1992-1995, there were attacks in Armenia on offices of religious organizations, and members of various communities were physically hurt. There have been no more attacks since 1995. However, there are many cases of members and leaders of various religious organizations reporting harassment on the part of government agencies. Here is one of the typical recent examples: in January 2005, the mayor of the Tumanian village in Lori marz told local Evangelists that he had received orders from Marzpet’s Office telling him to *ban* the activities of the Evangelical community. He said same orders had come from national security officers in Lori, as well. It is worth mentioning that the Armenian Evangelical Church closely cooperates with the Armenian Apostolic Church. Such cases are typical, and representatives of other registered churches will be able to recall numerous similar instances. There are many cases of building managers rejecting meeting space rental proposals, saying they may be harassed later.

The official and pro-governmental media, including television stations of Armenia, regularly show appeals for intolerance or, even, violence against other religious communities. In August, the Public Television of Armenia was hosting a talk show, during which both parties to the “debate” stood in effect for the same position, claiming that all religious organizations, other than the Armenian Apostolic Church, fracture national cohesion and may undermine the future of Armenia. No other opinions have been broadcast by the Public Television of Armenia. So far, none of the authors of these calls for intolerance and violence have been prosecuted, even though such things are against RoA legislation and international conventions. Statements containing religious intolerance can often be heard from government officials.

8. NATIONAL AND ETHNIC MINORITY RIGHTS

There are no specific obligations regarding national and ethnic minority rights in the Council of Europe membership application of Armenia and Opinion No. 221 on the application, which was issued by the Parliamentary Assembly of the Council of Europe (June 28, 2000).

Armenia has ratified the Framework Convention on Protection of National Minorities (1998) and the European Charter for Regional or Minority Languages (2002). In June 1993, Armenia ratified the Convention against Racial Discrimination. The RoA Constitution and laws guarantee equal treatment to all citizens regardless of their racial, ethnic, cultural, and religious affiliation. In particular, Article 14.1 of the Amended Constitution provides: *“Discrimination on the ground of sex, race, skin color, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.”* Article 47 provides: *“It shall be prohibited to use rights and freedoms for the forceful overthrowing of constitutional order or instilling national, racial, or religious hatred, or advocating violence or war.”*

The RoA Criminal Code contains Chapter 19 entitled “Crimes against People’s Constitutional Rights and Liberties.” Article 143 provides for criminal prosecution for violating anyone’s rights, in particular, due to his/her national, racial, religious, and social affiliation, sex, and political views.

There are also separate provisions in the Law on Language (Article 3) and two articles in the Law on Television and the Radio, which refer to national minority rights. For example, Article 1 of the Law on Language encourages the use of national minority languages in the Republic of Armenia and guarantees everyone’s right to receive education in his/her mother tongue. According to Article 4, national minorities may use their mother tongue together with the Armenian language in official documents and seals. Article 8 of the law “supports and promotes conditions necessary for preserving the cultural identity of different national minorities.” Article 9 of the Criminal Code guarantees free interpretation during trials for both citizens and non-citizens.

There is still no law on national and ethnic minorities, even though various non-governmental organizations and parties have been calling for such a law since 2003. Thus, deputies representing the Republican Party and “Dashnaktsutyun” (ARF) party factions have stated that their parties are working on developing a law on national minorities. These statements were made at a seminar on “National Minority Rights in Armenia: Armenia’s Prospects after Becoming a Member of the Council of Europe” organized by the Center for National and Strategic Studies on July 17, 2003. It is known that the Department for Migration and Refugee Affairs has developed two draft laws on the subject. One of the drafts was rejected by minorities, while the second one was withdrawn without discussion.²³ Another draft has been developed and is currently under discussion; starting from October 2004, it is being discussed with the participation of national minorities. The RoA Government’s Department on National and Religious Minorities has organized a number of roundtable discussions of that draft law.

According to the 2001 census data, ethnic minorities make up 2.2% of Armenia’s total population. This number includes 11 ethnic communities - Assyrian, Yezidi, Kurdish, Russian, Greek, Malaccan, Jewish, Polish, Ukrainian, Georgian, and German. The most populous communities are those of Yezidis (40,620 people), Kurds (1,519 people), Russians (14,660) and

Assyrians (3,409).²⁴ Most of these communities appeared in Armenia in the beginning of the 19th century, when certain migrations took place after Eastern Armenia became a part of Russia.²⁵ All ethnic groups are scattered around the country and the capital. There are no marzes or administrative units in the country that are populated completely by a minority group. In various villages and towns, ethnic minority groups are either a small part or the majority of the population.

National minorities do not have their own political parties and are not represented in the National Assembly. However, national minorities are represented in local self-government bodies as village mayors (for example, the mayor of Verin Dvin is an Assyrian, the mayor of Arme Taza is a Yezidi, etc.). In April 2004, the RoA Government allocated a building to national minorities for cultural events. In addition, the RoA Government allocated certain funds (the dram equivalent of more than \$100,000) in the 2005 state budget for renovating Armenia's National and Ethnic Minority Center.²⁶ Government sources say that some 10 million drams (about \$19,880) are given annually to national minority non-governmental organizations for various programs.²⁷ National minorities experience no resistance to the exercise of their right to study their native language. Ethnic minorities can study their mother tongue and receive education in their language in secondary schools in the Republic of Armenia. For example, the Assyrian language is taught in three villages - Dvin, Dimitrov, and Arzni. However, almost all national minorities experience problems with specialists and curriculum development. The Russian community is in the best position, since they get all their educational materials from Russia, where teachers are trained, as well.²⁸

There are some media outlets that give ethnic communities an opportunity to exercise their right to freedom of information. The Yezidis, Kurds, Ukrainian, Russians, and Greeks have newspapers in their own languages.²⁹ According to information published in *Azg* daily of September 20, 2005, the "AR Radio Inter-Continental" radio company presented a proposal to the National Television and Radio Commission regarding the performance of radio broadcast activities at 106 MHz in the City of Tsaghkahovit, and since there are national minorities living in Tsaghkahovit and the adjacent settlements, this company proposed that it would produce and broadcast content for and about national minorities, among others.

Two groups of major issues related to Armenia's ethnic minorities have been noticed during 2004. There is some tension regarding recognition of a Yezidi ethno-confessional group, whose members speak the same language as the Kurds, but make up a separate ethnic group. Some heated discussions on the subject have taken place among the Kurds and the Yezidis throughout 2004 and in the previous years. However, the RoA Government has adopted a neutral stance on this issue, hoping that these groups make a decision in a climate of tolerance and mutual understanding.³⁰

In 2004, representatives of two ethnic communities alleged discrimination against them. Thus, on September 24, 2004, local authorities refused to provide assistance to the village of Dmitrovo with a significant Assyrian population. According to I. Gasparian, discrimination occurred in that village during appointments to administrative posts.³¹ However, local authorities were accused of similar discrimination against the entire population of the country in general, regardless of ethnicity. The second case concerns representatives of the Jewish community, who accused ALM TV station and the Armenian Aryan Union of igniting anti-Jewish sentiment.³² The State Department Report on Global Anti-Semitism, released in January, 2005, mentions the existence of anti-Semitic sentiment in Armenia as well, making a reference to ALM TV station and the Armenian Aryan Union.³³ However, even if there have been some statements by the aforementioned organizations, and especially by the Armenian Aryan Union³⁴, namely, by its head

Armen Avetissian, there seems to be no anti-Semitism in society at large so far. The Union's influence is insignificant, and its opinion certainly does not reflect the wide spectrum of public opinion. This problem can become acute if similar speeches or statements about the existence of such sentiment play the role of actually encouraging anti-Semitism. It is necessary to take this issue very seriously and react immediately to all speeches against any ethnic minority group in Armenia. It is noteworthy that criminal charges against Armen Avetissian for public incitement of national, racial and religious hatred with threats of violence (Article 226, part 3, of the RoA Criminal Code) were brought not after he had made his statements, but after the State Department report was released. A. Avetissian was arrested by the Yerevan City Prosecutor's Office on January 24, 2005, and the Yerevan Kentron and Nork-Marash community court of the first instance issued an arrest warrant for him on the same day. The legal proceedings against Armen Avetissian were initiated in March 2005. He was sentenced to three years of probation and was released right from the court room.

In the fall of 2005, the commencement of the second stage of drafting legislation on national minority rights has been an important step towards improving respect for such rights. The draft law was discussed with the stakeholder ministries and agencies and was reviewed by experts of international organizations. A broadly positive opinion was issued by the European Center for National Minorities, and the draft was highly appreciated by the Swedish Helsinki Committee. The expert of the Swedish Helsinki Committee states in his opinion that the law is a good one and that "the law is rather detailed and does not contain any unclear provisions."

The draft Law on National Minorities is an important document that, once adopted, will ensure the protection and development of the identity of national minorities living in Armenia fully in line with the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

9. ALTERNATIVE SERVICE

Serious discussions on alternative service started in Armenia after the country joined the Council of Europe (2001)³⁵; one of the commitments assumed upon entry was to pass a law on alternative service within three years and to release all persons sentenced to imprisonment for avoiding military service on the grounds of conscience and convictions. However, *in those three years, until 2004, there were about 100-150 people that refused military service on the basis of their convictions (all members of Jehovah's Witnesses religious community), and most of them were sentenced to imprisonment. According to August 2003 data, 33 Jehovah's Witnesses that refused military service for religious reasons had already been detained, and another 25 (out of 40,000 conscripts) had been arrested.*

After two years of delays, a draft Law on Alternative Service was developed, which provided for alternative military service only for members of religious organizations officially registered in the Republic of Armenia; moreover, such service was for a longer period of time, which the Council of Europe considered punitive in nature. That draft failed to address the problem of the main group avoiding military service for religious reasons, namely the Jehovah's Witnesses religious community. This approach was criticized by NGOs and the Council of Europe.³⁶ After some amendments, the Law on Alternative Service was adopted on December 17, 2003. While the law allowed members of non-registered religious organizations also to opt for alternative service, and the term of the service was somewhat reduced, a number of problematic provisions in the law remained in place: the law still did not provide for "alternative civil service." In particular, the law provides for two types of alternative service, i.e. service in the RoA Armed Forces and alternative labor service outside the RoA Armed Forces. The terms are 36 months for alternative military

service and 42 months for alternative labor service, whereas regular compulsory military service is 24 months. The law also retained some provisions that go against international standards, such as provisions that the conscription for alternative service shall be carried out and controlled by the same organizations that are responsible for drafting conscripts for regular compulsory military service. In addition, all persons in alternative service must wear a uniform as defined by the RoA Government.

Those who have completed alternative service may not work in any areas related to the right to carry, possess, and use weapons.

The Law on Alternative Service went into force in July 2004. According to the law, a person subject to military draft must submit an application to the military commissariat in his place of residence by March 1 or September 1 proceeding to the draft, specifying the type of alternative service he wishes to choose and justifying his decision.

On June 25, 2004, the Government passed a decree “On Approving the List of Locations for Alternative Service, Uniforms for Alternative Servicemen and Procedures for Wearing the Uniforms.” According to this decree, persons in alternative military service shall serve as soldiers in **separate units** of military divisions of the RoA Armed Forces (in Syunik, Gegharkunik and Tavush); persons in alternative labor service shall serve as medical orderlies in various institutions belonging to the RoA Ministry of Healthcare and Ministry of Labor and Social Affairs (psychiatric clinics, nursing homes for the disabled, institutions for the elderly, psychiatric and neuro-psychiatric clinics, and the “Nork” infectious disease hospital).

During the 2004 fall draft, not only did military commissariats fail to provide information about alternative service opportunities to citizens that are subject to military draft and would like to apply for alternative service, but also, military commissariat’s officials themselves often were not sufficiently informed about what alternative service was, and how and where persons drafted for alternative service would carry out their duties.³⁷

The examination of court rulings on avoiding military service reveals that prosecutors and courts continued to detain potential alternative service candidates and to sentence them to prison terms after the passage of the law on December 17, 2003, when necessary legal changes were being made necessary for the law to go into force. *In judgment No. 48203003 of January 26, 2004 on the Artak Saiyan case, the Armarvir marz court of first instance ruled that using religious beliefs for justifying the refusal to perform military service is ungrounded, and that, in doing so, the defendant is trying to avoid criminal prosecution.*

*As of September 20, 2004, eight members of the Jehovah’s Witnesses community had been handed down prison sentences and were serving their sentences in Kosh and Nubarashen penitentiary institutions.*³⁸ These eight people should have been released in accordance with Armenia’s commitments before the Council of Europe, and they should have been given information on alternative service and an opportunity to choose such service.

*Under Article 327(1) of the new Criminal Code, avoiding a regular draft for compulsory military service is punishable by a fine in the amount of 300-500 times the minimum wage, or detention for a period of up to two months, or imprisonment for a period of up to two years, as opposed to three years under the old Criminal Code. In the past, courts never used the **maximum punishment**, but since the new Criminal Code was adopted, they have been using mostly the maximum punishment (two years in prison). Even if a court of the first instance hands down a more lenient sentence, the court of appeals overturns the verdict and extends the terms of imprisonment, saying that “the punishment does not correspond to the seriousness of the crime” and “a more*

lenient sentence cannot serve the purposes of the punishment.” ³⁹ *Four of the eight Jehovah’s Witnesses have been sentenced to two years, three of them have been sentenced to 1.5 years, and one has been sentenced to one year in prison. Only one of them, Stepan Yeremyan, has been punished by a 300,000 dram fine for avoiding military service (Article 327(1) of the RoA Criminal Code).*

*After having served the sentence, many are drafted again; if they refuse military service again, they are handed down prison sentences for the second time. This violates the well-known principle of criminal law that forbids **punishing twice** for the same offense, as well as Article 10 of the RoA Criminal Code.*

The National Assembly was supposed to amend the law in accordance with the Council of Europe resolutions to remove any non-compliance with international standards. Amendments to the RoA Law on Alternative Service were made on November 22, 2004. However, problems with the duration, procedures, and locations for alternative service, as well as with agencies responsible for organizing and controlling the service, were not resolved. Moreover, while the December 17, 2003 law allowed persons in alternative service to switch to compulsory military service at any time, but had no provisions about switching from compulsory military service to alternative service, the amended law simply banned the switch from compulsory military service to alternative service.

Article 24 of the law required passing laws regulating social security of persons in alternative labor service and members of their families and liability of persons in alternative labor service before the law went into force on July 1, 2004. However, those laws were never adopted. The November 22, 2004 amendments to the Law on Alternative Service stipulated (Articles 21 and 22) that alternative servants’ social security and liability issues (including the cases of disability or death caused by work trauma or professional illness) shall be regulated by the procedure laid down in the Republic of Armenia Law on State Pensions.

Alternative military servants’ crimes are punished in the same way as regular military servants, under the procedure defined by law, while labor servants are sanctioned in accordance with the general procedure provided by the legislation.

During the 2004 fall draft, 26 members of the Jehovah’s Witnesses organization and one Molokan were sent to serve in the aforementioned institutions as part of their alternative service. According to the RoA Ministry of Defense, only one of the 26 applicants for alternative service chose alternative military service, while the remaining 25 persons applied for alternative labor service. According to a Government decree, 349 slots were allocated for alternative service during the 2004 fall draft. 300 of them could have served in alternative military service, i.e. in military units, but without having to deal with weapons, while others could have served in alternative labor service. According to a Government decree, control of the latter was assigned to the heads of the institutions where they would serve. In other words, one could say that the course of the service is largely determined by the institution director’s attitude towards persons opting for alternative service.

The Armenian Helsinki Committee carried out monitoring in places of service. Four out of nine institutions where alternative service takes place were selected for the monitoring, including the psychiatric clinics in Vardenis and Gyumri, the Nork hospital for infectious diseases, and the Nork nursing home. Thus, 13 out of 22 alternative servicemen participated in the survey. Detailed individual interviews with alternative servicemen were conducted. The visits gave the impression that the Government had selected the locations for alternative service in haste and without appropriate examination. They had not taken into consideration whether or not alternative service in these institutions would be appropriate.

In the case of 11 out of the 13 alternative servicemen, the first and the biggest problem had to do with performing the duties of medical orderlies. There was no such problem in the Nork hospital for infectious diseases, where the two alternative servicemen were happy with their work. They simply did not perform the duties of medical orderlies. The hospital's Chief Doctor, Ara Asoyan said that the servicemen are engaged in various activities - construction, receiving medications from warehouses, cleaning away the snow, moving patients around the hospital, etc., but they are not asked to clean the toilets and clean after patients. The two servicemen working in the hospital confirmed the Chief Doctor's words. Their only complaint had to do with the length of the service and the fact that they could not participate in the meetings of their religious community.

One of the servicemen in Vardenis honestly admitted that, because of the conditions, he had once regretted choosing alternative service and had decided to quit. However, he continued his service. Only one of the 13 servicemen that participated in the survey knew in advance he was going to work as a medical orderly. The other 12 said they had been told in advance that they were going to work in those institutions, but they hadn't been told about their duties.

Eight persons performing their alternative labor service in the Vardenis psychiatric hospital said during their interviews that, at first, they were told in military commissariats that they were not going to be assigned any undignified work, but two days after they had arrived in Vardenis, the military commissar visited them and informed them of the Government's decision, according to which they were supposed to work as medical orderlies, with duties including cleaning toilets and dressing cadavers. The servicemen refused to do such work. The management called in representatives of the military police and military prosecutor's office, who constantly monitored them and said: "If you refuse this work, you will be prosecuted under Article 364 of the Law on Military Service." It has become clear from the February-March 2005 visits of the Helsinki Committee Monitoring Task Force that the servicemen performing alternative service in the Vardenis Psychiatric Hospital are responsible for maintaining the hospital's sanitary condition, making beds for patients, and washing the floors. However, they haven't cleaned toilets or dressed any cadavers yet.

The servicemen complained about organizations in charge of their control. In addition to being controlled by the hospital's management, they have been constantly controlled by a number of RoA Ministry of Defense structures, such as the regional military police, the prosecutor's office, and the military commissariat.

The interviewees mainly do not use any means of communications: in one case, calling is expensive, in another case - there is no telephone, in other cases no calls are allowed. They do not get any newspapers. Most of them do not have television sets, either. In Vardenis, the servicemen were banned from reading their religious literature, and even their Bible was taken away.

According to the survey, their sanitary-hygienic conditions (bathing, washing their bed linen, and changing clothes) are not good, either. The servicemen wash their bed linen themselves. Servicemen eat in cafeterias in their respective institutions, with the menu designed for the sick and the elderly.

In May 2005, during the fifth month of their service, all the citizens performing alternative service refused to continue their service. They claim the service is not fully in line with the principles of alternative service and is supervised by the Ministry of Defense. Criminal cases have now been instigated against these individuals.

13 Jehovah's witnesses and Malaccans have already been convicted to imprisonment sentences of differing lengths (between 2 and 3.6 years) on charges of deserting the service venue or military detachment arbitrarily. Hovhannes Aslanyan, one of them, died in a car crash on the way to his trial. Eight of them were initially accused of organized desertion, which could be punished with 4-10 years of imprisonment. The case was initially handled by the Military Prosecutor, but was later transferred to a civil one. 4 of them have already been convicted to 3 years of imprisonment on charges of arbitrarily deserting the service venue.

Another 19 Jehovah's Witnesses from Armenia and 1 from Karabagh have been convicted to imprisonment for avoiding the regular military draft (sentences varying between 1 and 4 years). Hovhannes Khachatryan is still in pre-trial detention facilities, as his trial is still pending.

During the 2005 spring draft, no one applied for alternative service.

In order to ensure that the RoA Law on Alternative Service, passed in connection with the requirements of the Council of Europe, be applied in our country in accordance with the principles of humanitarianism and tolerance, serve its purpose, and be acceptable for the authorities and the public, it is necessary to amend the Law on Alternative Service and Government Decree 940-N on Approving the List of Alternative Service Institutions, the Form of Alternative Service Uniforms, and the Procedure of Wearing Such Uniforms. In particular:

1. Alternative service should be converted to real civil service and provide the power to supervise alternative service to non-military agencies;
2. A shorter period of alternative service should be defined;
3. Alternative servants should be treated by regular civic medical institutions;
4. Alternative servants should not be required to wear military uniforms; and
5. When defining the list of alternative service places, the professional skills of the alternative servants and the needs and peculiarities of institutions should be taken into consideration.

10. LEGISLATION ON PERSONAL DATA PROTECTION

Privacy is widely recognized as a human right. Individuals should be confident that information about them will be handled fairly. This includes personally-identifiable information in the hands of government agencies. Government's practices in collecting, retaining and managing personal data about its citizens raise a wide range of privacy concerns.

Taking into account the growing public concern about the protection of personal data stored by both governments and businesses, the Council of Europe has developed Convention No. 108 (1981) "for the protection of individuals with regard to automatic processing of personal data." The Convention outlines basic principles that member states shall adopt in the area of automatic processing of personal data stored in public and private databases. Important elements of the Convention are obligation of the Parties to ensure relevant measures of personal data protection and appropriate sanctions and remedies for violations of provisions of domestic law, giving effect to the basic principles of the Convention. Taking into account the importance of the issues related to establishment of relevant supervisory authority in the signatory-countries, an Additional Protocol to the Convention was developed by the Council of Europe and ratified by most of the Convention Parties. The Protocol also addresses the issues related to the trans-border flow of personal data. Armenia is not a signatory of this important international document, which was signed and ratified by the majority of European countries.

In spite of the fact that Council of Europe Convention 108 has not been ratified by the Republic of Armenia, in 2003 the National Assembly of the Republic of Armenia adopted the Law of the Republic of Armenia “On Personal Data.” In general, the Law complies with the principles outlined in the Council of Europe Convention 108. However, there are some gaps in the Armenian legislation related to specific provisions of the Convention, which do not provide adequate protection of personal data stored in public and private databases. One of such gaps is the absence of “*appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection*” as required under Article 10 of the Convention. Though the Law of the Republic of Armenia “On Personal Data” officially declares that person’s violation of the law shall result in liability for its violation, no criminal sanctions for the violation of data protection law are foreseen so far. It can be assumed that in cases of violation of the provisions of this law by state servants, disciplinary measures will be taken; however, no adequate measures of responsibility are provided for its violation by personnel of the commercial and public organizations, as well as by natural persons. Obviously, disciplinary sanctions could not be considered an adequate measure for the protection of citizens’ privacy.

Two major issues, such as the establishment of a supervisory authority and the trans-border flow of personal data, are not properly addressed under the Armenian legislation. Though the Law stipulates the establishment of a personal data protection body, it does not empower it with the supervisory functions and responsibility of inspecting the use of personal data by either public or private organizations. The Law of the Republic of Armenia “On Personal Data” does not stipulate a separate section on limitation of forwarding of personal data abroad. According to the Law, the procedure of transferring personal data abroad shall be considered either in the international treaties or pursuant to Article 6 of the law, that is, forwarding of data abroad may be realized with the consent of the subject providing the personal data. The Law lacks a detailed stipulation of conditions and procedures for the permission to forward personal data to the subjects of the third countries and responsibility of a supervisory body to inspect and grant such permission. This should be also considered as an inconsistency with European standards and a sign of the lack of adequate protection of citizens’ privacy within the context of the aforementioned Council of Europe Convention.

11. FREEDOM OF EXPRESSION AND INFORMATION

Having become a member of the Council of Europe on January 25, 2001, Armenia undertook two major commitments with regard to freedom of information and expression:

- a) To adopt a new law on mass media within a year;
- b) To transform the national television into a public service broadcaster, governed by an independent board.

Though the Republic of Armenia Law on Television and the Radio (adopted on October 9, 2000) provided for the creation of the Public Television and Radio Company of Armenia, the second part of the commitment, i.e. the management of the Company by an independent administrative body, apparently has not been honored (see details in the section on the Republic of Armenia Law on Television and the Radio and its implementation practice), because the Public Television and Radio Company Board is formed by the President of the Republic. The authorities always claimed that under the Constitution, no other body had the power to form the Board. The same explanation was given to the formation of the National Television and Radio Commission by the President, claiming that the constitutional amendments would resolve this issue.

In 2005, the draft amendments to the Constitution of Armenia were circulated: the draft adopted by the National Assembly in first reading provided that the members of the broadcast regulatory body would be appointed by the National Assembly upon nomination by the President of the Republic. This provision was, however, concerned with only one body. Later, after the complaints of journalistic organizations and discussions with the Venice Commission, the respective article (83.2) of the constitutional draft (and later, the constitutional amendments adopted in the Referendum) read as follows:

“With a view to ensuring the independence, freedom, and pluralism of the broadcast media, an independent regulatory body shall be created by law, half of the members of which shall be elected by the National Assembly for a six-year term, whereas the other half shall be appointed by the President of the republic for a six-year term. The National Assembly shall elect the members of this body by majority vote of the total number of parliamentarians.”

The YPC experts challenge the following aspects of the definition:

a) The goal for which the body is created (***“With a view to ensuring the independence, freedom, and pluralism of the broadcast media”***): the body should not be created for this purpose; rather, its appointment procedure should be defined in such a way as to ensure the independence and freedom of the regulatory body.

b) This article still refers to only one body, while the Council of Europe Parliamentary Assembly resolutions always referred to regulatory bodies, having in mind also the Public Television and Radio Company Board. Though journalistic organizations mentioned in numerous discussions that the procedure enshrined in the Constitution should apply to both regulatory bodies, the authors of the amendments were not affected by these arguments.

c) The procedure for the formation of the broadcast regulatory body, which is defined in the Constitution, restricts any possible future changes to the Law on Television and the Radio, and will not ensure the independence of this body.

d) Despite Resolution 1405(2004) of the Parliamentary Assembly of the Council of Europe, which provides that after the Law on Television and the Radio is amended, the composition of the National Television and Radio Commission should be changed, the transitional provisions of the Constitutional Amendments (Article 117(12)) provide that ***“the members of the independent body specified in Article 83.2 shall stay in office until the end of their term prescribed in the Law on Television and the Radio. In the event the term of their office ends or their office is terminated before the end of its term, vacancies shall be filled consecutively by the National Assembly and the President of the Republic.”***

Article 27 of the Constitutional Amendments is also concerned with the freedom of expression and information. This article provides:

“Article 27. Everyone shall have the right to freely express his opinion. It shall be prohibited to force a person to renounce or change his opinion.

Everyone shall have the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas by any medium of information, regardless of state frontiers.

The freedom of mass media and other media of information shall be guaranteed.

The state shall guarantee the existence and activities of independent public radio and television offering pluralistic information, educational, cultural, and entertainment content.”

Under the draft amendments, this right, alongside with some other rights and freedoms, could be restricted ***“only by law, if it is necessary in a democratic society for reasons of national security, the protection of the public order, the prevention of crime, and the protection of public health and morals, as well as the constitutional rights and freedoms, and honor and reputation of others”*** (Article 43). These rights and freedoms may also ***“be temporarily restricted in the procedure defined by law at times of military state or state of emergency, in the frameworks of international commitments regarding derogation from obligations in emergency situations”*** (Article 44).

Seven of the journalistic organizations of Armenia proposed a number of amendments to the draft that was submitted to the Parliament for first reading. For instance, they suggested prohibiting any form of censorship in the Constitution. The reason for this suggestion was that countries like Armenia, which had censorship bodies in the recent past, still face the threat that latent censorship may be practiced. A constitutional provision prohibiting any form of censorship would guarantee its prohibition under various laws. However, such a provision was not included in the Constitution.

Thus, the Amended Constitution does not resolve the two most essential issues concerning the field of media activities: the Constitution does not prohibit censorship and does not effectively safeguard the independence of the two media regulatory bodies.

Since the constitutional amendments are directly related to the electoral legislation and the Law on the Referendum, we intend here to analyze also the amendments in these areas.

Freedom of Expression and Information during Elections and Referenda

The Republic of Armenia Law on Television and the Radio, the Electoral Code, and the Law on Referendum all contain provisions on the freedom of information during elections and referenda. For instance, Article 11 of the Law on Television and the Radio provides: ***“Before and during referenda and electoral campaigns, television and radio programs shall be broadcast in accordance with the legislation on referenda and elections.***

During this period, it shall be prohibited for television and radio companies to broadcast political or other campaign content in the form of informational, editorial, documentary, creative, or other shows. The broadcasting of such content over television must be accompanied with a mandatory full-time note on the screen reading “political advertisement” or “campaign show” or, in the case of radio broadcasting, there shall be at least three reminders during each show of its being campaign content.

During referendum and election campaigns, television and radio companies shall publicly announce the cost of their air time for paid political advertisement and other campaign content. Those who wish shall use air time on the basis of a contract, on equal grounds.”

The Law on Amending the Electoral Code (adopted on May 19, 2005) has almost fully changed Article 20 of the Electoral Code on campaigning (“Article 20. Election Campaigning over the Mass Media”). Prior to the amendments, Article 20 of the Electoral Code simply defined that ***“the Central Electoral Commission shall define the procedure of granting free air time to presidential candidates and parliamentary majority contest candidate parties on the Public Radio and the Public Television.”*** This provision was later amended as follows:

“For each general election, the Central Electoral Commission shall, within a three-day period after the end of the term for registration of candidates, define the procedure and timetable

of granting free air time to presidential candidates and parliamentary majority contest candidate parties/party alliances on the Public Radio and the Public Television.” A new provision has been added as follows: *“The Public Television Company and the Public Radio are obliged to ensure equal conditions to all candidates and parties (party alliances) taking part in elections. The media content broadcast by the Public Television Company and the Public Radio regarding the campaign of candidates, parties, or party alliances shall be presented impartially and shall contain information that is free from judgment, ensuring respect for fair and equal conditions.*

The failure by a candidate, party, or party alliance running in elections to organize any events, or the lack of information on organized events may not serve as a ground for refusing to broadcast appropriate information on the campaign of other candidates in the mass media.”

This provision and Paragraph 4 of the same article, which requires that *“the price per minute of paid air time over the Public Radio and the Public Television Company shall be publicized within no more than 10 days after general elections are scheduled, and such price may not be changed during the campaign stage”* applies also to television and radio companies (regardless of ownership form) by virtue of the amended Paragraph 5 of the same article. Another paragraph has been added, which provides: *“Newspapers and magazines, regardless of who their founders are, with the exception of newspapers and magazines founded by parties, shall be obliged to ensure equal conditions when they publish election campaign materials.”*

The YPC experts consider these amendments a step forward in the right direction. However, so long as general elections have not been held since the amendments were made, it is difficult to measure their effective application in practice. The monitoring conducted by the Yerevan Press Club during the presidential and parliamentary elections in 2003 showed that the principles of proportionality and equality were not respected. Television news, in particular, allocated a lot more air time to covering the campaign of the incumbent president (in the 2003 presidential elections) and the incumbent ruling parties.

During the 2003 elections (as well as in virtually all the elections that preceded), coverage of the official activities of candidates (both the president and parliamentarians) continued to raise issues. Such media coverage was considered a form of indirect campaigning. The May 19, 2005 Law added a new Article 22¹ to the Electoral Code. This article is concerned with the restrictions on campaigning by candidates that hold political or discretionary positions, or are state, civil, and local government servants (Paragraph 3 of this Article is concerned with the specific issue outlined above). Paragraph 3 of Article 22¹ to the Electoral Code provides:

“It shall be prohibited to cover the activities of such candidates (i.e. candidates that hold political or discretionary positions, or are state, civil, and local government servants—Ed.) in the mass media, with the exception of cases provided by the Constitution, as well as official visits and receptions and measures implemented by them in the course of natural disasters.”

Let us now address the freedom of expression during referenda. Article 20 of the Republic of Armenia Law on Referendum (adopted on September 12, 2001, and amended on March 31, 2003 and September 28, 2005) is concerned with referendum campaigning. This article provides that the campaign shall begin *“on the day when the Presidential Decree on holding a referendum is officially publicized, and shall end one day prior to the voting,”* and *“may be carried out over the mass media, public campaign events (meetings, gatherings, public discussions, debates, demonstrations, rallies, and processions), publicizing printed materials, and disseminating audio and video records.”*

The Republic of Armenia Law on Referendum also specifies the individuals that may not engage in campaigning: however, the Law adopted on September 28, 2005 has introduced major amendments to this provision. Prior to the adoption of the September 2005 Law, *“state and local*

government bodies, and their staff—during the performance of their work duties” were not allowed to campaign, but after the amendments, *“campaigning may not be carried out by state and local government bodies and their staff, with the exception of staff holding political and discretionary positions, during the performance of their work duties.”*

However, the Law does not address the issue of equal mass media access for those that are for or against the referendum matter, unlike the Electoral Code. There is only one provision that provides: *“The state shall guarantee the free implementation of the campaign on the referendum matter.”*

From November 5 to 25, 2005, Yerevan Press Club monitored the mass media engagement in the campaign of the November 27 Referendum on the Constitutional Amendments.

The monitoring showed that Armenian television companies failed to honor the requirement of Article 11 of the Republic of Armenia Law on Television and the Radio, because they did not publicize the price of their paid air time for campaigning on the referendum matter and did not make any paid air time available. It was also found that although the air time and newspaper space allocated to mass media for the referendum campaign was adequate, the mass media did not ensure impartial coverage and did not adequately facilitate the public in making an informed decision (see Appendix 7 on the results of the monitoring).

RA Law “On Freedom of Information

Though Armenia had assumed no specific commitment with regard to the adoption of the Law “On Freedom of Information,” the adoption and implementation of such a law was necessitated by the need to realize the fundamental right to seek and receive information.

Until 2003, no law on freedom of information or access to information existed in Armenia. The RoA Law on Freedom of Information was passed on September 23, 2003, and became effective on November 14 of the same year.

The law is made up of 15 articles, referring to the main principles of guaranteeing freedom of information, recording, classifying and maintaining data, access to information and guarantees of transparency, restrictions on the freedom of information, the procedures for making and discussing inquiries, the terms of providing information, the grounds for refusal to provide information, responsibility for violating freedom of information, etc.

This law was the first to provide for the constitutional human right to seek and receive information in a way that would be close to international standards. One of the advantages of the law is also that it had defined the structures to which the obligations under this law apply. These are *“state bodies, local self-government bodies, state offices, state-subsidized organizations as well as organizations of public importance and their officials that hold information”* (Article 3). Thus, for the first time in the Armenian legislation, the notion of *“organization of public importance”* was introduced, defined by the same Article of the law as *“non-state organizations that have monopoly or a dominant position in the commodity market, as well as those providing services to public in the sphere of health, sport, education, culture, social security, transport, communication and utility services”*.

Article 7 of the Law, which we view as one of the most important ones, is entitled “Ensuring Access to Information and Publicity.”

The Article stipulates, first of all, that ***“Information holder works out and publicizes the procedures according to which information is provided on its part, as defined by legislation, which he places in his office space, conspicuous for everyone.”*** The second clause of the Article requires that the information holder urgently publicize or via other accessible means inform the public about the information at its disposal, the publication of which can prevent dangers to the state and public security, public order, public health and morals, others’ rights and freedoms, environment, person’s property.

Clause 3 of this Article is also extremely important, listing the information types and the changes to information, which the information holder is required to publish at least once a year (this list includes 13 types).

It is very beneficial that the Law itself defines the procedure for submitting the inquiry and its review, by Article 9, not leaving the development of the procedure to the discretion of the specific agency or to the government. The Article has an important provision eliminating one of the previously existing obstacles to access to information. This provision runs as follows: ***“The applicant does not have to justify the inquiry”*** (Article 9, clause 4), which complies with the Recommendation (2002) 2 of the CoE Committee of Ministers to Member States on Access to Official Documents. Section 5 of this Recommendation says: ***“An applicant for an official document should not be obliged to give reasons for having access to the official document.”***

Article 10 of the Law refers to the terms of providing information, noted that no fees are charged for the publication of the information in case of a response to an oral inquiry, in case of typewritten or copied information of up to 10 pages, provision of information by e-mail, etc. The Article also stipulates that, should a fee be charged for the provision of information, such fee cannot exceed the cost incurred to provide the information.

Finally, Article 8 of the Law refers to restriction on freedom of information, which corresponds to international standards, including the requirements of the CoE Committee of Ministers Rec (2002)2. To this day, the Government has not adopted the Procedure for Providing Information or Copies by State and Local Government Bodies, State Institutions, and Organizations, though the adoption of such a procedure is required under the Law.

To date, the Government has not complied with the requirements of Article 5 and 10 of the Law, and has not adopted procedures for registering, classifying and maintaining information developed by the information holder or directed to it, as well as for providing information or its copy by state or local government bodies, state institutions and organizations, although the Government already has their drafts.

The Law had just been enacted, when in 2004, the situation with the Law became alarming for the civil society. The Government had developed draft amendments to the Law, which, if adopted, would significantly damage the law. Fortunately, the process of adopting such amendments was halted.

However, short as the existence of this Law has been, cases of its infringement have already been reported.

Thus, “Investigative Journalists” NGO addressed the Yerevan municipality, demanding the copies of the municipal resolutions on the construction made in the park around the National Theater of Opera and Ballet in 1997-2003. These documents were necessary for journalistic investigation. After numerous refusals, the organization started litigation against the city authorities. After the courts of first and second instance refused securing the suit, “Investigative

Journalists” challenged the ruling with the Court of Cassation, which overruled the judgment of the court of second instance and redirected the case back to additional review of the Court of Appeals (in a new chamber). The latter ruled to oblige the municipality to provide the information requested by the journalists. The municipality, on its behalf, challenged the case with the Court of Cassation; however, the court upheld the judgment by its decision of February 10, 2005. It appears that to fulfill the simplest stipulation of the Law on Freedom of Information, one has to pass through a year-long litigation process and exhaust all judicial instances. Even after the judgment was reached, the Yerevan Municipality protracted the provision of data till the NGO applied to the Judicial Enforcement Department, after which the Yerevan Municipality expressed readiness to provide the information.

A similar incident occurred in Vanadzor, where the municipality refused to provide the resolutions of the municipality and the Community Council of 2002-2003 to the Vanadzor Branch of the Helsinki Citizens Assembly.

(Please see the annual reports of the Yerevan Press Club and the Committee to Protect Freedom of Expression for more details on the two cases: <http://www.ypc.am>, as well as the electronic version of the YPC Bulletin).

The legal and regulatory framework on official publications and official communication is a part of a wider area of legislation ensuring citizens’ right⁷ to search, receive, and communicate information, as proclaimed by the International Covenant on Civil and Political Rights (Art. 19) and the European Convention on Human Rights and Freedoms (Art. 10).

Taking into account the importance of realizing citizens’ rights to search, receive, and disseminate information, and considering the information technologies as an effective tool that governments could use, the Committee of Ministers of the Council of Europe has adopted Recommendation Rec (2002)2 to Member-States “on access to official documents”. Recommendation Rec (2002)2 outlines the main principles of the implementation of information rights of citizens and provides the general methodology for the relevant parts of national legislations. The important parts of Recommendation Rec (2002)2 are the paragraphs describing the recommended procedures for requesting and processing requests of official documents.

The RoA Law “On Freedom of Information” does not contain special provisions related to the use of information technologies for the delivery of services related to the access/request of official information, with the exception of Article 7(5) of the Law, which provides: “...information shall be published in a way that it is accessible to the public and, if the holder of information has a web site, then also by means of such a web site.” In fact, the use of information technologies is limited to the publication of some official information on ministries’ web sites. Official web sites of ministries do not always contain all the information that is subject to mandatory publication under the RoA Law “On Freedom of Information.”

There are no specific international obligations of the Republic of Armenia with respect to the use of information technologies in public administration; Armenia’s information society policy cannot be praised for its compliance with the practice widely used in European countries. Unlike many European countries, Armenia still does not have an information society development strategy and an e-governance development action plan. At the same time, there are several positive examples of the use of information technologies in the area of public administration in Armenia which, however, are exceptions, rather than the rule. Such instruments of official public

⁷ In this text the universal human rights to search, receive and disseminate information will also refer to as information rights.

communication are usually the result of the efforts of foreign and international organizations, donors, and civil society organizations. Similar to the situation with access to information, there are no formal obligations of the Republic of Armenia in the area of developing information society and implementing e-government. However, the promotion of the use of information technologies in the area of public administration is an important element of the European political culture, and countries that seek integration with European society ought to comply with the European public administration standards.

The RoA Law “On Mass Communication”

As it has been noted above, upon accession to the Council of Europe, Armenia undertook to adopt a new law on media within a year. The first RoA Law on Press and Other Media Outlets had been adopted in 1991.

The new law, the draft of which was put into circulation in January 2002, initially was much more regressive than the law then in force. Journalists and public organizations rejected the first version of the draft, pointing out justly that the adoption of the draft could result in the re-introduction of censorship and suppression of free expression. That version of the draft never reached the Parliament. The Government had several times reviewed the draft, retaining every time the main provisions, which were deemed unacceptable by the journalistic community. However, the stance on the draft seemed to change after the elections to the National Assembly: the authors and the specialized committee of the Parliament expressed their readiness to hear and take into account all the proposals that would aim to improve the draft and raise it to international standards.

As a result of cooperation between the Yerevan Press Club, the Committee to Protect Freedom of Expression, Internews Armenia, Journalists Union of Armenia, the authors of the draft, and the Parliamentary Committee, the draft, though still in need of further improvement, became acceptable to the parties concerned.

Herein, the main provisions of the Law will be considered.

Firstly, the Law defines the notions of “mass communication” and “mass communication medium” (it is only the definition of mass communication media that remains disputable to this day) and further, by Article 4, spells out the guarantees for freedom of expression in communications:

1. “Entities engaged in communications activity and journalists shall operate freely in compliance with the principles of equality, legitimacy, freedom of speech (expression), and pluralism.

While conducting his/her legitimate professional activities, a journalist, as a person performing a social duty, shall be protected by the RoA legislation.

2. Media products are produced and disseminated without prior or current state registration, licensing, declaration, or notice to any state body.

The licensing of TV and radio broadcasting is conducted according to the RoA legislation on television and radio.

3. The following is prohibited:

- 1. Censorship;**
- 2. To compel the entity engaged in communication activity or a journalist to disseminate or refrain from the dissemination of information;**
- 3. Interfering with the legitimate professional activities of a journalist;**
- 4. Discrimination in public circulation of appliances and materials necessary for the dissemination of information;**
- 5. Restriction of a person's right to exploit media products of his/her choice, including those issued and disseminated in other countries."**

There are two clauses deserving particular attention in this Article: a) *While conducting his/her legitimate professional activities, a journalist, as a person performing a social duty, shall be protected by the RoA legislation*, and b) *it is prohibited (...) to interfere with the legitimate professional activities of a journalist*. It should be added here that the RoA Criminal Code criminalizes the act of obstructing the legitimate professional activities of a journalist (see below).

Article 164. Hindrance to the legal professional activities of a journalist

- 1. Hindrance to the legal professional activities of a journalist, or forcing the journalist to disseminate information or not to disseminate information, is punished with a fine in the amount of 50-150 minimal salaries, or correctional labor for up to 1 year.**
- 2. The same actions committed by an official abusing one's official position, is punished with correctional labor for up to 2 years, or imprisonment for the term of up to 3 years, by deprivation of the right to hold certain posts or practice certain activities for up to 3 years, or without that.**

The reason we address the issue here is that after the adoption of the new law, in 2004, several outrageous examples of hindering the legal professional activities of journalists were reported.

Thus, on April 5, 2004, in the city of Ashtarak, the police hindered the work of the correspondent of "Haikakan Zhamanak" newspaper Haik Gevorgian, later taking him to the police station, as he was taking pictures of the Ashtarak-Yerevan highway blocked by the police. (Note: the highway was blocked to prevent the inflow of participants to the opposition rally in Yerevan). According to Haik Gevorgian, he had been "lectured on how to behave" for an hour at the police station.

On the same day--April 5, unprecedented violence was committed against journalists during the opposition rally in Yerevan. The attacks on journalists, damaging their cameras, evolved in front of the policemen, none of whom interfered. During the incident, cameras of the private "Kentron" and "Hay TV" companies, as well of Public Television of Armenia were broken, the tape of "Shant" private TV was snatched away, the photo cameras of correspondents Onik

Grigorian (“Hetq” online newspaper), Anna Israelian (“Aravot” daily), Haik Gevorgian (“Haikakan Zhamanak”) were destroyed. The journalists were also subjected to physical violence. Only after an active social protest wave were criminal proceedings instituted on this fact, and only against two people. These two were found guilty and sentenced to a penalty of 100, 000 AMD. Surprisingly, the proceedings were instituted not under Article 164 of the RoA Criminal Code (“Hindrance to the legal professional activities of a journalist”), but under Article 185 (“Willful destruction or spoilage of property”), with the mildest punishment chosen out of all, stipulated by the Article.

Even more outrageous were the events of April 12-13, when the journalists reporting on the opposition rally were attacked by the policemen themselves. On that night, correspondents of “Haikakan Zhamanak” daily Haik Gevorgian and Avetis Babajanian, the cameraman of the Russian ORT TV company Levon Grigorian, and journalist of “Chorrord Ishkhanutiun” newspaper Mher Galechian were beaten. According to Haik Gevorgian, his camera was snatched out by the Deputy Head of the RoA Police Hovhannes Varian in person, and the violence was exercised by the policemen in his very presence. Even more horrifying is the narration of the cameraman of the Russian ORT TV Company Levon Grigorian, published in the Yerevan Press Club Weekly Newsletter (see YPC Weekly Newsletter, November 12-18, 2004). Despite the public attention that the case got, the numerous protests made by local and international public organizations, no criminal proceedings were instituted on the case, not even an administrative investigation was conducted.

The next vase of hindrance to the professional activities of journalists occurred on August 24, 2004. On that day, the correspondent of “Aravot” newspaper Anna Israelian and the photo journalist of “Photolure” photo news agency Mkhitar Khachatrian were attacked by some Gagik Stepanian, as they were gathering information on the summer houses being built in Tsaghkadzor (please see the annual report of the Yerevan Press Club and Committee to Protect Freedom of Expression in 2004 for more detail on YPC web site: www.ypc.am). On this fact, for the first time in the history of independent Armenia, criminal proceedings were instituted under Article 164 (“Hindrance to the legal professional activities of a journalist”,) and on November 11, the court ruled to sentence the defendant to six months’ imprisonment. By the assessment of Yerevan Press Club, the punishment is too mild, particularly since the law allowed for an early release. These expectations came true, as the people guilty of violence against journalists were released already on October 26.

Article 164 of the Criminal Code was also applied to Armen Vardanian, who committed violence against correspondent of “Haikakan Zhamanak” daily Arman Galoyan on September 23, 2004, in the vicinity of one of the Yerevan markets. He was sentenced to a year’s reformatory labor with 20% allocation of his monthly salary to the state budget.

The RoA Law “On Mass Communication” strengthens the provision on the protection of information sources (Article 5). It is stipulated that the identification of sources can only be imposed on the journalist and the medium by court, and only as necessary for the disclosure of grave and very grave crimes. It also specifies the cases when identification of sources may be demanded (**“if social interest in law enforcement outweighs the social interest in protecting the**

sources of information, and all other means to protect the social interest are exhausted”). This clause was expanded at the insistence of the journalistic associations, stipulating that in this case, the journalist can demand a court hearing in camera. Therefore, the Article should either be brought into compliance with Recommendation No. R (2000) 7 of the CoE Committee of Ministers to Member States on the Right of Journalists not to Disclose Their Sources of Information, or else, amendments should be introduced in other laws in the spirit of this Recommendation. This is particularly important, since, as the practice shows, this provision contradicts Article 86 of the RoA Criminal Procedural Code, which provides that journalists are not included into the list of those who shall not be involved in criminal proceedings and interrogated as witnesses. This issue first came up when the Chairman of “Investigative Journalists” NGO Edik Baghdasarian was summoned to the police station of Kentron community of Yerevan, where he was demanded to disclose the sources of information published in one of his articles. YPC believes that the problem is to be solved by amending Article 86 of the RoA Criminal Procedural Code, to include journalists into the list of individuals that cannot be involved in the case and interrogated as witnesses, in order to protect the information sources.

Article 6 of the Law on Mass Communication refers to the accreditation of journalists, and Article 7 is related to the restrictions of the freedom of expression in the field of media activities. Part 1 of that Article provides: ***“It is prohibited to disseminate information defined by law as secret, or information advocating criminally punishable acts, as well as information violating the right to privacy of ones’ personal or family life.*”**

In part 1 of the Article above, the phrasing ***“information defined by law as secret”*** is unclear. The journalistic associations have repeatedly stressed that responsibility for the information defined as secret lies with the information holder. Should it become known to the journalist, the decision of whether to publish it or not rests with the journalist and his/her medium, as an ethical matter. Also, Article 9 of the Law, entitled “Responsibility of the Entity Engaged in Communication Activity,” provides certain protection in case of publishing secret information: ***“The entity engaged in communication activity is not liable for dissemination of secret information as stipulated by law, provided the information in question was obtained lawfully, or it was not apparent that the information was secret under the law.*”**

If the entity engaged in communication activity has disseminated information the secret nature of which has been evident, it will be exempt from liability, if dissemination of information was done for the sake of protecting public interest.”

The right to response and refutation is stipulated in Article 8, specifying that the response and refutation can be demanded within one month since the publication of the information, and is to be published within a week since the submission. It is also noted that the refutation must refer to only factual mistakes. The Law also lists the cases when the refusal to publish a response or a refutation is permitted.

Law “On Television and Radio” and Its Implementation

As it has been noted above, the commitments and obligations of Armenia also called for transformation of the state broadcaster into a public service one. The RoA law “On Television and Radio” was adopted on October 9, 2000, that is, after the Opinion 221 of the PACE (June 28, 2000)

on Armenia's application for membership in the Council of Europe and before Armenia became a full-fledged member of the Council of Europe.

The Law regulates the work of both private and public service broadcasters. The main point of debate remains the formation and the authority of the regulatory bodies - the National Commission on Television and Radio (regulating the private broadcasting) and the Council of Public Television and Radio Company. According to the Law, both the National Commission on Television and Radio and the Council of Public TV and Radio Company are formed by the RoA President. Their independence is supposedly guaranteed by their terms of service, during which the authority of their members cannot be terminated but for several cases - the decease of a member, voluntary resignation, etc. Yet, is this sufficient to ensure the independence of the regulatory bodies? In the opinion of the journalistic community, it is not. Thus, the broadcast licensing tenders held in 2002-2004 have proven that the concern is valid: "A1+" TV Company participated in 8 broadcast licensing tenders and was every time refused a license by the "independent" National Commission on Television and Radio. Throughout this period, "A1+" challenged the decisions of the NCTR at every judicial instance domestically with no success, and the case is currently pending before the European Court of Human Rights.

The independence of the broadcast regulating bodies is a problem that has been particularly emphasized by the Council of Europe, its Committee of Ministers adopting a Recommendation on this: Recommendation (2000)23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector of December 20, 2000. This issue was also addressed by PACE in its three resolutions on the fulfillment of commitments and obligations by Armenia, issued in 2004. Thus, PACE Resolution 1361 (January 27, 2004) says:

"The Assembly notes that a number of legislative commitments - increased local self-government, introduction of an independent ombudsman, ***establishment of independent regulatory authorities for broadcasting***⁴¹, modification of the powers of and access to the Constitutional Court, reform of the Judicial Council, etc. - are still subject to a revision of the Armenian Constitution".

The same Resolution further provides:

"As regards freedom of expression and media pluralism, the Assembly is concerned at developments in the audiovisual media in Armenia and expresses serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licenses, in particular as regards the television channel A1+. However, it notes the adoption in December 2003 of the Law on the Mass Media and a law amending the Law on Radio and Television Broadcasting."

On December 3, 2003, the RoA National Assembly adopted the RoA Law on Amending the RoA Law on Television and the Radio." This followed another expert assessment of the existing Law by the Council of Europe. The NA deputies that initiated the amendments assured that the changes were developed on the basis of the CoE expert assessment dated July 26, 2002. However,

YPC analysis reveals that the main objections of the expert were not taken into account. Firstly, the reviewing expert placed a particular emphasis on the procedure of forming the regulatory bodies - the Council of the Public TV and Radio Company and the National Commission on Television and Radio. In particular, the expert pointed out that the member appointment policy for both the NCTR and the Council of PTRC should be aimed at ensuring appointment transparency and the independence of the bodies from political influences. Experts also note that for the members of National Commission on Television and Radio, this should be their principal employment.

This point in the expert review was not taken into account by the authors of amendments to the RoA Law on Television and the Radio.” To fill in the vacancies in the Council of Public TV and Radio Company, the following procedure was stipulated:

“The Chair of the Board shall inform in writing the President of the Republic of Armenia whenever a vacancy opens in the Board. The President announces a competition for the opening in the mass media within a one-week period.

Anybody can be nominated for the vacancy of a Board member, according to the requirements of this law.

At least a 10-day term is stipulated for nominating the candidates.

The data about the candidates are published in the mass media.

The RoA President, based on the competition procedure confirmed by him, appoints one of the winners of the competition as a Board member. The information about that is published in the mass media - with the necessary substantiation.”

In January 2005, a competition was announced to fill the vacancies at the Council of Public TV and Radio Company. The competition jury was headed by the Chairman of the Council of the Public TV and Radio Company Alexan Harutyunyan. Yerevan Press Club, Journalists Union of Armenia, Internews Armenia, and the Committee to Protect Journalists qualified this competition as imitation of democracy. The winners of the competition became members of the Council. These were Stepan Poghosian and Henrik Hovhannisian, previously holding the same positions.

The same procedure applies to the National Commission:

“The Chairman of the National Commission shall inform in writing the President of the Republic of Armenia whenever a vacancy opens in the National Commission. The President announces a competition for the opening in the mass media within a one-week period.

Anybody can be nominated for the vacancy of a member of the National Commission, according to the requirements of this law.

At least a 10-day term is stipulated for nominating the candidates.

The data about the candidates are published in the mass media.

The RoA President, based on the competition procedure confirmed by him, appoints one of the winners of the competition as a National Commission member. The information about that is published in the mass media - with the necessary substantiation.”

These amendments yield no result whatsoever and do not adhere to the requirements of Recommendation (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting and Recommendation Rec(2000)23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, because the determination of competition winners remains a subjective decision to be made by the President or the Commission appointed by him.

The issue of independence of broadcast regulatory bodies was also addressed in PACE Resolution 1374 (April 28, 2004):

“- create fair conditions for the normal functioning of the media, for example, as regards the issuing of broadcasting licenses to television companies, in particular, to television channel A1+”.

Notably, “A1+” TV Company continues to remain out of air. Moreover, “A1+” TV Company, having founded “MS Explorer” LLC jointly with “Cooperation for Democracy” NGO, took part in the broadcast licensing tender for FMs in Yerevan, announced on September 17, 2004, and on February 14, 2005 it was again refused a license by the National Commission.

The tenders for television and radio broadcast licenses conducted by the National Television and Radio Commission have also been analyzed by the Armenian “Internews” NGO in the framework of its “Television Regulation in Armenia” project. A section of the analysis, which is related to the topic in question, is presented below in full.

After the most recent amendments of December 29, 2003, a third paragraph was added to Article 50 of the Law on Television and the Radio, which provides: “The National commission must duly justify its decisions on selecting the licensee, refusing to grant a license, or revoking a license.” In order to clearly understand how well the Commission respects this provision of the Law, decisions taken by the Commission before and after the amendment have been reviewed.

Decisions on selecting the licensee, which have been taken after the amendments (hereinafter, “decisions taken later”), are not considerably different from the decisions taken before January 2004 (hereinafter, “decisions taken earlier”). In the decisions taken earlier, it is directly mentioned that “*on the basis of the tender results, the company is hereby recognized as the winner of the licensing tender,*” whereas the decisions taken later contain more extensive wording: “*taking into consideration that the bid submitted by limited liability company _____ taking part in the license for broadcasting television content on band _____ in the city of _____ is in conformity with the requirements of the Republic of Armenia legislation on television and the radio and the tender conditions established by decision _____ of the National Television and Radio Commission dated _____, the National Television and Radio Commission hereby decides to recognize the _____ company as the winner of the tender.*”

We believe such wording of decisions by the Commission fails to comply with the requirements of Article 50 of the Republic of Armenia Law on Television and the Radio, because in order to be awarded a license in the tender, it is insufficient for the bid to be in conformity with the Armenian legislation on television and the radio. The Armenian legislation on television and the radio clearly provides that in order to issue a broadcast license, the winning bidder is selected on the basis of:

- a) The predominance of own content;
- b) The predominance of domestically-produced content;
- c) The technical and financial capabilities; and
- d) The competence of the staff.

We believe the Commission should select the winning bidder on the basis of the requirements of law and, therefore, determination of who performs better vis-à-vis the legal requirements. Considering that the law and the tender procedures define four criteria, the Commission needs to justify its decisions by evaluating each of the four criteria: otherwise, the decisions of the Commission cannot be considered justified.”⁸

The same study of Internews Armenia public organization also referred to the compliance of 19 TV companies with the Law "On Advertising". A one-week monitoring registered violations of the requirement for advertisement volume in one hour of airtime, ban on advertising strong alcoholic beverages and tobacco. However, the National Commission on Television and Radio either applies no punishment for such violations or does it selectively.

Among the problems faced by the post-Soviet Armenian media are their financial dependence on political and economic patronage, resulting in political bias, absence of due attention to the issues of public concern. The honoring of commitments to the Council of Europe was to bring about greater freedom of journalistic profession, installment of certain legal mechanisms that would ensure objective reporting, proceeding from public interests. This applies primarily to the broadcast media, which are the main source of information for the population. Therefore, along with the assessment of the direct fulfillment of commitments with regard to legislation and the functioning of the reformed legal mechanisms, the present research also aimed at determining how much the reforms have affected media content, first of all focusing on the broadcasters. To this effect monitoring of the mainstream TV channels was administered. The necessity of this study was further confirmed by the fact that the broadcasting landscape of the country was formed after Armenia became a member of the Council of Europe and the adoption of the Law on Television and the Radio as part of the commitments to the CoE, and was particularly affected by its practical implementation (replacement of state broadcasting with public service broadcasting and conductance of broadcast licensing competitions).

The monitoring was implemented by Yerevan Press Club in February 2005 (see Appendix for the findings of the study in detail). The study focused on two tasks: to reveal whether and to what extent the major broadcasters meet the information demands of the society and the representation of diverse opinion on major events of public importance on TV air.

The following conclusions can be drawn from the monitoring findings: 1) the major Armenian TV channels, deemed to be the main information sources for the population of the country by

⁸ Quote from analysis provided to us by “Internews.”

surveys and other tools for studying public opinion, do not cover a significant part of topical issues, thus restricting the right of the audience to be informed, and neglecting its demands and needs; 2) unlike the periods that are decisive for the political future of the country (elections of various levels, referenda), when, according to the previous studies, the main TV channels displayed an obvious slant in favor of the incumbent authorities, this study did not record any prevalence of any political stance on TV air; 3) at the same time, a somewhat passive behavior of the TV companies in terms of presenting the opinions of political and public figures on a whole range of issues was noted. Thus, the contribution of media in shaping the public policy culture in the country is unsatisfactory; 4) The analytical programs of most TV channels studied are not sufficiently contributing to the audience finding its way through the information flow; 5) in particular, the international and social problems, which, according to all public opinion polls of the past years, are of utmost interest to the audience, are not a priority in the programming policy of the media studied; 6) at the same time, the TV channels pay much attention to the routine, day-to-day activities of state structures, the leadership of the country, the political figures and businessmen who have certain levers of affecting the given TV company; 7) as another monitoring, administered during the same period jointly by the London-based Media Diversity Institute and Yerevan Press Club, shows, the broadcasters very rarely addressed the issues of socially vulnerable groups of the Armenian society. These subjects are covered only in the case of a news pretext and mostly address the official stance on the groups, as voiced by state and international structures.

Thus, it can be stated that during the period when commitments to the CoE were being fulfilled, the Armenian broadcast media market (even though their number is quite large for a country with a small area and a population of 3 million) is not adequately responding to the needs of society and the problems of social development in the country.

Decriminalization of Libel and Insult

In 2003, during the discussions of the draft new Criminal Code of the Republic of Armenia, numerous public and international organizations were firm in their stance on the document, insisting that the libel and insult must be decriminalized. However, the authors of the draft Code refused to compromise. On June 17, 2003, heads of six diplomatic missions active in Armenia, as well as representatives of 11 international and local NGOs addressed an open letter to the Speaker of the RoA National Assembly Artur Baghdasaryan (copies were sent to the RoA President Robert Kocharyan, Prime Minister Andranik Margaryan, Justice Minister David Harutyunyan, senior officials of law enforcement bodies and judicial power, NA deputies, and the mass media). The letter called to decriminalize libel and insult and to transfer the regulation of these offenses into the framework of civil legislation.

The necessity to amend Article 135 (“***Libel***”), 136 (“***Insult***”) and 318 (“***Insulting a representative of authorities***”) was addressed by item 16ii of PACE Resolution 1361 (January 27, 2004):

“(The Assembly) asks the Armenian authorities to start work on revision of Articles 135, 136 and 318 of the Criminal Code by March 2004, in co-operation with Council of Europe experts, to remove any possibility of making insult and defamation subject to a prison sentence.”

On June 9, 2004, the RoA National Assembly adopted the RoA Law on Amending the RoA Criminal Code, by which amendments were introduced also in the three Articles mentioned above. According to the RoA Minister of Justice David Harutyunyan, the amendments were a compromise with the demands to decriminalize libel and insult. Currently, these Articles are worded as follows:

“Article 135. Libel.

1. Libel - the dissemination of obviously false information humiliating the person’s good reputation, dignity and honor - is punished with a fine in the amount of 100 to 500 minimal salaries.

2. Action envisaged in part 1 of the Article, if repeated, is punished with a fine in the amount of 300 to 1000 minimal salaries, or with imprisonment for up to 1 year.

Article 136. Insult.

1. Insult, the improper humiliation of other person’s honor and dignity, is punished with a fine in the amount of 100 to 400 minimal salaries.

2. Action envisaged in part 1 of the Article, if repeated, is punished with a fine in the amount of 200 to 800 minimal salaries.

Article 318. Insulting a representative of authorities.

1. Publicly insulting a representative of authorities, in relation to the duties carried out by him, is punished with a fine in the amount of 100 to 500 minimal salaries.

2. Action envisaged in part 1 of the Article, if repeated, is punished with a fine in the amount of 300 to 1000 minimal salaries, or with imprisonment for up to 1 year.”

Thus, as a result of amendments to Articles 135 and 136, their second parts were removed, that is, the punishment stipulated for libel and insult contained in “public statements, publicly demonstrated works, or media.” The amounts of the penalties were also changed - that for libel increased from the former 50-150 minimal salaries increased in the new edition of the Criminal Code to 100-500 and that for insult increased from former 100 minimal salaries to 100-400 minimal salaries. Besides, from both articles sanctions of reformatory labor for up to a year (for libel) and up to six months (for insult) were excluded. From Article 318, part 2 was removed, too (insult of a representative of power, made in public statements, publicly demonstrated works or media). From part 1, “punishment of reformatory labor for six month up to one year” was excluded, while the fine amount was increased to 100-500 minimal salaries (previously at 100-200).

Besides, as a result of the amendments introduced, Articles 135, 136 and 318 were replenished by a provision stipulating punishment in case of a repeated action. In this case, not only the fine amounts

increase, but also, in the case of repeated libel (Article 135) and insult of a representative of power (Article 318), a prison sentence for up to one year is introduced.

In the opinion of experts, these amendments do not fully solve the problem, since the Articles remain in the Criminal Code, thus allowing the media and journalists to be subjected to criminal charges. Moreover, a demand made in the PACE Resolution **“to remove any possibility of making insult and defamation subject to a prison sentence”** is not actually accomplished, since, as noted above, imprisonment is stipulated in Articles 135 and 318. While PACE Resolution 1405 of October 7, 2004 has taken note of these amendments, the removal of the Articles from the Criminal Code is still important, since they have nothing in common with the freedom of expression and cannot be justified by Part 2 of Article 10 of the European Convention of Human Rights. Here, the Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur of Organization of American States in December, 2002 should be recalled, according to which: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws”.

On March 22, 2005, the National Assembly of the Republic of Armenia adopted the Law on Combating Terrorism. Article 14 of the Law is entitled “Restrictions on Information regarding Anti-Terrorist Activities.” Article 14 provides:

“It shall be prohibited to provide such information on anti-terrorist activities, which:

- 1) Reveal the special technical means and mode of implementing the anti-terrorist activity;***
- 2) May hinder the implementation of an anti-terrorist activity and create danger for the life and health of citizens;***
- 3) Is aimed at advocating or justifying the terrorism; and***
- 4) Contains information on state bodies, special services, anti-terrorism units, and their staff taking part in the anti-terrorist activity, as well as the persons that have supported the implementation of such activity.”***

The experts of YPC believe that such wording creates room for wide interpretation and may become another obstacle to mass media representatives trying to exercise their freedom of expression and to collect information.

Finally, the Law on Postal Communication and the related amendments to the Republic of Armenia Law on Licensing have become obstacles to the free dissemination of information since late-2005. These laws provide that private organizations engaged in subscription and dissemination of print publications must be licensed. Tax authorities, based on their own arbitrary interpretation of the provisions of these laws, started to visit these organizations and demand that they license their activities (the licensing fee is 5 million drams) and pay fines for operating without licenses.