

MONITORING OF THE LEGISLATIVE
ACTIVITY OF POLITICAL FORCES
OF THE NATIONAL ASSEMBLY

The project was implemented with the financial assistance of “Open Society Institute Assisitance Foundation-Armenia”

Yerevan 2009

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Preface

The parties' election platforms are usually brought into focus only during pre-election periods. After the elections, however, they turn secondary as fast as they become a matter of debate. The parties mention their platforms "when the occasion arises", in "convenient" instances, while the public in its turn does not monitor or fails to find effective means to follow up on the implementation of the platforms.

The "Monitoring of the Legislative Activity of Political Forces Represented in the National Assembly" project continued to follow the legislative activities of the five parties represented in the Parliament seeking to serve as a monitoring tool for the public. This is the second report in the framework of the project pursuing the same goals and objectives. The first was the outcome of the monitoring of the first two sessions in the newly formed National Assembly. At this stage we monitored the parliamentary activities during fall 2008 and spring 2009 sessions in the National Assembly of the 4th convocation. We looked at the law-making activities of the NA factions from the perspective of their comparison to the election platforms.

The project is the joint work of journalist and expert teams. The journalist team followed the work of the NA fall session compiling the information on the draft laws under monitoring and presented the positions voiced by the factions during the NA discussions comparing them to the approaches reflected in the platforms. The expert team provided its professional analysis on the draft laws.

Around ten draft laws discussed in two NA sessions were included in the monitoring. The attempt to cover as many different fields as possible as well as to consider the noteworthiness of certain discussions and votes prompted their selections. The draft laws under review refer to several fundamental areas: criminal justice and tax reforms, environmental issues and political rights, broadcasting field and freedom of conscience.

Information on each of the draft laws under monitoring is presented in the same structure, including two main sections. The first section covers the basic information on the draft law, the second sets out the positions based on which the NA factions have either approved or declined the legislative initiative. They were juxtaposed with the approaches envisaged in the platforms. The second section presents analysis by independent experts specializing in the respective fields on the legislative initiatives under monitoring.

Before presenting the positions of the factions we need to reiterate that the speeches made during the discussions do not fully qualify as such in that they were not presented as "opinions of the factions" per se. In fact, the term is clearly defined in the Law on NA Rules of Procedure. The deputies representing different factions, mainly the authors of the draft laws at that, were the ones making speeches. We presumed that no one objected to their opinions within the factions and those opinions were eventually confirmed in the vote. Perhaps it should be noted that the "Heritage" party which represents parliamentary

minority has expressed an opinion on almost all the draft laws. The second on the list in that sense is the “Republican” party enjoying a majority in the parliament.

As for the election platforms, time and again the results of the monitoring almost unarguably confirm the widely held belief that the election platforms of the parties are primarily of declarative nature. The approaches stated therein are very general and lack clarity and concreteness.

However, we can state that such a “style” allows for much flexibility in the future work. Oftentimes the contradictions between the programmatic points and positions expressed are possible to explain in the context of “interpretations”. Needless to say that the election platforms of the parties fail to address a range of issues and spheres which they would have to deal with as part of their legislative work.

The project was implemented with the financial assistance of the “Open Society Institute Assistance Foundation-Armenia” .

***Amendments
to the Law on
“Television and Radio Broadcasting”***

Passed on March 28, 2009

The draft law passed with the following distribution of the votes:

In favor 97

Against 0

Abstained 2 (independent deputies)

<i>The Republican faction</i>	<i>in favor</i>
<i>The “Prosperous Armenia” faction</i>	<i>in favor</i>
<i>The “Armenian Revolutionary Federation” faction</i>	<i>in favor</i>
<i>The “Rule of Law” faction</i>	<i>in favor</i>
<i>The “Heritage” faction</i>	<i>in favor</i>

RA Law on “Television and Radio Broadcasting” was adopted in October of 2000 (in the framework of requirements for accession in the Council of Europe), but over the past year four resolutions adopted by the Council of Europe on Armenia require reformation of the law. The legislative initiative under consideration is one of these requirements. It was authored by deputies. We will point out several of the proposed fundamental amendments:

- the RA President appoints Board members of the Public Television and Radio Company in line with competition rules and procedures approved by him (in the past they were simply appointed);
- each board member assumes the post taking an oath (the text of the oath is set by law)
- each year the funding of the Public Television and Radio should be provided on “in the amount not less than the previous year allocation” basis (in the past the funding was provided as per cost calculations based on the expenditures incurred in the previous year);
- From now on the Charter of public television and radio companies is approved by the Public Board and not the NA;
- at least one of the five board members should be female
- for the members who the National Assembly is entitled to appoint by a competition procedure was also established (the selection panel determines the competition procedure).

Views of the factions

- *The Republican faction*

The key rapporteur Armen Ashotyan stated that presented draft law has a political resonance and urged to admit that “the amendments to the legislation ensuring the functioning of electronic media are part of an on-going process. We have not attempted to offer solutions to all the issues, since in addition to problems accumulated over the years we now face challenges in the legislation associated with technological progress. I would like to say that this is the beginning of reforms and I project two more waves of amendments. One of them will deal with the “increase in European transnational broadcasting by the RA” the other- with digitalization. With regard to the latter the speaker found it unfortunate that an additional underlying political message is attributed to this issue in Armenia whereas it is a critical problem in a number of European countries.

The “Republican” party election platform does not cover this field.

- *The “Heritage” faction*

“As a working group member, co-author and a deputy representing a political force Anahit Bakhshyan voiced “her opinion”: “as for the PACE recommendations of different years regarding the promotion of freedom of media in any democratic state, I would like to state that these guarantees are sufficiently stipulated”.

Indicating that the proposed amendments had further made the mechanisms for establishment of bodies regulating the work of broadcasting media “democratic” and “transparent” and viewing issues predominantly in the domain of the Public Television and Radio Company she saw the final resolution in the human factor: “they have to get rid of the slave inside and believe that they are independent and everyone should treat their work with sense of responsibility and perform his/her task as an independent member of the board”.

Though the work performed was compared to patchwork, the speaker was convinced that given the political will the legislation provides adequately for having independent electronic media.

The “Heritage” has talked about amending the law on “Television and Radio Broadcasting” in its election platform finding it important to substitute the state broadcasting with true public broadcasting and ensuring the independence of bodies regulating the work of television and radio companies.

- *The “Prosperous Armenia” faction*

Naira Zohrabyan, the co-author of the draft law representing the PAP noted that it had been thoroughly discussed with the experts of the Council of Europe. Also, “it will make it

possible to address the concerns raised by the public and the PACE in at least 2-3 resolutions”.

She expressed her regret over the fact that it was no longer technically possible to include a number of useful recommendations received by the NGOs in this document which she believed could prompt a new law-making initiative.

The “Prosperous Armenia” in its election platform appreciates the role of mass media as a key instrument in ensuring plurality and forming public opinion and sees the need for “improving conditions for their free and unbiased work”.

Expert Opinion

*Mesrop Harutyunyan,
Expert of the Committee on Protection of Freedom of Speech*

On September 10, 2008 The RA National Assembly rushed the adoption of the Law on making an addition to the Law on “Television and Radio Broadcasting”. However, the draft law was made public only on the opening day of the session, September 8, was approved in the first reading, an extraordinary sitting was convened at 6.30 pm on the same day which, firstly, adopted the decision to hear the mentioned draft law according to a special procedure (having the 3rd hearing within 24 hours of the 2nd one), then the voting for the 2nd and 3rd readings was quickly arranged and the draft law was adopted. Two days later, on September 12, 2008 President Serzh Sargsyan signed it, on September 17 the “Official Newsletter of the Republic of Armenia” published it and on September 27 it took effect.

This begs the question: Why did the Government need this law and why was this seemingly minor addition adopted so hurriedly?

To answer this let us quote the law in full:

Article 1. To add new content to Article 59 of the Law on “Television and Radio Broadcasting” adopted on October 9, 2000

“No competitions for television and radio broadcasting licensing are announced till July 20, 2010. Television companies with licenses expiring before January 21, 2011 can apply to the National Commission for extension. The term of the license is extended for the requested term but not longer than January 21, 2011”.

The government has attempted to answer this question by attaching the rationale on two and a half pages to the draft law. The gist of it is that since a transfer to digital broadcasting is planned, therefore, according to the line of reasoning, “the proposed solution will ensure a smooth transfer for television and radio programs in the territory of RA from current analogue broadcasting system to digital, avoiding the temporary and unreasonable licensing procedures and not violating the existing and prospective rights”.

Then, the Government offers grounds for these statements. By way of conclusion the authors note that “the adoption of the draft law requires immediate action as the broadcasting licenses of a number of television programs expire in October. It is recommended that the draft law be approved and deemed urgent.”

The latter explanation itself (...expires in October) is enough to understand how the RA government rushed through the draft law allowing for inaccuracies in the rationale. In fact, none of the television companies’ licenses were to expire in October, 2008. A number of these licenses were expiring in April, 2009, therefore pursuant to the law new licensing competitions were to be announced six months in advance.

However let us refer to the law.

According to media analysts and journalist community the adoption of such a draft law pursued only one aim, which is to ensure that “A1+ ” and “Noyyan Tapan” television companies are not eligible to enter the licensing competition for another two years.

A number of journalist NGOs issued a statement which noted, “The Government of the Republic of Armenia yet again proved that its initiatives in the field of mass media are not directed towards ensuring the constitutional right of people to freely receive and circulate information, improving the field, honoring assumed obligations to the Council of Europe and following up on recommendations of the PACE resolutions but rather towards the maintenance and strengthening of total control over other broadcasters”.

The adopted law is unacceptable for the following reasons:

The Government, despite repeatedly voiced pledges to not circulate any draft law related to the field without discussion with stakeholder organizations, did it secretly yet again. This confidential working practice demonstrates that the Government realizes the vulnerability of the document. Then, the authors of the draft law despite their efforts failed to reasonably explain: What project envisages that from July 2010 the digitalization of broadcasting will start in Armenia? When and where was such a program discussed and approved? What is the timeline for implementation?

Through the adopted law the exact opposite of the requirement of PACE resolution 1620 (2008) was accomplished.

The resolution distinctly states, “The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the Court concerning the denial of a broadcasting license to the television channel A1+, calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines adopted by the Committee of Ministers of the Council of Europe on 26 March 2008, and with the case law of the Court”.

The representatives of the journalist community concluded their statement with the following, “The Government’s initiative has nothing in common with either the protection

of interests of the broadcasters, the consumers, the state or the provision of equal opportunities and elimination of market failures. It was simply an attempt to save itself the bother of licensing competitions as “an extra headache”. The consequence of adoption of this law is that we enter the era of digital broadcasting with low quality broadcasters who do not meet the requirements of the public and international standards, are monopolized and thus easily controlled.

These grounds are perhaps adequate to prove the unacceptability of the adopted law. This said, here is another instance of rash actions of the government. The thing is that the authors of the draft law had made a major mistake or an omission which was noticed neither by the deputies nor the lawyers of the President’s staff and the law was published as it was. Let us read the law again, “No licensing competitions for television and radio broadcasting are announced till July 20, 2010. **Television companies** with licenses expiring before January 21, 2011 can apply to the National Commission for extension. The term of the license is extended for the requested term but not longer than January 21, 2011” (highlighted by us-M.H). This way the issue of radio companies with licenses expiring before January 21, 2011 remained unclear. It demonstrates that the Government, focused on suspension of licensing for television companies only (since the threat was associated with “A1+” and “Noyyan Tapan” television companies), had forgotten to write what the radio companies would do should their licenses expire. And only after our newspaper publication regarding this omission the Government submitted a new draft in order to correct its mistake.

In particular, the draft proposed “replacing the word “television companies” with “television and radio companies” in the second sentence of the final part”. And in order not to leave an impression that for replacing one single word a new draft law was prepared, the Government, down the line, proposed an addition to Article 28 of the law, “The status of Public Television and Radio Company and Principles of Operation”. The paragraph “The Public Television and Radio Company can provide airtime for the broadcasting of special programs and shows in the languages of national minorities in the Republic of Armenia. The total time for such programs shall not exceed 1 hour per week on television, and 1 hour a day on the radio” was to be replaced with “The Public Television and Radio Company can provide airtime for the broadcasting of special programs and shows in the languages of national minorities in the Republic of Armenia. The total time for such programs shall not exceed 2 hours per week on television, and 1 hour per day on the radio. The special programs and shows in the languages of national minorities in the Republic of Armenia shall be subtitled in Armenian. This was not a significant amendment and we can reiterate with confidence that it was done in order not to submit a draft law merely proposing replacing the word “television companies” with “television and radio companies” to the parliament. The RA National Assembly adopted this draft law on December 26, 2008.

On April 28, 2009 the National Assembly of the RA adopted a draft law package containing draft laws on making amendments and additions to the Law on “Television and Radio

Broadcasting”, RA Law on “Rules of Procedure of the National Commission on Television and Radio”, “RA Rules of Procedure of the NA”, on making amendments to the Law on “State duty”. The package signed by a number of NA deputies had been circulated at the end of 2008. And back at that stage the experts had presented several critical comments. The package with some amendments and restatements was put up for discussion in February, 2009. At that point the journalist organizations presented critical objections yet again, let alone the fact that the draft laws discussed in February were prepared hastily and apart from legislative faults contained technical, stylistic and language flaws. Nevertheless, as a result of criticism and the expert conclusion of the Council of Europe the package was further elaborated on and eventually adopted on April 28, 2009. However, the key issues pointed out by the experts of journalist organizations in Armenia were not addressed.

The main issues of principle are set out below.

1. The issue of independence of the National Commission on Television and Radio, the regulatory authority of the activities of television and radio companies remains unresolved. The very fact that a competition procedure was established for the members appointed by the National Assembly through making amendments and additions to the RA Law on “Rules of Procedure of the National Assembly” or it was rephrased that the RA President “appoints the successful candidate member of the National Commission in line with competition rules and procedures approved by him” does not yet secure the independence of this body. The oath established for the member of the National Commission on Television and Radio does not warrant independence either.

2. No reform is implemented for the Public Television and Radio Company. The mechanisms for the National Commission on Television and Radio to supervise and regulate the public broadcasting are not designed. The provisions related to the Public television and radio company have undergone merely cosmetic modifications.

Here is an example.

“Article 8. To add a third part to Article 19 of the Law with the following content:

“Based on the provisions of Article 27 of the Constitution of the Republic of Armenia, the independence of the activities of the Public radio and Television Company offering a diversity of informational, political, economic, educational, cultural and entertainment programs, is guaranteed in the Republic of Armenia with the exception of other cases prescribed by Article 44 of the RA Constitution and laws.”

Or,

Article 13. *In Article 28 of the law*

1) to restate the second sentence of the 1st part as follows, “in order to ensure a constitutional human right the State establishes an independent public television and radio

company the activities of which ensure the diversity of programs-informational, political, economic, educational, cultural, children's, scientific, on Armenian language and history, sports, as well as those of other informative nature which are important and significant to the public. It operates according to this law, its rules of procedure and the legislation of the Republic of Armenia".

Such amendments are not essential or principal and can not in any way provide for truly independent public broadcasting.

The provision suggesting amendments to Article 29 on Appointment of the Board member of the Public Television and Radio Company does not address the issue of independence of the board as long as the mechanisms for public participation are not in place.

As per the amendment, "The Board consists of five members (at least one being female) who are appointed by the RA President in line with competition rules and procedures approved by him."

It remains unclear why instead of ensuring public representation a quote on participation of women was set.

3. The possibility of holding impartial and transparent competitions for television and radio broadcasting licensing is not provided. Only in Article 50 of the Law new formal criteria are introduced regarding the selection of the licensee.

Here is that Article in full:

Article 31. In Article 50 of the law

1) add points "b1", "b2" "b3" "b4" with the following content to the 1st part:

- b1) the business plan of the television and/or radio company and its feasibility;
- b2) the diversity of programs included in the application;
- b3) the applicant's ability to promote plurality;
- b4) a proposal to ensure diversity on air reflected in the application.

2) In the 2nd part insert the phrase "the documental proof of financial sources" following the phrase "based on";

3) In the 3rd part insert the phrase "and ensures that all the grounds are made public and are accessible" following the phrase "the decisions";

The questions here are: How will the members of the National Commission on Television and Radio decide whose business plan is feasible and whose is not? Or where will "the applicant's ability to promote plurality" be reflected and what is the measure for this ability? In the meantime, the journalist community proposed a truly transparent

competition procedure. In particular, the idea of public review of applications was suggested.

4. The amendments did not fix the faults of the above-mentioned law adopted on September 10, 2008. Importantly, the clause on suspending the licensing competition was not revoked in which case there is no sense in discussing any amendment to the law.

So the joint opinion of the Armenian experts is that the package adopted in April 2009 does not address any issues of principle and introduces merely cosmetic changes to the legislation regulating the broadcasting sphere.

Amendments to the Law on “The Rules of Procedure of the National Assembly”

Passed on October 23, 2008

The draft law passed with the following distribution of the votes:

*In favor 71
Against 7
Abstained 3 (independent deputies)*

<i>The Republican faction</i>	<i>in favor</i>
<i>The “Prosperous Armenia” faction</i>	<i>in favor</i>
<i>The “Armenian Revolutionary Federation” faction</i>	<i>in favor</i>
<i>The “Rule of Law” faction</i>	<i>in favor</i>
<i>The “Heritage” faction</i>	<i>against</i>

The draft law was authored by the parliamentary coalition. Yet another amendment to the Law on “The Rules of Procedure of the National Assembly adopted back in 2002 was effected in the context of resolutions 1609 and 1620 of the Council of Europe.

“The Council of Europe Parliamentary Assembly has adopted a resolution on the rights of the opposition in democratic parliaments. I have to say that a considerable part of the rights envisaged by the resolution are in place in our case. A part of those is impossible to introduce due to certain constitutional barriers. And we have sought to fill the gap that could be filled. For the first time we give the definition of oppositional faction...” Davit Harutyunyan, the chair of the NA standing committee on state and legal affairs presented the draft law with the amendments which apart from this definition also proposed the following:

- The faction is oppositional if the head of the faction or its secretary makes a statement in the National Assembly session about being oppositional and no person nominated by the specific party or party alliance forming this faction is included in the government.
- During question time with the government 3 signed-up deputies from each oppositional faction can ask oral questions first.
- During the NA announcement time 3 signed-up deputies from each oppositional faction can take the floor first.
- The oppositional faction has the priority in putting one draft of a law or a NA resolution on the agenda during every second four-day session. At the same time many restrictions on exercising this right are mentioned.
- The most extensive “amendment” in the document deals with the election procedure for chairs of committees and their deputies and though it is to take effect from the session of the next convocation it does not, in essence, envisage any content-related “innovation” and only proposes classifying the parliamentary factions through a mathematical equation based on the number of their members and reserves more numerous factions the right to nominate chairs of committees and deputies.

Positions of the factions

- *The “Republican” faction*

“Which are the most essential changes in this draft? The definition of what makes an opposition is the most significant. A number of other amendments are made as well. However, I can not count these amendments truly important in terms of content and do not wish to refer to them separately. These are details”,-were the words of the Republican author who also complained that the opposition had not exhibited “due interest”. He noted that “the opposition should find the will in itself and quit being only critical while assuming the responsibility vested in it.”

- *The “Rule of Law” faction*

The “RoLP” representative stated without specifying that the draft grants serious privileges to the opposition. “As I am also considered a co-author of this draft let me just say that it is a very important one. I myself have been a representative of an oppositional political force for two years on end and realize perfectly well the challenges faced so these are quite weighty privileges allowing the representative of an oppositional political force to express what they have to say.” He accused the “Heritage” of speculations, ingratitude and slacking.

The “Rule of Law” election platform reads that for the development of a sustainable and powerful political system the maintenance of domestic political peace and harmony as well as the creation of principles and culture of political partnership is critical among other matters.

- *The “Armenian Revolutionary Federation” faction*

The ARF representative also referred to the definition of opposition as the major amendment and like other fellow members of the coalition criticized the opposition. In the ARF’s view it was absurd that “the opposition wanted more seats in the parliament than it has members today”. Stating that the proposed “mechanisms had not been created in Armenia but rather derived from the Council of Europe resolution” and were tested on democratic parliaments the speaker urged the opposition to welcome the amendments as an improvement to the current state of affairs although not sufficient indeed.

- *The “Heritage” faction*

The faction believes that the amendments are “cosmetic” in that they do not provide for real counterbalance to the majority, that is, the authorities. According to the speaker, “The opposition should have the committees which are assigned control functions. In some parliaments it is the audit committee which we do not have here. The financial-credit committee, defense committee and human rights defender’s committee are somewhat close to the mentioned committee.”

“Heritage” takes the position that the authorities of the head of the Control Chamber functioning outside the parliament and the National Commission on Television and Radio should also be conferred on the opposition.

*Amendments to the Law on
“The Rules of Procedure of the National Assembly”*

Expert Opinion

The draft law on “Making amendments and additions to the RA Law on “The Rules of Procedure of the National Assembly” authored by Davit Harutyunyan (RPA) Armen Rustamyan (ARF), Gagik Tsarukyan (PAP) and Heghine Bisharyan (RoLP) representing the NA coalition majority was put into circulation on May 23, 2008 and on June 9 was included on the agenda of the NA session and the four-day sessions of June 9-12. On June 9 a decision was adopted to discuss and pass it in full over two readings pursuant to Article 63 of the RA Law on “the NA Rules of Procedure”. The draft law was discussed and passed according to the first reading schedule on June 9 and 10 respectively (in favor-72, against-1, abstained- 6), was discussed as per the second reading schedule on October 22 and finally adopted on October 23 (in favor-71, against-7, abstained- 3). During the adoption in the first reading the oppositional “Heritage” faction abstained and during the second one voted against. The RA President signed the law on November 11, 2008.

The first one of the ten articles proposing amendments to the “NA Rules of Procedure” (Part 1¹ added in Article 14 of the Original law) determines the status of parliamentary opposition which was absent in the RA legislation. According to the definition, “the

faction is considered oppositional if the head of the faction or its secretary makes a statement in the National Assembly session about being oppositional and no person nominated by the specific party or party alliance forming this faction is included in the government." Such a definition makes it impossible for any political force to be involved in the government and not support it, nor does it allow it to self-declare as oppositional faction and enjoy the rights stated for the opposition. For instance, the ARF which in the past had one of its members in the government did not take full responsibility for its activities and every once in a while severely criticized the policies implemented in a number of fields. Article 1 also stipulates the grounds for forfeiture by a faction of its oppositional status: "In the event that a person nominated by the specific party or party alliance forming this faction is included in the government *or* the head of the faction or its secretary makes a statement in the National Assembly session about not being oppositional it stops being recognized as oppositional" (in either event).

The requirements for being recognized oppositional are noticeably stricter and the possibilities to forfeit this status are easier. If, in order to be acknowledged oppositional both conditions should be satisfied simultaneously, this is not the case for not being recognized oppositional or forfeiting the status in that the presence of at least one condition is sufficient. Such a definition provides a real opportunity for the authorities to deprive the oppositional faction, based on political expediency, of its status, consequently its guaranteed rights employing certain devices as to satisfy one of the conditions. For example, when the authorities make an arrangement with one of the parties forming the faction on nominating a member to the government or when a party representative especially if the head of the faction or its secretary makes a statement supporting the government or one that is so interpreted by the leadership/parliamentary majority of the NA and so on.

Article 2 of the Law (Article 26 in the Original law) stipulates the procedure for allocation of positions of chairs and deputy chairs of the NA standing committees to all the factions (and not of the positions reserved for the oppositional factions). From now on and up to the end of the NA mandate the right to nominate a candidate for these positions is reserved only to the factions and is exercised on the opening day of the NA first session. The right to nominate a candidate is allocated to the factions by professor Victor D'Hondt's method, that is based on a quotient calculated for each position by the following equation: $Q_f = M_f / (P_f + 1)$, where Q_f is the faction's quotient, M_f is the total number of faction members, P_f is the total number of positions of standing committee chairs and deputy chairs reserved for the faction when calculating the faction's quotient for the given position based on its right to nominate candidates. As regards this latter formulation found in the law it is nowhere mentioned who is to determine the "positions of standing committee chairs and deputy chairs reserved for the faction when calculating the faction's quotient for the given position based on its right to nominate candidates", and their number which will be used in calculating the quotient or how this is determined. However, it is stipulated that "the faction with the highest quotient is entitled to be the first to choose the post of the committee chair or deputy chair and nominate candidates for that post." The right to nominate candidate for the subsequent post "is given to the faction having the highest quotient compared to the rest of the factions. The quotient is then

recalculated up to the point when the right to nominate a candidate for the last available posts of standing committee chair and deputy chair is determined”.

In case of equal quotients the question of allocation of the right can be dealt with by mutual consent of the factions and in case of its impossibility, in a draw. At the same time, it is allowed for the factions to trade and(or) concede each other the right to nominate a candidate by their mutual consent.

But here as well there is a theoretical/hypothetical possibility for the NA political majority “to take it all”, since the right to nominate a candidate per se does not necessarily imply the guaranteed reality for the opposition to hold the post of a standing committee chair or his/her deputy. It is merely a right to pursue them, because the candidates nominated by the opposition may not be elected by the NA majority. For instance, pursuant to Part 5¹ added to Article 97 of the Original law “if the candidate nominated by the faction for the position of chair of the standing committee is not elected, new elections are held where the entitled faction can nominate a new candidate” and as per Part 5² if the faction does not nominate a candidate in the elections of the chair of the committee, then the right to nominate a candidate for the given position passes to the faction having the highest quotient at the beginning of the calculation. As for the positions of Deputy Chair of the standing committee according to Part 7¹ added to Article 12 of the Original law “if the candidate nominated by the faction for the position of deputy chair of the standing committee is not elected, new elections are held where the entitled faction can nominate a new candidate, and Part 7² added states that if the faction does not nominate a candidate in the elections for the deputy chair of the committee, then the right to nominate a candidate for the given position passes to the faction with the highest quotient at the beginning of the calculation. In both cases it is possible that neither of the candidates nominated by the opposition will win and consequently the faction can no longer nominate candidates.

The law allows for many theoretical possibilities to lose the posts secured by the oppositional faction. For instance, according to Point b) added to the 3rd part of Article 12 the mandate of the chair of standing committee and his/her deputies ends if “b) they have left the factions nominating him/her for the post of committee chair”. However, as a result of the elections held for the vacant post(s) the latter can pass in the first place to the political majority because Part 1¹ added to Point 2 of Article 26 states that the right to nominate a candidate is given to the faction with the highest quotient whereas the oppositional faction has secured these posts due to its past quotient. Or, by mutual consent of the government-oriented factions the vacant post(s) can be reserved for a newly created non-oppositional faction, through electing the candidate nominated by it and not by the oppositional faction. The same can happen to the vacated posts in cases envisaged by subpoints a) and c) of Part 3 of Article 12 (when the mandate of the chair of the committee ends due to the termination of deputy’s mandate or his/her resignation). Also, the Law does not address the revision of the scope of the rights stated in the discussed article in case of rearrangement or division of the oppositional faction (which is formed by a party alliance) even if the parties forming it individually continue to present themselves as oppositional factions. This means that regardless of the future changes in

the makeup of the parliamentary opposition and in the distribution of oppositional forces, (this does not concern dramatic changes and the situation when due to rearrangements the minority becomes the majority), the posts allocated to the factions in the very first NA session are not subject to review in the future, at least in terms of political majority, and the committee chairs and deputy chairs hold office till the end of the NA mandate.

So, it is evident that as a result of amendments and additions made to the law, the political majority, that is the winner "gets the choice morsels" and if needed "can also take it all" even depriving the opposition of the posts held. In addition, the rights stated in Articles 2 and 7 analyzed above which can be called rights to "affect the decision-making process or participate in it" will take effect on the opening day of the first session of the NA next, fifth convocation (2012). They did not apply to the current parliamentary opposition in order to "to avoid political speculations", and since "all the posts of chairs of committees and their deputies were already occupied".

The other rights reserved to the oppositional factions can be predominantly called rights "ensuring plurality". This way, according to Article 3 (Part 2¹ being added to Article 30 of the Original law) at least 1/3 of the members of the standing/head committee participating in its vote, if against the committee's conclusion and having a special opinion, is given the opportunity to present an accompanying minority report (unlike the key rapporteur-without the right of closing speech) in the NA. At the same time, 3 deputies from each oppositional faction get the priority to issue a statement in the NA announcement session. This is followed by question time based on registration order. (Point 1 added to Article 35 of the Original law). According to Part 4¹ being added to Article 35 of the Original law the oppositional faction also has the priority to put one draft law or a NA resolution draft on the agenda as subject to immediate discussion during the second sitting of the Tuesday session of every second four-day session. (In case of its absence or if the discussion of the question is finished in the course of the same session other items on the agenda are discussed.)

The faction's decision on recognizing the draft law or a NA resolution draft as subject to immediate discussion is submitted to the NA Chairman no later than 5 pm on the Friday preceding the upcoming four-day session (Article 104² being added to the Original law). As per the same article such draft law is considered subject to immediate discussion if it is in circulation and the conclusion of the head committee is received; or the term designated for its provision has expired. This is potentially dangerous in that the head committee can avoid presenting a conclusion on the law-making initiative of the oppositional deputy until the time designated for it elapses. And the oppositional faction as much as it has the priority to include it on the agenda may become accountable for withdrawing the legislative initiative of its deputy. The reason is that the law or the NA decision will most probably fail to pass and the oppositional faction can at best use the NA platform to make only several speeches on the subject maximum up to the beginning of the NA announcement session. No more. It is noteworthy that the provision of Article 104² is dedicated to "hearing the question in an expedited mode" according to which in the event that the NA has not adopted a decision on a special procedure for the discussion of the question (which will certainly not be adopted if the question is regarded as undesirable or

unfavorable by the majority) the “rights to talk” about the issue raised by the opposition are “reduced”. This way, the time allocated for a report and closing speech is up to 7 minutes each (instead of 20 minutes), for questions and answers to them-1 minute each and the total length of question time cannot exceed 20 minutes. So on average 10 questions and 10 answers can be voiced after which the question time ends. Even a recess can be announced only based on a NA decision which is also impossible to accomplish if there is no quorum during the discussion of the question raised by the opposition or the majority decided against it.

So, the rights of the opposition to simply “talk more” have been added to the law. The first group of amendments made which concerned affecting the decision-making process or actively participating in it, not only contains loopholes for the majority to “take it all” or keep the opposition in dependence (defiant and undesirable opposition will simply be resigned to unsuccessful efforts of exercising its right) but also does not apply to the current parliamentary opposition. And the second group of rights is extremely superficial and the procedure to exercise them is such that as a consolation the opposition can include one question on the NA agenda, which will be discussed in an expedited mode. Chances are that its own law-making initiative will fail and be taken out of circulation once and for all.

Conclusions

- Rights of the parliamentary opposition stipulated in this form are only part of the rights recommended by PACE resolution 1601(2008) “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament” adopted on January 23, 2008 and narrowed at that. This resolution calls on the parliaments of the member states to ensure not only “a representative, pluralist democracy” and “a status enabling the opposition to play a responsible and constructive role” but also “the right of everyone to take part in the management of public affairs”. (Point 1). Especially, when the PACE resolution 1609(2008) “Functioning of democratic institutions in Armenia” dated April 17, 2008 criticized the RA political system not for or not only for the fact that the opposition could not express its views but also based on a “winner takes all” attitude and the reality in which the opposition is excluded from any effective participation in the decision-making process and governance of the country, as well as the fact that the National Assembly of Armenia has so far failed to play its role as a forum for political debate and compromise between the different political forces and also because a part of the political spectrum in Armenia is not represented(Point 6.1). By resolution 1601(2008) the opposition should be entitled to not only oversee and criticize the work of the ruling government, but also, to continuously evaluate government action and hold the government to account to ensure transparency of public decision (point 2). In order to realize these and other rights it urges to stipulate solutions such as “allocating the presidency of standing/permanent committees among parliamentary groups on the basis of proportional representation” in such a way that “at least one permanent committee is chaired by a member of the opposition; the chairmanship of committees responsible for monitoring government action, such as the committee on budget and finance, the

committee on financial control (audit), or the committee supervising security and intelligence services, should be granted to a member of the opposition”.

- The scope of recommended improvement set out in Point 8.1 of the PACE resolution 1609(2008) “to guarantee a proper status and appropriate rights to the opposition in the political system” was diminished to stipulating in a reduced scope the rights of the parliamentary opposition whereas it had to encompass the proper rights and status of the entire opposition in the political system as mentioned in Point 8.1 of the PACE resolution 1609.
- Although the refinement of the mentioned clause had to be carried out through initiation of “an open and constructive dialogue between the political forces” in reality it turned into a process of imposition by the parliamentary majority of one-sided and uncompromising solutions concerning the scope and content of rights of the parliamentary minority.

*Amendments and Addenda to the
Law on “The Freedom of Conscience
and on Religious Organizations and the
Criminal Code of the Republic of Armenia”*

Passed the 1st reading on March 19, 2009.

The draft law passed the 1st reading with the following distribution of the votes:

*In favor 88
Against 0
Abstained 3 (independent deputies)*

<i>The Republican faction</i>	<i>in favor</i>
<i>The “Prosperous Armenia” faction</i>	<i>in favor</i>
<i>The “Armenian Revolutionary Federation” faction</i>	<i>in favor</i>
<i>The “Rule of Law” faction</i>	<i>in favor</i>
<i>The “Heritage” faction</i>	<i>did not vote</i>

The key rapporteur was Armen Ashotyan, the Head of the NA Committee on Education and Science. Noting that while developing the draft the international law and expertise were taken into account the authors offered the following rationale for amendments:

“The concept of “soul hunting” is not clearly defined, the minimum threshold for the members of religious organizations needs to be reviewed, and the totalitarian and destructive characteristics of religious organizations are not indicated.”

The legislative initiative was submitted in a package simultaneously proposing amendments to the Criminal Code: “We propose prescribing criminal penalties for forming, leading and assisting associations, infringing on people’s lives or their rights, and “hunting for souls”

So, the draft law proposes:

- performing a re-registration of religious organizations, envisaging raising of the threshold for the minimum number of members.
- clearly defining the concept of “soul hunting”.
- envisaging an imprisonment of maximum of 2 years for “soul hunting”

The views of the factions

Coalition partners, the “Rule of Law” and the “Armenian Revolutionary Federation” took no interest and part in the draft discussion in the Parliament, although their representatives were named in the group of authors. They expressed no opinion, viewpoint or interest in the form of questions.

- *The Republican faction*

According to the Republicans the proposed amendments provided for more essential points in the law in terms of democracy and human rights. They were convinced that a country in such geographic and a complex geopolitical position as ours could not afford to take a risk and be overly liberal in these matters. As per the RPA the society had become a hostage to various occurrences of “soul hunting” and it was time to redress the situation at the legislative level.

The “Republican” election platform does not specifically address the issue of religion.

- *The “Prosperous Armenia” faction*

The PAP highly valued the authors’ wish “to duly underline the historic role and position of the Armenian Apostolic Church in our public life”. The PAP as well appreciated the importance of the draft in terms of safeguarding the society against “all kinds of threats and challenges” and agreed that the subject concerned national security. Trusting the authors of the draft in studying the international expertise the faction representative did not see any issues regarding human rights and therefore did not believe the draft examination by international experts was needed.

The “Prosperous Armenia” states in its platform that the Armenian Apostolic Church should enjoy the opportunity to preach Christian values and preach against extremist sects in Armenia, and the State, “while protecting the freedom of conscience should put up a wall against dangerous foreign religious organizations, religious extremism as well as other sects that threaten the lives, health and dignity of citizens and are dangerous in terms of national interest”.

- *The “Heritage” faction*

The faction did not share the excitement of the colleagues regarding the work on the draft as being “scrupulous and detailed”. In their view the draft touched a sensitive and complex area and “it is unacceptable to be guided by the internal “philosophy” of taking primitive measures. It is unreasonable to think that the imprisonment of one religious organization will deter the rest.” Convinced that the draft needed serious development, the faction representatives were concerned that such attitude towards religious organizations in polarized society would further widen the chasm. They believed that the draft needed to be sent to international experts for examination in order to avoid undesirable consequences in future.

The “Heritage” party election platform does not address the issue of priorities in the sphere of religion.

Expert Opinion

Stepan Danielyan
“Partnership for Democracy” NGO

The Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations" was adopted on 17 June 1991 based on the corresponding law adopted in 1990. Over the course of discussions of the initial draft Article 17 was added stating the “prerogatives” of the Armenian Apostolic church and thus creating a contradiction with other articles. The draft contains other incoherent clauses as well. All of this has further confused the logic of the law and in fact rendered its full enforcement problematic. In addition, the law does not have an application scheme and many of the laws are of declarative nature.

The RA National Assembly made amendments and additions to the law on September 19, 1997 and on April 25, 2001.

Following the adoption of the law there have been a number of initiatives to draft a new law or make amendments to the law which have not been successful however. The reason is the new privileges and ambitions to increase the role of the Armenian Apostolic Church, on one hand and the relevant provisions of the RA Constitution, international conventions and obligations which are incompatible with these requirements.

The last draft proposing amendments to the law was authored by deputies Armen Ashotyan, Naira Zohrabyan, Heghineh Bisharyan, Lilit Galstyan, representing the coalition parties and Victor Dallakyan, an independent deputy.

The draft law was presented to the Parliament for the first hearing in January of 2008 and adopted on March 19, 2009. In the course of public discussions initiated by organizations representing the civil society the law was presented by Armen Ashotyan. No discussion took

place during the first reading explained by the fact that the draft was to be sent to Venice Commission for an expert opinion.

On June 12-13 2009 the Venice Commission at its 79th Plenary Session adopted the Joint Opinion on the Law on Making Amendments to the Law on the Freedom of Conscience and on Religious Organizations of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (hereinafter Joint Opinion).

A 20-page conclusion was prepared for the 3-page draft law. A few critical issues have, nevertheless, remained unaddressed by the authors of the opinion.

The joint opinion was sent to the Speaker of the National Assembly. Armen Ashotyan, a key author of the draft law has since become the Minister of Education and Science and the future of the law is unclear at this point. According to information from the Staff of the National Assembly no action will be taken regarding this draft law till at least September 2009.

The faults of the draft law can be classified in two groups. The draft does not anyhow attempt to correct the flaws, unclarities, inconsistencies between different articles and also other laws and unintelligible formulations present in the operating law. On the other hand, the new amendments contain articles which restrict the activities of not only the Armenian Apostolic Church, but also other religious organizations, are of discriminatory nature and contradict the RA Constitution as well as international conventions.

Over the course of several discussions initiated by the civil society the main faults later contained in the Joint Opinion were indicated, however since the document was developed by renowned professionals representing reputable organizations we will present the "conclusions" section covering the key considerations in brief.

Conclusions

- The draft laws under consideration take some important steps to improve the precision and the range of human rights guarantees as required by international commitments.
- However, they raise several concerns and would require redrafting. The law which is currently in force would also require more extensive amendments than those proposed by the draft law under consideration.
- The main problems raised by the provisions under consideration are the following:
 - the law (both the current one and the draft amendments to it) should specifically refer to "everyone", and not merely to "citizens". This usage should also be consistent: rights should be enjoyed (individually and collectively) by all, irrespective of nationality or citizenship;
 - the scope of freedom of conscience, religion or belief (e. g. Article 1) should be adjusted;
 - the law should make clear that those religious communities which are not registered as a religious organization can have access to legal entity status under

general provisions (e.g., under association law). If legal entity status cannot be provided for them under general provisions, they should be given access to legal entity status under the registration process of the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations (e. g. Article 5);

- the requirements for registration as a “religious organisation” require extensive redrafting. The definition of Christianity should be deleted. The minimum number of members necessary for an organisation to be registered must not be increased;
- the offence of proselytism should be reworded to ensure the offence is clearly defined as one of “improper proselytism”; the definition of ‘improper proselytism’ should be drawn with greater care; and the penalties for improper proselytism should be reconsidered as they could appear to be unduly harsh;
- it should be acknowledged that Art 162 of the Criminal Code (as amended) should not permit the imposition of sanctions on a religious organisation such as the Jehovah’s Witnesses for stating that its members should refuse to undertake military or appropriate alternative civilian service as this teaching involves the promotion of a central precept of the beliefs of this organisation;
- the provision on usage of religious symbols, names, etc. (Article 11 Section 2) should be redrafted;
- possible discriminations between religious communities should be avoided;
- the prohibition of control (Article 19) should be redrafted or deleted.

The joint opinion criticizes a number of articles of the operating law which have not been amended in the draft law. In particular, it is recommended that the definition of religious organizations be amended.

“Article 5. A group of citizens is recognized as a religious organization if it meets the following conditions:

- a) it is not in contradiction with provisions of Article 3 of this law,*
- b) is based on any historically recognised scripture.*
- c) Its doctrines form part of the international contemporary religious-ecclesiastical communities*
- d) it is free from materialism and is intended for purely spiritual goals.”*

“Scripture”, “the international contemporary religious-ecclesiastical communities”, “free from materialism” are debatable formulations which do not meet the European legal standards and are open to differing interpretations and may thus lead to arbitrary decision-making.

The joint opinion challenges the ban imposed on minors to join religious organizations “It must be noted however that underage persons may be members of registered associations, subject to certain conditions.”

The list of powers for the religious organizations registered under Article 7 of the current law is deemed indistinct. "It must be stressed, in connection with the list of the prerogatives of the registered religious organisations, that it is not clear whether it purports to be a definitive list of the rights and privileges of recognised religious organisations - that is, whether this section thereby excludes religious organisations from other activities." (Joint Opinion)

The joint opinion notes that it is not clear why the privileges bestowed on ethnic minorities "having a national doctrine" are not applicable to the ethnic minorities having "a non-national doctrine".

It is recommended that the proposed amendments to the Criminal Code, which prescribe penalties for "soul hunting"/ improper proselytism be revised in their entirety. Another recommendation suggests clearly referring to "improper proselytism" and ensuring that definitions are "thorough", "sensible", "not broad" and the penalty "not severe" and so on.

The joint opinion does not tackle several critical points.

First, the European experts do not perceive the meaning of the medieval term "soul hunting" contained in the current law and widely used in Armenian mass media. There is a concept of "proselytism" which has been presented as the English translation for "soul hunting". Perhaps that is the reason that there was no reference to the usage of the term. The proselytism is one of the fundamental human rights and should not be confused with "improper proselytism" when a person is forcefully converted to a different faith. This term in the current law should be replaced and instead of "soul hunting", "improper proselytism" should be used.

The definition of "soul hunting" can be applicable to any religious organization. No attention was drawn to the fact that the definition of "soul hunting" and the penalties intended for that can be applicable not only to religious, but also scientific, artistic, publicist and other types of activities, reinstating the censorship, if desired. Many works by international and Armenian classics can be even banned.

Another essential consideration refers to the amendment to Article 13 proposing inserting the phrase "except in cases prescribed by law" at the end of the statement "Prohibits the involvement of church in the public administration, does not assign any public functions to the church and religious organizations" contained in the current law.

This amendment contradicts the constitutional requirement for the State and the Church to be separate. There are reasons to believe that upon adoption of this draft law amendments will be introduced to the RA Law on "the Relationship between the Republic of Armenia and the Holy Apostolic Armenian Church" and the Church will enter the public school system.

*Additions to the RA Law on approving the
annual and comprehensive plans on Lake Sevan
ecosystem recovery, preservation,
reproduction and utilization*

Passed on June 10, 2008

The draft law passed with the following distribution of the votes:

In favor 71

Against 7

Abstained 1 (independent deputy)

<i>The Republican faction</i>	<i>in favor</i>
<i>The "Prosperous Armenia" faction</i>	<i>in favor</i>
<i>The "Armenian Revolutionary Federation" faction</i>	<i>in favor (only Vahan Hovhannisyan voted against)</i>
<i>The "Rule of Law" faction</i>	<i>in favor</i>
<i>The "Heritage" faction</i>	<i>against</i>

The NA discussions on the draft law started on May 22, 2008. The key rapporteur was Andranik Andraasyan, the head of the State Committee for Water Management of the Ministry of Territorial Administration. The draft proposed varying the amount of water released from Lake Sevan for 2008 solely. This was a drought year, decline was registered especially in the River Hrazdan's average water supply level, the Aparan reservoir was not filled up by 2/3 and projecting that Sevan-Hrazdan system would face the problem of low water supply, for around 42.000 hectares of land the government proposed increasing the amount of water release from Lake Sevan for agricultural purposes from 170 million cubic meters to 285 million cubic meters. The issue was discussed also in the expert commission on Lake Sevan conservation of the RA National Academy of Sciences and certain differences had emerged regarding the amount of water to be released. The government asserted that the proposed amount did not entail its complete consumption. In the prior years, for instance, only 150 million cubic meters had been consumed as opposed to permissible 170 million cubic meters.

In the first reading 64 deputies had voted in favor of the draft, 22 against and 4 had abstained. Between the first and the second readings the authors of the draft law lowered the figure for the amount of water to be released from 285 million cubic meters to 240 million cubic meters. Prior to this the deputies had been briefed by the representative of the RA NAS expert team working on Lake Sevan issues that the commission had come to an agreement with the government over the revised amount of water.

The “Heritage” questioned the honesty of the government explaining that the latter was more concerned with the issue of saving the littoral zone structures hence the efforts it undertook to stop the increase of lake’s level. The droughts brought forth challenges for farming but according to Stepan Safaryan, secretary of “Heritage” instead of unsparingly wasting the water of Lake Sevan, a strategic water reservoir should be constructed.

The “Heritage” party platform contains a separate and quite extensive section dedicated to environmental issues. It analyses the environmental problems caused by the utilization of natural resources, indicates measures that may help defuse the environmental crises. The text does not specifically expand on Lake Sevan, but the “Heritage” faction was the only one whose members present during the readings voted against the draft law both times.

Vahan Hovhannisyan presented the ARF faction’s stance. He noted that the faction would support the draft law only if the government expressed its willingness to implement a plan of recovery, preservation and efficient use of Sevan Lake ecosystem and design ways of its consistent realization.

This is essentially determined by the ARF election platform where “Environmental protection” section reads: “The Federation underlines the importance of recovery, preservation and efficient use of Sevan Lake ecosystem”.

In the first reading 7 deputies of ARF had voted against the draft law. In the second reading the only one from ARF voting against was Vahan Hovhannisyan.

The “Prosperous Armenia” party platform not only contains a special chapter entitled “Environmental protection” but also a section specifically on Lake Sevan within this chapter. It reads: “Pay special attention to the solution of problems of Lake Sevan ecosystem which has an environmental, economic, social, scientific, historic, cultural, aesthetic, health, climatic and recreational value. Design and implement comprehensive, annual and targeted plan for the restoration of Lake Sevan’s natural level, the reproduction, conservation and use of natural resources of its ecosystem.”

Neither during the discussion nor in the course of expression of factions’ stances no “PAP” deputy spoke on the subject though their voting pattern was curious. During the first reading 7 deputies of the “Prosperous Armenia” had voted against, while in the second reading their vote “against” had changed into either “for” or “absent”.

The RPA was convinced that the parliamentary opposition employed the issue of Lake Sevan for populist purposes whereas there was nothing to frustrate the comprehensive measures towards the recovery of Lake Sevan ecosystem.

Reminding everyone that in 1996, 1984 much larger volumes of water had been released from Lake Sevan the RPA asserted, that at the moment everything was done according to the law and on behalf of Sevan, both the littoral zone construction and the water release for addressing agricultural problems.

One of the key statements in the Republican party platform reads: "The cradle of the Armenian people is the Armenian plateau, the God-given land of the Armenian people". In these statements the topic of environmental protection of this cradle is not anyhow covered.

The Rule of Law deputies did not take the floor in the discussion of the draft nor did they voiced the faction's position. All the "RoLP" deputies voted in favor of the draft during both first and second readings. Actually, this demeanor was not too "far-off" from the party election platform which merely stresses the importance of prevention of an environmental disaster, implementation of state protection over green areas and forests.

Expert Opinion

*Karine Danielyan
Doctor of Geography, head of "For Sustainable Human Development"
Association, Head of UNEP national committee*

As we know, on May 15, 2001 the National Assembly of RA adopted the Law on Lake Sevan which stipulates the unacceptability of negative water balance of Lake Sevan (Article 11). Later, on December 14, 2001 the Law on "Approving the annual and comprehensive activity reports on Lake Sevan ecosystem recovery, preservation, reproduction and utilization measures" was adopted stipulating that, "The maximum volume of water release from Lake Sevan shall be set at 170 mln cubic meters" (Article 6.1). At the same time, it provides that in the event of unforeseen emergency situations the Government ...can submit for discussion in the National Assembly a temporary program which is to be approved through adoption of the respective law.

In May 2008, the RA Government took this opportunity and citing the drought emergency submitted the draft law on making amendments to the above-mentioned law, which was approved by the NA allowing the increase of water outflow up to 240 mln cubic meters (71 votes in favor, 7 against, 1-abstained). The Government suggested increasing the outflow up to 285 mln cubic meters but as a result of discussions in which I took part in my capacity as independent expert of the NA this figure was reduced to 240 mln cubic meters.

On August 21, 2008 citing the same reasons the Government turned to the NA and consequently a new draft law was adopted (83 votes in favor, 4-against) according to which the water release volume was brought to 360 mln cubic meters.

The following rationale was offered:

The irrigation season in 2008 started in late April which was unprecedented in recent years. Due to extended insufficiency of precipitation or its complete absence, high air temperatures and relative low humidity starting from April, all the circumstances typical of drought were present in the republic.

During 2001-2007 based on respective decisions of the RA Government the water for irrigation purposes was released from Lake Sevan mainly beginning from the first ten days in June.

Such an unprecedented picture is observed also in Aparan and Azat reservoirs which are of strategic importance and state-subsidized. In particular, as of 14.05.08 the water volume of Aparan reservoir made up 27.93 mln cubic meters which is less than for the same period in 2007 by 57.2 mln cubic meters and water volume of Azat reservoir as of 14.05.08 was 45.96 mln cubic meters which is less than for the same period in 2007 by 25.06 mln cubic meters (Appendix 3, Clause 2. Current state analysis).

However, the State Water Resources Commission's reasoning behind the need of more than doubling the water release is quiet dubious. Therefore, in June-August, 2008 the experts of "For Sustainable Human Development" Association and other NGOs conducted a relevant study which confirmed our doubts. Discussions took place in Yerevan (at the Ministry of Nature Protection and at the National Center of Strategic Research), as well as in Gavar (in Orhous center) with the representatives of the RA State Water Commission and the Ministry of Nature Protection whose arguments were not only unconvincing but proved the opposite.

So, the current emergency drought situation in the country, especially in the Ararat Valley, was noted as the main argument. But our studies showed that there had been a drought only in April whereas during the next months of vegetation period the weather conditions were more favorable. It is true that year 2008 was by overall assessment poor in water, but over the past decades we have experienced several years of real drought /1999, 2000, 2006/, with far more severe climate and the comparison to rather water-rich 2007, is not correct.

The data from Tables 1-3 demonstrate that 2008 was a more favorable year in terms of climate than year 2000 in particular. The comparison of water reserves in Azat and Aparan reservoirs and volume of natural flow of the River Hrazdan also attests to the fact that year 2008 was favorable. Nevertheless during the mentioned years the water release from Sevan did not exceed the limit of 199 mln cubic meters.

Following the publication of our counterarguments it was announced that 2008 was not in fact a drought year but rather there were certain drought conditions. However, the agricultural lands had been expanded as well as the structure of agricultural crops had shifted towards more hydrophilous plants. Our studies have revealed that the areas have not been officially expanded (table 4-5), and the structure has changed by 2-4% which could not serve as basis for increasing the outflow from 170 mln cubic meters to 360 mln cubic meters either.

Table 1. Average monthly temperature and precipitation deviations from norm in Ararat in 2001 and 2008

(ΔT - deviation of average monthly temperature $Q\%$ - deviation of average monthly precipitation)

<i>Months</i>	2000		2008	
	ΔT	$Q\%$	ΔT	$Q\%$
IV	+2.6	-61.8	+3.1	-95,9
V	-0.3	-78.9	-1.0	-32,9
VI	+1.3	-91.7	+0.7	-68,8
VII	+3.0	-85.7	-0.2	-67,1
VII	+1.8	-87.5	~ 0	~ 0
<i>Average for 5 months</i>	+1,68	- 81,12	+0,52	-52,94

Table 2. Average monthly temperature and precipitation deviations from norm in Armavir in 2001 and 2008

(ΔT -deviation of average monthly temperature $Q\%$ - deviation of average monthly precipitation)

<i>Months</i>	2000		2008	
	ΔT	$Q\%$	ΔT	$Q\%$
IV	+2.3	-15.6	+3.1	-96.9
V	-0.9	-2.2	-1.3	-1.1
VI	+0.2	-74.2	+0.6	-32.1
VII	+2.4	-100.0	-0.5	+2.5
VII	+0.9	-12.5	~ 0	~ 0
<i>Average for 5 months</i>	+0.98	- 40.9	+0,14	-25.52

Note: Water Release from Sevan in 2000 totalled 189 mln cubic meters.

Table 3. Volume of Aparan and Azat reservoirs as of May 16, the Hrazdan River flow during the vegetation period and the water release from Lake Sevan, in mln cubic meters.

	1999	2000	2008
Aparan reservoir	18.6	31.1	27.9
Azat reservoir	34.6	38.6	49.5
Total	53.2	69.4	77.4
The river Hrazdan Natural flow	99	100	125
Whater release from Lake Sevan	198.76	189.97	36

Table 4. Irrigated lands in Ararat Valley

Year	Area
<i>2004</i>	<i>41 195</i>
<i>2005</i>	<i>44 076</i>
<i>2006</i>	<i>45 456</i>
<i>2007</i>	<i>430432</i>
<i>2008</i>	<i>43021</i>

Table 5. Irrigated lands in Kotayk, Aragatsothn, Ararat and Armavir

Year	Area
<i>1990</i>	<i>134 295</i>
<i>2000</i>	<i>162 803</i>
<i>2004</i>	<i>171 126</i>
<i>2006</i>	<i>150 631</i>

As already mentioned the Parliament voted in favor of the Government's proposal with the exception of the "Heritage" faction. We, 4 experts of Public Environmental Alliance attended the National Assembly sitting in our capacity as observers. We managed to talk to deputies from different factions. Although they did not reject our arguments they were convinced that "It is not important why the water has not been adequate, more important is the reality that there is demand for water at this time, therefore the water release from Sevan should be increased."

Interestingly, the RA Minister of Agriculture met with journalists on May 17 and stated that the year was fruitful and that was owing to favorable weather conditions.

Back when the first discussions were initiated (22.05.08) the deputies from "Heritage" stated that the executive is more concerned with maintaining the Lake Sevan's littoral area structures, thus it was taking measures to prevent the increase in lake's water level. The same view was circulating in the public and had periodically found its reflection in the press.

It is difficult to distinctly to state the real reasons behind the additional water release. We can only assume that the following obstacles were present for the future increase of the lake's level:

- the issue of littoral area structures;
- the fact of not transferring certain communications in a timely manner;
- the fact of not clearing the forested areas in a timely manner which leads to formation of wetlands in some littoral areas.

The possibility of uncontrolled water use and efforts to derive additional energy should not be eliminated either.

So, in 2008 305 mln cubic meters were released from Lake Sevan and the newly created *President's Commission on Lake Sevan issues*, had set the outflow volume at 150 mln cubic meters for 2009.

(The information in this statement is taken from materials of "Armhydromet", the RA Ministry of Agriculture, Ministry of Nature Protection and the RA National Statistical Service of RA)

Tax Package

Adopted on December 26, 2008

The draft law passed with the following distribution of the votes:

In favor 75
Against 19
Abstained 5

<i>The Republican faction</i>	<i>in favor</i>
<i>The "Heritage" faction</i>	<i>against or abstained</i>
<i>The "Rule of Law" faction</i>	<i>in favor</i>
<i>The "Prosperous Armenia" faction</i>	<i>against</i>
<i>The "Armenian Revolutionary Federation" faction</i>	<i>in favor</i>

The tax package was discussed in the National Assembly extraordinary session convened on December 23, 2008. It proposed amendments and additions to nine laws on taxation, including RA laws on "Taxes", "Value Added Tax", "License Fees", and others.

The tax package with presented rationale was aimed towards stimulating the domestic production and envisaged setting regulations for the small and medium entrepreneurship. The draft law on License Fees was at the heart of the parliamentary debate.

With this draft the government proposed setting a new type of fee for business activities such as repair of shoes, clothes, carpets or musical instruments and alike. The fee was to replace income tax and value added tax and be paid into the state budget. The size of the license fee is to be differentiated based on communities: 60 thousand drams in the capital city, and 12 thousand drams on the border.

According to Vardan Ayvazyan, Chair of NA Committee on economic affairs the package had been discussed in the head committee for a month and put up for parliamentary hearings. In his opinion the proposed draft did not deserve such a response since it did not envisage changes in the tax rates, "nor did it pursue a fiscal aim" and only sought to introduce regulations in the field.

The positions of the factions

- *The Republican faction*

This time on behalf of the Republican faction Vardan Ayvazyan, Chair of NA Committee on economic affairs announced that the faction would vote in favor of the package taking into account the very fact that the tax rate were not to be changed and actually the new

regulations would make the business operation “free from hassle, with simplified and easy regulations” and on a general note the Chair of the Committee on economic affairs asked the opponents “to not play the savior”.

The RPA has stated in its election platform: “Promotion of small and medium entrepreneurship as a key component for the development of a middle class”. It touches on the issue of fair and proportionate distribution of tax burden as well as the clarification of the tax legislation and administrative mechanisms.

The “Armenian Revolutionary Federation” faction

Artsvik Minasyan representing the ARF faction pointed out the strengths and weaknesses of the draft. According to him the underlying concept of this law was acceptable, though mechanisms for implementation were imperfect. Supporting the need for this law he suggested easing the potential social tension caused by it through interim solutions. The ARF representative summarized his speech stating, that “we should bring these people under taxation by inviting them and not forcing”. As an “invitation mechanism” the ARF proposed reducing the size of the license fee replacing it with a nominal amount.

The formulations on this issue found in the ARF election platform are as follows: “Budget Policy should address social problems...substantially facilitate the tax system, group tax types reducing the number of taxes”.

- The “Prosperous Armenia” faction

The PAP found the aim of this initiative to be unreasonable in the times of economic crisis. The faction representative took the position that in the times of financial economic crisis the government needed to come up with a completely different agenda entailing tax relaxation. “Have we exhausted all the possibilities to bring the large businesses under taxation and so the poor knife-grinders and potters are the only ones we can rely on?”, - Gohar Yenokyan was asking her colleagues. The PAP representative recommended voting against the draft.

In its party platform the “Prosperous Armenia” party has also stressed the importance of stimulating the small and medium businesses and reduction in black economy. The PAP sees the solution in the following: “... For the development of small and medium entrepreneurship, the taxation should become more favorable; To cut the number of state authorities involved in inspections of small and medium enterprises”.

RoLP-The party found the initiative to be acceptable overall, with some qualifications. Hovhannes Margaryan talked about the principle of voluntarism in respect of license fees and about clarifying the list of business activities.

The “Rule of Law” party has expressed its willingness to assist the small and medium business sectors and has made it a key programmatic point in its election platform. “Lower taxes are essential prerequisites for economic growth. The party believes that the

scope of application of fixed taxes should be expanded as much as possible for small and medium enterprises, services and other sectors, and also taxes and duties should be reduced relying on international practices.”

- *The “Heritage” faction*

The “Heritage” party offers the following solutions in its election platform: “...carry out an effective employment policy, implement legislative reforms”. The philosophy behind the party platform is biased towards social protection. The promotion of small and medium entrepreneurship and reduction in black economy is to be accomplished through the improvement of the legal framework.

Expert opinion

Andranik Tevanyan
PhD in Economics

Director of “Politeconomia”, Institute for Political,
Economic and Legal Research

The new government, formed following the 2008 Presidential elections is quite active in introducing changes to the economic policy, particularly concerning taxation and customs. However, it should be mentioned that the government’s actions receive different responses in the political, business and expert circles. Even within the ruling coalition differences arose over certain legislative amendments. In particular, this was the case with the tax package containing RA laws on making amendments and additions to the RA laws on “Value Added Tax”, “License Fees”, “Mandatory Social Security Payments” as well as to a number of other laws. (In the shorthand notes of the NA this is the exact formulation for putting them to the vote-A.T).

The RA law on “License Fees” included in the legislative package became a subject of heated debate. It was even coined by the public as “the knife-grinders’ law”.

The rationale for the mentioned law and all the legislative initiatives of the government is that it fights the black economy thus fulfilling the government’s programmatic clause according to which the paperwork for the businesses is considered a target issue. Also, the tax system is simplified and small business entities are safeguarded against the bureaucratic hassle. The installation of cash registers, application of license fees and similar measures should, in government’s opinion, contribute to the cutdown in the black economy. It should be noted that due to these measures, as per various assessments, the first tax blow will be inflicted on the small businesses as they cannot secure a documentary statement from the large businesses to vouch for their expenses. The government does not support this view.

The law on “License fees” regulates the matters regarding the calculation and payment of license fees, determines the range of payers, the size of license fees and the system of payment. Accordingly, entities eligible for the license fee are those involved in the types

of activities prescribed by law having an annual turnover (gross income) of less than 2.5 million drams during the previous year for services rendered and work performed, with the exception of the work performed as a hired employee.

The law also determines the list of those individuals who are not eligible to pay a license fee. A differentiated approach is applied towards individuals working in the capital city and the marzes, with the license fee ranging from 12,000 to 60,000 AMD.

Appendix 1 of the Law presents the types of activities subject to the license fee. Fourteen areas are mentioned: from repair of shoes, clothes, musical instruments and household goods to freelance actors, dance groups, sports clubs, housekeeping (babysitters, personal drivers, family cooks, providers of household and other family services).

Over the discussion of the law opposing views were voiced.

Arguments in favor

- The payment of license fee facilitates the relationship of the so-called self-employed with the tax authorities.
- The size of these fees is not large and will not hinder the self-employed
- The State should oversee all those earning income
- Through the law the self-employed will spare themselves the hassle of red tape.

Counterarguments

- In the time of economic crisis it is unacceptable to subject the knife-grinders and alike to tax terror and the application of the law will be untimely.
- The size of the license fee is large and can have a negative psychological impact on people
- The law allows for loopholes and abuse is not eliminated.

In our opinion the law has a number of flaws which, irrespective of the social, economic and political context and sentiment, will create difficulties in terms of application. From the legal point of view, several questions remain unanswered, such as:

How will the state determine those, involved in business activities who are eligible for license fee payment, considering there is no clear methodology to confirm that the given entity has had an annual turnover of less than 2.5 mln drams?

How will the state reveal those, involved in business activities who are eligible for license fee payment?

How is the relationship between other business entities and the self-employed regulated in terms of provision of documentary proof?

What will happen to the self-employed who will choose not to pay the license fee?

The submitted law package can be interpreted in two ways: those voting in favor stated that the package was to support small and medium entrepreneurship and those voting against claimed the opposite. Time and the outcome can be the best judge of that, since at this point statistical indicators are not available.

***Amendments and additions to the
RA Law on "Excise Tax"***

Adopted on February 26, 2009

This draft law discussed and adopted in the NA spring session is noteworthy not so much in terms of amendments but due to the fact that the same law had undergone amendment two months earlier relying on the contrary logic. While in December the NA deputies voted in favor of increasing the excise tax rates on imported goods, in February they voted for lowering the same rates.

The first draft of amendments to the law was authored by independent deputies and ARF representatives, and the second one- by Galoust Sahakyan and Armen Ashotyan, members of the Republican faction. In the first case the legislature claimed to be taking an anti-recession measure securing comparative advantages for the local producers and thus favorable conditions for competition with the importers of goods of the same type. In the second case the stated aim was to ensure equal competition between the producers and the importers.

The rationale behind the second amendment was also supported with "pragmatic" calculations: "The drastic increase in the excise tax rates on imported goods will inevitably affect the imports volumes. Even if the reduction in imports of spirits is offset by the growth in production volumes, a decline in the tax receipts of the budget associated with excise tax will occur. This is due to the fact that compared to locally produced spirits, the majority of imported spirits are in a higher price bracket, therefore, the excise tax collected off these categories of goods makes up a larger sum."

The revised draft law was discussed according to the special procedure (having the 2nd hearing within 24 hours of the 1st one).

Here are the results of the vote:

first reading` 71 in favor, 21 against and 4 abstained (February 23, 2009)

second reading` 71 in favor, 5 against and 2 abstained (February 26, 2009)

The RPA, PAP and RoLP supported the draft in the vote. ARF did not participate in the vote. Those present from "Heritage" party voted against it.

In fact, the deputies who had submitted the first version of the law stating the need for an increase in excise tax rates having the local producers' best interest at heart, mostly did

not participate in the vote for its second and final version or voted against it (save for Arshak Mkhitarian, representing the PAP who voted in favor as per the decision of the faction).

The positions of the factions and election platforms

With the exception of the “Heritage” the factions did not present their opinions during the discussion of the draft law.

In the judgment of the “Heritage” the new amendments manifested “the unacceptable lack of principles”.

- *The Republican faction*

The faction has voted in favor of the final version of the RA Law draft on “Excise tax” whereas it has stated under the “Industry” section of its election platform: “to promote the substitution of imported goods with domestic ones”. In addition, the “Industry” section calls for “stimulation of the export-oriented industries by implementing favorable tax and customs policy in order to secure higher growth rates for exports over imports”.

So it turns out that by first increasing the excise tax rates for imported goods and then lowering them the RPA seeks to stimulate the local production and follow a policy that would lead to higher growth rates for exports over imports.

- *The “Prosperous Armenia” faction*

The party has also supported the law under review. With PAP we observe the same pattern in that certain discrepancy exists between the voting and programmatic points as was the case with RPA. The “Economic Policy” section of the party election platform reads: “For the development of domestic production as well as small and medium entrepreneurship, the taxation should become more favorable”.

The “Efficient foreign debt management and foreign economic policy” section of the PAP election platform states that “the markets for domestic goods should be expanded” as well as “special attention should be paid to the protection of domestic market given that the appropriate legislation has not been enforced up till now which causes distortion of certain markets and violation of the domestic producers’ interests”.

- *The “Rule of Law” faction*

The RoLP has also departed from programmatic points of its election platform. The party has voted in favor of the law whereas the “Economy” section of its election platform reads: “Growth in volumes of exports, state assistance for exporting businesses” as well as “Consistent support and assistance to foreign investors and domestic producers in creation of jobs”. So, it turns out that by voting in favor of setting a relatively lower excise tax

rates for the importers of finished alcoholic beverages the RoLP will attempt to support the domestic producers.

- *The “Armenian Revolutionary Federation” faction*

The party had supported the first version of the law, but did not participate in the vote for the second version in a sense expressing its disapproval. Being a member of the ruling coalition at that point the ARF probably did not wish to vote directly against the law and accordingly did not actually participate in the vote.

The “Industry” section of the ARF election platform specifically states: “Sound and targeted protection and assistance for the industrial companies as long as they are not sufficiently strong to compete with foreign companies”.

We can say that by voting in favor of setting the excise taxes at a higher rate for imports the ARF had remained true to its election platform.

- *The “Heritage” faction*

The faction has voted against the law. Under the “Economic development” section of its election platform the party has particularly highlighted the importance of promoting the local production and specifically the substitution of imports: “In order to stimulate exports and import-substituting production amendments are to be made to the customs and tax legislation as well as the RA Law on “Protection of economic competition”.

The issues of sales and processing of agricultural produce including also the production of wine, vodka and cognac, are given special attention in the “Heritage” election platform. Voting against the law under review the “Heritage” has not deviated from the philosophy behind its programmatic points.

Expert opinion

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During the period under review one of the most noteworthy laws discussed and voted on in the NA is the RA Law on Making amendments and additions to the RA Law on “Excise Tax”. In a very short period of time it underwent two diametrically opposite amendments and in both cases predominantly the same people presented the rationale for adoption of the law in the form it was. Curiously, the amendment submitted the first time envisaged increase in the excise rates and the 2nd exactly the opposite. By the way, both times the laws passed securing an overwhelming majority of the parliament. The clause being amended

referred to the 1st point of Article 5 of the RA Law on “Excise tax” adopted on July 27, 2000.

So, the first amendment to the RA Law on “Excise Tax” submitted by Ara Nranayan, Mikayel Manukyan, Arshak Mkhitaryan, Samvel Balasanyan, Versandik Hakobyan, Hakob Hakobyan, Ashot Apoyan, Karen Vardanyan, Mikayel Vardanyan and Aleksan Petrosyan secured privileges for the local producers of goods subject to excise tax compared to the importers.

The list of the people proposing amendments to the law is curious in the sense that the majority of these individuals as well as other deputies supporting the law are the owners of large companies operating under the excise taxation regime, so as a matter of fact this amendment was the result of lobbying by certain special interest groups.

The main spirits producers in Armenia are represented in the National Assembly through the so called “Spirits faction” working in the parliament. It was through their initiative that the draft law was adopted. The rationale was that the global economic crisis had led to a decrease in consumption volumes abroad as well as in the RA. Therefore it was necessary to sustain at least domestic consumption volumes. To accomplish this, the local producers should enjoy privileges over importers of similar goods in order to withstand competition. The supporters of the draft law stated that the tax privileges in comparison with the importers would create an opportunity not to cut jobs and in the conditions of overall reduction of effective demand and not burden the budget with additional social issues.

Another argument offered by the proponents of the differentiated approach to excise rates was that the consistent revaluation of RA national currency recorded over the past years had artificially strengthened the position of importers in the spirits market and the revision of excise rates would somewhat redress the situation and contribute to better competition.

Both in the National Assembly and the Government the amendment to the law was welcomed. The authorities were keen to present the adoption of the draft law as an anti-crisis measure stressing that the State supported local producers.

Shortly after the amendment to the RA law on “Excise Tax” a new amendment was proposed by deputies Galoust Sahakyan and Armen Ashotyan (now the Minister of Education and Science of the RA) again concerning the excise rates.

This yet another amendment was put up for discussion based on grounds diametrically opposite the amendments adopted the first time.

We will present them as reflected in the section on the rationale of the law:

“The drastic increase in the excise tax rates on imported goods will inevitably affect the imports volumes. Even if the reduction in imports of spirits is offset by the growth in

production volumes, a decline in the tax receipts of the budget associated with excise tax will occur. This is due to the fact that compared to locally produced spirits, the majority of imported spirits are in a higher price bracket, therefore, the excise tax collected off these categories of goods makes up a larger sum.

“The drastic increase in the excise tax rates on imported goods can prompt the exporter countries of these categories of goods to take adequate countermeasures in relation to the goods imported from Armenia into these countries.

The reduction in imports of spirits will not contribute to the higher quality of corresponding categories of products manufactured in the RA due to unequal competition. For the same reason, as well as due to the increase in the prices of imported goods (as a result of imposition of high excise tax) conditions that can lead to higher sales prices of corresponding categories of products manufactured in the RA will emerge”.

The revised draft law was discussed according to the special procedure (having the 2nd hearing within 24 hours of the 1st one) and passed with an overwhelming majority of votes in favor.

The propaganda machine of the authorities equally supported the 2nd amendment to the RA law this time however emphasizing the idea that the State again takes an anti-crisis measure securing equal competition between importers and producers.

Consequently, it turned out that even being represented in the NA, the “Spirits faction” of the local producers failed to protect its own interest and the “Importers’ faction” outside the Parliament was able to win in the showdown. The answer to the question-why this turned out to be the case-is outside the scope of this analysis.

By the way, the deputies who had submitted the first version of the law stating the need for an increase in excise rates on behalf of the local producers, mostly did not participate in the vote for its second and final version reflecting the opposite logic.

Amendments to the Criminal Justice Legislation

Adopted on February 5, 2009

The draft law passed with the following distribution of the votes:

In favor 81

Against 6

Abstained 3 (independent deputies and Artsvik Minasyan)

<i>The Republican faction</i>	<i>in favor</i>
<i>The "Prosperous Armenia" faction</i>	<i>in favor</i>
<i>The "Armenian Revolutionary Federation" faction</i>	<i>in favor</i>
<i>The "Rule of Law" faction</i>	<i>in favor</i>
<i>The "Heritage" faction</i>	<i>against</i>

On February 5, 2009, during the four-day session the National Assembly adopted through the second reading and in full one of the law packages concerning the criminal justice field. It envisaged amendments and additions to five codes in parallel- the "RA Civil Procedure Code", the "RA Criminal Procedure Code", the "RA Judicial Code" the "RA Administrative Procedure Code" and to the Law on "Bankruptcy".

The government explained the need for the amendments citing the criminal justice reforms underway which, as communicated to the parliament, were directed towards the reinforcement of the independence and self-governance principle of the judicial system.

The issue of dissolution of specialized courts was at the core of the amendments. As noted by Gevorg Danielyan, Minister of Justice, the functioning of specialized courts demonstrated in a relatively short period of time that "they have rendered the principle of access to justice extremely vulnerable which is reflected in the uneven workload of the judicial bodies, existence of unjustified barriers for the parties when filing a lawsuit, clearly unfounded grounds for accepting cassation court grievances for review and so on."

The specialized court started operating in Armenia from January 1, 2008. One year proved sufficient to find their functioning inefficient and subject to revision.

The adopted package also included the amendment according to which the trial can proceed in the absence of the defendant due to the sanction imposed by the court and instead the attendance of the attorney is considered mandatory. The proposal for this amendment directly coincided with the period when the court of general jurisdiction tried the criminal cases filed in connection to March 1 events.

However, as per the rationale of the Minister of Justice the amendments had been drafted earlier, did not have any political implication and stemmed mainly from the following

consideration: "regular improper conduct by the defendant undermines the feasibility of trying the case in a reasonable time which results in violation of his/her own rights as a defendant as well as of other participants of the trial".

The views of the factions

The factions with the exception of the "Heritage" did not present their view on the discussed package. The "Heritage" deputies and Artsvik Minasyan from ARF were the ones taking the floor.

Armen Martirosyan representing the "Heritage" faction talked about misspending public funds referring to the fact that the specialized courts set up a year earlier were to be dissolved which denoted a waste of funds. The "Heritage" representative viewed the judicial sanction of removing the defendant as a circumstantial solution. "The defendant's attendance during the trial is indispensable", insisted the "Heritage" representative and suggested taking alternative punitive measures.

The election platforms of all the parliamentary parties have addressed the criminal justice field in generalized and declarative formulations. The election platforms lack framework approaches and a clear vision of what we have, what should be changed and how. The RPA election platform states: "harmonization of the structure and functioning of the judicial system with the European standards" without specifying how they envision this harmonization. The PAP election platform declares: "The functioning of the RA judicial system should be based on the provision of publicity of justice and transparency". The "RoLP" has very briefly mentioned in the "Law and Legitimacy" section of its election platform: "Implementation of legal reforms, fair judicial protection". Somewhat different is the "Heritage" election platform which offers certain criteria.

The declarative formulations concerning the field found in election platforms are perhaps the reason that the executive approaches the criminal justice reform not from the standpoint of its own views and framework solutions but rather from the position of restating the government policies.

P.S. The question of raising the judges' salaries was more hotly debated in the National Assembly than the legislative amendments abolishing the specialized courts set up only a year earlier as a result of the vote taken by the same deputies. The laws related to such a critical sphere for the country were adopted mechanically just like they had been adopted a year earlier by the same deputies of the same parliament.

Expert Opinion

*Ara Zohrabyan,
Deputy head of the Chamber of Advocates*

The package adopted on February 5 included laws on making amendments and additions to the Civil Procedure Code, Administrative Procedure Code, Criminal Procedure Code, and Judicial Code.

We will present the expert opinion separately for each of them:

1. The amendments in the law on “Making amendments and additions to the Civil Procedure Code” (hereafter “the Law”) pertain to court organization and criminal procedure. They were essentially aimed towards:

- the abolition of the civil court
- mandatory application of the rules for preparing the case for trial in all courts of general jurisdiction
- reinstating the institution of appeal against the decisions of the Court of Appeal within a one-month period, from the time of adoption til taking effect.

Amendments pertaining to court organization

Due to amendments pertaining to court organization the specialized civil courts (hereafter civil court) have been de jure and de facto dissolved as courts of first instance which can be viewed as a reasonable measure considering the ineffectiveness of the civil court institution.

It was difficult to regard the civil court as a specialized court in that it only tried certain cases deriving from arbitrarily separated civil legal matters. This way, in one case the determination of jurisdiction could be based on the size of the lawsuit, in another case-on the fact that it dealt with the issue of honor and dignity or with the annulment of transaction and so on.

The civil court had departed from the traditional nature of this institution not only in terms of the substance of cases in its jurisdiction but also in terms of human resources policy. The requirements for judges of specialized court should be different from those for judges of courts of general jurisdiction (for instance, the work experience or the judges’ knowledge related to specialized cases which could be checked by means of examinations or tests). Otherwise the specialized court is not able to serve the purpose of its creation.

Setting aside the statistical data which essentially served as rationale for the framework for amendments and additions we need to refer to the idea that the civil court per se was “artificially created” .

This first of all implies that as in many cases, in this case as well, the social need as a true and correct measure for a legislative amendment was not present. In other words, while establishing the Civil Court the critical point concerning the need for a specialized civil court in the Republic of Armenia was not taken into account, especially considering the range of cases tried in its jurisdiction.

The notion that the Civil Court with such jurisdiction is irrelevant is supported by presented statistical data which make it apparent that in our practice of law civil cases placed under the jurisdiction of the Civil Court do not make up a large number. In addition, they do not have substantial differences compared with other civil legal cases in that all of them have the private nature, dispositivity and fundamental principles of the civil law as their common frame of reference.

Amendments pertaining to criminal proceedings

Concerning the criminal procedure stage of preparing for trial:

In terms of amendments pertaining to criminal proceedings, the mandatory stage of preparing the case for trial can be considered an accomplishment. The activities performed at the criminal procedure stage serve as a basis for comprehensive trial of the case.

Moreover, the introduction of this criminal procedure stage has a preventive nature. It prohibits the court from placing the burden of proof for corroboration of certain facts on persons involved if these facts have not been discussed at criminal procedure stage of preparing for trial as subject to corroboration and burden of proof has not been distributed by the court.

With such legal regulation in place, the subject of the criminal procedure is in essence given the opportunity at the legal formalization level to not bear negative consequences of not corroborating the fact which has not been discussed by the court at criminal procedure stage of preparing for trial as subject to corroboration.

Another essential principle introduced on the preparatory stage is "laying all the cards on the table". This way, the executive obligates the parties to present at this stage all the evidence at their disposal.

With regard to substantive judicial acts by the RA Civil Court of Appeal taking effect a month after their publication:

The legal determination of a term when judicial acts of the RA Civil Court of Appeal (hereafter Court of Appeal) take effect, is legitimate. Specifically, this will make it possible to avoid exercising the legal regulation mechanism for the reversal of judicial acts. For revision of the judicial act already in effect, legally well-founded exceptional cases should be stipulated, otherwise this can potentially interfere with the legal order.

Despite the fact that according to the rationale for the amendments, the purpose of the law was to ensure access to justice and full and efficient realization of everyone's right to court protection prescribed by the RA Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, no amendment concerning the accessibility of the Cassation Court was effected.

The majority of grievances to the Cassation Court are returned with pro forma explanation (citing some of the reasons set out in the act issued by a lower court) without considering the specific arguments. In these circumstances corruption risk in the highest court increases in that not all the legitimate grievances are accepted and not all the invalid grievances are returned.

The broad discretionary authority of the Cassation Court in terms of acceptance of addressed grievances does not ensure the right to access to court. It would be correct for the law to regulate matters regarding the submission of grievances to the Cassation Court.

Other comments and recommendations

According to the rationale for the adoption of the law it ensures the efficient realization of the right to court protection prescribed by the RA Constitution for every person in all judicial bodies and right to access to justice.

However, the Law has failed to regulate the time frame as the most critical factor for the efficient realization of the right to court protection, in keeping with the spirit of this rationale.

Pursuant to the 1st part of Article 111 of the operating Criminal Procedure Code of the RA the case should be tried and the judgement handed down in a reasonable time (formerly a two-month term was set). Upon the "introduction" of the reasonable time all the civil cases started experiencing delays (3-7 months on average) causing the just dissatisfaction of the public. Not everybody is comfortable with such "slow" justice which in its turn can contribute to resolution of disputes through extrajudicial and illegal measures.

The legislature needed to focus on guidelines for distribution of cases both in the courts of first instance and superior courts. By current guidelines the head of the court assigns the cases which in a sense makes the judge dependent on the head of that court. In the U.S. judicial system the distribution of cases is predominantly performed by means of special computer software that also takes into account the workload of judges.

2. The amendments in the law on "Making amendments and additions to the Administrative Procedure Code" (hereafter the "Law") pertain solely to court procedure.

The judgments of the administrative court which previously took effect upon publication will now, according to the amendment, become effective a month after their publication.

This is a positive amendment and is prompted by the decision of the RA Constitutional Court dated November 25, 2008 N78-CCR which declares the 1st part of Article 115 (amended by the law) and the 1st part of Article 118 of the RA Administrative Procedure Code to be contradicting the requirements of Article 1, the 1st part of Article 18 and the 1st part of Article 19 of the RA Constitution and invalid. But the legislature has not considered other "concerns" raised in the resolution of the Constitutional Court 78-CCR dated November 25, 2008.

So, the RA Constitutional Court has specifically stated the following in the resolution N78-CCR dated November 25, 2008:

- 13th Point, forth paragraph- *The Constitutional Court does not find it legitimate, in the absence of the appellate court legal proceedings, to stipulate the same grounds and terms of acceptance for submission of a cassation appeal against administrative acts as practiced in a three level judicial system.* "

- 13th Point, fifth paragraph - *"At the same time, admitting that, differentiated approach towards various specialized courts of first instance designed by the RA judicial Code, in terms of not allowing for the opportunity to lodge a grievance to the appellate court against the acts by the Administrative court, rests on some objective justifications, that is, the nature of cases subject to administrative court trial, the Constitutional Court affirms that such differentiated approach is required also when setting legal regulation of the cassation appeal procedure for administrative acts".*

Pursuant to the 1st part of Article 118 of the RA Administrative Procedure Code the norms stipulated in the RA Civil Procedure Code are applicable (*mutatis mutandis*) to the guidelines and grounds for appeal against judicial acts by the Administrative Court and to the legal proceedings in the Cassation Court.

As you can see this norm has also been declared to be contradicting the RA Constitution and invalid. And naturally, the executive was responsible for adopting a new differentiated approach regarding the terms of acceptance and grounds for lodging a grievance to the Cassation Court appealing against the judgments by the RA Administrative court, which did not happen. Under this circumstances, the right to access to justice for those lodging grievances against the judgments of the RA Administrative court, is further restricted.

3. On the RA Law on "Making amendments and additions to the Criminal Procedure Code

The amendments in the law on "Making amendments and additions to the Criminal Procedure Code" also pertain to court organization and criminal procedure. They were essentially aimed towards:

- the abolition of the criminal court
- imposing the sanction of removing from the court room against the defendant

- reinstating the institution of appeal against the decisions of the Court of Appeal within a one-month period, from the time of adoption till taking effect.
- the alteration of term for the appeal against the judicial acts according to cassation procedure.

a) Amendments pertaining to court organization

Due to amendments pertaining to court organization the specialized criminal courts as courts of first instance (hereafter "criminal court") have been *de jure* and *de facto* dissolved which is in essence a rational step.

We believe that one of the reasons necessitating the dissolution of the criminal Court is the established unacceptable practice of law. Already with its decision N 782 dated December 2, 2008 the RA Constitutional Court declared the 3rd and 5th parts of Article 14 of the RA Judicial Code to be contradicting the Constitution and noted that they would be declared void as of March 1, 2009.

Based on the Constitutional Court resolution the practice of sending judges on secondments was discontinued. This was not done due to its unreasonableness or illegitimacy per se but rather considering the established practice.

Specifically, the RA Constitutional Court has stated in this resolution:

The analysis of the RA practice of law reveals that only in February-September 5 judges from general jurisdiction courts of first instance were sent on secondments to the Southern Criminal Court and 14 judges to the Northern Criminal Court .

The number of these judges exceeds that of the Northern Criminal Court by four times.

The Constitutional Court finds that such situation is caused by the lack of a thorough approach towards the formation of the Northern and Southern criminal courts. The established courts, in one case composed of a head of the court and three judges and in the other case-the head of the court and two judges, as a matter of fact, have from the beginning been a formality.

The poorly thought-out solutions in terms of organization of court have resulted in a situation when for each specific case the head of Cassation Court has formed a specialized criminal court composed predominantly of judges from general jurisdiction courts of first instance based on solely discretionary selection. The Constitutional Court finds that such state of affairs does not derive from fundamental principles of a legal state, is not legitimate and also involves a corruption risk.

In addition, we believe that the social need to have a specialized criminal court is not real either.

b) Amendments pertaining to criminal proceedings

In our opinion, the amendment suggesting imposing the sanction of "removing from the court room" against the defendant, is unfavorable.

This amendment violates a number of natural rights of the defendant, an innocent person for the time being, including the right to defence, that is to listen to witnesses testifying against him/her, ask them questions and so on. It is hard to picture how the person accused of committing a crime can prove his/her innocence if he/she is not even given the opportunity to attend the court hearing and directly participate in the trial that will decide his/her fate.

As for those defendants who flagrantly abuse their right to attend the court hearing, the fight against them should not result in violation of the rights of all "defendants" and change in their legal status.

Finally, the amendment has led to a number of other issues in the practice of law.

First of all, 6th part of Article 314.1 of the Criminal Procedure Code (hereinafter the Code) contains elements of legal unclarity. In particular, an additional procedure of removing the defendant from court room is envisaged¹ for disrupting the normal course of the hearing and disregarding the presiding judge's orders which has not covered cases of manifesting contempt of court.

We believe that disregard of judge's orders constitutes contempt of court which in practice can result in circumventing the "warning" procedure. In order to avoid further abuses it would be advisable for the executive to clearly define the "contempt of court" in the sense of the 6th part of Article 314.1 of the Criminal Procedure Code.

The 5th part of Article 69 of the Code has been elaborated on resulting in the following formulation of the article:

Article 69. The mandatory participation of the defense attorney

1. The participation of the defense attorney in a criminal trial is mandatory when 1) the court imposes sanctions envisaged by the 2nd clause of the 1st part of Article 314.1 of this code.

2. The participation of the defense attorney in a criminal trial is mandatory

8) from the moment of imposition of sanction for the case envisaged by 11th clause of the 1st part of this article.

¹ to issue a warning and only if it is followed by another instance of violation remove from court room

5. In the case envisaged by 11th clause of the 1st part of this article the court does not accept the defendant's refusal of a defense attorney and following the procedure set by this Code appoints a defense attorney or sustains the authority of the appointed defense attorney.

In the context of the law-drafting rules it can be implied that the 5th part of Article 69 of the Code deals only with the appointed defense attorney and foresees two alternative outcomes:

1. the court does not accept the defendant's refusal of a defense attorney and following the procedure set by this Code appoints a defense attorney;
2. the court does not accept the defendant's refusal of a defense attorney and sustains the authority of the appointed defense attorney.

The issues regarding the attorney being appointed or not are revealed in the requirement of the 1st part of Article 70 of the Code stating that the lawyers participate in a criminal trial as defense attorneys:

1) at the invitation of the suspect, the accused, his/her legal representative, or relative as well as at the invitation of other persons, at the request or with the consent of the suspect or the accused.

2) when appointed by the Chamber of Advocates of the RA based on the requisition by the body conducting the trial.

The norm mentioned above implies that the defense attorney is appointed only by the RA Chamber of Advocates. The RA Chamber of Advocates is entitled to appoint only those lawyers as defense attorneys who have contract-based labor relations with the chamber. At the same time, it cannot in any manner task the lawyers who are only members of the chamber and they can get involved by their consent only.

These issues have not been completely addressed. Moreover, the law does not clarify the course of the trial when the defendant has to agree to the defense attorney engaged through the his/her consent in cases when the latter is removed from the courtroom. These gaps in legislation manifested themselves in the course of trials of the "case of 7".

Referring to the amendments to the Law on Making amendments and additions to the Criminal Procedure Code (hereinafter the "Law") it is to be noted that in this case as well they pertained to court organization and criminal procedure.

The Judicial Code by its structure regulates matters concerning court organization and criminal procedure.

This is probably the reason that the Law has replicated some parts of the laws on making amendments and additions to the Criminal Procedure Code, Administrative Procedure Code and Civil Procedure Code.

Under the 2nd part of Article 45 (Other law-drafting rules) of the RA Law on "Legal Acts" internal contradictions and **unjustified duplications of legal norms should not occur.**

Viewing the RA Judicial Code in the context of this law-drafting rule it becomes obvious that it should have not contained norms pertaining to criminal procedure. The RA Judicial Code should have regulated matters solely concerning the court organization (including the matters of self-governance of the judicial system, the appointment of judges, holding the latters to account and so on).

This departure from the law-drafting rule has compelled the legislature to replicate all of the criminal procedure amendments to be made to the RA criminal, civil or administrative procedure codes, in the RA judicial code, if the criminal procedure norm being amended is present in the Judicial code.

***Amendments to the RA Law on
"The position-based pay rates for the management of
RA legislative, executive and judicial bodies"***

Adopted on November 27, 2008

The draft law passed with the following distribution of the votes:

In favor 66

Against 7

Abstained 7 (independent deputies)

<i>The Republican faction</i>	<i>in favor</i>
<i>The "Prosperous Armenia" faction</i>	<i>independently and diversely</i>
<i>The "Armenian Revolutionary Federation" faction</i>	
<i>The "Rule of Law" faction</i>	<i>mostly abstained</i>
<i>The "Heritage" faction</i>	<i>against</i>

The draft law was presented in a package in the extraordinary session convened at the government's initiative. At the same time the draft law on making amendments to the law on "Prosecution" was put up for approval. It was decided to have the 2nd reading within 24 hours of the 1st one. The hastiness was due to the law on the State Budget with discussions on it proceeding by the regular sitting schedule.

The submitted draft laws proposed stipulating that the position-based pay rate for the judge of General Jurisdiction is determined in a separate article of the law on "State Budget" for each year. The same formulation is suggested in relation to the law on the "Prosecution".

According to the key rapporteur, the Minister of Social Security, the salary of the judges had not been raised since 2003 whereas that of the prosecutors had risen from January 1, 2008 but the clause setting a relationship between the Prosecutor's General's salary and that of the Head of Cassation Court had been reviewed. The government cited anticorruption policy as grounds for amendments and expressed hope that the remuneration of the judge commensurate with his/her mission would contribute to the development of independent and unbiased judicial system.

In the final version of the draft it was stated that it had a status of a normative legal act and would be in force for a year.

The views of the factions

- *The "Rule of Law" faction*

Heghineh Bisharyan insisted that the 100% increase in the pay for the judiciary should be equally distributed between the executive and the legislature. "I ask you to keep silent...those of you who do not need a salary can leave the room. All the speeches make us realize that there is hardly any faction or deputy in favor of the initiative. All of this attests to the fact that there is injustice". However, the faction had decided to be more lenient with injustice when voting: "Our position will be at least to abstain.

In its election platform the "Rule of Law" stresses the importance of distinct separation of powers between the branches of the government, finding the monopolization of power by any of the branches unacceptable.

- *The "Prosperous Armenia" faction*

The PAP representative tried to shift the focus towards the motivation claimed in the proposed amendment. "The government's main argument is that by raising the salary of the judges in the judicial system they will lower the corruption risks. " The speaker questioned the effectiveness of the suggested route: "Do you truly believe that through raising the salary by even 100% the corruption in the systems mentioned by you will decline?"

In its election platform the "Prosperous Armenia" states the need to lay the legal and social groundwork for judge's immunity and irreplaceability to guaranteeing the independence and impartiality balancing it with an effective mechanism to ensure accountability.

- *The "Armenian Revolutionary Federation" faction*

In the ARF representative's opinion by placing the determination of salary for judges and prosecutors into the state budget draft an opportunity to further politicize the system is created which contradicts the principle of separation of powers and the system of checks and balances: "We should realize that through the adoption of this law we make the

system more vulnerable and harm the administration of justice in our country." Stating that the increase in the salaries should be proportionate, the ARF speaker accused the colleagues of turning the discussion into a political show and called for development of a legislative package in the framework of an integrated strategy on public service remuneration system and secure a respectable salary in 2009 both for the managerial positions and civil servants and with regard to minimum wages put to life the key principle laid out in the coalition memorandum setting the minimum living wage budget at the base.

In its election platform the "Armenian Revolutionary Federation" underlines the importance of full practice of the principle of the separation of powers and the system of checks and balances and for the effective fight against corruption, along with other measures attaches significance to determination of salaries that would secure decent living standards for public officials and their families.

- *The Republican faction*

In the faction head's opinion the draft is presented in the framework of reforms in the criminal justice system. Along with other components a salary increase is envisaged, since "good tools cost much money, be it a state employee, a deputy or a criminal justice system". The heated debate according to the speaker was caused by the fact that the government had not done a good job of properly presenting the draft to the parliament. However, "our job should not be done from the position of being deeply insulted but should reflect our political creed".

In the election platform the "Republican" stresses the importance of adaptation of the structure and functioning of the judicial system to European standards and radical reconsideration of principles of prosecutorial activity for the development of the judicial system.

- *The "Heritage" faction*

The "Heritage" was against raising the salary offering the following explanation: "Against the background of shameful trials following the events of March 1 and without discussing the state of the system and questioning the conduct of many judges, we seem to show encouragement to this whole system". The speaker representing the faction's view opposed the principle of segmental salary increase for: "Before this draft law I cherished a remote hope that the day would come when not only everybody's salary would be interconnected but also the salary increase coefficients and minimum wage would be interrelated. So if we wish to increase the pay rates for certain managerial positions in terms of salary, why don't we start with the ordinary folk?"

In its election platform the "Heritage" emphasizes the need to straighten out the procedure of appointment and promotion of judges and prosecutors and ensure the transparency of the field. In addition, the independent prosecutorial control, as mentioned, will contribute to the success of the fight against corruption.

Expert Opinion

*Ara Zohrabyan,
Deputy head of the Chamber of Advocates*

"The position-based pay rates for the management of RA legislative, executive and judicial bodies" was adopted on December 26, 2002 and took effect on July 1, 2003.

As per the amendments made to the law the position-based pay rate for the Head of the RA Constitutional Court and the member of the RA Constitutional Court has been set at 680.000 and 600.000 Armenian drams respectively versus former 340.000 and 300.000 Armenian drams. The determination of the remuneration amount for judges (heads) of Courts of General Jurisdiction, Court of Appeal and Cassation Court has been left outside the scope of the law and has been transferred to the RA Law on the "State Budget". The RA government's anticorruption policy was cited as grounds for mentioned amendments.

While the increase in the pay rates for the Head of the RA Constitutional Court and the judges of the RA Constitutional Court can be considered generally positive it is hard to state the same in relation to the other part of amendments.

In order to ensure the smooth functioning of the RA judicial system or in other words, to raise public confidence in the judicial system the following measures are deemed necessary:

- involvement of professional judges
- improvement of judge's living conditions
- ensuring judge's independence
- clarification of the basis and mechanisms for the accountability of the judge
- adjustment of the legislation to the relations within the modern society

These five components do not contain the primary obligation of the state to raise legal awareness of the public which is the rule of the rules. It is obvious that a society with a low level of legal awareness cannot clearly comprehend the role of the court. Moreover, it cannot adjust its conduct to meet the instruction requirements in the law. This explains the fact that the number of offenses has increased and will continue to do so.

The amendments to the law were aimed towards the second of the above-mentioned components, that is the improvement of living conditions of judges.

However, amendments have not made it clear that the salary of judges has been raised. In addition, the mentioned third component, the independence of judges, has been undermined.

The law on the State budget comes into effect from January 1 of the given year and normally operates till the end of the year with the exception of cases when the law on the next year's state budget has not been adopted. As per Articles 76 and 89 of the

Constitution the state budget is approved by the National Assembly upon its submission by the Government.

It is inferred from the above that the judiciary falls into direct dependence on the executive, that is the government.

Theoretically, the government discontented with the courts may choose to exercise its opportunity to not directly raise the position-based pay rates or set them lower than the current rates. While the lower pay rates will not affect the active judges (Pursuant to Part 3, Article 75 of the Judicial Code the salary of the judge and bonuses calculated in relation to it can not be reduced during his/her time in office) but can bear adversely on newly appointed judges.

Under Article 5 of the RA Constitution the state governance is administered in line with the Constitution and the laws, based on the separation of powers of the executive, legislative and judicial branches and the system of checks and balances. According to the mentioned principle the legislature should not be dependent on the executive, the executive on the judiciary and vice versa. The merging of these 3 branches jeopardizes the very ideology of a legal state in general and only ensuring the separation of powers and the system of checks and balances becomes the guarantee of qualitative changes. For instance, let us imagine the following situation: The National Assembly has adopted a law, that is to say, has set mandatory rules of conduct in matters dealing with title. The executive, represented by the Marzpet has made a decision depriving him of his title in contradiction of that law. In this case the citizen can contest this decision in the court which in its turn can revoke the decision of the marzpet. This very separation of powers and the system of checks and balances ensure the protection of human right.

So, the amendments to the law violate the principle of separation of powers and of checks and balances of the executive, the legislature and the judiciary guaranteed by Article 5 of the RA Constitution since it restrains the courts in their relationship with the body playing a major role in determining the size of the salary for its members.

The current RA Law on "The Prosecution" was adopted on February 22, 2007 and took effect from April 21, 2007. The amendments to the RA Law on "The Prosecution" leave the determination of position-based pay rates for prosecutors to the regulation of the RA law on the State Budget as well.

Under Article 103 of the RA Constitution the RA Prosecutor's Office is an integrated system led by the Prosecutor General. The Prosecutor General is appointed by the National Assembly for a 6-year term on the recommendation of the RA President. The RA Law on "The Prosecution" suggests that the Prosecutor's Office is independent from the executive, legislative and judicial authorities.

The mentioned arguments presented regarding the Law on Making Amendments and Additions to the RA Law on “The position-based pay rates for the management of RA legislative, executive and judicial bodies” hold true with the law on making amendments to the RA Law on “The Prosecution” since the Prosecutor’s Office is also dependent on the executive authorities.

Ad-hoc Committee inquiring into the March 1-2, 2008 events in Yerevan and their reasons

The objective of the Committee is to inquire into the violence occurred on March 1-2, 2008 in Yerevan and its reasons, as well as the legitimacy and proportionality of police actions, to clarify the victims’ death circumstances, to offer recommendations on political, legal and other solutions preventing the recurrence of such events.

The National Assembly Ad-hoc committee inquiring into the March 1-2, 2008 events in Yerevan and their reasons was set up by the decision of the National Assembly on June 16, 2008.

As per the decision the committee is entitled to request information from the state and local self-governing authorities, invite officials to provide clarifications, engage experts, including international, visit places of detention. Pursuant to the decision the committee includes 2 deputies from each parliamentary faction, 1 independent deputy and, based on the committee’s decision, representatives of political forces outside the parliament. These latter have advisory voting rights in the committee.

The committee is headed by Samvel Nikoyan from the “Republican” party. Sitting on the committee are Hermine Naghdalyan, also from “ARP”, Artsvik Minasyan and Artashes Shahbazyan from “ARF”, Hovhannes Margaryan and Artsruni Aghajanyan from the “RoLP”, Aram Safaryan and Naira Zohrabyan from “PAP”. The parliamentarian “Heritage” party refused to participate in the work of the committee. Despite being the author of the draft law Viktor Dallakyan declined to get involved as an independent deputy. As such Levon Khachatryan attended the first session of the committee but later chose to withdraw explaining that his close personal relationship with the Prosecutor General can become a subject of speculation. Since then Samvel Balasanyan has participated in the work of the committee as an independent deputy. The political forces outside the parliament, such as the “United National Party”, “New Times” that have overcome the 3% threshold in the parliamentary election, as well as the candidates in the presidential elections or their representatives also participate in the work of the committee. Tigran Karapetyan and Levon Ter-Petrosyan have refused to participate, Vazgen Manukyan and Artashes Geghamyan have sent their representatives, and Aram Harutyunyan, the head of “National Accord” participates in person.

The term for functioning of the committee was set till October 25, 2008. During that period the committee was to submit a conclusion over the work performed.

On October 22, 2008 the term for the committee's work was extended till February 25, 2009. It was once more extended till September 15, 2009 on February 23, 2009. At that time the proposal to extend the term came from Republican Sukias Avetisyan who was not a committee member. He reasoned that the committee still had work to do, there were questions to be answered therefore more time was needed to finalize the work.

Views of the factions

- *The "Republican"*

The head of the committee Samvel Nikoyan pointed out that the question of term extension for the work of the committee had been brought up by a non-member since people sitting on the committee were not the only ones responsible for its work. Nikoyan noted that the committee needed time to work on the final report and for it to be comprehensive they needed to have the conclusion of the fact-finding group at their disposal. The ARP supported the proposal to extend the term for the work of the committee.

- *The "Rule of Law"*

Heghineh Bisharyan, the head of the faction took the position that the term extension for the work of the committee is in everyone's best interest in that it will help to work without rush and perform an unbiased analysis. She believed that any political force could contribute to the work of the committee during that period. Also, this would help in "finding common ground for cooperation refraining from extreme sentiments".

Oppositional "Heritage" did not participate in the vote on the subject. 95 deputies voted for the committee to continue its work till September 15, Viktor Dallakyan voted against and Tigran Torosyan abstained.

The Committee started off with visiting the prison facilities and meeting those detained after March 1. All the video footage presenting the March 1 events went through special viewing. After that the committee invited the cameraman of "A1+" television company to attend the session. Due to his nonappearance 1-2 sessions of the committee were cancelled. In the spring of 2009, for over a month the committee did not convene either due to the absence of the invitee. This time it referred to Hayk Harutyunyan, the former Chief of Police.

At the session which was attended by "A1+" cameraman Hovsep Hovsepyan, footage taken by him on March 1 was showed. It contained images of little pools of clotted blood, a jaw, a skull and bone fragments. Shota Vardanyan, the Head of "Center of Forensic Expertise", who had attended an earlier session held by the committee and viewed these images as well, asserted that they did not show human bones but instead those of a piglet and a sheep. The videotape with the images shot by Hovsep Hovsepyan was forwarded to the

March 1 ad-hoc committee by a journalist of "Haykakan Zhamanak". Shortly after the committee had received an anonymous envelope with another videotape inside as reported by its head Samvel Nikoyan. It contained tapped phone conversations between Levon Ter-Petrosyan and Alik Arzumanyan on March 1-2 and footage of the known events with "anti-Levon" commentary. The committee viewed the footage and did not go further than that.

During one of the sessions the committee invited 3 people arrested in front of the French Embassy who had been questioned as eyewitnesses and released. They related seeing many bottles filled with gasoline and bludgeons by the statue of Myasnikyan and the French embassy walls that night.

One of them claimed that the spillage over the French Embassy walls was not blood as shown in the images taken by "A1+", but gasoline. Purportedly he had accidentally spilled one of the bottles lined up against the wall.

On October 3, 2008 experts from the United States arrived in Yerevan. They were involved in the work of the 9/11 Commission and had come to Armenia to share experiences. Unlike the Armenian Committee the American Commission was formed not on a partisan basis but solely on a professional one. All the high-ranking U.S. officials had given testimony on their recommendation. In essence, the sharing of experience did not work since it became clear that the American and Armenian committees have operated in two dissimilar realities, American and Armenian.

In the course of the session of April 30, 2009 Hayk Harutuyunyan, former RA Chief of Police offered clarifications to the committee. He answered several questions circulating after March 1 as well as brought up new questions. Specifically, he stated that on March 1 the protesters had not been deliberately fired at and deemed the actions of the police on that day to be legitimate and not harsh. The former chief of police confirmed that a special steering group had been set up and he had been one of the members. The former chief of police did not provide answers to the questions as to whether the steering group worked in the president's office and who else was in that group.

On October 24, 2008 the RA President signed a decree on creating a fact-finding expert team for inquiry into the March 1 events. The fact-finding team had to work in a free and independent manner, be closed for mass media and had to present its findings and their study to the ad-hoc committee.

Thomas Hammarberg, Council of Europe Commissioner for Human Rights welcomed the creation of the group.

The fact-finding group consisted of one representative of RA President, Gevorg Tovmasyan, one representative of coalition Robert Avagyan, one representative of the Human Rights Defender, Vahe Stepanyan, one representative of Armenian National Congress, Andranik Kocharyan and one representative of "Heritage", Seda Safaryan. The group was led by Vahe Stepanyan.

Robert Avagyan, Gevorg Tovmasyan, Vahe Stepanyan suspended their work in the group on May 5, 2009 and decided to take vacation till May 18. It happened after the publication of the report on the circumstances of death of Hamlet Tadevosyan, an officer of the Police Forces in the press. The mentioned 3 members never returned after vacation, at which point the Decree of the RA President on the termination of the activities of the fact-finding committee was issued. The March 1 committee will submit a summary report in the fall session of the National Assembly. This is when the work performed will be finally and carefully evaluated. And at this point the committee members who were involved as representatives of political coalition believe that the committee made every effort to solve the issues it was designated to work on.

An optimistic report for the optimistic voter

It is more than reasonable to view and evaluate the activities of the political forces forming the parliament, and the viability of declared concepts and course followed in the context of comparison of positions taken over the five years of legislative work with the respective election platforms. It is logical and well-founded at least due to the very fact that normally the motivation of the political forces behind securing seats in the parliament is the opportunity to put to life their own platforms. In fact, they make every effort to persuade the electorate of this intention.

However, as it is often the case with us, this time also the reason and relevance clash with the reality and fail. While during the first year it was possible, albeit with a lot of effort, to draw certain parallels and refer to the election platforms when analyzing the parliamentary activity, from the second year on these two realities exist separately and do not intersect. In all fairness though, the reality of fall 2008 when the second year of the parliamentary work began, was very different, to put it mildly, from the reality of spring 2007 when the parties were presenting their election platforms. It was marked with formation of new coalition and ensuing new interparty agreements, Council of Europe resolutions issued one after the other, persistent political tension inside the country and economic crisis...

The year was not an ordinary one indeed. The sheer number of laws adopted through the expedited procedure is indicative of this tension (perhaps panic) in the parliament. As a result of working in this environment the adopted laws not only often clashed with the principles declared by the parties which later supported these laws but were at times simply contradictory (for instance, the RoLP stance on cash registers) Those seeing the problem in the viability of the platforms and lack of principles on the part of political forces are certainly right as well. That could be the case. At any rate, wishing to sound a more positive note we can state that the fall 2008 - spring 2009 period for the political forces forming the NA was, at best, a time when the implementation of their platforms was put on hold.

However this is one aspect of the issue. It is also interesting to know what laws were adopted, what legislative amendments were effected and the manner in which the legislative field was after all being reformed in this dramatic period. But before tackling the content, here is a small observation-what immediately strikes us is the haste in the law-making activity. As already mentioned the expedited procedure for adoption of the laws was frequently practiced usually without serious reason. In addition, the parliament seems to have made it a customary practice to revisit the laws at intervals of 1-2 months proposing yet another amendment which at times covers the same provisions while offering diametrically opposite solutions. And in all instances the parliament votes in favor of the draft laws with heartfelt agreement.

The gross product of the yearlong law-making activity can be divided into two groups, "pragmatic" laws and "imitation" laws. Although in a number of cases elements of pragmatism and imitation appear together the first group of laws stands out as practical, realistic and is meant to address very specific issues for a specific (oftentimes short)

period of time. We will name a few. the September amendment to the law on television and radio broadcasting, two amendments related to excise tax, two draft laws making it possible to increase the water release from Lake Sevan, the increase in the salaries of judges, even the amendments made to the Criminal Code. (As a matter of fact, the latter can be easily listed in the second group of the laws as well.)

It is easy to see that these initiatives which were to achieve strictly practical aims deal with various spheres and their nature is more suggestive of temporary "normative acts". It is our firm belief that while the laws are not dogmas and are subject to amendment and refinement, they should be amended only in the context of rational and programmatic justifications. However, it is extremely hard and at times impossible to find logical, convincing reasons, principles and programs behind the laws arising as a result of momentary interest and relevancy as well as coalition agreements. In fact, in all the mentioned cases the representatives of the small parliamentary opposition responded to the sketchy and confusing rationale of those submitting the draft law by voicing the notions existing in the public on the true aims and motives for these initiatives, which unfortunately sounded far more reasonable and convincing.

The picture is somewhat different for the group of "imitation" laws. In these cases the agreement inside the coalition reaches its peak. The entire process of putting the draft law in circulation and it becoming law, takes on a merely formal "imitational" nature. No objection or weighty recommendation whatsoever and instead expression of a firm belief that the given draft law "takes us at least a step forward"... Also to be mentioned is the fact that the draft laws securing such a progress (the April "additions and amendments" to the Law on television and radio broadcasting, amendments made to the Law on NA Rules of Procedure, which were to extend the authorities of the parliamentary oppositions) are normally quite extensive and confusingly worded to say the least. In reality, this is simply an attempt to rock the boat to pretend movement, figuratively speaking. Admittedly, our law-makers are successful in leaving the European experts with such an impression.

So, as the outcome of the yearlong work of the parliament we now have laws that on one hand serve specific objectives and interests and had nothing to do with improving the legislative field, and on the other hand laws that actually did not change anything, were meant to "accommodate" the Council of Europe requirements and did not reform the legislative field either.

