

Monitoring report on implementation of ENP in Armenia in 2015-2017

Open Society Foundations-Armenia

October 20, 2017

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

INTEGRITY OF ELECTIONS

ENP AP Implementation Program 2014-15 Priority Area 17.A.17. *Ensure that the RA electoral code is in line with recommendations of 2012 and 2013 nation-wide elections observation missions of OSCE/ODIHR.*

The Constitutional amendments adopted through the referendum of December 6, 2015 marked a change from a semi-presidential system to a parliamentary system. As a result of Constitutional amendments, the new Electoral Code, along with relevant legal acts, was adopted in 2016, which raised concerns by the civil society and the Venice Commission and OSCE/ODIHR on a number of issues. Respective amendments to the Criminal Code are a notable regress, stipulating criminal responsibility for making false statement on voting on behalf of other person.¹ The new Electoral Code significantly cuts down on the rights of observers and reporters, but does not require mandatory testing of observers. The Electoral Code does not address the discriminatory provisions for absent voters. The Code allows voting electronically only for the families and staff of diplomatic missions, families and employees of Armenia-registered companies operating abroad and military servicemen studying abroad. The rest of citizens included in the general voters' lists, but away on the Election Day, are deprived of the opportunity to vote. When drafting the new Code, the government and opposition reached an agreement over publishing the signed voter lists and providing video monitoring at the polling stations. However, provision of video monitoring was reduced to 1500 polling stations with one camera in each.

Parliamentary Elections of April 2017 conducted according to the new Constitution, were marred by extensive abuse of administrative resources, multiple voting, vote buying, controlled voting, intimidation, and falsification of the voting results. The defining role of misuse of administrative resources, vote buying and other campaign-related violations on the outcome of the elections was acknowledged also by the international observers. In particular, the Final Report of the OSCE/ODIHR International Election Observation Mission concludes, "The campaign was tainted by credible and widespread allegations of vote-buying, pressure on public servants including in schools and hospitals, and of intimidation of voters to vote for certain parties. This contributed to an overall lack of public confidence in the electoral process and raised concerns about voters' ability to cast their votes free of fear of retribution, as required by OSCE commitments."²

The most striking case of misuse of administrative resources was revealed in March 2017 by the Union of Informed Citizens NGO, through audio-recording of the conversations with the principals of schools and kindergartens. Thirty school principals disclosed enrollment of parents' votes in favor of the Republican Party.³ On March 25, 2017 the Office of the Prosecutor General of Armenia assigned the Police to investigate these tapes. After the elections, the Police issued a decision that none of these tapes contained *corpus delicti*. Another widespread violation on the Election Day was controlled voting, where citizens were guided by other individuals to ballot boxes and casted their votes while these "guides" were present. The "Independent Observer" initiative published a report about violations during the Election Day, which shows that in 52% of 200 voting stations their observers witnessed cases of controlled voting.⁴

Recommendations:

- *Guarantee against the abuse of official position and administrative resources for campaigning in line with the OSCE/ODIHR recommendations;*
- *Remove criminal liability for false reports on voting on other persons' behalf as a guarantee to protect the right to express and report on electoral violations;*

¹ Civil Society Statement on "Making amendments and supplements to the Criminal Code of the Republic of Armenia", 22 October 2016: <https://transparency.am/en/news/view/1690>

² Final Report on Parliamentary Elections 2017. OSCE/ODIHR Election Observation Mission: <http://www.osce.org/odihr/328226?download=true>

³ Misuse of Administrative Resources in Schools and Kindergartens by the RPA: <https://sut.am/en/archives/803>

⁴ RA Parliamentary Elections 2017. "Independent observer" Public Alliance Final Report: <http://hcav.am/wp-content/uploads/2017/07/NA-report-ENG.pdf>

4.1 Political dialogue and reform

4.1.1 Democracy and the rule of law, human rights and fundamental freedoms

Strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law

Strengthening democratic institutions

Following the parliamentary elections of 2017, the Republican Party of Armenia (RPA) has effectively monopolized all the political decision-making within its rank and file, hence relegated the Parliament to the role of rubber-stamp. In essence, the political debates only take place within the RPA, and once the decision is made, it is then simply communicated to the Parliament and voted onwards. This way, the Parliament is increasingly losing its institutional rational, as neither meaningful political debates are taking place in its premises, nor genuine legislative initiatives are forwarded from within. Under such circumstances, the parliamentary oversight over executive branch is completely undermined.

Another factor affecting this negative development is the introduction of the “Nation-Army” concept after the “April War” of 2016. Through this concept, the Army is elevated from its usual institutional obligation of providing security from external threat to an overarching state institution. According to this doctrine, all other state institutions and policies should be subservient to the needs of defense, which further fuels the militarization in Armenia. Two projects introduced under this doctrine envision increase of compulsory military service from two to three years, where conscripts will be financially compensated for a longer service. Given the widespread poverty in the country, these projects exacerbate the social injustice and run the risk of causing further societal polarization to irreconcilable degree.

INDEPENDENCE OF JUDICIARY

Specific actions: Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/ adapt laws for the status of judges, the judiciary and the Council of Justice accordingly;

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

Armenian authorities have not undertaken necessary measures to promote independence of the judiciary. Current legislation provides the President with significant discretion in selection of judges, while under the new Constitution, President appoints the judges of the Cassation, first instance and appellate courts upon the recommendation of the National Assembly and Supreme Judicial Council. Besides, the Constitution provides that the National Assembly will elect the Constitutional Court judges by at least a three-fifths majority vote of MPs. In this situation, the judiciary will not be immune from external pressure, because the incumbent political party, having a stable majority in the Parliament, can turn the elections into a single-party decision.

According to the Freedom House, Armenia’s score in 2016 for judicial framework and independence was 5.50 out of 7, where 7 stands for the lowest level of democratic progress. GRECO assessed the independence of the judiciary –from external and internal actors – as unsatisfactory. Abuse of powers by the Justice Council is among the internal factors that restrict independence of judges. The Council is empowered to bring disciplinary sanctions against judges, which are often applied arbitrarily to punish the “non-obedient” judges. The legislation regulating the disciplinary sanctions against judges lacks clarity, which results in imposition of unlawful sanctions. Specifically, the Justice Council is not required to provide reasoning for its decisions on dismissing judges or instituting disciplinary procedure against them. Furthermore, the decisions on the disciplinary sanctions are not subject to appeal. The external factor compromising independence of the judiciary has been the unlimited power of the President to appoint the judges from the list of candidates. In contrast, draft Judicial Code foresees only formal appointment of judges by the President, but does not provide objective criteria for their appointment. Particularly, to become a judge, the candidate is required to pass several exams, including a psychological test. The latter lacks clear criteria and standards, undermining the credibility of the overall selection process.

Recommendations:

- *Provide objective criteria for appointment of judges, including through removing the psychological test from qualification exams,*
- *Foresee in the law that judges can be disciplined only for committing ethical violations and crimes,*

- *Prescribe mechanisms for the judges to appeal the decisions of the Supreme Judicial Council rendered against them.*

Right to a Fair Trial

The lack of independence and integrity of the judiciary, as described above, inevitably leads to systemic violation of the fundamental right to fair trial.⁵ These violations were particularly ardent during the recent trials of the “Sasna Tsrer” members and a number of political opponents. Criminal cases against several political activists, Gevorg Safaryan, Andreas Ghukasyan among them, are allegedly politically motivated⁶ due to excessive application of detention as measure of restraint, reported fabrications of charges and lack of procedural safeguards during trials. As a result of these violations, 12 persons are currently under detention or serving their prison term, which ranges from 1.5 to 7 years.⁷

In June 2017, the trial of the “Sasna Tsrer” members was marred with unprecedented police violence. The police officers have beaten four members of the group in the basement of the court. The attorneys of the victims and the Ombudsman later documented various physical injuries on the defendants’ bodies. In response to the crime reports, the Special Investigative Service initiated criminal proceedings on the grounds of exceeding authority by the police officers. However, the police officers, who have ostensibly beaten the defendants, continue to be on duty in the courtroom during the subsequent trials of the “Sasna Tsrer” case.

The reports on hindrance of the attorneys’ activities during the trials of the “Sasna Tsrer” members and others showcase grave violations of the right to a fair trial, including the right to legal aid. The authorities obstruct professional activities of attorneys in variety of ways preventing them from providing effective defense to their clients. During the trials, the attorneys were subject to police violence,⁸ arbitrary searches in the court and judicial sanctions, and restrictions on freedom of expression.⁹

Recommendations:

- *Release all political prisoners, investigate the cases of suspected selective justice;*
- *Cease all types of interventions into attorneys’ professional activities.*

PREVENTION OF TORTURE

ENP Implementation program Priority Area 53.B.33. Further reform of the penitentiary system: in this regard, take concrete measures in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Committee against Torture, particularly through adoption of a program of actions for the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, as well as through facilitation of public oversight over the penitentiary institutions and preliminary detention facilities.

Several legislative changes were introduced in the RA Criminal Code (CC) in 2015, which brought the definition of torture in compliance with the UN CAT. The CC, however, does not criminalize inhuman and degrading treatment, which impedes effective investigation into the cases that do not amount to torture.

There were no tangible developments in ensuring effective investigation into the cases of torture and ill-treatment. These cases do not reach the court, because investigation of the torture allegations by the Special Investigation Service (SIS) results either in non-initiation of a criminal case or termination of the criminal proceedings right after initiation. SIS applies higher standard of proof for the cases of torture, demonstrating discriminatory approach towards the cases, where

⁵ The number of the satisfied applications against Armenia in the ECHR proves that the reason behind systemic violations of the right to a fair trial, secured under Article 6 of ECHR, is the lack of impartiality and integrity of the judges. The recent ECHR judgment (CASE OF VARDANYAN AND NANUSHYAN v. ARMENIA, 2017) exposed partiality and lack of integrity of the judge when hearing the case on the illegal appropriation by the government; [http://hudoc.echr.coe.int/eng#{"docname":\["Vardanyan and Nanushyan v. Armenia"\], "documentcollectionid2": \["GRANDCHAMBER","CHAMBER"\], "itemid":\["001-167760"\]}](http://hudoc.echr.coe.int/eng#{)

⁶ Human Rights Watch; Armenia: Opposition Activist Jailed: <https://www.hrw.org/news/2016/01/08/armenia-opposition-activist-jailed>, Armenian Activist Stuck in Detention: <https://www.hrw.org/news/2017/01/30/armenian-activist-stuck-detention>

⁷ Persons considered imprisoned unjustly or for disproportionately long terms on political grounds: Gevorg Safaryan, Andreas Ghukasyan, Shant Harutyunyan, Avetis Avetisyan, Liparit Petrosyan, Vardan Vardanyan, Albert Margaryan, Mkrtych Hovhannisyan, Vahe Mkrtychyan, Hayk Harutyunyan, Alek Poghosyan, Hayk Kyureghyan.

⁸ On June 28, 2017 police officers forcefully prevented attorneys Lusine Sahakyan and Ara Zakaryan from entering the police station to provide legal aid to a person, who was arrested from the vicinity of the court during the “Sasna Tsrer’s” trial.

⁹ Civil Society demands to stop hindering professional activities of lawyers: <https://goo.gl/qCUa8r>

public officials are involved.¹⁰ It is important to note that SIS is not provided with operational mechanisms to conduct impartial investigation.¹¹ Besides, the head of the SIS is directly appointed by the President, which compromises the agency's institutional independence.

No accountability mechanisms, such as video/audio recording of the facilities and interrogation rooms, are put in place to prevent ill-treatment during interrogation. Moreover, independent civic monitoring groups do not have access to all the facilities, where a person may be detained, for example, investigators' rooms. Under the National Human Rights Action Plan of 2014-2016, the government committed to study international experience of audio-visual recording of interrogations and submit a proposal concerning introduction of such system. Nevertheless, no measures were taken towards implementation of this action.

Recommendations:

- *Criminalize inhuman and degrading treatment through amending the Criminal Code;*
- *Provide the Special Investigation Service with the capacity to conduct operational-search activities;*
- *Ensure transparent and accountable appointment of the head of the Special Investigation Service;*
- *Exclude the discriminatory approach in application of standard of proof in cases, where public officials are charged with torture or ill-treatment;*
- *Ensure audio and video recording of interrogation facilities and civilian oversight over all premises, where people are to be detained.*

Use of Force by Police

There has been no effective investigation into the cases of illegal and disproportionate police force against participants of peaceful assemblies in Erebuni in July-August 2016. Police violence soared especially during the protests of July 20 and 29, when police used tear gas and stun grenades against peaceful protests. There were several allegations of violence and torture against the protesters in police departments and vehicles. Many citizens had obvious traces of violence on their bodies and even serious injuries after leaving police stations. Specifically, as a result of police violence, 33 civilians received fractures, 47 had shrapnel wounds, 7 civilians had severe burns, one citizen poisoning from tear gas, another one lost his eye. The total number of citizens who applied for medical assistance those days reached 101. Throughout this period, more than 700 citizens were apprehended by police, and some of them remained in police custody for up to 32 hours without food, water and other basic conditions. However, no effective investigation was conducted into the acts of police misconduct and use of force until now. Moreover, to moderate the growing discontent with police violence during the Erebuni protests, in August of 2016 some progress was registered in investigating the attacks against peaceful protesters and reporters during the Electric Yerevan protest in June 2015.

Recommendations:

- *Undertake prompt, thorough, impartial and independent investigations into all allegations of unlawful conduct by law enforcement officials in connection with the dispersal of protests, including events in June 2015 and July 2016.*

Ill-Treatment in Prisons

Despite some efforts to address overcrowding in prisons, namely through closure of old prison, construction of a new one in Armavir and introduction of pilot probation service, the issue persists and amounts to torture in certain prisons. Specifically, according to the reports of the Penitentiary Monitoring Group, Nubarashen, Vardashen and Kosh penitentiary institutions are the most overcrowded.¹² Lack of adequate healthcare services in penitentiaries results in inhuman treatment against prisoners with health issues. Recent death of a detainee Artur Sargsyan ("Bread bringer"), who had serious health problems, was allegedly caused by his prolonged and unjustified pre-trial detention.

Recommendations:

- *Address the issue of overcrowding in prisons through effective application of early and early conditional release, replacement of detention with other measures of restraint, including probation;*
- *Improve access and quality of the healthcare services in penitentiary institutions;*
- *Ensure effective investigation into the case of Artur Sargsyan, establishing state responsibility for his death.*

¹⁰ Partnership for Open Society Initiative's Joint Submission to The CAT on The 4th Periodic Report of The Republic of Armenia Regarding the Implementation of the UN CAT, 2016; http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT_CAT_CSS_ARM_25742_E.pdf

¹¹ Under ECHR standards, efficient investigation should give reasonable prospects for establishment of the facts and calling those responsible to criminal liability.

¹² Prison Monitoring Group, Annual report of 2016; http://pmg.am/images/2014-2015_PMG_Annual_report.pdf

FREEDOM OF EXPRESSION

Action Plan Implementation Program. 18A.18. *Strengthen the independence and diversity of media through implementing successive steps.*

Armenian authorities have not taken necessary measures to uphold the international commitments concerning ensuring diversity of broadcast media, transparency of media ownership and proper implementation of the digital switchover. Media ownership is still not transparent; the law does not require disclosing media ownership. The main shareholders of television companies are either representatives of political elites or large businesses, which leads to full control of broadcast media. The broadcast legislation does not guarantee independence of the national regulator. The seven-year transition from analogue to digital broadcasting was completed in 2016, leaving more than 10 regional TV companies on the verge of shutting down.

Numerous cases of restriction of the freedom of expression and independent media were registered throughout 2015-2017. In June 2014, the court ruled in favor of the Special Investigative Service, requiring the Hraparak newspaper and iLur.am website to disclose their sources of information for investigation purposes. In June 2015, criminal proceedings were initiated against the editor of iLur.am online outlet for refusing to comply with the court decision to disclose the source of information. In October 2015, reviewing the lower court's decision on disclosure of information, the Constitutional Court ruled that disclosure was not proportionate, because the case neither qualified as a grave crime nor was against the safety of an individual. Moreover, 15 insult and defamation cases were initiated against media workers in 2015, and 14 cases in 2016.¹³

Among other methods of restricting freedom of expression were physical violence against journalists, while performing their professional activities. According to the data of the Committee to Protect Freedom of Expression (CPFE), physical violence against journalists increased in 2016 (26 journalists) as compared to 2015 (23 journalists). For the 1st semester of 2017, eight cases of violence against journalists were registered by the CPFE.¹⁴ On June 23rd 2015, the police specifically targeted media representatives in order to prevent them from covering the use of force during dispersal of the Electric Yerevan protest. As a result, 24 journalists reported about hindrance of their professional activities, smashing and/or confiscating their cameras, deleting footage and video materials on their cameras. Out of 24 journalists, 14 were also subject to physical attacks and violence. Similarly, the protests following seizure of police department by the "Sasna Tsrer" group in July 2016 were associated with large-scale violence and impediments of the lawful professional activities of the media workers. Overall 27 media workers suffered from police violence. Moreover, 19 out of 27 media workers were subjected to physical violence, eight faced various types of pressure and persecution. As a result, criminal charges were brought against eight persons, seven of which were taken to the court.

The Ararat TV publically perceived as the mouthpiece of RPA and located within the headquarter of RPA, has launched a smearing campaign against civil society organizations in general and adoption of the draft law on "Prevention of Domestic Violence". Specifically, Ararat TV has turned into a harbinger for "For Restoration of Sovereignty" and "Pan-Armenian Parent Committee" that openly preach intolerance and accuse civil society organizations of undermining traditional values and destroying Armenian families. The propagandistic narratives spun through this TV channel, were latter echoed and magnified through other media outlets such as Iravunk, Golos Armenii, Verelq, ArmeniaSputnik and others, targeting civil society organizations and their work in Armenia.

Recommendations

- *Carry out a prompt and effective investigation into attacks against journalists, issuing public reports on the results of each investigation;*
- *Amend the Law on TV and Radio to ensure transparency of media ownership, transition to a simplified licensing procedure, and independence of the national regulator through reforms of the member selection and appointment process.*

¹³ Committee to Protect Freedom of Expression; www.khosq.am

¹⁴ Ibid.

ANTI-DISCRIMINATION LEGISLATION

Action Plan Implementation Program. 46.B.26. *Revise legislation on gender equality, child protection and prevention of discrimination*

Armenia still lacks a comprehensive and effective anti-discrimination legislation. The current national legislative framework consists of legal provisions scattered throughout the legal system, which fail to provide mechanisms for effective protection against discrimination. The provisions of the Criminal Code indicate only national, racial, or religious grounds as aggravating circumstance for serious crimes disregarding other manifestations of discrimination and hate crime. The procedural norms of proving differential treatment in the court are not regulated by the law. Court's approaches to evidential issues, particularly, the burden of proof, do not comply with international standards of anti-discrimination law further undermining the possibility for victims to claim effective legal protection and prosecution of perpetrators.

In the framework of 2014-2016 national human rights action plan an assessment was conducted reviewing the compatibility of Armenian legislation with international law and assessing the need for adopting an anti-discrimination law. Subsequently, the Ministry of Justice introduced a draft 'Law on Equality' in February, 2015 in response to UPR recommendations and EU budget support conditionality requiring adoption of a comprehensive and effective anti-discrimination legislation. The draft law formally addresses the gaps in current legislation, however it fails to provide mechanisms for prevention and combating discrimination and to establish an effective and independent national equality body.

Recommendations:

- *Adopt an effective and comprehensive anti-discrimination legislation in line with European and international standards anti-discrimination law ensuring provision of effective prevention and protection mechanisms, including establishment of independent and effective national equality body.*

Freedom of Conscience and Religion

Armenia has not adopted a comprehensive legislation on freedom of conscience and religion. The current law on Freedom of Conscience and Religious Organizations implies limitation for religious minorities. Specifically, it has restrictions regarding registration and practice of religious organizations. On the other hand, it gives privileges to the Armenian Apostolic Church: the latter has exclusive access to hospitals, orphanages, boarding schools, military units, and penitentiaries. The amendments in the Constitution indicate a concerning intention to define different legal statuses for "religious organizations" and the "Armenian Apostolic Church" (AAC). While the amended Constitution provides that religious organizations shall be separate from the state, it proclaims the 'exclusive mission of the Armenian Apostolic Holy Church as the national church in the spiritual life, development of the national culture, and preservation of the national identity of the people of Armenia'. The current Law on Religious Organizations does not regulate this issue, while in 2017 a new draft law was introduced which mentions 'religious organizations' and the 'Armenian Apostolic Church' as separate legal categories.¹⁵ Furthermore, both the amended Constitution and the proposed law allow restrictions on the expression and practice of freedom of religion in order to protect state security. This provision not only contradicts the case law of the European Court of Human Rights, but also may lead to negative developments considering the numerous statements of the public officials and the AAC calling for limitation of rights of religious organizations to protect 'national security'. The draft law also suggests unjustified limitations regarding the registration of religious organizations, prohibition on foreign funding and obliges religious organizations to keep records of their members. Finally, the draft law limits freedom of expression by proposing an unnecessary restriction of coverage of the AAC's theology in the media or during assemblies, allowing it only upon consent of the AAC.¹⁶

The preferential government support for the AAC and its exclusive presence in public education and closed institutions leads to discrimination in these fields. Particularly, the AAC holds religious classes and prayers in the army, which conscripts are forced to attend. Moreover, soldiers who have religions other than the AAC or are atheists forcefully undergo baptism into the Armenian Apostolic faith. As for the education, students have to take a mandatory class named "History of the Armenian Church". The latter comprises religious propaganda, which is against OSCE Toledo principles and has prompted religious intolerance among students. The Ministry of Education stated that the government had no

¹⁵ OSF-Armenia Justice Group Observations and Recommendations on the Draft Amendments to the RA Law on Freedom of Conscience and Religious Organizations and related legal acts, July 2017

¹⁶ ODIHR Opinion on the Draft Law of the RA amending the Law "On Freedom of Conscience and Religious Organizations", Warsaw, 29 September 2017

intention of following the 2013 recommendation by the UN Committee on the Rights of the Child to revise school curricula to eliminate the course.¹⁷

Recommendations:

- *Review the 2017 Draft Law on Religious Organizations based on ODIHR commentary to rule out preferential government support for the Armenian Apostolic Church in law and in practice, specifically, by*
 - *expressly stating that the Armenian Apostolic Church is governed by the draft law;*
 - *removing the reference to “state security” as a limitation ground for manifestation of religion and replacing it with the term “public safety” in line with international standards;*
 - *removing restrictions on registration and foreign funding of religious organizations;*
 - *removing the obligation for religious organizations to keep records of their members;*
 - *removing the restriction of coverage of the AAC’s theology in the media or during assemblies.*

Discrimination against LGBT people

LGBT people still lack legal recognition as sexual orientation and gender identity (SOGI) are not included in Armenian legislative framework thus limiting legal recourse for many crimes against them. LGBT people and human rights defenders and activists face bias-based speech and violence, while the authorities fail to carry out efficient, prompt and impartial investigation of such violations. Existing legislation does not provide a definition of “hate speech” and does not imply liability for hate speech. The Criminal Code does not consider SOGI grounds as aggravating circumstance for serious crimes.

In July 2017, two LGBT-themed movies were withdrawn from the program of ‘Golden Apricot’ International Film Festival in an act of censorship and discrimination by the Union of Cinematographers of Armenia.¹⁸ LGBT persons are frequent targets for discrimination in closed institutions such as prisons and the army. Homosexual prisoners and soldiers face physical and psychological violence, degrading treatment and discriminatory attitude displayed by prison and army officers as well as inmates and fellow soldiers.

Recommendations:

- *Review the existing legislation regarding hate speech and hate crime, including providing definitions and defining liability for hate speech as well as considering the committal of a crime on the basis of sexual orientation and/or gender identity of a person as a circumstance aggravating the crime and punishment.*
- *Undertake appropriate measures to ensure the safety of LGBT people in closed institutions and to prevent cases of inhuman and degrading treatment against them.*

DISCRIMINATION AND VIOLENCE AGAINST WOMEN

Action Plan Implementation Program. 37.B.17. *Adopt Law on Domestic Violence in accordance with the Council of Europe Convention on preventing and fighting of violence against women.*

The effective enforcement of the legal and policy regulations of gender inequality and gender-based violence is significantly lowered due to the absence of functional implementation mechanisms. Particularly, the law on equal rights and equal opportunities for women and men has still not been implemented efficiently due to the lack of authorized duty-bearers with clearly defined functions and necessary resources.¹⁹ Furthermore, no liability is implied for violations of the law. Due to the absence of legislation on domestic violence, the cases of domestic violence are still investigated as other criminal cases, with no accent on gender sensitivity. The police inaction and disproportionate sentencing by the court create an atmosphere of impunity for perpetrators. This also hinders the access to justice for women as the battered women refrain from reaching out for assistance from authorities.

¹⁷ US Department of State, International Religious Freedom Report for 2016, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2016&dliid=268786>

¹⁸ Censorship in Armenian cinematography: “Golden Apricot” has removed the “Armenians: Internal and External Views” program from the festival, <https://goo.gl/oQMb7g>

¹⁹ Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Country Visit Report, 2014, <https://goo.gl/I6Iw0w>

In November 2016, the Ministry of Justice introduced a new draft of the law on prevention of domestic violence. This was followed by a smearing media campaign against the law by several Russian-funded nationalistic organizations and entities started a. Not only did the Ministry fail to address the disinformation and educate the public on the need of the law, but it also eventually withdrew the draft due to “existing concerns of part of Armenian society regarding the law”.⁶ In August, 2017 anew draft law was presented by the Ministry of Justice, which was criticized by women’s rights organization. The draft law does not imply criminal liability for acts of domestic violence thus failing to ensure effective prosecution and punishment of perpetrators. The draft law envisages establishment of a coordinating body, which however is not enshrined with powers for monitoring and evaluation of implementation of the law, rather it has more of a consultative role. The draft law also contains provisions on reconciliation between the victim and the perpetrator without sufficient safeguards to ensure the security and position of the first.

At the same time, domestic violence increased without due redress from the part of authorities. In the period of 2012–2016 the police have registered 3571 cases of domestic violence. In the last six years, 40 women were killed because of violence committed by a current or former intimate partner.²⁰ The national statistics reveal that 17% of the total homicides recorded in Armenia in 2015 were committed by family members.²¹

Recommendations:

- *Adopt a comprehensive and effective standalone law on domestic violence in line with Istanbul Convention and CEDAW General Recommendation N19;*
- *Adopt supplementary legal acts necessary for effective enforcement of the law on equal rights and equal opportunities for women and men to prescribe liability for gender-based discrimination and to enhance the functions of duty-bearers.*

LABOUR RIGHTS

Continue reform efforts in the fields of labour, social security and social protection;

Strengthen the administrative capacity of the Public Employment Services (PES), Labour Inspectorate and social services agencies, in particular at regional level.

Continue efforts to ensure trade unions’ rights and core labour standards, based on European standards and in accordance with relevant ILO conventions;

Since the abolishment of the Labour Inspection in 2013, there has been no extra-judicial mechanism for protection and promotion of the labour rights. The Ministry of Healthcare, which was given certain functions of the Labour Inspection, was not able to protect workers’ rights effectively as it only oversees issues related to the safety of workplace and health of employees. The wide-scale agency reform implemented by the government in 2017 laid groundwork for merging all inspections into one body, which will partially oversee the safety of the working conditions of employees.

Under current Labour Code, strikes can be organized only by the trade unions in case all means of mediation with the employer are exhausted. Given the insignificant role of the trade unions in Armenia, the right to strike cannot be effectively exercised in practice.

The right to adequate social protection is seriously violated due to the absence of an unemployment benefit system in the country. The latter was abolished in 2013 on the grounds of high corruption risks in the system.

Recommendations:

- *Establish an independent and effective Labour Inspection in compliance with the standards of the ILO convention no. 81,*
- *Liberalize the regulations concerning the exercise of the right to strike in the Labour Code,*
- *Restore the system of allocation of unemployment benefits to secure the right to social protection.*

²⁰ Coalition to Stop Violence Against Women, 2016, “Femicide in Armenia: A Silent Epidemic”; available at <https://goo.gl/chd1jH>; Legalizing the stereotypes: women victims’ access to justice and gender stereotyping in the framework of gender based violence judicial proceedings, Coalition to Stop Violence against Women, 2017, short summary in English available at <https://goo.gl/v9XNmv>

²¹ A study by RA Investigative committee, summary of findings available at: <https://goo.gl/0PgHFP>

FIGHT AGAINST CORRUPTION

Action Plan Implementation Program 2014-15 Priority Area 47.B.27. *Enhancement of institutions to fight against corruption in accordance with EU best practices.*

Action Plan Implementation Program, Priority Area 48.B.28: *Continue fight against corruption, join international anti-corruption organizations, continue implementation of anti-corruption obligations undertaken by Armenia. Adopt new anti-corruption strategy (national program on the fight against corruption) and ensure its compliance to the GRECO recommendations.*

Action Plan Implementation Program, Priority Area 50.B.30. *Legal regulation of illegal enrichment in accordance with EU best practices.*

Armenian has taken some steps towards implementation of the recommendations concerning prevention and fight against corruption, however, the changes are not effective yet. The latest nation-wide survey data reveals that corruption remains one of the most important problems in Armenia,²² and for the fifth year in the row Armenia's score for the category of Corruption in Freedom House's "Nations in Transit" 2016 study is 5.25, with 1 representing the highest level of democratic progress and 7 the lowest.²³ Armenia moved down by 18 points in the list of countries of Corruption Perception Index, ranking the 113th out of 176 countries in 2016. The corruption perception score has gone down by 2 points (from 35 to 33), suggesting that corruption was perceived as more prevalent in 2016 than in 2015.²⁴

No serious progress had been recorded in the fight against corruption in Armenia despite creation of the Anti-Corruption Council (ACC) and adoption of the Anti-Corruption Strategy (ACS). Established in February 2015, the ACC does not function as a specialized preventive, law-enforcement or multi-purpose agency, but simply consults the government on implementing the anti-corruption policies. The Council discusses and approves the ACS, suggests changes to the anti-corruption action plans, discusses and approves sectoral action plans, oversees implementation of the ACS. Since the establishment of the Council, the Armenian government has initiated a series of changes of the legislative framework, aimed at fight against corruption. These measures included adoption of the Laws on the Corruption Prevention Committee and Protection of Whistleblowers, criminalization of illicit enrichment, enlarging the scope of the high-ranking officials entitled to submit asset and income declarations, and limiting cash transactions for the high-ranking officials. The Law on Corruption Prevention Committee prescribes preventive functions to the anti-corruption body, but does not provide safeguards for its independence; instead, the guarantees of independence are limited only for the members of the committee. According to the amended Criminal Code, criminalization of illicit enrichment does not have retroactive effect. There is no separate legislative regulation on conflict of interests.

Recommendations

- *Transform the Anti-Corruption Council into a permanent, professional, and independent body with a wider range of functions of prevention and decision-making.*
- *Adopt a separate legislation on conflict of interests; determine conflict of interest as a situation incompatible with public service.*

PUBLIC PROCUREMENT

The new Law on Public Procurement entered into force in April 2017. It requires disclose of beneficial ownership, provides for more transparency of procurement system, simplifies choice of procurement procedures. However, the law still does not foresee a mechanism of criminal or administrative liability for the public officials responsible for public procurement. Another systemic problem not addressed in the new law is that, not having the status of a legal entity, the decisions of the Appeals Board cannot be appealed in the court. Enforcement of anti-corruption legislation in public procurement is ineffective. The requirements on precluding conflict of interests, disclosing beneficial ownership in public procurement and their declarations prescribed by law are not enforced in practice. There are numerous cases of single source procurement, when procurement is conducted with prices higher than market ones. Generally, preferences are given

²² Transparency International. 2015. The State of Corruption. Armenia, Azerbaijan, Georgia, Moldova and Ukraine, <http://transparency.am/files/publications/1436175393-0-361397.pdf>

²³ Freedom House, Nations in Transit, 2016, <https://freedomhouse.org/report/nations-transit/2016/armenia>

²⁴ CPI 2016 Results for Armenia and Other Countries of the Region, <https://transparency.am/en/cpi>

to certain companies and periodically single source procurement is conducted from them. There are cases, when procurement contracts are signed with companies, which do not possess licenses or are in the procurement black list at the moment of contract signing, or with intermediary universal companies, which provide wide diversity of services and goods. Monitoring analysis revealed high concentration of winner companies participating in framework agreements; thus, public procurement is not attractive for new players. E-procurement system does not ensure sufficient participation yet. In 2016, only 12% of announced procedures were implemented through e-procurement system.

In 2015, the total amount of public procurement amounted to around 430 billion AMD (\$896 million), which made 30% of total expenditures of the state budget and about 8.6% of the GDP.²⁵ In 2016, public procurement constituted 23.2% of the state budget with more than 337 billion AMD (\$702 million).²⁶ Huge budget allocations for the public procurement contain corruption risks in mismanagement of these funds by the state authorities. Civil society organizations and investigative journalists periodically raise such cases in their reports, which need further examination by the responsible authorities. For example, in 2017 and in 2016 the Ministry of Defense purchased training equipment for \$1.4 million and \$1.2 million, respectively, through single source contracting to “Radvan Technology” LLC.²⁷ Share of the defense spending in the state budget makes 14.4% of the total budget. At the same time, a significant portion of public procurement for military and police is secret in Armenia, and information published on public spending is of a general character. According to the 2016 study, the proportion of the non-secret purchases in the overall procurement of the Ministry of Defense was quite small and failed to reflect the real situation.²⁸

Recommendations

- *Amend the Law on Public Procurement to prescribe a mechanism of criminal or administrative liability for the public officials responsible for the implementation of the legislative framework in public procurement;*
- *Amend the Law on Public Procurement to define the status of the Appeals Board as a legal entity in order to appeal its decisions in the court;*
- *Conduct impartial investigations on the publications and reports of media and NGOs on public procurement that contain corruption risks.*

²⁵ Monitoring Report on Public Procurement 2015-2016, TI-Armenia, <https://transparency.am/en/publications/view/140>

²⁶ Results of Monitoring of Armenian Public Procurement in 2016-2017, TI-Armenia, <https://transparency.am/en/publications/view/191>

²⁷ Public Procurement Monitoring Reports, 2017, TI-Armenia, <https://transparency.am/gnumner/bulletins/bulletin5.pdf>;
<https://transparency.am/files/publications/1467124214-0-987586.pdf>

²⁸ Corruption Risk Assessment in the Procurement Procedures of RA Defense, 2016, TI-Armenia, <https://transparency.am/hy/publications/view/130>