Open Society Foundations - Armenia

Monitoring Report
of
Eastern Partnership Roadmap 2012-13

Armenia

Multilateral Dimension

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Contents

Abbreviations

AA	Association Agreement
AMD	Armenian Dram
APTRC	Armenian Public Television and Radio Company
CEC	Central Electoral Commission
CPFE	Committee to Protect Freedom of Expression
CPI	Corruption Perception Index
CRRC	Caucasus Research Resource Center
CSO	Civil Society Organizations
CU	Customs Union
DDoS	Distributed Denial of Service Attack
ECtHR	European Court of Human Rights
EU	European Union
FOI	Freedom of Information
GCB	Global Corruption Barometer
GRECO	Group of States against Corruption
HCAV	Helsinki Citizens' Assembly Vanadzor Office
IO	International Organization
LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer
LSG	Local Self Government
MTA	Ministry of Territorial Administration
NA	National Assembly
NCTR	National Committee on TV and Radio NCTR
NGO	Non Governmental Organization
OECD	Organization of Economic Co-operation and Development
OSCE/ODIHR	Organization for security and Co-operation in Europe/Office for Democratic Institutions and Human Rights
OSCE/RFOM	Organization for security and Co-operation in Europe/Representative on Freedom of Media
PDO	Public Defender's Office
PEC	Precinct Electoral Commission
RA	Republic of Armenia
TEC	Territorial Electoral Commission
TIAC	Transparency International Anticorruption Center
UNCAC	United Nations Convention against Corruption
WHL	Wilspera Holdings Limited

Preface

The process of European integration, and specifically the prospect of negotiating the EU Association Agreement (AA), was viewed by many in Armenia as a unique chance to comprehensively raise standards in governance, democratic institutions, justice, and economy, at a systemic level. The reason for this is the multi-faceted and binding nature of the AA. As such, the Eastern Partnership (EaP) Roadmap 2012-2013 was deemed to be an important step in this process. Along with a number of previous efforts, we at Open Society Foundations (OSF) undertook monitoring of the roadmap implementation in order to secure a proper point of departure for further integration within the AA framework.

During the writing of this report, there was an unexpected policy shift with President Serzh Sargsyan's September 3rd announcement to join the Customs Union (CU), which radically changes Armenia's development roadmap, setting it towards an opposite direction. While the EaP Roadmap had found advocates and implementers among the most experienced and capable members of civil society, and the monitoring has been carried out, we are now faced with a reality that does not allow for the initialing and implementation of the AA.

The decision to join the CU has created a new and dangerous reality that no longer includes an EaP Roadmap, and by extension an AA. In fact, much of the work already undertaken for the AA now needs to be undone in order to get to that opposite destination set out in the CU.

It can be argued that in light of such a reality, the work of the expert group and our resources were meaningless. For this particular project and moment in time, it is difficult to argue against such a conclusion, however, as EU diplomats have repeatedly stated since September 3rd, "The door to the Association Agreement is closed, but it is not locked". While reopening that door will require a political decision from both sides, keeping it open, despite real or perceived geopolitical pressures will take more than political theatrics. It will take a reform agenda based on genuine improvements in the efficacy of democratic practices and accountable governance institutions. These improvements must be measured by their impact on the ground, and through the protection of human rights and fundamental freedoms.

It is here where the Roadmap, along with similar monitoring initiatives and reports, can be instrumental, by providing valuable insight into the quality of the reforms and offering tangible recommendations on how to move forward. Our monitoring reports have repeatedly documented the superficiality and deficiency of the reforms process, which has not only failed to address the intended issues, but has actually served to intensify them and undermine their solutions. The lenient assessment of the reforms by European officials has lead to a failed process, resulting in a dramatic degradation of democratic standards in many areas, including elections, transparency, judicial

independence, and in economic and political domains. If not seriously tackled, these problems will only grow, and consolidate towards a return to authoritarian rule. Any integration project that fails to address these problems cannot truly be called value-based, but rather as temporary and unsustainable measures. By contextualizing the problems, analyzing the deficiencies, and providing concrete recommendations, this report can be a critical resource not only for a roadmap aimed at a re-opening, but also for real benchmarks on walking down that road towards the desired destination.

Acknowledgments

This report has been prepared with the assistance of Open Society Foundations-Armenia and the Open Society Georgia Foundation, with the direct involvement and cooperation of independent experts and civil society representatives from both countries. Open Society Foundations-Armenia would like to thank both the Georgia and Armenia teams for their valuable insights and productive partnership.

Methodology

The monitoring report consists of *two volumes* aiming to assess Armenia's progress towards implementation of the *multilateral* and *bilateral* dimensions of the 2012-2013 Eastern Partnership (EaP) Roadmap, using evaluations conducted using benchmarks developed by a group of experts from Georgia and Armenia. The benchmarks are based on objectives, outcomes and measures set in the EaP framework. The report is structured in a way so that each section is composed of an executive summary, results, discussion, conclusion, and recommendations. Where applicable, the context in which these reforms have been undertaken is briefly introduced. The report has been peer-reviewed by independent experts from academia and civil society. As a result, it provides a detailed assessment that offers a cross-sectoral and comparative view of the overall integration process.

Both quantitative and qualitative research methods were used in the report, based on descriptive statistical data, observation results, in-depth interviews with experts, officials, and field professionals, along with secondary sources. Wherever required materials were not available, information was provided by prominent civil society organizations working in the relevant fields. Depending on the context, media reports have also been used to capture the most recent events, though arguments based on the latter are supported by other sources as well. The research was conducted with due respect and full confidentiality to the rights and interests of all parties involved.

The report documents Armenia's progress towards the EaP Roadmap implementation in selected areas. It covers the period from May 1, 2012 through September 1, 2013 and highlights areas where progress has been made, along with serious concerns regarding the overall governance situation and the pace of reforms. The report also evaluates the

quality, depth and logic of measures put into place by the government to meet the EaP commitments, and provides practical policy recommendations in priority areas.

The assessed policy areas under the *multilateral* dimension – electoral standards, freedom of the media, regional and local authorities, improved functioning of the judiciary, and fight against corruption – all correspond to the Armenian government's efforts to achieve objectives in support of democracy, good governance and stability. These five policy areas were chosen because sustainable development in these areas, and functional operation of the core democratic institutions involved, will play a determining role in successful European integration. In addition to these policy areas, it contains a section on the fight against cybercrime due to its novelty and the under-researched nature of the field.

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A.1. Electoral standards and freedom of the media

EXECUTIVE SUMMARY

Electoral rights are regulated by the Constitution and the electoral code. The latest version of the electoral code was adopted on May 26th 2011, almost a year before the 2012 National Assembly elections. In theory, the electoral code adopted in 2011 provides the necessary mechanisms for ensuring free, fair and fully democratic elections; however, abuse of administrative, human and material resources on behalf of the ruling party prevents this from happening. As a result, electoral rights are not fully respected in the Republic of Armenia. It is therefore of even greater significance, to implement steps directed at the proper application of legislation in practice in order to hold fully democratic elections.

The current report is based on elections observation results during the 2012-2013 elections cycle. As such, it aims to understand the nature of domestic electoral legislation, its practice in line with European electoral standards, and the reforms that have been carried out thus far. In so doing, it will reveal the persisting problems in the field, and Armenia's progress in implementing the goals set out by the multilateral dimension of the EaP roadmap. Finally, it will propose certain recommendations to overcome these problems and shortcomings.

In conducting the analysis, the following sources were examined: RA national legislative acts; international documents; conclusions of international expert organizations; reports released by local and international observation of National Assembly elections, LSG Bodies; and data from the Presidential Elections. Elections data was gathered from the official website of the Central Electoral Commission.
There are legislative gaps that restrict full electoral rights, such as:

- Restrictions of the right to universal suffrage of certain groups of people, including convicted prisoners, the persons recognized as legally incapable by a court, and citizens of RA residing abroad.
- Limitations on appealing electoral violations, to those whose "subjective electoral right" has been violated, essentially restricting civil society and "groups of voters" from judicial remedy of public interest violations.
- Restrictions on publication of the voter lists after elections, which make it impossible to monitor their accuracy.

Additionally, there are shortcomings in electoral administration, such as:

- The politization, insufficient preparedness and lack of professionalism of electoral commission members
- The Unwillingness for law-enforcement officials to properly investigate electoral violations.
- The disproportion amount of editorial airtime provided to pro-government candidates versus static informational airtime for oppositional candidates

INTRODUCTION

According to the Constitution of the Republic of Armenia, presidential, National Assembly and local self-government bodies, as well as referenda shall be held on the basis of the right to universal, equal and direct suffrage by a secret ballot. The electoral rights in the Republic of Armenia are regulated by the Constitution and the RA Electoral Code, which was adopted on May 26th 2011, almost one year prior to a large number of national and local elections.

The 2012-2013 electoral season consisted of the National Assembly elections on May 6th 2012, the presidential elections on February 18th 2013 and the Yerevan City Council elections held on May 5th 2013, along with over 1471 local self-administration elections. By the end of this season, the distribution of political office seats indicated an increase in standing of the ruling party, both in the National Assembly where it now enjoys an absolute majority, as well as in Yerevan City Council, and throughout local offices, often at the expense of opposition party members[1]. While the incumbent president, representing the ruling party, was declared the winner of the presidential elections after one round of voting, it nevertheless revealed a rather weakened position, through large electoral losses in many big cities and towns, including in the second and third cities. In this context however, the opposition parties failed to galvanize their base, by their nonparticipation in the elections, their unwillingness to unite around a single challenger, and by an inability to effectively challenge the elections results.

National elections were monitored by international and domestic observers while some of the local self-government elections were monitored by domestic observation missions. Although international organizations recorded progress in the Armenian elections in comparison with previous parliamentary and presidential elections, domestic observers highlighted a number of violations. Specifically, they revealed a large volume of electoral violations, especially during 2013 February presidential elections, ranging from abuse of administrative resources, multiple voting, vote-buying, 'carousel' voting, intimidation, ballot box stuffing and falsification of the voting results[2]. According to the many local human rights and democracy building civil society organizations, the nature of violations has changed over time, moving from violent and overt forms of intimidation and harassment, to peaceful methods of multiple voting or vote-buying. However, the scale of such "soft" violations has become so widespread, that they undermine the free will of the citizens and remove much democratic legitimacy of the state.

Based on the results of two national and a number of local elections observations, this report aims to understand the nature of domestic electoral legislation, its practice in line with minimum electoral standards, and the reforms that have been carried out thus far. In so doing, it will reveal the persisting problems in the field, and Armenia's progress in

[1] See Appendix 1, table 1 for more detail.
[2] Report on the Observation Mission on Parliamentary Elections of 6 May, 2012. Helsinki Citizens' Assembly Vanadzor, August, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

implementing the goals set out by the multilateral dimension of the EaP roadmap. Finally, it will propose recommendations to overcome these problems and shortcomings.

METHODOLOGY

In conducting the analysis, the following sources were examined: RA national legislative acts; international documents; conclusions of international expert organizations; reports released by local and international observation of National Assembly elections, LSG Bodies; and data from the presidential elections. The official data on elections held in 2011-2012 were taken from the official website of the Central Electoral Commission.

RESULTS

The new electoral code has changed the way in which electoral commissions are selected, by limiting the de jure power of the presidency in the case of the Central Election Commission (CEC), and paying more attention to political affiliation, professional experience, and gender balance. The method for appointing members of the Territorial Electoral Commissions (TEC) has also moved away from a de jure partisan model to a model of appointing professionals by the CEC, with at least 2 being women in each TEC. By contrast, Precinct Electoral Commission (PEC) members are appointed through a partisan model. As such, each political party or alliance having a faction in the National Assembly appoints one member each for every PEC. While both CEC and TEC members are recruited for permanent positions, PEC members are recruited prior to elections. Individuals wishing to work in precinct electoral commissions can attend training courses organized by the CEC. Upon its completion, they are required to take a knowledge exam to obtain a license. Despite these changes, there is a high level of politization within all electoral commissions[3].

In accordance with the electoral code, police representatives are stationed at all polling stations in order to maintain order when called upon by PEC chairs. During the last elections cycle, observers indicated that PEC chairs refused to engage the police to properly deal with irregularities and maintain order, as they preferred to ignore issues instead[4]. Since police officers assigned to polling stations are not allowed to intervene upon the request of other citizens or on their own initiative, many visible violations were not recorded by PEC Chairmen or reported to the police. Even in instances where violations are reported, law enforcement bodies are reluctant to fully pursue the case, often citing a lack of evidence.

[3] Report on the Observation Mission on Parliamentary Elections of 6 May, 2012. Helsinki Citizens' Assembly Vanadzor, August, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

[4] Report on the Observation Mission on Parliamentary Elections of 6 May, 2012. Helsinki Citizens' Assembly Vanadzor, August, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

There are concerns regarding the integrity of voters' lists and a suspicion that they are inflated and exploited by the authorities for electoral gain, considering the high rate of migration from the country[5]. Due to a provision in the electoral code barring the publication of the signed voter lists after an election, there is no effective way for civil society to monitor and address this concern. Moreover, the electoral code only allows electoral violations to be appealed by individuals whose 'subjective right of suffrage' is violated, essentially disqualifying "groups of voters" or violations pertinent to the public interest, from judicial remedy.

The accreditation process, including training and examinations, for registering domestic observation missions is under the jurisdiction of the CEC. The Venice Commission and OSCE/ODIHR continue to express concern over this procedure as it can, and has, been used for limiting civil society monitoring of the electoral process.

Despite the latest revisions to the electoral code, there are still shortcomings in its compliance with European and international electoral standards. Specifically, the right to universal suffrage continues to be undermined. Incarcerated individuals, individuals recognized as legally incapable by a court, and citizens living abroad, are all denied their right to suffrage. This restriction is based not only on provisions in the electoral code, but also in the RA Constitution, making their repeal a long and difficult process. Remote voting is now available for members of the RA diplomatic corps; however, this is done in a non-controlled environment, where secrecy of the ballot cannot be verified. The electoral code also fails to properly address campaign regulation violations. While a judicial process for appealing such violations has now been added, the punishment for such violations still falls outside the principle of proportionality.

Progress has been made in the field of media freedom, however many shortcomings still exist that serve to distort the media landscape during elections. While access to broadcast airtime is now equally distributed among all candidates, pro-government parties receive disproportionally more editorial airtime, while the rest are presented through static informational news. Violation of the rights of journalists and media especially increases during elections and post-election periods. Legislative processes initiated during pre-election period raised concerns ahead of the parliamentary elections as they were directed to restrict activities of journalists and freedom of speech. In a step backwards, the new electoral code removed a previous provision that protected proxies, observers, and media representatives from charges of libel for their opinions expressed over the election process and summary of results. On January 31, 2012 the Central Electoral Commission approved by decree[6] an accreditation procedure for denying and terminating accreditation for journalists. The 2012 parliamentary elections were accompanied by 3 cases of violence against journalists and 4 cases of obstructions

[5] RA Parliamentary Elections, 6 May 2012, OSCE/ODIHR Election observation mission, Final report, OSCE/ODIHR, June 2012, http://www.osce.org/odihr/91643

[6] RA Central Electoral Committee. Decision N18. Retrieved from http://res.elections.am/images/dec/12.18n.pdf

against their activities.[7] During the presidential elections, 5 incidents were observed – 2 cases of physical violence and 3 cases of pressure were directed at journalists. During the Yerevan city council elections, 1 case of physical violence was recorded and 8 cases of pressure on journalists. Generally, cases of violence, obstruction and pressure against journalists are not disclosed and punished.[8]

DISCUSSION

Capacity-building for electoral administration

The following bodies are involved in organizing and conducting elections, and in monitoring the pre and post election processes:

- The Central Electoral Commission (CEC)
- The Territorial Electoral Commissions (TEC)
- Precinct Electoral Commissions (PEC)
- Oversight-Audit Service of the Central Electoral Commission
- The Police Department (Passport and Visa Administration, Patrol and Post Services, Investigative Service)
- RA judicial bodies (courts of common jurisdiction, administrative courts, and Constitutional Court).

Electoral commissions and administration

The seven members of the CEC are formally appointed by the RA President, based on a list of nominations submitted by the following officials: three nominees by the Human Rights Defender, two nominees by the Chairperson of the Chamber of Advocates, and another two nominees by the Chairperson of the Court of Cassation. Moreover, the candidates to CEC membership must meet certain requirements; they must have a higher education, and relevant work experience. At least two of the CEC members must be women and at least two members must have legal education or a scientific degree in law. Additionally, CEC members can neither be employed for other paid jobs, with the exception of being involved in scientific, pedagogic and creative work, nor be engaged in politics.

Any citizen not involved in public, social or political activities that meets certain educational and professional experience requirements, can be involved in TECs. There are, however, no restrictions on TEC members to hold other positions within the state, such as civil service, discretionary or community service positions. In light of the high

[7] Committee to Protect Freedom of Expression Annual Report 2012. On the Situation of Freedom of Speech and Violations of Rights of Journalists and Media in Armenia. Retrieved from http://khosq.am/en/reports/annual-report-2012/

[8] Committee to Protect Freedom of Expression (2013). 1st and 2nd Quarterly Reports. On the Situation of Freedom of Speech and Violations of Rights of Journalists and Media in Armenia. Retrieved from http://khosq.am/en/reports/cpfe-quarterly-report-january-march-2013/ http://khosq.am/reports/2013-թ-երկրորդ-եռամսյակային-զեկույց/

level of politicization among the civil service[9], this circumstance can influence the independence of the commissions.

Political independence of electoral commissions is not guaranteed, either by law, or in practice. Commissions, which are called to be politically diverse, particularly the PECs, include people who are employed by various state and community entities. PECs, in turn, have two members appointed by TECs and while the rest are represented by parties in the National Assembly (one member from each faction). The representatives of the oppositional parties are frequently bribed or intimidated.

In practice, the major deficiencies of PEC and TEC members isn't in their lack of electoral knowledge and skills, but rather in their lack of political will to ensure free and fair elections. As a result, instead of carrying their duties prescribed by law, PECs strive to ensure turnout and voting results based on the political interests of the ruling party and its allies, by following the basic commands of higher administrative bodies – the TECs and the CEC. The TECs and PECs often demonstrate systematic inaction in disciplining the unlawful interference of unauthorized persons, preventing gatherings outside precincts, as well as recording incidents and violations in the record books. TECs in their turn consistently reject complaints and applications of observers and oppositional political parties, basing their judgment exclusively on minor technicalities, without taking into consideration the merits of the claims[10]. At the same time, commissions and law enforcement bodies do not conduct a proper and objective examination of the claims. As common practice, law enforcement bodies do not respond to crime reports in a timely manner and later fail to initiate criminal cases or dismiss the cases, citing a lack of corpus delicti.

Based on the electoral code, and in compliance with the CEC's decision # 36-N made on July 29, 2011, PEC members were enlisted after participating in professional training courses and receiving accreditation certificates. During the 2012-2013 elections season, domestic observation missions highlighted a lack of professionalism on the parts of many electoral commissions[11]. This was particularly demonstrated when PEC members created obstacles for observers and media representatives to properly carry out their work, as well as in their failure to ensure public order within and outside the polling stations. This lack of professionalism on behalf of PEC members and their unwillingness to work properly was further demonstrated in their refusal to record irregularities in their journals or to receive official complaints from proxies and/or accredited observers[12].

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[9] European Neighbourhood Policy: Monitoring Armenia's Anti-corruption Commitments, Transparency International Anti-corruption Center, January 2011. Retrieved from http://transparency.am/dbdata/ENP2010-final-am.pdf

[10] HCAV Report on Observation Mission On The Parliamentary Elections of May 6 2012, Vanadzor 2012

[11] Report on the Observation Mission on Parliamentary Elections of 6 May, 2012, Helsinki Citizens' Assembly Vanadzor, August 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

[12] RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission, Final Report. May 2013
Retrieved from http://www.osce.org/odihr/elections/101314

In general, PEC members perceive their functions to be limited to the voting room only and do not pay attention to irregularities/violations that take place within 50 meters of the polling station, as defined by law. PEC members generally do not prevent electoral violations on their own initiative and take steps to address electoral violations only when these violations are brought to their attention by observers or proxies. These shortcomings forced OSCE/ODIHR to highlight the need for further capacity development of electoral commissions in its 2013 Presidential Elections Observation Mission Final Report[13].

According to the OSCE/ODIHR Election Observation Mission Final Report, there is a lack of public trust in the election administration and the judiciary. Public reluctance to report electoral offenses can be explained by a fear of repercussion[14]. Administrative resources are widely abused during the pre-election campaign and on the Election Day by authorities controlling these resources, mainly by the ruling party, and in rare cases by other political factions[15]. The abuse of administrative resources is manifested in the selective and discretionary application of the legislation by administrative authorities, and is coupled with the partiality of administrative bodies[16]. Domestic observations revealed that during the pre-election campaign, and on Election Day, the ruling party used administrative resources to garner votes, while the politicization of TECs and other administrative bodies was used for concealing this abuse[17].

Law enforcement authorities

Prior to the beginning of the official campaign for the May 6th, 2012 National Assembly elections, the Police established an operational headquarters "to establish proper law and order during elections and to ensure the normal course of elections."[18] Similarly, the Prosecutor General issued an order to establish a working group to provide prosecutorial oversight over the process of receiving, registering and processing electoral violations reports.

Investigations on electoral violations are the responsibility of law-enforcement bodies. Generally, law enforcement bodies receive information about violations through reports from individuals, organizations and media outlets, as well as from the internet. In

[13] RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission, Final Report. May 2013
Retrieved from http://www.osce.org/odihr/elections/101314
[14] RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission. Final Report, OSCE, May 2013. Retrieved from http://www.osce.org/odihr/elections/101314
[15] Joint Final Opinion on the Electoral Code of Armenia, Joint Final Opinion on the Electoral Code of Armenia, May, 2011. Retrieved from http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e
[16] RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission, Final Report, OSCE/ODIHR, May, 2013. Retrieved from http://www.osce.org/odihr/elections/101314
[17] HCAV Report on Observation Mission On The Parliamentary Elections of May 6 2012, Vanadzor 2012
[18] OSCE/ODIHR Election Observation Mission Final Report Parliamentary Election 2012

response to hundreds of reports, law enforcement bodies instigate only selected criminal cases, denying others on the grounds of not finding sufficient evidence to proceed with the case. Even in cases pursued by these bodies, there is evidence of using intimidation tactics against whistleblowers and supporting persons engaged in illegal activities[19]. Moreover, there is currently no specific provision in the criminal code for pursuing criminal cases on electoral violations. Such a provision would help facilitate faster investigations by defining shorter terms for the examination of these cases, considering their urgency and its impact on the election results.

During their elections observation of the presidential elections, the Helsinki Citizens' Assembly – Vanadzor Office recorded and submitted 61 violations. It also issued statements through its website and through the media every 4 hours on the Election Day. Moreover, an additional 43 were submitted by other elections observers, resulting in 104 total elections related reports to the police. The police departments prepared materials based on the reported incidents, which resulted in 9 decisions to not pursue criminal cases, and one decision to not pursue an administrative process. To date, there have been no decisions to instigate a criminal case on the rest of the reported violations. According to police reports, no criminal cases were filed over the 81 complaints on electoral violations during the presidential elections.[20] Moreover, the courts refuse to accept claims about the failure of the police to properly investigate reports on electoral violations, citing the provision in the electoral code which only allows appeals by individuals who's 'subjective right of suffrage' is violated, essentially denying litigation aimed at protecting public interests[21].

Appeals and judicial bodies

Decisions of electoral commissions can be appealed to their superior commission, or submitting a complaint to the Administrative Court and the RA Constitutional Court, creating overlapping jurisdiction for filing complaints. While the electoral code states that complaints are directed to electoral commissions, general administrative laws allow complainants to choose to file complaints directly to the Administrative Court. In these cases, proceedings in an election commission are suspended if the case is already under consideration by a court. Furthermore, Part 6 of Article 46 of the electoral code states that, "in case of appealing decisions, actions or inactions of electoral commissions to a higher electoral commission, the electoral commission in charge of examining the appeal on invalidating the voting results in a precinct can obtain evidence, at their own discretion". The Venice Commission has expressed a negative opinion regarding this

[19] Post-Election Interim Report, 19-26 February 2013, OSCE/ODIHR and Human Rights Election Observation Mission, March 2013. http://www.osce.org/odihr/elections/99931

[20] See Appendix 3

[21] "According to the Court of Appeals of the RA, the Observer is not eligible to request from the RA Police to undertake steps towards the violations, recorded by the observer". Press-Release, Helsinki-Citizens' Assembly-Vanadzor, May 23 2013. Retrieved from http://hcav.am/events/վերաքննիչ-դատարանի-կարծիքով-դիտորդն/

provision[22] . The OSCE / ODIHR observation mission has also addressed the mechanism of complaints for the protection of electoral rights in its report, by stating that the manner in which election commissions and courts deal with complaints often does not provide an effective or sufficient remedy[23].

According to the electoral code, decisions and actions of electoral commissions can be appealed by anyone who finds that his or her 'subjective right of suffrage' is violated, by an observer if his or her 'observer rights' are violated, or by a proxy if his or her 'proxy rights' are violated. It conspicuously leaves out observers and "groups of voters". This essentially denies voters, accredited observers, and civil society groups the right to seek judicial remedy for break of general electoral rights, because each role is only allowed to appeal a decision or present a violation in cases that affect their respective roles directly. The Venice Commission and OSCE/ODIHR continue to insist on a change to this provision, to allow for groups of voters and civil society groups to file appeals challenging election results and revealing general elections violations[24].

Preparing civil society to better fulfill their role as observers

The Constitutional Court has stated in its # 906 decision adopted on September 7th 2010 that civil society has a role in pursuing public interests and demands of collectives and individuals, as well as in public management. It is through civil society that the public has an opportunity to provide independent oversight and control over state and local self-government bodies. The Constitutional Court has also recorded that this is especially true when there are violations of legal interests or subjective rights of a collective entity and not an individual[25].

Articles 29 through 33 of the Electoral Code establish the rights of observers and candidate representatives and describe their accreditation procedures. There remain many areas where the rights of observers need to be improved and strengthened in order for them to do their jobs effectively and properly. Article 29 states that any organization that wishes to conduct elections observation must be involved with "issues relating to the democracy and protection of human rights" by statue. Article 30 places the responsibility of accreditation with the CEC, with Article 30.4 requiring the CEC to "reject the application on accreditation of observers where the tasks enshrined by the statute of the organization do not meet the requirements" for foreign and domestic non-governmental organizations outlined in Article 29. The enforcement of this provision

[22] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission,
May, 2011. http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e
[23] RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission, Final , OSCE/ODIHR Report, May 2013. http://www.osce.org/odihr/elections/101314.
[24] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, May, 2011. http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e
[25] Case Concerning the Determination of the Issue Regarding the Conformity of the Phrase "His/Her" after the Word "Has Been Violated" of Article 3 Part 1 Point 1 of the Administrative Procedure Code of the RA with the Constitution of the RA, Constitutional Court of RA, September 7, 2010.

has been based on a subjective interpretation of what constitutes the protection of human rights. As an example, a prominent women's rights organization, The Armavir Development Center, was denied accreditation during the 2012 National Assembly elections, because while their statute used the words "women's rights", it didn't include "human rights", and was therefore deemed ineligible by the CEC.

The CEC offers courses and administers the mandatory accreditation exams, based on Article 31.1 (1), which states that courses must be offered annually in Yerevan and in the regions, that qualification certificates be granted based on a computer-based or standard test, that persons can be tested. In addition to this accreditation process, the CEC also administers the process of issuing qualification certificates for observers, which encourages participation in a voluntary training course organized by the CEC, aimed at preparing observers for the mandatory knowledge accreditation exam. Without these two certificates, an individual is restricted in their access to PEC sessions and in polling stations during voting. The Venice Commission and OSCE/ODIHR have repeatedly expressed concerns over this provision, as it can be used to "limit transparency by restricting the pool of potential observers through the training, testing, and certification process" (Joint Opinion, pg 13, pt 59). They recommend that the training should be the responsibility of the observer organization. Furthermore, they state that the accreditation process should not be used as a means to limit organizations from participating in elections observations in any way. Moreover, studies show that despite the testing process, in some cases the observers display limited knowledge of their rights and responsibilities[26].

Throughout the 2012-2013 elections season, many domestic observation missions started employing new methods, such as keeping static video cameras focused on the ballot box or recording the entire polling station, both as a means to record the voting process and violations, and to serve as a deterrent. Additionally, an Ushahidi-based crowd sourcing system named iDitord, has been in use since 2012, allowing average voters to anonymously record and submit elections violations. During the 2013 Yerevan city council elections, a new system of SMS reporting was introduced by the Citizen-Observer initiative, as a tool for their embedded observers to instantly report violations. The two systems offer similar tools, but are aimed at different constituencies and have been used in different ways. iDitord is a public tool that geo-maps violations on an open website, whereas the Citizen-Observer SMS reporting tool is deployed for use among observers, as a way to more efficiently conduct formal, accredited, observation work.

Increasingly, during elections seasons, little known and obscure NGOs, which have almost no track record of being engaged in democratic development or human rights issues, reveal themselves in full force and deploy observers on a large scale, usually state employees such as teachers and civil service workers. They are deployed in almost

[26] EPDE statement on Presidential Elections in Armenia, 18 February, 2013, EPDE, February 2013. Retrieved from http://www.epde.org/tl_files/EPDE/EPDE%20PRESS%20RELEASES/EPDE%20Statement%20Presidential%20Election%20Armenia%2018022013_final_EN.pdf

every single polling station, and issue statements denying any violations, in an effort to provide legitimacy to the outcome of the elections[27]. Moreover, based on the observations of HCA Vanadzor, these observers have displayed a passive attitude towards their responsibilities and have been seen to openly support the interests of specific parties namely, The Republican Party of Armenia, and The Prosperous Armenia Party[28]. The European Platform for Democratic Elections international network has addressed this formal involvement of some observation missions in its statement issued regarding the presidential elections[29]. Domestic observations have shown that such organizations protect the interests of specific political parties, and are directly or indirectly, affiliated with these parties.[30]

Bringing electoral legislation and practice in line with European electoral standards

While the new electoral code has taken steps to address some of the concerns of the Venice Commission, it is clear, both from the contents of the code and its application during the last elections season, that more work must be done to come into compliance with European electoral standards. In its final assessment of the electoral code, the Venice Commission has expressed its concerns over the restrictions on universal suffrage of incarcerated individuals and individuals recognized as legally incapable by a court ruling[31]. More troubling is that these restrictions exist not only in the electoral code but also in the Constitution. These restrictions contradict Article 3 of First Optional Protocol to ECHR[32] [33].

Participation in elections is also limited to citizens that are physically present in the republic on Election Day. The one exception to this limitation is in Article 60 of the Electoral code, which provides for electronic voting by members of the diplomatic corps and consular representations of the Republic of Armenia, along with their families

[27] Situation of Human Rights Defenders of Armenia, January 2011-November 2012, Helsinki Citizens' Assembly – Vanadzor, PINK Armenia. Helsinki Association for Human Rights, Rule of Law, November 2012. Retrieved from http://hcav.am/wp-content/uploads/2013/02/Report-English.pdf

[28] Report on the Observation Mission on Parliamentary Elections of 6 May, 2012, HCAV, August 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

[29] EPDE statement on Presidential Elections in Armenia, 18 February, 2013, EPDE, February 2013. Retrieved from http://www.epde.org/tl_files/EPDE/EPDE%20PRESS%20RELEASES/EPDE%20Statement%20Presidential%20Election%20Armenia%2018022013_final_EN.pdf

[30] Helsinki Citizens' Assembly Vanadzor (2012). Report on Observation Missionon the Parliamentary Elections of May 6 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf (pg. 15)

[31] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May 2011. Retrieved from http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e

[32] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May 2011. Retrieved from http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e

[33] Case of Alajos Kiss v. Hungary, Application no. 38832/06, ECHR, 20 August 2010.

residing abroad with them and having the right to vote. According to the CEC decision 19-N, the process of electronic voting takes place in an uncontrolled environment as the only option. The Venice Commission and OSCE/ODIHR stress that this should only be an alternative to voting in a controlled environment (i.e. a polling station). They add that, "Remote electronic voting is particularly controversial because it cannot guarantee secrecy and it cannot be observed through the methods commonly applied to observation of voting in the controlled environment of a polling station"[34]. They recommend that the proper implementation of an electronic voting system requires a robust and detailed legal framework that can provide equal levels of accountability as a controlled polling station environment.

In Compliance with Article 47.6 of the electoral code, electoral commissions must undertake relevant measures for issues requiring urgent solution. However, the particular issues considered to be requiring urgent solution and what measures the electoral commissions are obliged to undertake, are left vague and unanswered, leading to an altogether disregard for the provision[35].

According to the electoral code, upon failure to adhere to campaign regulations, the electoral commission can apply to court in order to invalidate a candidate's, party's or alliance's registration all together. Previously, The Venice Commission and OSCE/ODIHR had recommended the revision of Article 18.8 of the electoral code, which provided for a candidate's registration to be revoked after a warning and a court decision for any violation of the campaign regulations, in line with the principle of proportionality. The amended provision now allows for a candidate revocation based on a violation "that may essentially affect the results of the election", following a warning by the corresponding electoral commission giving the candidate "a reasonable period" not exceeding three days, to address the violation. Where the violation is not addressed within the prescribed timeframe, the commission must file a claim with a court in order to repeal a candidate's registration. While the revision adds a degree of protection from arbitrary pressure, the punishment is still uniform for all forms of violations, running against the principle of proportionality[36]. The Venice Commission and OSCE/ODIHR recommend that the electoral commission should have the ability to extend the three-day deadline where appropriate. They also continue to recommend that monetary fines be imposed for minor violations of campaign regulations, in conformity with the principle of proportionality.

According to Article 28, the CEC's Oversight and Audit Service is responsible for supervising the use of campaign funds and "over financial activities of political parties".

[34] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May 2011. pg 13, pt 62
[35] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 Retrieved from May, 2013. Retrieved from http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e
[36] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May, 2011. pg 10, pt 45

The Venice Commission and OSCE/ODIHR have repeatedly expressed concern over the CEC's role in providing oversight and auditing. They have stressed the importance of assigning this role to an independent agency, as a form of good practice, which can increase public trust in the process and ensure proper functioning of the campaign finance system.[37] A prime example of the need for this reform can be found in the OSCE/ODIHR observation report on the 2012 National Assembly elections. While Article 25.1 of the electoral code requires all electoral contestants to open special campaign bank accounts, the Oversight and Audit Service interpreted this provision as non-mandatory for those contestants who did not intent to spend funds on their election campaign. As such, some 11 majoritarian candidates failed to open special campaign accounts, and another candidate reported no expenditures. Overall, the Oversight and Audit Service did not have a proactive approach or an effective mechanism to examine the accuracy of submitted reports, which lessened the value of the reporting.[38]

In November 2012, a coalition of NGOs – Transparency International Anti-corruption Center, Helsinki Citizens Assembly - Vanadzor, Europe in Law Association, Protection of Rights without Borders, Rule of Law – developed a package of amendments to the electoral code addressing the inflation of voters' lists, abuse of administrative resources, transparency of the voting process, complaint procedures. Specifically, it also asked for the publication of the voter lists after an election, in order to mitigate multiple-voting and ballot stuffing, and to provide civil society oversight of the process. The proposals were rejected whole-sale, citing inappropriate timing with elections on the horizon, even though many of the suggested amendments wouldn't have required any preparation by the authorities at all. Indeed, the proposals would not have disrupted the upcoming elections but instead would enhance the legitimacy of, and increase public trust in, the electoral institutions.

Ensuring that media freedom is better respected and that the right of all candidates to have access to the media is observed

Coverage of elections campaigns is regulated by articles 19, 21, and 22 of the electoral code, which states that candidates, parties and alliances running for office have the right to free and paid broadcast time on public radio and television, regulated by the CEC. It is further stated that the candidates shall enjoy non-discriminatory conditions and their campaigns shall be covered objectively and without any assessment whatsoever. Moreover, this requirement is also extended to all other television and radio stations, which provide coverage of candidates. Media coverage of the 2012 parliamentary and 2013 presidential elections was much different from that during previous national elections - broadcast media demonstrated a greater level of access to opposition parties and candidates, and covered campaigns in more balanced way, as reflected in civil

[37] Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May, 2011. Retrieved from http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e

[38] OSCE/ODIHR Election Observation Mission Final Report – Parliamentary Elections 2012

society media monitoring reports[39]. While broadcasters were careful to allocate equal airtime to all candidates, however, editorial airtime heavily favored pro-governmental candidates while opposition candidates received static informational news coverage.

In general, there is a severe shortage of editorial and analytical coverage of all candidates. There is more analytical coverage in online and print media than on television, yet there is no equality in such coverage. TV debates between candidates are not available in the Armenian television. Pro-governmental candidates usually refuse to participate in such debates. Only one TV debate was organized on broadcast media, on the ArmNews TV channel, during 2012 parliamentary elections. With very few exceptions, television stations never provide critical coverage of the president and a number of other officials[40]. Although following the criticism from international organizations there was some progress in balancing coverage of candidates during the pre-election campaign, the situation abruptly changed during the post-election protests, when the television coverage became extremely biased and pro-governmental. There is manipulative coverage of candidates in the broadcast media. Some manipulations can be noticed in the coverage of activities and public events of certain political forces, for example in special filming techniques designed to show there were less people than in reality during demonstrations and public meetings[41]. As a result, the ruling political forces always get an advantage in their coverage by virtue of being in the government.

CONCLUSIONS

Although the electoral code adopted in 2011 reflects certain aspects of the Venice Commission's Code of Good Practice in Electoral Matters, the full application of the electoral rights and democratic elections are hampered by the abuse of human and administrative resources by the ruling party. Moreover, the electoral code still contradicts the Venice Commission's Code of Good Practice in many places. Shortcomings of the law are exacerbated by poor enforcement, mainly due to the lack of political will. At present, there are no known processes aimed at amending the electoral code and incorporating recommendations of local or international organizations. Instead, there is clear evidence that even after recommendations from OSCE/ODIHR to change the practice of rejecting claims on technicalities, TECs and courts continue the practice of denying consideration of complaints and applications, against, mostly because of the clear absence of political will.

[39] Report on Monitoring of Armenian Broadcast Media Coverage of RA Parliamentary Elections in 2012 and Presidential Elections in 2013, Yerevan Press Club. Retrived from http://www.ypc.am/upload/YPC%20Monitoring_Second%20Stage_April%208-%20May%204,%202012_eng.pdf ; http://ypc.am/upload/YPC%20Monitoring_RA%20Presidential%20Elections%202013_eng.pdf

[40] Report on Monitoring of Armenian Broadcast Media Coverage of RA Parliamentary Elections in 2012 and Presidential Elections in 2013

[41] Report on Monitoring of Armenian Broadcast Media Coverage of RA Parliamentary Elections in 2012 and Presidential Elections in 2013

RECOMMENDATIONS

Recommendations towards legislative amendments:

- Publish voter lists after an election, in order to mitigate against multiple voting and ballot stuffing, and to provide civil society oversight of the process;
- Make corresponding amendments to the legislation to allow voters, groups of voters, NGOs conducting observation to appeal electoral violations and advocate for public interest electoral reforms;
- Make amendments to the electoral code to set the requirement on the electoral commissions examining the complaints in accordance with part 6 of Article 46 of the electoral code, to obtain evidence as well;
- Make an addendum in the electoral code stipulating that proxies, observers and media representatives may not be held criminally liable for opinions expressed about the process of elections and results;
- Make amendments to the electoral code to restrict the right of public or state officials, as well as members of political parties, to be appointed to the TEC;
- Amend the electoral code to eliminate the knowledge test requirement for observers;
- Make corresponding amendments to the legislation and RA Constitution, in order to restore the electoral right of incarcerated individuals;
- Make corresponding amendment to the legislation prescribing an individual-based approach to electoral rights for people convicted for minor crimes by the courts, so they are not automatically deprived of their electoral rights;
- Make an addendum to Part 6 of Article 47 of the electoral code, specifying what issues require immediate solution and what action the electoral commissions are required to take;
- Research the possibility for creating alternatives to invalidating the registration of a candidate or a political party in case of violation of campaign regulations or failure to eliminate the violation in a timely manner;
- Research the possibility of creating an independent auditing body to audit campaign funds.

Recommendations towards practical measures:

- Ensure greater efficacy on behalf of law-enforcement officials charged with investigating electoral violations;
- Reintroduce mechanisms for citizens residing abroad to exercise their electoral rights;
- Conduct trainings of PEC and TEC members, providing sufficient knowledge and skills about electoral processes and the rights of all individuals involved in the electoral process;
- Ensure comprehensive, thorough and independent investigation by electoral commissions, judicial and law enforcement bodies;
- Ensure greater transparency of electoral processes through video-taping and online broadcast of the electoral process;
- Provide official feedback to recommendations made by organizations conducting observation missions.

A.1.3 Support for freedom of the media

EXECUTIVE SUMMARY

This report analyzes the current situation of both traditional and new media in Armenia; the state of freedom of expression and pluralism; violations of the rights of journalists and media; and the decriminalization of libel and insult from the viewpoint of the country's EU EaP obligations. The activities of the regulatory body, the National Committee for TV and Radio (NCTR), are also reviewed. The report presents issues in the provision of freedom of information on both a legislative and practical level.

INTRODUCTION

According to Freedom House, in 2013, 18 radio stations, more than 40 television channels, more than 200 print publications and more than 100 media websites in Armenia were deemed *Not Free Press*[42]. Media in Armenia, is inadequate as a tool for informing the public on electoral processes as it is partially under the political and economic control of the authorities. Armenia needs to significantly improve the independence and freedom of regulatory bodies, limit media monopolies, solve problems related to digital switchover and information transparency, and liberalize the advertising market.

During almost all elections, television programing has been one of the main tools for the formation of public opinion, manipulation, and reproduction of the power in the hands of the authorities. The national regulatory body, the NCTR, has regularly blocked media outlets from television airtime. There is no transparency in broadcast media ownership in Armenia, while the activities of the NCTR and the Council of Public TV and Radio Company are only partially transparent. Public television remains a serious player in the broadcast advertising market. Financed from the state budget and having the largest coverage in Armenia, public television is in a significantly superior position in relation to other broadcasters. For more than two years, there has been no real progress in legislative processes aimed at improving broadcast legislation in order to meet international standards.

METHODOLOGY

This report is based on monitoring reports, assessments of research organizations, media publications, publications, as well as expert opinions and evaluations. The report identifies and analyzes the problems of the Armenian media sector. It also provides recommendations to overcome the problems of freedom of speech and media in Armenia in the framework of EaP obligations. In the conclusion of this report, the main issues are summarized and recommendations are outlined.

[42] Freedom House. Freedom of Press. Armenia. 2013. Retrieved from http://www.freedomhouse.org/report/freedom-press/2013/armenia

RESULTS

Accessibility of public information

The RA Law on Freedom of Information defines freedom of information; provision of accessibility to freedom of information; restrictions of freedom of information; procedures of oral and written inquiries and responses; repercussions for breaches of the law; and reasons and procedure for refusal to provide the information. The law prescribes proactive mechanisms to provide the public with information by officials (Article 7) and reactive mechanisms for responding to citizens' oral and written inquiries (Article 9). More than 120 claims have been brought to the courts since the adoption of the law, and the vast majority of them have been resolved in favor of the plaintiffs, with freedom of information requests granted.

Current state of freedom of expression and violations of the rights of journalists and the media

On March 21, 2012, the National Assembly passed a draft law on State of Emergency[43], which restricts freedom of speech. Particularly, some media publications and programs may be prohibited during a state of emergency. And according to an amendment to the Code of Administrative Offenses[44], broadcasters or publishers of prohibited material during a state of emergency face a penalty of 500-800 times the minimum monthly salary.

In 2012, compared with 2011, the number of incidents of physical violence against journalists decreased, whereas violations of the right to seek and disseminate information increased considerably, especially during the election periods. For 2012, the Committee to Protect Freedom of Expression (CPFE) recorded four incidents of violence against journalists (5 such cases were reported in 2011), 37 cases of threats and pressure (49 cases in 2011), and 23 violations of the right to seek and disseminate information.[45] From January to June of 2013, CPFE recorded six cases of physical violence against journalists, 34 cases of threats and pressure on media and journalists, and six cases of violation of the right to seek and disseminate information. Kima Yeghiazaryan, a journalist for the newspaper *Hayots Ashkharh* and Shant TV commentator Armen Dulyan were fired for comments made on Facebook in 2013. Neither of these individuals took their cases to court. Crimes against the media and journalists typically become more frequent during elections and times of political tension.

[43] RA Law on Legal Regime of State of Emergency. 2012. Retrieved from http://www.parliament.am/drafts.php?sel=showdraft&DraftID=5294&Reading=0
[44] RA Administrative Code. Retrieved from http://www.parliament.am/legislation.php?sel=show&ID=1392&lang=arm
[45] Committee to Protect Freedom of Expression. Annual Report 2012. Retrieved from http://khosq.am/en/reports/annual-report-2012/

In 2012, there were several cases of violation of the right to freedom of expression. In April 2012, Asparez Journalists' Club of Gyumri and the Vanadzor Branch of the Helsinki Citizens' Assembly were attacked for providing a space to screen Azeri films, and law enforcement bodies neither prevented this, nor held the perpetrators responsible. In October, law enforcement bodies failed to protect the rights of citizens who took part in an LGBTQ parade.

Since 2003, Freedom House has assessed the level of freedom of press in Armenia as *Not Free Press*[46]. According to IREX's Media Sustainability Index, Armenia is in the 'unsustainable mixed system' to 'near sustainability' range for 2010-2013.[47] The World Press Freedom Index of Reporters Without Borders has noted progress in the Armenian media sector, improving its ranking from 77th to 74th (out of 179 countries). [48]

Transparency of media ownership and sources of financing

Media concentration and lack of transparency of ownership are increasing challenges in establishing freedom of media in Armenia. This endangers diversity of media content and pluralism, and it undermines the independence of media. No law contains requirements on the disclosure of information on media ownership. Such information is virtually inaccessible to the public. The major problem in detecting media owners in the Armenian media market is the lack of publicly available ownership data. There are no provisions in the legislation for the media to disclose their owners or benefactors to ensure media ownership transparency. According to legislation on broadcasting, the tenders for TV and radio frequencies in Armenia are public. In practice they are partially accessible to the public.

Although media legislation and policies do not guarantee transparency of media ownership, there is indirect evidence that broadcast media have political and business affiliations. Most media outlets remain dependent upon large businesses and the political elite. In the absence of adequate self-financing, there is widespread shadow financing of the mass media, which leads to hidden controls, curbing media independence. It is widely known that people affiliated with the RA president have control over major TV and radio companies, in terms of producing the content and appointing the staff. A number of regional TV channels are directly or indirectly controlled by large businesses and/or regional authorities. According to the investigation of Investigative Journalists' Association, CS Media City media holding consists of Armenia TV, ArmNews TV, ATV channels, FM 10 radio station and a

[46] Freedom of Press. Armenia. 2013, Freedom House Press. Retrieved from http://www.freedomhouse.org/report/freedom-press/2013/armenia
[47] Europe & Eurasia Media Sustainability Index 2013. http://www.irex.org/sites/default/files/u105/EE_MSI_2013_Armenia.pdf
[48] Reporters Without Borders. Press Freedom Index 2013. http://en.rsf.org/spip.php?page=classement&id_rubrique=1054

number of other media companies[49] It is known that Yerkir Media TV is controlled by the Armenian Revolutionary Federation party, and Kentron TV is controlled by the leader of the Prosperous Armenia Party, Gagik Tsarukyan. The journalistic community and media organizations regularly demand transparency of media ownership and sources of funding.

The Armenian media advertising market is estimated to be a 40-80 million USD industry according to various assessments. About 85 percent of this is concentrated in Yerevan. Armenian Public TV and Radio Company (2 TV channels, 1 radio station, 1 TVRC branch) receives direct financing from the state budget (3,113 billion AMD in 2011) and at the same time it sells advertising (1,370 billion AMD in 2011). [50]

Print media is financed by several sources - copy sales, sales of advertisement, sponsorship and state support. Armenia's print media is supported by the Book and Publishing Center, state non-commercial organization acting within the RA Ministry of Culture. In 2012, 48 million AMD was allocated to more than 80 print media outlets.[51]

Internal censorship and self-censorship are widespread in broadcast media with some limited exceptions. In 2012, there was an attempt at hidden censorship within an initiative that aimed to 'clean' TV broadcasting content from the immoral nature of soap operas and entertainment programs. On October 8, 2012, upon the request of the president, the Public Council adopted a list of recommendations to create a committee within the NCTR for defining standards to monitor television content[52]. Involvement of state authorities in controlling television content, which is an issue of self-regulation for TV channels, could possibly lead to hidden censorship.
About 15 media outlets have their own journalistic code of conduct. For example, the code of conduct of A1+ media outlet is an annex to the job contracts of its journalists.

Independence of media regulatory body

Article 83.2 of the RA Constitution stipulates that, for the purposes of providing freedom, independence and diversity of broadcast media, an independent regulatory body is created, half of whose members are elected by the National Assembly for a six-year term, while the other half are appointed by the president, again for six years. The RA law on Television and Radio stipulates that the authorized regulatory body of broadcast media is the NCTR, composed of eight members. The National Assembly

[49] Media Moguls: On the Trail of Armenian TV Owners; Foreign and Domestic. Retrieved from http://old.hetq.am/am/media/broadcast/
[50] Monitoring Report of Compliance of Volumes and Placement of Advertising in Public Television of RA with the Legislation for 2011 and May-June 2011-2012, Journalists' Club "Asparez" http://www.asparez.am/wp-content/uploads/2012/10/1st-report-2011-total-2011-2012-may-june-comparative-monitoring-jca-9.10.2012.pdf
[51] Government Policy to Subsidize the Print Media is Wasteful and Pointless. Retrieved from http://hetq.am/arm/news/19652/
[52] RA Public Council. 2012. Retrieved from http://www.publiccouncil.am/hy/press-releases/item/2012/10/08/144/

elects the members of that body by the majority of votes of the total number of deputies. There is no mechanism through which society can influence the NCTR members' elections or oversee their activities. The current system of NCTR member selection and appointment does not guarantee the independence of the NCTR, primarily because the election procedure is such that the parliamentary majority can always have its preferred candidate elected to the NCTR. In Armenia, the parliamentary majority always consists of the parties that support the RA president. In other words, all eight members of the NCTR are representatives of the authorities. No mechanisms have been established to provide guarantees for the independence of NCTR members by reforming the system of member selection and appointment.

Public broadcaster serving public interest

A separate chapter of the Law on Television and Radio stipulates the status of the Armenian Public Television and Radio Company; principles of its activities; the procedure of governing body formation and its powers. The board of public broadcaster, by law, is composed of five members (at least one of whom must be a woman), who are appointed by the president. Board members are appointed for a six-year term. The board elects a chair and vice-chair from its members. No legislative measures have been taken to amend the Law on Television and Radio in order to ensure independence of the Council of Public Television and Radio Company. The Council of Public Television and Radio Company, which is in charge of all the public broadcasters, is perceived as an organization serving the interests of the authorities, rather than society.

Level of implementation of digital switchover

The transition from analogue to digital broadcasting remains problematic. The digitalization process so far has only resulted in diminishing pluralism by de facto decreasing the number of TV companies on air. As a result of the digitalization tender in December 2010, the number of frequencies used for TV broadcasting actually decreased from 22 to 18. In 2012, the tender for "Introduction and management of the RA terrestrial digital broadcast transmission services" was cancelled because of an insufficient number of applications. The tender for the formation and management of digital broadcasting multiplexes is not transparent. According to the government's decree of June 20, 2013, the responsible authority for digital switchover in Armenia, is the Television and Radio Broadcasting Network State Agency[53]. The government made this decision directly, without announcing a new tender and with no public discussion. On June 14, 2013, according to the change made to the Law on Television and Radio, the deadline for digital radio broadcasting by the transitional provision was extended by 3 years, until July 20, 2016[54]. According to the same amendments, the deadline for

[53] Decision taken in the minutes of the Government session June 20, 2013. Retrieved from https://www.egov.am/u_files/file/decrees/arc_voroshum/2013/06/qax24-24.pdf
[54] Amendments to the Law on TV and Radio of 14.06.2013. Retrieved from http://parliament.am/drafts.php?sel=showdraft&DraftID=30636

transition from analogue to digital broadcasting and analogue licenses of operation for regional TV channels was extended by six-months, until July 1, 2015. It is obvious that implementation of a government action plan for the transition to digital broadcasting is behind the schedule.[55] Overall, the public is not informed about the process of digitalization. It is also unclear which vulnerable groups might benefit from state support.

Decriminalization of libel and insult

According to amendments in the RA legislation of May 18, 2010, libel and insult were decriminalized and are now under civil jurisdiction. Penalties for moral damage compensation were legislatively introduced (insult - up to 1 million AMD, libel - up to 2 million AMD). During two and a half years that followed, more than 71 claims were brought to court, mainly against print and online media and journalists by current and former officials, MPs and oligarchs[56]. The decriminalization of libel and insult still raises concerns due to the high monetary fines associated with it, which restrict freedom of expression and media. The total sum of compensation so far has reached about 300,000 USD, which has endangered the existence of some media outlets. There were fewer libel and insult charges against journalists and media in 2012 compared with the previous year (16 cases in 2012, 36 in 2011). As June of 2013, 14 new cases have been brought to court so far this year[57]. Out of 14 court cases for Jan-July 2013, nine plaintiffs demanded the maximum amount of compensation, AMD1 million for offence, and AMD2 million for slander. Moreover, seven of the plaintiffs are demanding AMD3 million, both for slander and offence.

Pluralism in online and social media

According to the 2011 monitoring report of InternetWorldStats.com, 47.1 percent of Armenians use the internet[58]. And according to data from the 2011 Caucasus Barometer, 67 percent of internet users live in Yerevan, 23 percent in other urban areas, and 10 percent in rural areas[59]. According to SocialBakers.com , there are 416,520 Facebook users in Armenia (approximately 17 percent of the population)[60].

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55 Decree of the Government of the RA of June 30, 2011. Retrieved from https://www.e-gov.am/gov-decrees/item/19861/

56 Monitoring of slander and libel court cases with involvement of journalists and media, Committee to Protect Freedom of Expression. Retrieved from http://khosq.am/monitorings/qlm-ների-ներգրավվածությամբ-զրպարտու-2/ (Armenian)

57 Annual Report 2012. On the Situation of Freedom of Speech and Violations of Rights of Journalists and Media in Armenia. 2nd Quarterly Report, Committee to Protect Freedom of Expression. http://khosq.am/en/reports/annual-report-2012/, http://khosq.am/reports/2013-թ-երկրորդ-եռամսյակին-զեկույց/

58 Internet World Stats. 2011. Retrieved from http://www.internetworldstats.com/

59 Caucasus Research Resource Centers. (2011) "Caucasus Barometer". Retrieved from http://www.crrccenters.org/caucasusbarometer/

60 Socialbakers 2012. Armenia Facebook Statistics. http://www.socialbakers.com/facebook-statistics/armenia

Alternative information is mainly available on the internet through hundreds of news sites and online publications. Running a media outlet, including internet media, does not require special state registration; the annual registration fee for owning a domain is about 20 euros. There is no legal regulation for the internet and social media in Armenia. Facebook is the most popular social media platform after Odnoklassniki.ru. Civic initiatives, bloggers, traditional and online media outlets have Facebook pages, and through closed, open, and semi-open groups, freely spread news, analyses, ideas. Through social media, they organize events, run campaigns, and pursue the protection of various interests. In the run-up to the 2013 elections, Facebook was largely used by political parties and candidates to present their pre-election platforms. Facebook was also used by the Armenian electorate as a platform for discussion about electoral processes. Twitter is less influential and less used in Armenia.

On September 10, 2012, A1+ started to broadcast the "Ayb-Fe" program five days a week on ArmNews TV. The authorities may consider the fact that it is allowed to air as progression towards freedom of speech, however, this step is not enough to ensure pluralism in the Armenian media.

On May 21, 2013, the heads of print media organizations made a statement on violations of copyright of journalists and the print media. They were concerned by the fact that published news and articles appear on the internet, mostly without proper references, which violates the copyright of journalists and the media. To improve the situation, the editors of print newspapers suggested that online media sign an agreement for rights to use their news and articles. On June 21, 2013, the editors of online publications made a similar statement, offering terms of cooperation to protect the copyrights of journalists and the media. As a result, amendments were developed to the Law on Copyright and the issue what brought to the National Assembly agenda[61]. According to these amendments, new conditions are stipulated for the use news pieces. Partial reproduction of an article belonging to one print/online media outlet by another print/online media outlet, without the author's consent and payment, shall be permitted only "within reasonable limits". Moreover, full reproduction of a news piece shall be made only upon the author's consent[62].

Case Study

Public broadcaster is deeply involved in the commercial advertising business

The Public Television and Radio Company, which has two nationwide television channels and one nationwide radio station, remains the most influential media outlet in

[61] On 30 September 2013 the National Assembly adopted in second hearing and finally amendments to the RA Law "On Copyright and Related Rights", at http://news.am/arm/news/173620.html (accessed 1 October 2013).

[62] Yerevan Press Club, "Weekly Newspaper, September 6-12", at http://ypc.am/bulletin/t/45744/ln/eng (accessed 22 September 2013).

the country. The public broadcaster, financed by the state budget, is also deeply involved in selling commercial advertising and broadcasting. It has the right to advertise no more than 7 percent of its air time, and broadcast no more than 14 minutes of advertising per hour. By selling advertising time, the Public TV Company: (1) violates the RA legislation on advertising in an uncontrolled manner, (2) regularly exceeds the advertising broadcast limits prescribed by the law, using around 27 full days of airtime annually for commercial advertising. It is also worth noting the 80 percent of advertisement sales go to the intermediary organization[63].

DISCUSSION

Armenian broadcast media lacks pluralism and diversity. Broadcast media has become a tool of propaganda, PR and advertising. During times of political tension and elections, human rights violations and infractions are not covered by the vast majority of broadcast media companies. News analyses and editorial pieces on broadcast media do not include critical assessments of high-level officials and MPs. Broadcast media is generally considered as pro-governmental, with dictated analytical news and editorial policy. Online publications have more freedom and offer a more diverse range of pieces. The content of both private broadcast media companies and the Public TV Company is controlled by the authorities.

Years of experience have shown that the media regulatory body of Armenia, the NCTR, does not operate with sufficient transparency. Though the Law on Television and the Radio declares lawfulness, democracy, equality, impartiality, autonomy, collegiality, and publicity as the guiding principles for the activities of the NCTR, the way in which these principles are followed in the administration of tenders does not meet the expectations of society. Moreover, under the same law, the NCTR may engage specialists and experts in the performance of its functions (either on a volunteer or contractual basis), however no specialists have been invited to ensure the impartial assessment of applications in tenders held since 2002, even though journalistic non-governmental organizations have repeatedly offered their professional services to the NCTR. The same holds true for the competitions carried out in 2010 for broadcasting via the digital broadcasting network.

The transition process from analogue to digital broadcasting remains problematic. Digitalization in Armenia faces technical, material and financial challenges. It is obvious that implementation of the government's action plan for transition to digital broadcasting is unsuccessful and behind schedule. To date, the digitalization process has only resulted in diminishing pluralism on air by decreasing the number of TV companies. As a result of the tenders carried out in 2010, a number of regional TV stations, as well as A1+ and ALM TV companies, were defeated or for several reasons dropped out of the competition. In 2015, out of 25 regional TV channels, only 10 will

[63] Monitoring of Correspondence of Advertising Volume and Allocation of Programs of the Public TV with RA Legislation. Journalists' Club "Asparez" - http://www.asparez.am/wp-content/uploads/2012/10/1st-report-2011-total-2011-2012-may-june-comparative-monitoring-jca-9.10.2012.pdf

be allowed to broadcast. The operational deadline of analogue licenses is extended to July 1, 2015. It is not clear what will happen with regional TV channels after the deadline.

On June 6, 2013, the government of Republic of Armenia released a decree that started the distribution process of digital dividend frequencies, without having any national digital dividend plan approved by major stakeholders. It is proposed to sell a 20 MHz wide frequency for broadband mobile internet provision from the digital dividend freed spectrum for 6 billion AMD (~15 million USD). This decree raises digital dividend distribution transparency and accountability issues. It is not effective to start the distribution process of digital dividend frequencies with no national digital dividend plan approved by major stakeholders. Moreover, the price mentioned for this frequency allocation in the decree does not correlate with allocation prices made in 2010-2011[64]. For the optimal management of the frequencies that will be released in the digital switchover process, it will be better to map the whole frequency range effectively, to use the whole frequency range and avoid non-usable frequency zones in the released spectrum. In all of these processes, transparency and accountability issues remain unaddressed, and the public remains in the dark.

An international audit of television and radio frequencies took place in Armenia in 2009. In March 2012, the Ministry of Economy provided a 141-page report on the audit of television frequencies in Armenia, [65] with only 1.5 pages related to broadcasting. The audit does not provide answers to the most important questions: How many frequencies have been provided to Armenia? How many are used and how many are free? Therefore, the government's assurances since 2010 that the digitalization process has been implemented on the basis of this audit are not credible. The NCTR refuses to provide information about all companies that participated in the 2010 digitalization frequency tender, despite a request for information by media organizations and a related court case.

According to legislation, if a broadcaster does not have a license for regular terrestrial broadcasting, it is not allowed to provide satellite broadcasting, which is a serious obstacle for development of satellite television in Armenia.

Print media is not influential in Armenia. The daily total print run of 12 daily newspapers published in Yerevan and one daily published in the regions does not exceed 35,000 copies. Nearly 25 newspapers are published in regions, the total print run of which does not exceed 25,000. Annually, about 48 million AMD (approximately 95,000 euros) is allocated to print media from the state budget as financial assistance through equal shares to all applicants. On the one hand, this is support for print media; on the other hand, it creates corruption risks as some of them are published only for getting this support from the government, besides unequal competitive conditions are

[64] On 23.04.2010 40 MHz wide frequencies was sold to K-telecom for 990.000.000 AMD (2.5 mln USD).
[65] In request of the Committee to Protect Freedom of Expression, The Ministry of Economy provided the organization with the printed version of the report on audit of frequencies in March 2012.

set as they get equal assistance regardless of printing frequency, quantity and staff. More importantly, editorial independence is compromised.

Internet media, social networks, and blogs are widely used in Armenia, and civic or public journalism is growing. However, television remains the main source of news and information for more than 90 percent of Armenians[66]. During elections and times of political tension, television is used as a manipulation tool by the authorities. Currently, four major cable TV networks operate in the territory of Armenia through IP networks. The existing legislation does not contain any must-carry requirements for cable providers.

On November 15, 2011, the RA Constitutional Court adopted a decision in response to the Human Rights Defender's appeal to harmonize Article 1087.1 of the Civil Code with the RA Constitution[67]. In particular, it ruled that media outlets could not be held liable for their "critical assessment of facts" and "evaluation judgments." The number of defamation suits against journalists and media has dropped compared with previous years. However, decriminalization of libel and insult still raises concerns because of the high monetary fines associated with these offenses, which pose a threat to freedom of press. The maximum penalties are so high that they could lead to bankruptcy (insult - up to 1 million AMD, libel - up to 2 million AMD).

The legislative process aimed securing broadcast independence and diversity on air has been halted for more than two years. The current broadcast law still raises many legitimate concerns. It is an obstacle to the liberalization of the broadcasting sector, development of competition, as well as diversity of television programming. A draft law has been presented to the Standing Committee on Education, Culture and Youth Affairs of the National Assembly, and it has been adopted as a basis for further development and discussion. Several working groups, with members from media organizations, international organizations, and state institutions discussed various topics, in an effort to incorporate them into the draft law in 2013. However, no hearing has taken place to discuss the draft law at the National Assembly.

CONCLUSIONS

Years of experience have shown that the commitments of Armenia to improve broadcast legislation, ensure diversity of broadcast media, and oversee a smooth digital switchover have not been met. The current broadcast legislation continues to undermine the independence and pluralism of television companies. Despite numerous amendments, the broadcast law still does not solve the main problems in the sector. According to the law, companies that do not have a terrestrial broadcasting license do

[66] European Friends of Armenia, Poll: Last Assessment of the Pre-Electoral Armenia, (EuFoA: Brussels, April 2012), http://www.eufoa.org/uploads/Poll_28.04.2012_EN.pdf.
[67] Decision of the Constitutional Court, http://www.concourt.am/armenian/decisions/common/2011/pdf/sdv-997.pdf

not have the right to broadcast satellite television, which hinders the development of this sector.

The government program of digital switchover has actually failed, and no tangible progress has been made to ensure a smooth and timely digital switchover. The switch-off date is less than two years away, but to date, there have been no information campaigns or wide public discussions on the process of digitalization. There is limited awareness and understanding by the public of the approaching change, and of its purpose and implications.

The switch to digital broadcasting and resulting release of a significant spectrum of resources require a specific policy agenda and an action plan. The government has started the distribution process of digital dividend frequencies without having any national digital dividend policy in place.

The NCTR, which regulates the broadcast sector and controls broadcast advertising, administers responsibilities in a selective, unstable and inconsistent manner. The current formational procedure of the NCTR does not ensure its independence. There are no mechanisms of public control over the process of selection and appointment of the members of the NCTR.

Media concentration and poor transparency of ownership are increasing challenges for the Armenian media. These obstacles endanger diversity of media content and pluralism, and discourage independence of media.

The public broadcaster is deeply involved in commercial advertising; advertising is often broadcast with violations of norms of volumes and placement prescribed by the law. The intermediary organization selling advertisement of public television gets fourfold more profit than the public broadcaster. Thus, the public broadcaster brings as much advertising revenue to the intermediary private company as it receives from the state budget. The public broadcaster is governed by a board consisting of 5 members, who are appointed by the president and may not be independent.

The policy of media outlets is controlled by the authorities to the extent that the media is influential in the formation of public opinion. The authorities, through shadowing and the NCTR leverage, keep their influence on the editorial policies of TV companies. Print media continues to lose its influence in Armenia; relatively influential print media outlets have developed online versions. The annual financial support given to print media from the state budget has a negative impact on the print media's editorial freedom. Online media is developing actively. There are also news websites with digest extracts, some of which violate copyright law, republishing materials without references or sources.

There are no trade unions of media workers and journalists in Armenia, which makes it impossible to effectively protect the labor rights of journalists and media staff.

RECOMMENDATIONS

- Provide guarantees for the independence of NCTR members by reforming the system of member selection and appointment. Create legal and practical safeguards for independence of the NCTR through radical changes in formational procedure, providing maximum transparency of the entire process of the members' selection and appointment, and ensuring participation of independent experts, journalists, and civil society organizations in the activities of the regulatory body;
- Amend the Law on Television and Radio to provide solid and real guarantees for pluralism and diversity during the digital switchover, in line with the OSCE/RFOM and civil society recommendations;
- Develop a national digital dividend plan for the distribution of digital dividend frequencies, to ensure transparency and accountability of the process;
- Amend The Law on TV and Radio and the Law on Dissemination of Mass Information to ensure media ownership transparency, requiring all types of media outlets to disclose their list of benefactors;
- Amend article 1087.1 of the RA Civil Code on moral compensation in order to reduce the maximum amount of compensation by 8 to 10 times.
- Establish legislation to prohibit the public broadcaster from commercial advertising;
- Transfer the authority to appoint members of the Council of Public TV and Radio Company from the president to the National Assembly. Set new appointment criteria, such as recommendations from at least five media organizations, or allow media organizations to nominate two of the council members;
- Provide clear distinctions of regulating satellite, mobile, internet-provided broadcasting and nonlinear audiovisual media services. Deregulate internet and mobile broadcasting; simplify the satellite TV and radio broadcasting license and make it independent from availability of terrestrial broadcasting license to ensure broadcasting diversification during the digitalization process;
- Publish the list of free and occupied TV and radio frequencies at least once a year; publish full application packages of past and future tenders of broadcast frequencies;
- Extend analogue broadcast licenses as long as digital multiplex services become available and new competitions of broadcast frequencies will be organized;
- Require broadcasters to present their detailed accountability of financial revenues, expenses, purchases, contests, TV shows, and staff hiring;
- Ensure access to information about incomes of TV and radio companies through publishing revenue sources and amounts;
- Make amendments to advertising legislation and to the relevant laws, by which product placement advertising (inclusion or reference to a product within a TV program) will be defined as tax delinquency;
- Ensure state support provided to print media proportional with taxes paid by them;
- Organize public awareness campaigns and discussions to inform the public about the digital switchover;

- Enforce proactive placement of public information by the public and responsible authorities; enforce procedures for reactive provision of public information by the public and responsible authorities; adopt a procedure for development, classification, storing and provision of information by the government; standardize official websites of all state institutions in accordance with the Freedom of Information Law.

A.4. Regional and local authorities

EXECUTIVE SUMMARY

This report studies Armenia's local and regional governance systems from the perspective of the country's European integration. Research methodology includes primary and secondary data analysis (prior surveys conducted in the field, in-depth interviews, expert opinions, reports and periodic publications, content analysis of media reporting, etc.). The report also briefly outlines the general context in which local and regional government reforms have been taking place over the past year. It is concluded that the Republic of Armenia (RA) needs to develop and adopt a unified and logically interconnected concept of territorial administration and local government reforms, focusing on long-term and sustainable fiscal and administrative decentralization. It also proposes implementation of need-based legislative amendments, enhancement of local government electoral mechanisms, introduction of elected seats into regional government structures, reduction of corruption risks at local and regional government levels through legislative regulation of conflict of interest, and through putting restraints on mayors holding consecutive terms in the office. Special emphasis is placed on the study of communities' capacity for financing of community budgets from alternative sources and their cooperation efforts at central, local and international levels.

RESULTS

With the collapse of the Soviet Union, the newly formed Republic of Armenia inherited the administrative-territorial structures of the previous regime. According to the administrative division of Soviet Armenia, settlements were classified as either urban or rural. Soviet Armenia was divided into 37 administrative regions. Reforms to the regional and local government systems started in 1995. Now there are 1000 settlements in Armenia, which are unified in 915 communities, of which 49 are urban and 866 are rural. Each urban and rural community consists of one or more settlements. In Armenia, local self-government is exercised only at the community level. Regional/territorial governing bodies (*marzpetarans*) are state government bodies in the regions and are appointed by the central government. The administrative territorial units are called *marzes,*[68] or regions.

In 1995, the National Assembly of the newly independent Republic of Armenia adopted the Law on Administrative-Territorial Division of the Republic (1995)[69] based on Article 104 of the Constitution[70], which states that the two units of the administrative-territorial division of the republic are regions and communities. Regions are composed

[68] Ministry of Territorial Administration (2013). Retrieved from http://www.mta.gov.am/en/the-ta-system/
[69] RA National Assembly. 1995. RA Law on Administrative Territorial Division. Ъ-062-I (1995). Retrieved from http://www.arlis.am/DocumentView.aspx?docid=240
[70] RA Constitution (1995). Retrieved from http://concourt.am/armenian/constitutions/index.htm

of both rural and urban communities. According to the Law on Administrative-Territorial Division, the territory of the Republic of Armenia is divided into ten regions[71]. Regional administration in Armenia is regulated by the Ministry of Territorial Administration.

Despite reforms and decentralization efforts, today, more than two decades after Armenia gained its independence, the local and regional government systems are still far from being self-sufficient, participatory, sustainable management systems that ensure the wellbeing of their member communities. According to Freedom House's annual reports on democratization processes, Armenia's local democratic governance score remained unchanged for the period of 2005-2010, remaining at 5.50[72]. In 2011-2013, a setback was registered, with the score changing to 5.75. Freedom House reports characterize Armenian local governance bodies as often lacking transparency and accountability. Many communities are in need of adequate human resources. Scarcity of local budgets is a key concern, especially for small communities[73]. The Armenian government largely seeks solutions to regional and local government problems in the still vaguely articulated and planned community consolidation strategy, which is still in the process of discussion and revision.

Decentralized cooperation

The existing 915 communities in the RA are regulated by the Law on Local Self-Government (2002)[74] and a number of related laws. According to RA legislation, communities are free to form associations and intercommunity unions. However in practice, there are few examples of such associations. This mostly has to do with underdeveloped infrastructure between the regions, legislative gaps regulating the field, as well as low public awareness and participation in policy formulation and the reform planning process. Cooperation between communities of Armenia and other countries generally takes the form of signing memoranda of cooperation and occasional mutual visits, which are neither efficient nor sustainable.

Formal system vs. reality

Local self-government bodies are led by directly elected councils and community leaders (with the exception of Yerevan). Councils have broad powers to resolve issues related to the community. However these institutional arrangements are not enough to form self-sufficient and sustainable communities, which are underfunded and rely heavily on state subsidies. (See Table 1 for more detail.)

[71] RA President's Decree N 728,1997).

[72] The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The 2013 ratings reflect the period from January 1st through 31 December 2012.

[73] Nations in Transit. (2013). *Nations in Transit 2013: Democratization from Central Europe to Eurasia.* (Sylvana Habdank-Kolaczkowska, Katherin Machalek, and Christopher T. Walker, Ed.). New York; Washington DC: Rowman & Littlefield Publishers.

[74] The Law of The Republic of Armenia on Local Self-Government (2002). Retrieved from http://www.parliament.am/legislation.php?sel=show&ID=1305&lang=eng

According to the data provided by the Association of Communities' Finance Officers, in 2010-2012 the gross budget of all the communities in Armenia constituted only 2.4% of the country's gross domestic product. Table 1 provides more information on community budgets in relation to the size of the community.

Table 1: Classification of Communities based on actual budgetary expenditure (Table is based on 2011 data)[75]

Group	Total budgetary expenditure (mln. AMD)	Number of communities
1	< 7	216
2	7 – 15	227
3	15 – 30	215
4	30 – 60	151
5	60 – 120	62
6	120 – 250	18
7	250 – 500	17
8	500 – 5000	7
9	> 5000	1
Total		914[76]

Decentralization of functions

The RA Government delegates a number of responsibilities along with their corresponding financial resources to the communities. In addition to these responsibilities, communities have their own obligations, some of which are mandatory, others voluntary. The latter are to be financed by community resources, which often results in a complete lack or poor quality of community services.
Community revenues are generated locally (taxes, fees) and from state sources (subsidies from state budget, subventions, etc.). The financial equalization principle is also in force, according to the RA law on Financial Equalization. The essence of this law is the reduction of the difference between communities' financial resources in order to ensure the harmonious development of communities[77]. However the financial equalization law uses a formula that does not have a special designation for populations under 300. Moreover, the only indicators used to assess the needs of communities are their population size and per capita land and property tax collection rates[78], with no carrot and stick mechanisms in place boost tax collection rates, no other revenue generation mechanisms at the local level, and no regard for specific community needs.

[75] RA Ministry of Territorial Administration. 2013. Methodology of Community Expenditure Policy. Retrieved from http://www.mta.gov.am/files/docs/498.pdf
[76] Table excludes the Community of Artsvashen.
[77] RA Law no Financial Equalization. 1998. Retrived from http://www.parliament.am/legislation.php?sel=show&ID=1956&lang=arm
[78] Community Finance Officers' Association. 2011. Local Self Government in Armenia. Book 5.

Transfer of property

With the formation of a new model of local self-government (1996) the state transferred the majority of local real estate to community councils (or councils of elders). However some properties in communities remained under state ownership. Community-owned real estate is still largely viewed as a resource that can be sold to fill budget gaps, and this presents a large corruption risk. Supervisory inspections carried out by the Chamber of Audits of Armenia in Ararat, Gegharkunik and Kotayk regions[79] found a number of deficiencies and infringements in community property management, in particular, in cases of alienation, leasing, and accounting records. Infringements of legislation have been identified against the Laws on Public Auctions and Asset Evaluation, the Land Code, and the Civil Code. Other findings include delays in signing alienation contracts after auctions have been held. Finally, there were cases of lease agreements below market rates, as well as direct sales[80].

A case that illustrates most of the abovementioned statements emerged recently. During a television-aired debate[81] the head of Gyumri[82] municipality's economic and financial division, Lena Gilavyan, said that the newly elected council of elders has planned Gyumri's four-year capital expenditures based on the existing property of the community. It later became apparent that most of the property has been sold, but still appears on community balance sheets.

Administrative supervision

The Ministry of Territorial Administration implements regular supervision in the communities. The Ministry of Finance is also authorized by municipalities to audit the allocation of budgets. The State Audit Agency (Control Chamber) regularly implements financial-administrative audits in communities, producing relevant public reports. However the problems and information on abuses reflected in the reports do not always bring about legal consequences. This is mostly due to the weak institutional capacity of the State Audit Agency. The regional governance bodies (*marzpetarans*) are also entitled to oversee the decisions of the council of elders. If they detect illegal activity, they may impose corresponding requirements on communities. In our reporting period, most of the State Audit Agency's reports concentrated on government-administered urban planning and construction deficiencies. They were primarily concerned with monitoring the use of Yerevan community's budget[83].

[79] RA Control Chamber annual reports. 2011. http://www.coc.am/ReportsArm.aspx?ReportYear=2011 No reports are available publicly at Control Chamber's website after 2011 on Community budget audits.
[80] Community Finance Officers Association. 2011. Local Self Government in Armenia. http://www.cfoa.am/Gorchunejutjun/Hratarakcutjunner/Pages%20from%20cfoa-maket-2012-2.pdf
[81] Tsayg TV (07/08/2013) Debate on the Use of Gyumry Community's Budgetary Sources and Budgetary Planning. http://www.youtube.com/watch?feature=player_embedded&v=kcWlgMYKW9E
[82] Gyumri is the second largest community in Armenia.
[83] RA of Armenia Control Chamber (2012). Annual Report. Retrieved from http://www.coc.am/YearReportsArm.aspx?ReportYear=2012

Institutional capacity of LSGs

Institutional sustainability of the communities is first and foremost based on their financial sustainability. Weak financial capabilities of communities (see Table 1, page 26) and heavily state-subsidized local budgets do not allow the LSG institutions to gain independence and obtain consecutive and sustainable institutional growth.

Competitive elections

A general and widespread problem identified by the Community Finance Officers Association is the number of registered candidates in community council, which generally corresponds to the exact number of required council members. Candidates for the mayor and council members were not even registered in about a dozen communities during LSG elections[84]. Moreover, in roughly a dozen communities, council sessions cannot be convened, because more than half of the council members are labor migrants, absent from their communities for 8-10 months due to the high level of unemployment in the regions.
Meanwhile, Article 143 of the Electoral Code states that the election of community leader is considered invalid if the number of registered candidates is less than two. This restriction still does not stimulate competition in the running for the mayor's office, as candidates formally nominate one of their neighbors or relatives as a second candidate, who resigns right after registering or by the end of the electoral campaign.
As for gender equality during local government elections, data provided by the National Electoral Commission indicates that as of September 23, 2012, when local government elections were planned in five regions (262 communities in total) out of 699 nominated candidates only 22 were women. Discounting candidates who withdrew from the running, 521 candidates were registered, only 11 of whom were women[85].
It is worth noting that the councils of elders in almost half of the rural communities of Armenia (typically the smaller ones), are essentially inactive, functioning solely as a formality. They do not fulfill any obligations other than voting unanimously in favor of the draft decisions proposed by the mayor. An important factor for the success of both rural and urban community leaders is affiliation with the ruling party. The vast majority of mayors are members of the ruling party.

Civil service model/HR management
According to official data, as of March 1, 2013, there are 6802[86] community servants in Armenia. Local government employees have the status of community servants, whereas

[84] Official Press release of Central Electral Committee. 2012. Retrieved from http://www.tert.am/am/news/2012/08/31/5201-teknacu/
[85] Women and Politics. Informative Analytical Portal. 2012. http://womennet.am/%D5%A9%D5%A5%D5%AF%D5%B6%D5%A1%D5%AE%D5%B8%D6%82-%D5%AF%D5%A1%D5%B6%D5%A1%D5%B6%D6%81-%D5%AF%D5%A5%D5%BD%D5%A8-%D5%AB%D5%B6%D6%84%D5%B6%D5%A1%D5%A2%D5%A1%D6%81%D5%A1%D6%80%D5%AF-%D5%A7-%D5%B0%D5%A1/
[86] RA Ministry of Territorial Administration. Statistics on Community Service. http://www.mta.gov.am/hy/statistics/

people working at regional municipalities have the status of civil servants. Civil servants are selected by a centralized body called the Civil Service Council. Though the institutional frameworks regulating fields of civil service and community service are somewhat similar[87], in practice community servants tend to be less protected and more "sensitive" towards changes of community leaders. Overall the management of human resources at the community level is weak, code of ethics requirements not even formally institutionalized, and job descriptions do not exist. About 20 municipalities have their own websites, while email, e-governance, and a system of effective service provision to citizens are not introduced to the LSG structure. Most rural communities have no online presence.

Capacity development, transparency, accountability and participatory decision-making

The most widespread capacity development activities are professional trainings for civil and community servants. Trainings and meetings are organized and carried out by state and civil society organizations for as well as people holding managerial and administrative positions. According to the most recent data available, in 2011 741 local government representatives and 74 regional government representatives participated in such trainings[88].

RA legislation requires transparency and accountability in the activities of local governments, but as a rule, these requirements are violated. Local self-governing bodies generally meet their reporting obligations towards the regional government, but are not transparent or accountable to the public. In June 2013, the RA National Assembly made an amendment to the LSG law, according to which community members can place a given issue on the council session agenda. Experts see this opportunity as a positive shift leading towards the development of democratic governance on the local level.

Still, meaningful public participation in the decision-making process is very rare. Where some vehicle for public participation exists, it is usually just a formality, used as a delusive leverage for external legitimization; more for improving public image than for the improvement of the quality and efficiency of decision-making and management.

DISCUSSION

LSG and regional governance reform

Major reforms, implementation strategies and corresponding legislative changes are being developed in the RA Ministry of Territorial Administration. However at the current stage, draft reforms are mainly concentrated on planned community consolidation and the development of implementation strategies in certain pilot cases. Community consolidation is largely discussed as a main tool designed to solve all

[87] RA Law on Community Service. 2004.
[88] RA Ministry of Territorial Administration. Statistics on Community Service. http://www.mta.gov.am/hy/statistics/

community problems. Meanwhile, the corresponding reforms at the regional government level are largely unaddressed.

For example, in 2011, the government of Armenia adopted a concept on "Community Consolidation and Forming of Intercommunity Unions"[89] as well as the Concept of Regional Development of RA[90]. However these have not resulted in any holistic reform plans or implementation strategies. What is more, there does not seem to be any effort to integrate these concepts at the local or regional level.[91]

Discussions on community consolidation wherever existent are held behind closed doors, with no public participation.[92] LSG representatives are not involved in LSG reform development processes, despite the fact that according to the Constitution of the RA, no changes can be made in the structure of territorial administration unless local referenda are held in those communities affected by the consolidation[93].

The role of civil society in the planning of reforms remains unclear. The Communities Finance Officers Association, Armenian Association of City Council Members, Foundation of Urban Sustainable Development and Association of Armenian Communities, with the support of Counterpart International, have developed and submitted to the RA government a draft strategy on LSG reforms, but there is still no information about its progress.
Four-year community development strategies are usually of a descriptive nature, generally lack elements of strategic planning and do not correspond to similar documents at national or regional levels. This indicates low levels of cooperation and poorly developed communication channels at different levels of government. [94]

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[89] RA Government. 2011. Concept on Community Consolidation and Formation of Intercommunity Unions. Retrieved from http://www.mta.gov.am/u_files/file/Hayecakarger/qax44-18_1.pdf and http://mta.gov.am/hy/conceptions/

[90] RA Ministry of Territorial Administration. Concept on Regional Development. 2011. http://www.mta.gov.am/u_files/file/Hayecakarger/MAR25-38_1%D5%BF%D5%A1%D6%80%D5%A1%D6%81%D6%84%D5%A1%D5%AB%D5%B6-%D5%B0%D5%A1%D5%B5%D5%A5%D6%81%D5%A1%D5%AF%D5%A1%D6%80%D5%A3.pdf

[91] This is true with the exception of two pilot cases: Syunik and Vayots tsor which have community consolidation implementation strategies. http://www.mta.gov.am/files/docs/602.pdf; http://www.mta.gov.am/files/docs/596.pdf

[92] It is noteworthy that according to the survey conducted by Counterpart International Armenian office with community citizens in 2011, 39.3% (1327) of the respondents said they strongly disagree and 20.8% (703) said they disagree with the community consolidation idea (N=3375) in Armenia. The survey data shows that currently the public attitude towards consolidation is rather negative

[93] RA Constitution. 1995. Retrieved from http://concourt.am/armenian/constitutions/index.htm

[94] See for example four year development plans in Lori community, Gyumri and Goris city communities. http://lori.gov.am/ruraldevprojects/ http://www.asparez.am/wp-content/uploads/2012/12/2013-2016-gyumri-hamajnqi-qaramya-cragir-draft.pdf; http://goriscity.am/upload/DocFlow/CouncilorDecision/t634962798915106250_Goris%20qaramya%20_2013-2016_.pdf

Principle of subsidiarity

Although local self-government bodies are separated from the state government and regional administrative bodies by law, but the principle of subsidiarity in the RA legislation and legal practice acts partially. The state keeps its hands on several fields of public service provision (school education, health, police, environment, etc.) not allowing local authorities sufficient leverage to perform functions that are closer to them. An additional, potential threat to the implementation of the principle of subsidiary is created by the planned community consolidation reform.

Adequate resources (finances and property) for LSGs to effectively perform their functions

The annual per capita budget for a relatively large community in Armenia is 30-45 euros, in Yerevan it is about 240 euros. In most small communities (this constitutes about 20 percent of all communities) the community budget suffices for administrative costs only. [95] This is largely due to the institutional setup of the system, which does not allow the Council to define the rates of local duties based on trade volumes, geographic location and other relevant criteria. Due to this legislative norm, in a number of communities, small businesses do not grow.

Effective conceptual, institutional and financial framework for regional development

From an institutional, financial and conceptual point of view, local self-governance systems in Armenia are instable. The executive apparatus of local self-government does not have the necessary institutional, administrative or financial resources to offer quality services or competitive salaries to employees. The electoral system in Armenia does not guarantee the institutional stability of communities. In local self-government units, with each change of powers, the staff of the executive bodies changes radically. Over the years, experienced professionals are often replaced by political appointees. However it is worth mentioning that regional government employees, who are considered civil servants, are less sensitive to changes of power than are community servants. The work of community servants is not regulated by the Civil Service Council. Conflicts of interest among LSG officials and council members are not regulated in practice, fundamentally damaging the LSGs' institutional stability. Unlike LSGs, the territorial management system is relatively stable due to its affiliation with the state system.

Cooperation efforts and inter-governmental coordination mechanisms

Within the framework of the EU Eastern Partnership, nearly all examples of cross-border cooperation between Armenia and Georgia refer to cooperation on the state

[95] See official statistics on Community budget expenditure structure at http://www.mta.gov.am/hy/budgetary-expenditure/

level, which is based on intergovernmental agreements and contracts. Successful examples for consideration are: Georgia acting as a transit country for Armenia's gas supply system, and railway communication and transit cargo transportation through Georgia.
Cooperation efforts within this framework would be more effective once regional government units and communities are allowed more autonomy in signing substantive cooperation agreements.
There are few examples of cross-border cooperation, such as the creation of Lake Arpi National Park in northwest Armenia and Javakhk National Park in southwest Georgia. Turkish border territory was also foreseen to be included in the park, however Turkey refused to participate in the program.

A comprehensive situation analysis for the strategic planning process

An extensive range of reports on this topic[96] is available on the website of the RA Ministry of Territorial Administration. Reports refer to the comparison of the social and economic situation in 2005-2011 and 2007-2013 periods; the nominations in LSG elections in 2008 and 2012; a comparison of total costs of 2009-2010 community budgets; community expenditure policies; information on tax collection at the local level; and two pilot community consolidation implementation plans. The Ministry of Territorial Administration examines community budget expenditures on a quarterly basis, and the results are regularly posted on the RA MTA official website.

The Community Finance Officers Association also periodically prepares progress reports[97] and shares them with the government. However, despite the availability of quite comprehensive data that speaks to the urgent need for radical reforms aimed at ensuring the financial stability of communities, the central government is reluctant to undertake serious steps towards fiscal decentralisation, or to support LSGs in acquiring alternative sources of funding for community budgets.

The harmonization of local government legislation with the European Charter of Local Self-Government is officially on track, but the process still doesn't correspond to the acceptable minimum standards envisioned by the document. One of the most problematic discrepancies is that according to the Charter, LSGs have the authority to define local tax rates, but in Armenia local taxes are determined by the state legislative body.

CONCLUSIONS

Despite A 17-year history of local self-governance, in Armenia it is still institutionally and financially weak. Armenia's local and regional governance system needs radical

[96] Available at RA Ministry of Territorial Administration website. 2013. Official website. www.mta.gov.am
[97] Communities Finance Officers Association. 2013. Web site:
http://cfoa.am/HTML/Hratarakcutjunner.htm

and holistic reform with an emphasis on fiscal decentralization to become independent, self-sufficient, sustainable and more democratic governance system. While the central government's main argument for not initiating fiscal decentralization reforms is the weakness of LSG institutions meantime fiscal decentralization itself could become the engine of consequent institutional strengthening of communities and raise local collection duties due to a spillover effect[98]. These reforms may in turn naturally lead to smoother community consolidation.

Additionally the LSG legislation and law enforcement practice need to be reformed and revisited to prevent corruption, conflict of interests and general passive stance of LSG bodies. Furthermore community authorities need institutional strengthening and capacity development with a heavy emphasis of management of public funds. As legal requirements addressed to local and regional government transparency and accountability are not widely respected by the local authorities, effective public awareness campaigns are to be planned and held primarily by the state and regional civil society organizations.

RECOMMENDATIONS

- Develop a comprehensive concept on local self-government system reform via participatory approach, drawing special attention to fiscal decentralization.
- Boost wide public discussion around strategic documents of regional and local government reform, ensure non-governmental professional and non-professional participation through all possible means.
- Oblige local self-government authorities to meet their obligations prescribed by LSG and budgetary legislations that will include:
  a) providing proper public awareness about council meetings, publishing public notifications.
  b) providing proper conditions (space, seats, etc.) for free participation of public in council meetings.
  c) having council minutes with mandatory publication volumes defined by the law.
  d) hold public hearing-discussions in the communities about community annual budgets, community development four-year programs, community key problems and their solutions, ensuring adequate public participation in them, and wide public awareness before the discussion.
- Initiate legislative reforms in the following directions:
  a) In the RA Electoral Code and in the law on local self-government restore the restriction of being elected as a community leader more than two consecutive times.
  b) Review principles and norms of community finance management having in mind needs of the given community, its' geographic location, climate, ethnic composition etc.

[98] Increased financial resources will lead to higher quality service provision, which in turn will lead to higher local tax collection rates.

c) Define by law conflict of interests of LSG authorities-community leaders and council members.
d) Regulate procurement process at local level by consecutive development and introduction of electronic procurement system in communities and accompanying capacity building.
e) Wherever possible, oblige mayors to live broadcast council meetings.

- Make special efforts for local self-government bodies' empowerment, capacity building and advancement of professional qualifications specifically to:
  a) Hold special qualification trainings for community employees and council members,
  b) Encourage adoption of code of conduct for local self-government bodies at the level of international best practices.
  c) Cooperate with sister / brother cities, donor organizations, international organizations, other structures acting abroad, for development of horizontal relations.
  d) Develop local government's capacity to raise alternative funds, grants and revenues.

1. Strengthen non-governmental organizations and other bodies of civil society:
   a) Through promotion or their participation in decision making process at regional and local levels.
   b) Through introduction and development of various forms of decentralized cooperation between community and civil society.

A.7. Improved Functioning of the Judiciary

EXECUTIVE SUMMARY

This report summarizes issues regarding the independence of judiciary in Armenia, including legislative and practical guarantees for judicial independence, procedures for appointment, sanctioning and dismissal of judges, internal independence of courts, effectiveness of self-governance bodies, and public trust in the judiciary. The report provides an analysis of the 2012-2016 Judicial Reform Strategy, as well as issues in the administration of justice, judicial oversight of pre-trial detention.

INTRODUCTION

Public trust in the judiciary is extremely low in Armenia. According to Transparency International's Global Corruption Barometer, 67% of Armenians view the judiciary as corrupt or extremely corrupt[99]. Research conducted by the Caucasus Research Resource Center reveals a decrease in public trust in judges between 2011 and 2012. In 2012, the European Court of Human Rights rendered 16 judgments against the Republic of Armenia, finding violations of the right to security and immunity of the person[100] in all 16 cases.

A major reform of the justice system was initiated in Armenia with the adoption of the 2012-2016 Strategy on Legal and Judicial Reforms. The reform initiative aims to safeguard an independent and accountable judiciary, and to improve the effectiveness of criminal justice the criminal sentencing systems, administrative justice, administrative proceedings, civil justice, and the performance of procedural functions. Although adoption of an overarching reform strategy is needed, the current strategy has several drawbacks. It fails to substantiate the choice or necessity of reforms in prioritized areas and does not contain an assessment of achievements and impact of previous strategies. Moreover, it fails to justify how the proposed changes will complement and consolidate the judicial and legal reforms implemented to date.

Another important development was the drafting of the new Criminal Procedure Code, which was extensively discussed with lawyers, members of civil society, and criminal procedure experts. There is a tremendous need for a new Criminal Procedure Code that will effectively safeguard the rights and freedoms of people involved in criminal cases. However, the government has yet to actively pursue an institutional change in this sphere. Another cause for major concern is the fact that the new Concept for the Criminal Code is being drafted with no input from civil society.

[99]Transparency International, *Global Corruption Barometer Armenia-2013*. Retrieved from http://www.transparency.org/gcb2013/country/?country=armenia

[100]Annual Report of the Human Rights Defender of Armenia for 2012 Retrieved from http://www.echr.coe.int/NR/rdonlyres/9A8CE219-E94F-47AE-983C-B4F6E4FCE03C/0/Annual_report_2012_ENG.pdf

The current procedures for the appointment, promotion and sanctioning of judges, as well as the financing of the judiciary remain problematic. Particularly, the president continues to have serious influence on the appointment and removal of judges, and disciplinary actions against them. From 2010 to 2013, there has been a rise in the number of disciplinary actions imposed on judges, with 8 cases in 2010, 15 in 2011, 22 in 2012 and 13 in the first half of 2013[101].

The current practices of the Court of Cassation have lead to widespread discontent among lawyers, who claim that the Court's current practice of rejecting most appeals[102] without justification invariably leads to double standards. Furthermore, the Court of Cassation fails to implement the standards set by the Constitutional Court in a number of decisions on matters of law.

METHODOLOGY

This report draws on information from assessments and studies conducted by local and international non-governmental organizations; reports and evaluations by international organizations; mass media publications; official reviews of court practice; expert opinions; and monitoring results from the Protection of Rights Without Borders NGO. Comparative analyses have been carried out to obtain a comprehensive understanding of the situation.

RESULTS

The president continues to have undue influence in appointing, promoting, disciplining, and sanctioning judges, thus precluding judicial independence. The lack of clear and objective criteria for disciplining and promoting judges leaves room for double standards and exacerbates the existing systemic dependence. As a result, judges of lower courts tend to consult with judges of the Court of Cassation when rendering their rulings, in an effort to minimize their chances of being subjected to disciplinary actions. Judicial self-governing bodies do not promote independence either, as the majority of core functions are vested with the Council of Court Chairmen. All of the above factors limit the establishment of a truly independent judiciary.

The courts of first instance and appellate courts rarely apply the case law of the European Court of Human Rights (ECtHR) and mostly base their conclusions on domestic legislation. In cases when the European Convention on Human Rights is cited, it is of a technical nature rather than an analytic reflection. Furthermore, ECtHR judgments against Armenia have little impact on the system as a whole, as the decisions largely result in simply compensating the victim without subsequent investigation of the case or change of practice.

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[101] Zani Haroyan, "*The judge is not independent to apply the law from the very beginning".* 4 August, 2013, Retrieved from http://www.1in.am/arm/armenia_right_203910.html.

[102] From January to December 2012 alone, 1,143 appeals were filed with the Criminal Chamber of the Cassation Court of the Republic of Armenia, and 1,007 of them were returned.

Judicial oversight of pre-trial investigations is not effective as the judiciary grants almost all the motions of prosecution for pre-trial detention. Moreover, torture allegations made during hearings are largely ignored and self-incriminating evidence is used during the trial.

The 2012-2016 Strategy of Legal and Judicial Reforms in Armenia and its Action Plan were adopted without due consultation with civil society. The Strategy does not provide an assessment of the human rights situation in the country, does not justify target area selection, and does not account for the risk of widespread corruption.

DISCUSSION

Judicial independence

There have been some positive developments relating to the qualification exams for the judge candidates, following the amendments to the Judicial Code making the interviews and written tests more transparent. The interviews and tests are live broadcast as well as video and audio taped, and applicants can receive copies of these recordings upon request. The testing and interview process can be overseen by representatives from the Staff of the President, Ministry of Justice, Chamber of Advocates and NGOs. To mitigate the risk of conflict of interest, members of the Council of Justice cannot participate in the decision making related to candidates that are direct relatives.

Nevertheless, there are systemic problems that hinder the establishment of an independent judiciary. The president has discretionary power to influence the process of judicial appointment, disciplinary sanctions, and the termination of judicial powers, with few checks or balances. While the Justice Council proposes the list of judge candidates, the president has the power to choose "candidates acceptable to him" to be appointed as judges (Article 117 of the Judicial Code), and to promote judges (Articles 137(9) and 138(8) of the Judicial Code).

Another impediment to the independence of the judiciary is the practice of judges consulting their colleagues (judges in the same court and/or other courts) prior to rendering a ruling. This practice is particularly widespread between lower courts and the Court of Cassation out of fear of the judgment being reversed and the judge being subjected to disciplinary action for an "illegal" ruling.
The tradition of a strong prosecutorial dominance persists, resulting in undue interference on the administration of justice. As of July 2012, according to judges' official biographies posted on the judiciary's website, 59 of the 220 sitting judges (26.8%) had previously worked for a prosecutor's office as a prosecutor, investigator, assistant to the prosecutor, or in another capacity[103]. The influence of the prosecution is strongly manifested in the administration of criminal justice, with only 2% full or partial acquittals during 2012. The judiciary also grants almost all the motions of the

[103] American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012, 79.

prosecution for pre-trial detention.[104] Only 17 of the 2,873 motions to perform a search during pre-trial investigation were rejected.[105] Prosecutors also influence the judiciary by using threats of retaliation for unfavorable rulings, although such behavior is prohibited by Article 6(3) of Judicial Code.[106]

The limited effectiveness of the judicial self-governing bodies affects the internal independence of judges. This point was raised by the Working Group on Independent Judicial System[107]. In particular, under the current legislation, the self-governing bodies of the Armenian judiciary are the General Meeting of Judges and the Council of Court Chairmen. The core functions of judicial self-governance are vested with the Council of Court Chairmen. The latter forms the Ethics Commission and the Training Commission. Such concentration of judicial self-governance is not consistent with the notion of the independence of judges and self-governance of the judiciary. Moreover, first instance judges do not participate in the implementation of reforms of the judiciary and the functioning of the courts. The Ministry of Justice has developed the new concept of the composition of the self-governance bodies of judges, but it is yet to be seen how this concept will lead to improvement of judicial self-governance practices.

Corruption remains widespread within the judiciary. One of the manifestations of this corruption is the recent scandal within the Judicial Department. Currently, virtually all top officials of the Bailiff Service within the Judicial Department are under investigation for abuse of office, fraud and illegal seizure of property. As of September, two people were suspects and 19 were accused[108]. The police are also investigating the case of the head of the Judicial Department, who is suspected of taking large bribes for hiring people to work. On September 27, 2013, the head of the Judicial Department allegedly left his position of his own accord.[109] An investigation of his suspected corruption is still underway.

Role of the Constitutional Court

Although the Constitutional Court makes progressive decisions on matters of law, its influence on judicial practice remains low, as lower instance courts and the Court of Cassation fail to implement these decisions. Specifically, the Constitutional Court's

[104] Within 2012-2013, out of 2,621 filed motions 2,497 were granted, and only 114 rejected. Data provided by Protection of Rights Without Borders NGO. 2013.
[105] The Judiciary of Armenia, http://www.court.am.
[106] American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012, 78.
[107] Eastern Partnership Enhancing Judicial Reform in the Eastern Partnership Countries Working Group on Independent Judicial system, *Project Report, Judicial self-governing bodies Judges' Career*, Directorate General of Human Rights and Rule of Law, Strasburg, March 2013, http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/ENG%20March%20Report%20Independant%20Judicial%20Systems.pdf
[108] Hetq online, Retrieved from http://hetq.am/arm/news/29621/datakan-kargadrichneri-gortsov-19-mexadryal-ev-2-kaskatsyal-ka.html
[109] Radio Free Europe/Radio Liberty, Retrieved from http://www.azatutyun.am/content/news/25120047.html

decision on the legal standing of NGOs is not implemented by the Court of Cassation. The Constitutional Court interpreted provisions of the Administrative Procedure Code, saying that NGOs have an important role in the administration of justice, and that they should be given legal standing to apply to court. However, the Court of Cassation and administrative courts are reluctant to consider this and continue to deny NGOs legal standing[110].

Free legal aid/access to courts

On December 8, 2011, the National Assembly adopted amendments to the Law on Advocacy, expanding the eligibility for free legal aid to representatives of vulnerable groups or insolvent persons, as well as in civil and administrative cases. This is a positive step towards state regulation of free legal aid. However, it is too early to assess the real impact of these changes, since the Public Defender's Office only started expanding the free legal aid area in September 2012.

Despite these positive steps, there are concerns about whether the Public Defender's Office (PDO) will have the capacity to handle all these cases. According to monitoring conducted by Protection of Rights without Borders NGO, there is an uneven distribution of defenders between Yerevan and regions, leading to an overload for some of the defenders. In practice, many of the defenders do not have adequate time to prepare their cases and thus are unable to ensure quality and effectiveness of protection. An increase in the number of cases that qualify for public defense should logically lead to an increase in the number of defenders. According to the website of the Chamber of Advocates, there are currently 56 public defenders in Armenia, out of which 28 are in Yerevan and 28 in the regions. Some of the lawyers listed as a public defenders also work as private lawyers, so it is unclear exactly how many lawyers are employed solely as public defenders.

Application of European standards in the administration of justice

Application of the case law of the European Court, especially by first instance and appellate courts of the Republic of Armenia, is extremely limited. Courts mostly base their conclusions on domestic legislation rather than on ECtHR case law. In cases when the Convention is cited, no explanation or analysis is provided beyond the citation. Courts rarely justify their refusal to apply the case law of the European Court of Human Rights. The trial monitoring conducted by the Protection of Rights without Borders NGO revealed that the vast majority of the Cassation Court's decisions on rejecting cassation appeals cite one particular judgment of the European Court: in about 70% of the 200 judicial acts reviewed, the Cassation Court cites the judgment of the European Court on the case of Meltex LLC and Mesrop Movsesyan v. the Republic of Armenia (application number 32283/04, judgment dated 17.06.2008). The quality and reasoning of the Cassation Court's decisions on rejecting cassation appeals are flawed because

[110] In April 2011, the Cassation Court made a decision declaring that NGOs are not recognized as legal persons to represent the interests of the public, and this decision is still in effect.

they fail to address the facts that are significant to their examination. Hence, the Cassation Court's finding that the appeal does not meet the requirements prescribed by the legislation is unclear, too.[111]

Execution of ECtHR judgments against Armenia

The judgments of the ECtHR are executed at a superficial level, with the government simply paying the compensation ordered by the Court to the victim. No other individual or general measures are implemented on the basis of a judgment of the European Court of Human Rights. In the case of Virabyan v. Armenia,[112] for instance, the Court found that the plaintiff had been tortured, and that the torture allegations had not been effectively investigated. Other than paying compensation, the Republic of Armenia has taken no steps to address the violation of Virabyan's rights. The officials that tortured him have not been criminally prosecuted and in fact, they continue to hold positions of power, including some senior positions in the police department.

Effectiveness of judicial oversight of pre-trial detention

Judicial oversight of the investigation of torture allegations and of the imposition of detention is ineffective. Detainees are generally reluctant to complain of torture because of lack of trust in the justice system.[113] In cases where torture allegations have been made in the courtroom, effective investigations are not conducted.[114] The courts generally dismiss these allegations and continue to use self-incriminating evidence. Imposition of detention as a measure of restraint is another problematic issue, as courts grant nearly all the motions of the prosecution for detention. Although some small positive steps were taken in 2012 on the first instance court level, the courts generally tend to uphold nearly all motions from prosecution for detention[115].

Effectiveness of civil control on the administration of justice

Civil society has access to pre-trial detention and the penitentiary system through two monitoring groups. The Monitoring Group over RA Police Detention Facilities was established in 2006 by decree of the head of police, as a means to allow for the civic

[111] Protection of Rights without Borders. Application of the Case Law of the European Court of Human Rights by Courts of the Republic of Armenia. Yerevan, 2011.
[112] European Court of Human Rights, Virabyan v. Armenia, App. no. 40094/05, judgment dated 02/10/2012 Retrieved from http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113302
[113] Avetik Ishkhanyan and Robert Revazyan. Treatment of detained persons in police departments. Yerevan 2013,
[114] There is a loophole in the RA Criminal Code, which does not include purpose or special subjects of the actions committed. The absence of these elements results in prosecution of torture perpetrators under other articles and milder punishments.
[115] This statistical data is from 2011 but it is illustrative: From 2624 motions on detention permission 2497 was satisfied by courts, from 3543 motions for search 3485 were satisfied, and from 605 and 301 motions for the control of correspondences and telephone conversations 604 and 299 were satisfied.

monitoring of police in detention facilities. The Monitoring Group over Penitentiary Institutions was established in 2004 by decree of the minister of justice. Neither of these monitoring groups are allowed access to investigator's rooms, where torture is allegedly used to acquire self-incriminating evidence.

Establishment of independent and impartial magistrates

The existing legal provisions and the practice of imposing disciplinary measures do not meet international standards. Sanctions are used as a punitive measure for judges who attempt to go against the executive's control. According to international standards, a judge may be disciplined only in cases of a violation of rules of conduct, while in Armenia, disciplinary liability is applied to both procedural and substantial breaches of law.

Disciplinary sanctions are imposed upon judges for the content of their rulings, which breaches the principles of judges' independence. Moreover, the finding of a violation of law by a higher court, normally the Court of Cassation, is deemed proof that a judge gravely and obviously violated the law, and is seen as grounds for disciplinary action. Decisions on imposing sanctions on a judge, including decisions on terminating the powers of a judge[116] are not subject to appeal in any court or administrative authority of the Republic of Armenia. With no chance to appeal a career-ending decision, judges dare not act against executive authority.

Similarly, the process of advancement through the judicial system is problematic in light of the president's undue influence in the process. The decision on the promotion of a judge is based on such criteria as ability, integrity and experience, and is reached by a secret ballot vote in the Council of Justice. The Council compiles an Official Promotion List of Judges and presents it to the president. The list consists of appellate court candidates in the civil, criminal and administrative specializations, Cassation Court candidates. The president has the power to remove individual candidates or reject the entire list.[117] Thus, although the promotion process may be based on objective criteria, the president is vested with large discretionary power in the final decision.

Training courses for judges

[116] As defined by Article 157 (1) of the Judicial Code, the Justice Council, after considering the matter related to the disciplinary liability of a judge, may apply any of the following types of disciplinary sanctions against the judge:

1) Warning—this is applied for a disciplinary offence that the Justice Council considers an offence of the least gravity, unless the judge has another pending sanction;

2) Reprimand – this shall be combined with depriving the judge of 25% of his salary for a six-month period;

3) Severe reprimand – this shall be combined with depriving the judge of 25% of his salary for a one-year period; or

4) Filing a motion requesting the President of the Republic to terminate the judge's powers -- This is applied if the grave disciplinary offence or the regular disciplinary offences committed by the judge renders him incompatible with the judge position.

[117] American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012, 61

The legislative basis for the training of judges corresponds with European standards, but its practical implementation varies. This is mostly due to the limited capacity of the Judicial School, which is responsible for course development and training. Some of the trainings are outsourced to external experts and the Judicial School does not carry out proper quality control over these courses. Within the initial training curriculum, there is a course devoted to ECHR. The course is completed in 46 hours (22 hours of lecture, 22 hours of practice, and 2 hours of exam-taking). The annual training program includes a human rights component. At least 2-3 courses on different ECHR topics are provided each year. Due to vast international community presence in Armenia, a significant number of training modules on different ECHR articles, as well as other relevant international human rights instruments, are offered by different international organizations. In order to tailor the courses towards human rights needs and to make the training sessions more practical, a thorough revision of the whole curriculum is envisaged through the Joint Programme supported by the EU and implemented by the Council of Europe entitled "Support to Access for Justice in Armenia."[118]

A new system for training judges and prosecutors is being developed in Armenia. According to the new law, the Justice Academy was created as a training facility for judges and prosecutors. This change aims to optimize administrative and educational resources, contribute to the association of these two professions, and develop training courses under same methodology.

Implementation of a coherent sector-wide reform strategy

The adoption of 2012-2016 Strategy of Legal and Judicial Reforms marked the start of a comprehensive judicial reform agenda in Armenia. The Strategy contains measures to support the development of clear criteria for the appointment, promotion, and performance evaluation of judges. It also contains measures to harmonize with the relevant international standards the grounds and procedures of imposing disciplinary sanctions upon judges, and measures to facilitate the creation of an effective system of self-governance of the judiciary. Unfortunately, the Strategy was developed and approved without a broad consultation with civil society and most of the recommendations put forth by civil society were not included in the strategy. The Strategy does not provide a comprehensive assessment of human rights problems in the country nor does it evaluate the effectiveness or drawbacks of previous strategies. The rights to fair trial, effective legal remedy, and personal security are not included in the strategy. The risk of widespread corruption is not considered within the strategy at all.

[118] Council of Europe, Eastern Partnership - Enhancing Judicial Reform in the Eastern Partnership Countries. Working Group on "Professional Judicial Systems", project report Training of Judges, Strasbourg, May 2012

CONCLUSIONS

The current legislative framework and practice creates systemic problems precluding the establishment of an independent judiciary. While steps are taken to improve the qualifications of lawyers, the system is slow in transforming due to prevailing corruption and improper influence from the executive. The procedures for appointing, sanctioning and dismissal of judges remain problematic with the president's undue authority to intervene in the process. The dependence of judges of lower instance on senior judges affects the impartiality in judicial decision-making. The willingness of the authorities to address these issues within the 2012-2016 Strategy of Legal and Judicial Reforms is commendable, but lack of civil society participation in the design process resulted in a strategy that does not address key issues.

RECOMMENDATIONS[119]

- Improve the procedures for the appointment and promotion of judges by removing president's discretionary power in the process;
- Modify the grounds for disciplinary liability of judges by establishing clear and precise criteria in compliance with international standards and best practice; disciplinary proceedings should deal only with instances of gross and inexcusable professional misconduct and should not extend to the content of judges' decisions;
- Install institutional safeguards against corruption by imposing stricter penalties for those found guilty of corruption; conduct proactive prosecution of corruption cases;
- Ensure individual independence in adjudication by strictly prohibiting the practice of consultations of judges with their colleagues prior to delivering the judgment;
- Prescribe clear and predictable criteria for the Cassation Court's determination of admissibility of cassation appeals, precluding the arbitrary practice of the Cassation Court;
- Improve the free legal aid system by adopting a standalone law on free legal aid and promote access to legal assistance by establishing national authority to put into practice reliable legal aid;
- Introduce a conflict of interest procedure for removal of dependence and links between judiciary and prosecution;
- Create a transparent and accountable system of self-governance bodies anchored in the principle of equality of judges, and to preclude the involvement and decisive role of court Chairmen in the activities of self-governance bodies;

[119] Most of these recommendations were made by civil society from the start of the ENP and Eastern Partnership processes. Previous assessments can be found on Partnership for Open Society website at www.partnership.am

- Ensure transparency of implementation of 2012-2016 Strategy of Legal and Judicial Reforms by holding regular consultations with civil society representatives and reporting on implementation;
- Include human rights training in the initial training for judges and mainstream ECHR into different courses and training materials.

A.9 Fight against Corruption

EXECUTIVE SUMMARY

This report assesses the capacity of anticorruption institutions to prevent and fight corruption; the existing policy framework to fight corruption; the monitoring and evaluation system for ensuring effectiveness of anti-corruption measures; and the level of civil society involvement in such measures.

Findings show that Armenia lacks strong and effective institutions and mechanisms to fight corruption. Anti-corruption strategy implementation institutions are dysfunctional. Recently established commissions on ethics of the legislative and executive branches have limited jurisdiction. Law enforcement bodies have not made progress in detecting corruption, and despite multiple reports by investigative journalists revealing the engagement of officials in criminal acts, the majority of these cases have gone uninvestigated. Generally, all of these institutions are dependent on the president and prone to political pressure by the ruling party.

This report concludes that in order to effectively fight corruption, Armenia must guarantee the operation of strong and independent anti-corruption institutions guided by a consensus-based and concrete anti-corruption policy, and free from any political pressure. Recommendations relate to the adoption and support of a new Anti-corruption Strategy and Action Plan; development of legislation to ensure independent and effective anti-corruption institutions; amendment of public service legislation to strengthen oversight of the conduct of high-ranking officials; adoption of legal and practical measures for the elimination of convergence of business and politics; and criminalization of unjust enrichment.

INTRODUCTION

Corruption is a major problem that impedes political, economic, and social reforms. It contributes to poverty and emigration and deepens public distrust towards authorities.

According to international indices, corruption is a serious problem in Armenia that *does not show any significant improvement over the years. Transparency International's (TI)* 2012 Corruption Perception Index (CPI) gives Armenia a score of 34 on a scale from 0 to 100 (0 representing the highest level of corruption) and ranks Armenia 105 out of 176 countries. This is not a significant change from 2011, when Armenia scored 33 and ranked 129th.[120] According to TI's 2012-2013 Global Corruption Barometer (GCB), 82

[120] CPI is aggregated and calculated by TI with the use of data of prominent international organizations and reflects the opinion of businesses and experts about the level of corruption in a country. Given the change of methodology of the calculation of CPI in 2012 this index can be compared only to that of 2011. Increase from 33 in 2011 (not published) to 34 in 2012 for Armenia is within the range of the statistical error so does not indicate progress. It rather completes the recent years' picture of stagnation of corruption (2.6 in 2011, 2.6 in 2010, 2.7 in 2009). More information available on http://transparency.am/cpi.php.

percent of respondents in Armenia consider corruption to be a serious or very serious problem, and 43 percent think that it has increased over the last two years. The most corrupt institutions are perceived to be the courts, public officials and the public health system.[121] Freedom House's 2013 Nations in Transit study gives Armenia a corruption score of 5.25 (on a scale of 1 to 7, 1 representing the highest level of corruption), which was the same as its score in 2012. In accordance with the World Bank Governance Indicators of 2011, Armenia's 'control of corruption' score was 30 on the scale from 1 to 100 (1 representing the lowest level of corruption). Its score in 2010 was 31.

Armenia has the following anti-corruption institutions:

- RA Anti-Corruption Council, charged with general oversight of the Anti-Corruption Strategy and Anti-Corruption Strategy Monitoring Commission;
- RA Ethics Commission of High-Ranking Public Officials, responsible for the collection and review of asset and income declarations, consulting of high-ranking executive officials on conflict of interest situations, issuing conclusions on their ethical misconduct;
- RA National Assembly Committee on Ethics, responsible for issuing conclusions about the need for declaration of conflict of interests and misconduct of members of parliament;
- RA Police, Special Investigative Service and National Security Service, each responsible for the investigation of different types of corruption-related crimes, in accordance with the RA Criminal Code.[122] Investigation processes are overseen by the RA Prosecutor's Office.

The government's anti-corruption policies are formulated by the Anti-Corruption Strategy and its Implementation Plan. The first such strategy and action plan were in force from 2003 to 2006, the second, from 2009 to 2012. The former was assessed as ineffective, largely due to the fact that it did not take a balanced approach to ensure the presence of all three major components of an anticorruption policy – prevention, detection and public support – but rather focused on preventive measures. The second strategy received more positive feedback from local and international experts, as it was more comprehensive. It clearly stated problems and measures to be taken to rectify those problems. In addition to prevention, it focused on detection and public participation in the fight against corruption. It also contained a monitoring and evaluation plan, which included the participation of civil society. Despite these improvements, this document was not properly implemented. On December 31, 2012, the 2009-2012 Anti-Corruption Strategy and Implementation Plan expired and currently, the country does not have an up-to-date document guiding anti-corruption policy.

[121] GCB is developed based on household surveys. More information available on http://transparency.am/gcb.php.
[122] List of corruption related crimes was approved by Prosecutor General's Order N82 from November 19, 2008

The government has taken some steps to engage NGOs in its activities related to anti-corruption, however such efforts are limited and usually regarded as an imitation of democratic decision-making. There are a few non-governmental organizations in the country systematically pursuing corruption-related issues. Some of them demonstrate strong opposition to the government in principle-related matters, other have a more cooperative or non-confrontational stance regardless of conflicts in viewpoint or approach.

METHODOLOGY

The methodology for the assessment of progress in the fight against corruption is based on the multilateral dimensions of the 2012-2013 Eastern Partnership Roadmap; the existing policy framework to fight corruption; the monitoring and evaluation system for ensuring effectiveness of anti-corruption endeavors; and the level of civil society involvement in such endeavors.

The assessment was conducted using data collected by the Transparency International Anticorruption Center (TIAC), which draws from the following sources:

- study of legal acts regulating the work of anti-corruption institutions;
- websites of anti-corruption institutions, such as the RA Ethics Commission for High-Ranking Public Officials (www.ethics.am), National Assembly Committee on Ethics (www.parliament.am), Prosecutor's Office (www.genproc.am), Police (www.police.am), Special Investigative Service (www.investigatory.am), National Security Service (www.sns.am), President (www.president.am) and Government (www.gov.am);
- public statements of state officials in respect to the quality of implementation of the 2009-2012 Anti-Corruption Strategy and its Implementation Plan and possible directions for a new strategy;
- media articles on corruption-related cases and their examination by law enforcement authorities;
- reports of international organizations, including the OECD Anticorruption Network for Eastern Europe and Central Asia, Istanbul Anticorruption Action Plan: Second Round of Monitoring Report for Armenia[123], and GRECO Third Evaluation Round Compliance Report on Armenia;[124]
- lists of participants in the government's anti-corruption initiatives and their input;
- responses of public institutions to the inquiries of TIAC regarding the implementation of the 2009-2012 Anti-Corruption Strategy and its Implementation Plan;

[123] OECD Anti-Corruption Network for Eastern Europe and Central Asia. Second Round of Monitoring. Armenia. 2012. http://www.oecd.org/corruption/acn/48964985.pdf

[124] Group of States Against Corruption. 2012. Compliance Report on Armenia. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2921_Armenia_EN.pdf

- responses of ethics commissions to the inquiries of TIAC regarding the pursuit of individual cases of conflict of interest and other breaches of the code of ethics;
- responses of law enforcement authorities to the inquiries of TIAC regarding the pursuit of individual corruption-related cases.

RESULTS

The current assessment reveals that state policies on the fight against corruption have not achieved any considerable outcomes so far because of poor implementation. There are no signs of improvement over the many years that such policies have been in place.

The RA Anti-Corruption Council held only one session in 2012 and none in 2013. The Anti-Corruption Strategy Implementation Monitoring Commission has remained entirely inactive.

The government's Anti-Corruption Strategy and its Implementation Plan for 2009-2012 were not completely and adequately implemented and since January 2013, the government does not have an up-to-date document to shape its anti-corruption agenda.

Since its establishment in 2012, the Ethics Commission of High-Ranking Public Officials has convened for three sessions. The RA National Assembly Committee on Ethics has held 15 sessions. Discussions have mainly focused on the appeals of civil society organizations and active citizens regarding the misconduct of high-ranking officials.

Most of the appeals regarding the behavior of high-ranking officials addressed by TIAC to the ethics commissions (6 to the Ethics Commission of High-Ranking Public Officials and 7 to RA National Assembly Committee on Ethics) were rejected on the grounds of failure to identify unethical conduct or conflict of interest. In one instance, the Ethics Commission of High-Ranking Public Officials thoroughly examined the case related to the conflict of interest of the Head of State Revenues Committee, but dismissed the case because of alleged legislative limitations. In another, the National Assembly Committee on Ethics rejected TIAC's appeal on the grounds that there has already been an appeal submitted by another person for the same incident. And there has been only one case of an appeal leading to action, when the National Assembly Committee on Ethics recognized the failure of a member of parliament to comply with the Code of Ethics in his relations with a journalist.

According to the report of the Deputy Prosecutor General, there were fewer criminal cases in 2012 than in previous years.[125] Moreover, 2012 saw a lower proportion of cases where the opening of criminal proceedings was rejected (402 out of 712, or 58% in 2011, compared to 418 out of 813 cases, or 51% in 2012). The number of cases taken to court has decreased from 129 in 2011, to 125 in 2012, though the number of accused

[125] Pastinfo. December 2013. Retrieved form http://www.pastinfo.am/hy/node/8223

persons has increased from 158 in 2011, to 180 in 2012. A large share of corruption crimes is related to tax evasion.[126]

Based on the reports of investigative journalists, there has not been adequate follow-up of cases related to high-ranking officials reported by TIAC. All eight corruption reports (five in 2012 and three in 2013) by TIAC on criminal acts of high-ranking officials (two members of parliament, two ministers, two heads of government committees, the head of the president's oversight service) addressed to the Prosecutor General, the Police and the Special Investigative Service, were rejected on the basis of absence of crime, without due examination of materials and with no proper justification of rejection.

There are very few cases of pursuit of high-ranking officials accused of corruption (Governor of Vayots Dzor and Deputy Governor of Kotayq) in spite of a large volume of materials published by investigative journalists as well as reports of the Chamber of Control.

On May 29, 2013, Hetq Investigative Journalists NGO published information about the participation of Prime Minister Tigran Sargsyan as an equal shareholder of an offshore company called Wlispera Holdings Limited (WHL) together with the Primate of the Armenian Apostolic Church, Ararat Diocese Archbishop Navasard (Samvel) Kchoyan and his godson, an infamous businessman, Ashot Sukiasyan. The latter is known to have seized the assets of another businessman, Paylak Hayrapetyan. The publication also exposed the involvement of Ameria Bank, which transferred loans to WHL for the support of a diamond industry project, in spite of its failure to abide with the terms of the loan agreement.[127] Both the prime minister and the archbishop refuted any connection or knowledge of their engagement as owners of the company, registered in Cyprus. Prime Minister Sargsyan applied to the Prosecutor General's Office to investigate how his name appeared on the Cyprus registry document of the company. The Prosecutor's Office was informed of Paylak Hayrapetyan's seizure of assets for the purpose of getting the loan and did not act on this knowledge for almost a year. After Ashot Sukiasyan was convicted in this case, he sent a letter to the Prosecutor General confessing that he had added the names of the prime minister and archbishop the registration of the offshore company without their knowledge.[128] However, the

[126] RA report on Corruption Crimes Investigation. 2012. See links below for more detail: Zhttp://www.genproc.am/upload/File/Korupcia%20hetaqnnutyun,%20naxaqnnutyun%202011.pdf; http://www.genproc.am/upload/File/Korupcia%20dataqnnutyun2011.pdf; http://www.genproc.am/upload/File/Korupcion%20hanc_-hetaqnnutyan%20ev%20naxaqnnuthayn%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf; http://www.genproc.am/upload/File/Korupcion%20hanc_-datakan%20qnnutyan%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf

[127] Hetq online. 2013. May 29. "Cyprus Troika: Who 'Stripped' Businessman Paylak Hayrapetyan of His Assets?". Retrieved from http://hetq.am/eng/news/26891/ovqer-en-paylak-hayrapetyani-unezrkman-hexinaknery-ofshorayin-eryaky.html; http://hetq.am/eng/news/27709/offshore-labyrinth-armenian-style.html

[128] Hetq online 2013. June 18. Ashot Sukiasyan: 'I wrote names of Prime Minister and Archbishop on off-shore document'. Retrieved from: http://hetq.am/eng/news/27474/ashot-sukiasyan-%E2%80%98i-wrote-names-of-prime-minister-and-archbishop-on-off-shore-document%E2%80%99.html

Prosecutor of Cyprus stated that it is not possible to register a company using the name of a person without his or her knowledge.[129] The case was widely discussed in traditional and social media, and people were waiting for the reaction of President Serzh Sargsyan, since those who hold public office in Armenia are prohibited by law to be involved in business, according to the Armenian Constitution.

A few days later, on June 13, 2013, the Chamber of Control presented its Annual Report to the National Assembly. The report revealed enormous corruption risks related to expenditure, amounting to about 700 billion Armenian drams (roughly 70% of the country's budget)[130] particularly pointing to the procurement and construction sectors.[131] This information, too, was widely discussed among the public, which expected that law enforcement bodies would initiate criminal proceedings and launch investigations on cases of embezzlement.

The ultimate surprise for the Armenian public was the president's reaction to these developments. On June 29, 2013, Serzh Sargsyan held a discussion on the effective use of budgetary resources, strengthening of oversight and decreasing corruption risks, where he actually skipped the offshore scandal – the largest case of this nature in the history of the Armenian government – and went on to blame the Head of the Chamber of Control for criticizing the government's work and publicly expressing political statements implying the embezzlement of 70% of the budget. He instructed the Prosecutor General to launch an investigation of the facts revealed by the report. He claimed with confidence that the embezzlement amounted to no more than 200-300 million Armenian drams.

The government did take some steps to engage NGOs in its very limited range of anti-corruption activities, such as invitations to participate in the session of the Council on the Fight Against Corruption, and the Open Government Partnership working group.

DISCUSSION

The Armenian government continuously fails in its declared fight against corruption, which has now been in progress for a decade, since 2003. In the same period of time, there have been minor improvements in policies and in meeting international obligations. Monitoring of the anti-corruption efforts of the Armenian government reveals a lack of political will to fight against high-level corruption, which is largely attributed to the convergence of business and politics. Influential entrepreneurs appear in the parliament to vote for laws serving their own interests, while ministers and other high-ranking officials run their own businesses or back others.

[129]Radio Liberty. 2013. July 1. "Cyprus Prosecutor Adds Fuel To Armenian Corruption Scandal". Retrieved form: http://www.armenialiberty.org/content/article/25033483.html
[130]Republic of Armenia Press. 2013. October 2. Investigations must be given a Legal Assessment. http://www.hhpress.am/index.php?sub=hodv&hodv=20130621_15&flag=am
[131]Report of Control Chamber 2012. http://www.coc.am/YearReportsArm.aspx?ReportYear=2012

The Armenian people, for the most part, do not believe that the government's will to fight against corruption is sincere. According to TI's 2012-2013 GCB, 53 percent of Armenians perceive the government's anti-corruption actions to be ineffective or very ineffective, while only 21 percent see them as effective or very effective – a 6 percent decrease from 2010.[132] The absence of significant results in the fight against corruption is not viewed as an unusual phenomenon against the backdrop of consistently falsified elections and the unyielding political dominance of ruling and corrupt elites. Doubts on the true political will to fight corruption are further increased by the questionable reputations of those assigned to lead the country's fight against corruption.

The engagement of lawmakers and high-ranking executive officials in entrepreneurial activities is prohibited by the Armenian Constitution, however law enforcement bodies turn a blind eye to the business activities of these officials, interpreting regulations as they see fit. In other cases, officials register their businesses under the names of relatives, and the resulting wealth does not appear on their asset and income declarations. Public Service Law is very narrow in this regard and includes persons with a blood relationship of up to the second degree of kinship under the definition of family. It even disregards the first degree of kinship in cases when the relative (e.g. son and daughter) lives separately.

Anti-corruption institutions

Armenia does not have specialized institutions that are fully responsible for the coordination and progress of the country's anti-corruption efforts. The existing structures are not effective, which is due to several factors, such as limited legislative authority, insufficient resources and lack of independence from political influence.

Based on their composition, both the Council for the Fight Against Corruption, led by the prime minister and the Anti-Corruption Strategy Implementation Monitoring Commission, led by the president's assistant, depend on the president. In addition, these institutions do not have the resources to ensure coordination, monitoring and effective implementation of activities aimed at fighting corruption. The Armenian government has never allocated a budget to match its promises of the fight against corruption with concrete measures.

Both of the ethics commissions aimed at preventing corruption were established in the first half of 2012 and in their early days, they seemed to function somewhat effectively. However, a year an a half later, it is clear that the Public Service Law is limited in its ability to control the activities of high-level officials. The Ethics Commission of High-Ranking Public Officials is not authorized to oversee the conduct of officials who do not have supervisors, such as the president, the ombudsman and the head of the Special Investigative Service. The Ethics Commission is not mandated to carry out analyses of assets and income declarations, nor can it report cases of criminal activity or

[132] Transparency International. 2013. Global Corruption Barometer. Armenia. http://transparency.am/gcb.php

inconformity of assets with respective incomes. The commissions not able to proactively initiate proceedings in cases of conflict of interest. The conclusions of these commissions on conflict of interest do not have legal implications, nor do they lead to the management of conflict to interest situations. Both of commissions are under the strong influence of the president. In particular, the Ethics Commission of High-Ranking Public Officials is formed by the president, resides in the president's office and does not have any control over the president.

There has been no noticeable progress in the performance of law enforcement authorities in the detection of corruption-related crimes. According to the Deputy Prosecutor General, the examination of corruption reports is often superficial and unsound.[133] The failure to pursue cases with the engagement of high-ranking officials indicates no progress and emphasizes a lack of political will to eradicate corruption at the highest level. It should be noted that according to GCB 2012-2013, about 66 percent of respondents think of the police as a corrupt institution. Sixty-seven percent indicated that they would not report cases of corruption. Of those who would not report corruption, 68 percent believe that doing so will not change anything.[134]

Policy framework

The 2009-2012 Anti-Corruption Strategy and its Implementation Plan included the main components of an effective anti-corruption policy (i.e. prevention, detection, and public participation in the fight against corruption) as well as specific measures in those areas. 70 percent of the actions outlined in the document deal with prevention of corruption, 15 percent deal with criminalization, and 15 percent with civil society's participation, providing measures in money laundering, public finance management, public procurement, tax and customs, judiciary, police, electoral system, local self-governance, education, healthcare, etc.[135]

As of January 2013, the Armenian government does not have a document guiding its anti-corruption policy. At various events and negotiations with international organizations, the government has stated its interest in developing a new strategy and action plan, but it is not yet clear what the focus or format will be of such a document.

The lack a new anti-corruption strategy and implementation plan points to the indecisiveness and lack of urgency within the leadership of the country to fight corruption. On the one hand, there are international obligations and expectations to be met; on the other hand, there is a lack of true political will.

[133] Pastinfo. December 2013. Retrieved from. http://www.pastinfo.am/hy/node/8223
[134] Transparency International. Armenia Survey Results. 2013. Retrieved from http://www.transparency.org/gcb2013/country?country=armenia&q=7#question7
[135] OECD Anticorruption Network for Eastern Europe and Central Asia Istanbul Anticorruption Action Plan Second Round of Monitoring Report. Retrieved from http://www.oecd.org/corruption/acn/48964985.pdf

Monitoring and evaluation mechanisms

The 2009-2012 Anti-Corruption Strategy and Action Plan included a results-based monitoring and evaluation plan, which unfortunately was not effective in practice. The monitoring and evaluation methodology should have been developed in 2010 and this did not take place.[136]

There have been only two interim monitoring reports on the implementation of the Strategy and Action Plan – for 2010 and the first half of 2011 – and the government still has not produced a final evaluation on the implementation of the Anti-Corruption Strategy. According to data received from entities in charge of specific anti-corruption activities, some of the planned activities of the 2009-2012 Anti-corruption Strategy and its Implementation Plan have been completed while others have not.

According to the 2009-2012 Anti-Corruption Strategy and its Implementation Plan, each ministry had to develop and implement its own anti-corruption strategy. However only the Ministry of Education and Science has developed an Anti-corruption Action Plan, which does not correspond with the measures of the respective section of the 2009-2012 Anti-Corruption Strategy and Implementation Plan.

GRECO's Third Evaluation Round Compliance Report on Armenia, published in December 2012, noted that Armenia had implemented 16 of the 19 recommendations contained in the Third Round Evaluation Report, while three were partially implemented. However GRECO's recommendations were related to incriminations and transparency of party funding, which cover only a limited set of issues within the government's anti-corruption agenda.

Civil society involvement

The 2009-2012 Anti-Corruption Strategy suggested certain measures for civil society's participation in the fight against corruption, including engagement in the monitoring and evaluation process. However, along with other activities of the action plan, these were not implemented. At the same time, with the support of international donors, some NGOs carried out a limited number of projects aimed at monitoring and evaluating anti-corruption measures in select areas.

There has been some progress in the government's efforts to include NGOs in the decision-making process. However the general consensus, given the lack of public trust in the government, is that these efforts are more to give the impression of participation and democratic governance, than an earnest effort to involve civil society in the fight against corruption.

[136] OECD Anticorruption Network for Eastern Europe and Central Asia Istanbul Anticorruption Action Plan Second Round of Monitoring Report on Retrieved from http://www.oecd.org/corruption/acn/48964985.pdf

CONCLUSIONS

Though Armenia has different institutions dealing with anti-corruption, there is no specialized structure that would coordinate the respective activities of various institutions, analyze gaps and impacts, and provide recommendations. Of the few efforts undertaken by the government, most are of a piecemeal nature and changes are not noticeable or sustainable.

All current anti-corruption institutions, along with many other structures in Armenia, are highly dependent on the president of the country, either directly (e.g. appointed by the president, reporting to the president) or indirectly (e.g. led by the prime minister, appointed by the president). The Republican Party of Armenia, led by the president, represents major business interests in Armenia. So naturally, anti-corruption institutions may not operate free from the influence of the president and his political support team. To date, there is no interest manifested by the leadership of the country to decisively separate politics from business.

Even though significant progress has been made in the transparency of assets and income declarations of public officials, the fact that they are made public does not lead to legal consequences in cases of unjust enrichment. Armenia has ratified the UNCAC Convention, which includes the stipulation of Article 20 on illicit enrichment. As this article is not integrated into Armenian legislation, law enforcement bodies do not have any directive to pursue the enormous and suspicious gaps within public servants' salaries and the volumes of assets and incomes declared (or hidden) by public officials.

RECOMMENDATIONS

The following is a list of the most critical recommendations to improve the results of anti-corruption efforts in Armenia:

- Develop a new Anti-Corruption Strategy and Implementation Plan and ensure appropriate funding for the planned activities based on the evaluation of the 2009-2012 Anti-Corruption Strategy and Implementation Plan and the input of stakeholders;
- Adopt legal acts and amendments to ensure the establishment and operation of independent and effective anti-corruption coordination/evaluation institution(s), with strong jurisdiction and guaranteed funding, led and composed by prominent and honest persons;
- Amend Public Service Law to enlarge the scope of activities of the Ethics Commission of High-Ranking Public Officials to include mandatory reporting of divergence of data on assets and incomes to the law enforcement bodies and to oversee the conduct of all high-ranking officials, including the president, ombudsman, and head of the Special Investigative Service;

- Expand the definition of family relationships in the Public Service Law to include up to the fifth degree of kinship, regardless of whether family members married or live separately from high-ranking officials;
- Take concrete measures to disintegrate business and politics. As necessary, introduce clarifications and amendments to legislation to avoid misinterpretations of banning regulations;
- Introduce illicit enrichment to the Criminal Code and develop respective regulations to ensure analysis of available information, such as assets and income declarations, and pursuit of respective cases.

A.10 Fight against Cybercrime

EXECUTIVE SUMMARY

This report provides an assessment of developments in the fight against cybercrime in Armenia. It outlines the main legal, institutional and policy challenges in this field. The Budapest Convention on Cybercrime is the main document guiding legislative and practical measures in this area, thus the report outlines how the provisions of the Convention are incorporated in national legal instruments. The report also examines current practices in combating cybercrime and the challenges encountered by authorities.

INTRODUCTION

The Republic of Armenia lacks the legislative and practical mechanisms to make the fight against cybercrime more effective. Although it is an area prioritized by the government, there is no overarching strategy for preventing and combating cybercrime. The Budapest Convention on Cybercrime and Concept on Information Security are the main guiding documents in this area, but they are only guidelines and do not hold any legislative authority in Armenia. The provisions within the current Criminal Code are not in compliance with the standards set by the Budapest Convention and do not provide a basis for the effective investigation and prosecution of cybercrime. Currently, a concept for a new Criminal Code is being developed. Unfortunately, it is a closed process that does not involve the participation of civil society, and it is not yet clear how the concept will address cybercrime.

There is a serious need for a coordinated effort to fight cybercrime, particularly given Armenia's vulnerability to cyber attacks[137]. According to Kaspersky Lab, Armenia ranks 4th in a list of 20 countries that are at the highest risk of online infection.[138] 66.6% of the Armenian population[139] has access to the internet, and this number is continuously growing.

Since 2012, a number of government agency websites and online media have been targets of large-scale DDoS attacks.[140] Throughout 2013, Turkish and Azerbaijani hacker groups continue to pose a major risk to Armenian networks and websites[141]. In

[137] Samvel Martirosyan, "Globe'' analytical journal N. 3, 2013
http://www.noravank.am/arm/articles/security/detail.php?ELEMENT_ID=6978
[138] Securelist, *Kaspersky Security Bulletin 2012. The overall statistic for 2012, Web threats*,
http://www.securelist.com/en/analysis/204792255/Kaspersky_Security_Bulletin_2012_The_overall_statistics_for_2012
[139] Internet World Stats, *Internet Usage and Population Statistics, Armenia-2012*,
http://www.internetworldstats.com/asia.htm#am
[140] Mediamax News Agency, http://www.mediamax.am/en/news/society/5783/#sthash.MXnCdL7h.dpuf
[141] Samvel Martirosyan, ''Globus'' analytical journal N. 9, 2012

order to address these risks, the government set up a secure hosting server for government websites. However, the websites of online media outlets remain vulnerable to cyber attacks. Moreover, the secure hosting provided to government websites covers only the risks associated with DDoS attacks, and not other types of cyber attacks.

Armenian law enforcement bodies have undergone several trainings on the topic, with the support of international and foreign missions to Armenia, particularly OSCE and the US Embassy. However there is still a lack of awareness and professional knowledge on cybercrime issues among regional police officers and judges. According to Armenian telecommunications industry representatives, many of the cybercrime reports submitted by them or their clients have either remained uninvestigated or have not even been filed by the relevant law enforcement authorities. [142] The absence of mechanisms for the protection of personal data, privacy and confidentiality is also an issue that currently remains unaddressed.

METHODOLOGY

This report has been prepared through an analysis of national legislation, relevant international documents and recommendations by international experts, existing international best practices, media articles, and interviews with key industry representatives.

RESULTS

The fight against cybercrime is not yet systematized and there are a number of concerns on its effectiveness. In 2011, the enhancement of cyber security and the fight against cybercrime were addressed as issues of strategic importance for Armenia.[143] Despite this recognition, the government has not developed an overarching strategy for dealing with cybercrime and the priority areas of cyber security have not yet been defined. The Concept on Information Security addresses the detection and prevention of cybercrime as one of its objectives. [144] However the concept does not have an action plan and it is not clear which activities have been carried out to fight cybercrime and to address data security issues in general.

The provisions of the Criminal Code that relate to cybercrime are not in compliance with the standards set by the Budapest Convention. They do not provide an efficient mechanism for combating cybercrime, nor do they provide safeguards for the protection of human rights and fundamental freedoms during the investigation process. Moreover, law enforcement authorities and judges do not have the necessary knowledge and skills

[142] In 2013, massive illegal traffic routing via clients softswitches was recorded and reported to police, which however, failed to investigate the situation properly.
[143] The order of the RA president on confirming the national program for enhancing the efficiency of the fight against cybercrimes in Armenia, 29 December 2011 NK-232-N
[144] The order of the RA president ''On Adopting the Doctrine of the RA Data Security''

to apply international standards in cybercrime investigation and require substantive capacity building in this regard.

DISCUSSION

Legal aspect

Armenia still lacks policy documents defining long- and short-terms objectives in preventing and combating cybercrime. Presidential Decree No NK-97 of 26 (July 2009) on the adoption of the Concept on Information Security is one of the few policy documents in this sphere. The Decree defines general objectives and activities, but does not include specific tasks and does not comply with the policy obligations defined by the Budapest Convention on Cybercrime. Nevertheless, the Decree obliges the government to develop a detailed action plan for the achievement of the objectives defined by the Concept. In 2012, the government adopted the National Program on Fighting Against Organized Crime, which defines activities aimed at strengthening government capacity to combat cybercrime. To ensure greater effectiveness in the fight against cybercrime, a National Strategy on Cyber Security/Information Security should be developed.

After the ratification of the Budapest Convention on Cybercrime, the Armenian government undertook some steps towards establishing relevant structures, such as a point of contact in the police force, within the Department on Organized Crime. Within the Prosecutor General's office, the Department for Investigation of Cases by National Security Bodies was renamed, the Department for Cases Investigated by National Security Bodies and Cybercrimes. However these changes are merely technical.

Provisions of the RA Criminal Code that regulate the prosecution of cybercrime offenses do not fully correspond to the Budapest Convention on Cybercrime. Chapter 24 of the Criminal Code includes seven articles on crimes against computer systems and computer data security. There are also separate articles defining crimes committed through computers, like computer fraud and computer forgery, dissemination and extortion of pornographic materials.[145] However the issue remains that the Criminal Code does not give a definition of "substantive" and "considerable" damage, which allows for ambiguity in the prosecution of cybercrime offenses.

In 2012, the State Cyber Security Committee reviewed the RA Criminal Code and found that several provisions do not correspond with the standards set by the Budapest Convention. More specifically, the Criminal Code is not in line with the definitions laid down in Article 1 of the Convention.[146] That is, the definitions in the Criminal Code of terms such as "computer system", "computer network", "computer data", and "traffic

[145] RA Criminal Code, Chapter 24, Articles 181, 144, 137, 140, 166
[146] Council of Europe, Cybercrime legislation-country profile Armenia, Version April 2012, CyberCrime@EAP Project, www.coe.int/cyberccrime

data" differ from those in the Convention.[147] Based on its review, the State Cyber Security Committee demanded that the RA Criminal Code clauses on cybercrime be brought in line with Articles 2-10 of the Convention. According to these articles, states must take legislative measures to prescribe responsibility for illegal access, illegal interception, data interference, system interference, misuse of devices, computer-related forgery, computer-related fraud, and child pornography offenses.

The Armenian legislative framework does not meet the Budapest Convention requirement of ensuring adequate mechanisms for privacy protection, and a legislative gap in the Criminal Code creates possibilities for avoiding criminal prosecution in certain cases of illegal access to the computer system. Particularly, the Criminal Code stipulates that illegal access requires additional qualifying elements[148] such as significant damage, while the term "significant damage" is not defined, allowing for inconsistent application of the law. In certain cases, this leads to the state's inability to fulfill its obligation to protect personal inviolability and privacy of communications, as outlined in Article 8 of the European Convention on Human Rights. Meanwhile, the Budapest Convention directly calls for states to ensure the implementation of procedural measures that will guarantee the protection of human rights and fundamental freedoms.[149]

In its review of the implementation of the Budapest Convention, the State Cyber Security Committee also addressed clauses relating to the expedited preservation of protected computer data[150]. In this regard, the Committee states that RA legislation does not meet the requirements of the Convention and does not provide adequate possibilities for expedited preservation of protected data.

Electronic evidence and results of computer forensic investigations are not used and it is not clear how evidence such as viral code or computer system log files can be used as evidence in the courts. According to the 2012 report of the Prosecutor General, 41 cases were filed that relied on the use of such evidence. The information from the prosecution states that the main targets of such violations are social networks, resulting in a violation of the right to privacy. Although there is a Law on Personal Data, it does not fully address the issues of privacy, private life and confidentiality, and does not provide

[147] Article 251 of the Criminal Code does not correspond to the logic of the Convention, which protects the entire computer system. The above-mentioned article criminalizes only the fact of illegal access to the computer system, while the Convention makes differences between the terms "computer system" and "computer data" and consequently these actions are separately criminalized. According to the Convention, there is no computer data system.

[148] The State Cyber Security Committee leaves it up to the State to attach qualifying elements to make a person liable for criminal offense, however, the current practice of computer related crimes and the practice of the other States shows that the mere illegal access should be punishable as an criminal offense. Meanwhile Article 251 of the Criminal Code prescribes criminal responsibility only with the existence of the following quality conditions: violation of protective system, destruction, copy or changes of the computer data by negligence, isolation of the information, taking out the computer from the computer system, bringing out of hardware, considerable damage.

[149] European Convention on Cybercrimes, Article 15

[150] Cybercrime Convention Committee (T-CY), *Assessment report Implementation of the preservation provisions of the Budapest Convention on Cybercrime*, Strasbourg, 25 January 2013, www.coe.int/TCY

mechanisms for personal data protection. The European Union is financing a project called, "Transactional e-Governance Development in Armenia" which will develop a new draft law on personal data protection which will be cohesive with the EU Data Protection Directive (Directive 95/46/EC[151]).

Legislation meant to ensure control over the operations of electronic service providers is inadequate, as it does not fully define the terms for data preservation. The laws on Criminal Procedure, Operative Investigation and Electronic Communication stipulate that law enforcement agencies are entitled to monitor, copy, and record information transmitted via telephone and email for use in investigations and court hearings. However, the aforementioned regulations are not sufficient to ensure operative data collection during cybercrime investigation. Moreover, the absence of special regulations on the handling and investigation of cybercrime leads to abuse of power by law enforcement agencies during computer searches, computer data seizure and acquisition of electronic evidence.

A new concept for the Criminal Code is now under development. Civil society is not invited to participate in this process, thus it is difficult to say whether these issues will be addressed in the new concept.

Institutions and capacity building

To ensure the effectiveness of anti-cybercrime measures, a coordinated approach is needed in establishing a set of legal, technical, procedural, and capacity building measures. International cooperation is also of vital importance.[152]

In order to investigate cybercrime, a special department was established in the Office of Prosecutor General. However this department does not have the human capacity to address this issue on a national scale. According to the 2012 report of Prosecutor General's office, with cybercrime consistently on the rise, it is now a problem that affects every region of the country.[153] Regional police departments lack the human resources to effectively investigate digital crimes. From an infrastructural perspective, limited international cooperation, due to lack of resources, is also of concern. This problem becomes especially noticeable during the investigation of international crimes, when traffic data originates from other countries and information is required from outside parties. OSCE Yerevan and the US Embassy in Armenia provided support for several professional training courses that dealt with cybercrime.[154] Current practice shows that the entire system – both the police and the courts

[151] The Data Protection Directive (Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data) is a European Union directive which regulates the processing of personal data within the European Union

[152] Stein Schjolberg and Solange Ghernaouti-Helie, *A Global Treaty on Cybersecurity and Cybercrime*, (University of Lausanne, Switzerland, 2011)

[153] Stein Schjolberg and Solange Ghernaouti-Helie, *A Global Treaty on Cybersecurity and Cybercrime*, (University of Lausanne, Switzerland, 2011)

[154] EU/EC regional seminar dedicated to the fight against cybercrimes was held in Yerevan, *PanArmenianNet,* 28 April 2012http://www.panarmenian.net/arm/news/105224/

– lacks adequate knowledge to ensure due process of cybercrime investigation and prosecution of perpetrators.

CONCLUSIONS

The fight against cybercrime is not yet an organized, coordinated effort in Armenia. This is cause for concern, given the fact that both the cybercrime rate and the number of internet users in Armenia are on the rise. There is a pressing need for a national strategy on fighting cybercrime, coupled with clear and effective legislation. Due to legislative gaps and the absence of safeguards, victim of cybercrime are not adequately protected and cybercrime investigations are ineffective. Thus, an overarching national strategy on cyber security and information security is needed.

Aside from legislative improvements, there is a significant need for capacity building of law enforcement authorities and judges, to enable them to properly apply international standards regulating this field. In order for progress to be made in this area, it is necessary for the judiciary and law enforcement agencies to be competent in modern technologies and the specificities of cybercrime. It is also necessary to develop a guiding document, which will include guidelines for all the relevant issues in the field, particularly legal, technical and infrastructural issues.

RECOMMENDATIONS

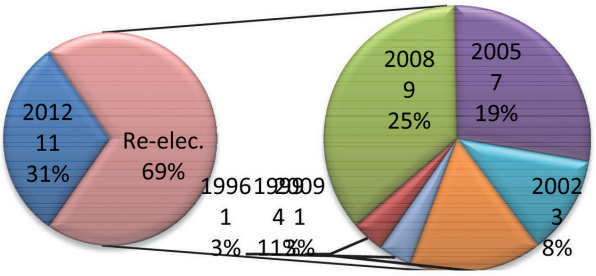
- Develop a standalone national cyber-security strategy; as a part of the national strategy, develop continuous cyber security risk assessment model based on vulnerabilities, threats and possible impact criteria;
- Create a guiding document on best practices, principles and/or frameworks on information security
- Ensure that the new Criminal Code is based on the standards set by the Budapest Convention
- Adopt an effective mechanism for enforcement of the legislation on personal data protection, in accordance with the requirements of the Council of Europe Convention for the Protection of Individuals on Automatic Processing of Personal Data;
- Make use of international standards in the field of cyber security and employ safe security techniques to minimize the number of successful cyber security attacks;
- Develop and enforce a continuous professional training system for judges, law enforcement agencies and forensic experts;
- Develop a repository of knowledge on cyber security-related issues (trends, technical expertise, case studies, risk identification);
- Promote a culture of cyber security (information about risks, provision of legal advice, etc.).

Appendix 1

Table 1: January 2012 - June, 2013 elections and charts of results of 2012 elections of community mayors of the RA cities

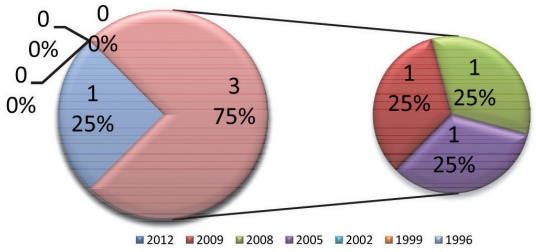
Table 1 depicts the number of elections held during 2012- June, 2013 according to the type of elections and their regional significance. The chart summarizes the results of elections held in RA city communities. In 2012 elections of overall 36 community leaders were held throughout RA 10 regions. It becomes clear from the chart that as a result of the elections only 1/3 of the mayors have changed. Moreover, only RPA, PAP and non-partisan candidates were elected to take on the Mayor's office. The proportion of re-elected RPA, PAP member mayors and candidates having retained their positions is also noteworthy.

Type of elections	Aragatsotn	Ararat	Armavir	Gegharkunik	Lori	Kotayk	Shirak	Syunik	Vayots Dzor	Tavosh	Yerevan	National	Total
NA Proportional												1	1
NA Majoritarian												3	3
City council member	90	85	93	53	95	62	113	93	35	46	1		766
Community leader	91	76	68	56	93	52	99	85	30	50			700
RA Presidential												1	1
Total	**181**	**161**	**161**	**109**	**188**	**114**	**212**	**178**	**65**	**96**	**1**	**5**	**1471**



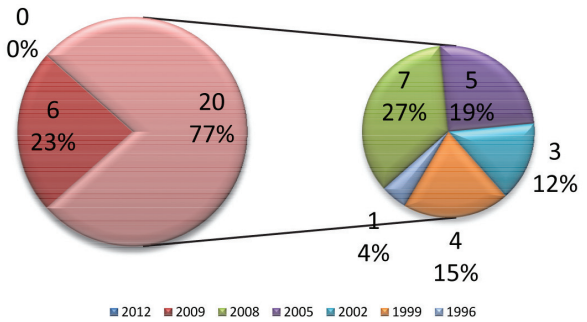
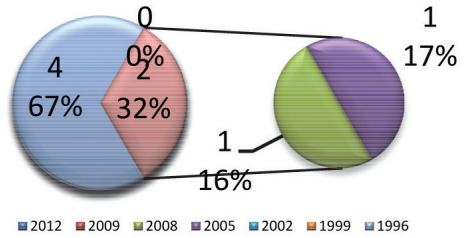
1.

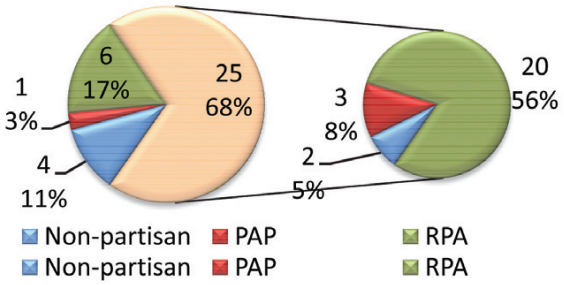
This chart reveals that as a result of 2012 elections of city community leaders, 69% (25 mayors) of the former mayors were once again re-elected, and only 36% (11 mayors) were for the first time elected in the Mayor's position.
Out of the re-elected mayors, the one elected the earliest goes back to 1996.

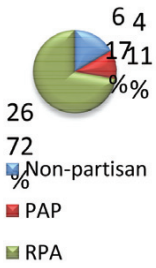


2.

The following chart shows that out of elected PAP member candidates 25% (1 mayor) was elected for the first time, while 75 % (3 mayors) were subsequently re-elected.

 3.	This chart shows that out of elected RPA member candidates 23% (6 mayors) were elected for the first time, while 77 % (20 mayors) were subsequently re-elected.
 4.	The chart shows that out of elected non-partisan candidates 67% (4 mayors) were elected for the first time, while 33% (2 mayors) were subsequently re-elected.





5.

This chart illustrates the number of re-elected mayors and first time elected ones according their party affiliation. 17 % (6 mayors) of first time elected mayors are RPA members, whereas, 3 % (1 mayor) are PAP members, 11 % (4 mayors) are non-partisan. 56 % (20 mayors) of re-elected mayors are RPA members, whereas, 8 % (3 mayors) are PAP members, 5 % (2 mayors) are non-partisan.	As a result of 2012 community elections, 72 % out of elected mayors are RPA members, while, 17 % are non-partisan and 11 % are PAP members.

Official data from the websites of the RA CEC (www.elections.am) and the Ministry of Territorial Administration (http://www.mta.gov.am/hy/) were used for compiling the tables and charts.

Appendix 2

Tables on trust rates towards NA, LSG Bodies and Mass Media in the Republic of Armenia

The tables below reflect the level of trust on the part of the citizens towards the aforementioned institutes during 2011 and 2012 and ascending or descending dynamics of 2012 as compared to that of 2011.

The results of the studies carried out by the Caucasus Research Resource Center (www.crrc.am) within the frames of "Caucasus Barometer" project were used for the compilation of the table.

The term for 2012 survey was October-November, hence, covering the period after the elections of NA and LSG Bodies.

National Assembly

The level of trust	**2011** %	**2012** %	
I fully trust	5	3	
I have more of trust	17	13	
Average/ neither trust, nor distrust	25	27	
I have more of distrust	18	18	
I don't absolutely trust	28	32	
I don't know	6	6	

Local Self-governing Bodies

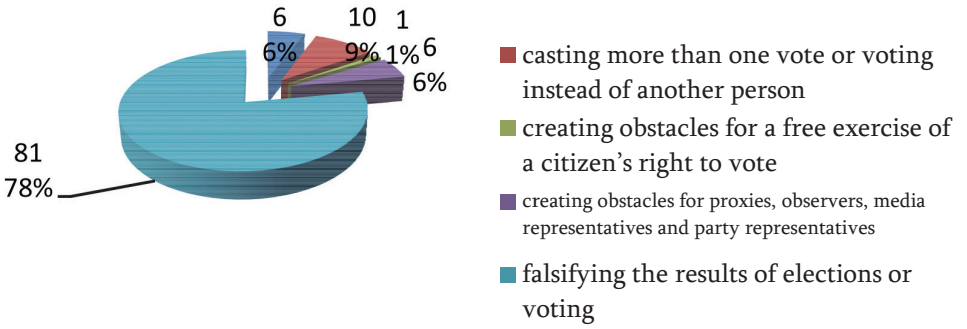
The level of trust	2011 %	2012 %	
I fully trust	5	11	
I have more of trust	24	24	
Average/ neither trust, nor distrust	34	28	
I have more of distrust	14	12	
I don't absolutely trust	15	22	
I don't know	3	4	

Mass Media

The level of trust	2011 %	2012 %	
I fully trust	5	4	
I have more of trust	28	21	
Average/ neither trust, nor distrust	34	41	
I have more of distrust	14	14	
I don't absolutely trust	15	17	
I don't know	3	3	

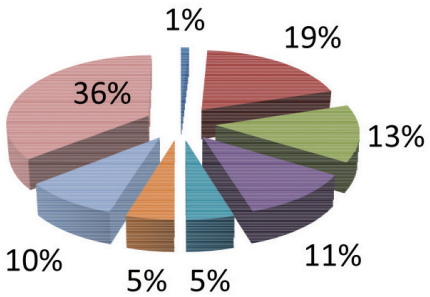
Appendix 3

Charts on investigations of electoral violation cases conducted by the RA Police (as of 15:00 pm of 27.03.2013) on the voting day of the RA Presidential elections.

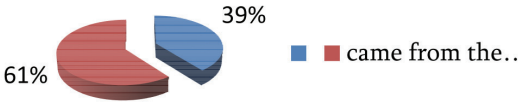


The chart shows how many complaints were received by the RA Police and which violations, prohibited by the RA Criminal Code, they related to.

The chart shows what measures were undertaken by the RA Police for the investigation of violations as of 15:00 pm of 27.03.2013.



The chart pictures how many of the complaints came from the city of Yerevan and how many from the RA regions.



The current charts were compiled based on the data posted on the RA Police official website***.

* Others include voter list irregularities, disputes in a polling station, stealing from a polling station, intentional damage to property near a precinct, and illegal access to email

** 9 cases were sent to the RA SIS , 3 out of which were returned.

*** http://www.police.am/news/view/hh-նախագահական-ընտրությունների-քվեարկության-օրը-ընտրախախտումների-դեպքերովhh-ոստիկանության-կողմից-կատարվող-քննությունների-վերաբերյալ-27032013-թ-ժամը-1500-ի-դրությամբ.html

Notes