

# Republic of Armenia

**NGO replies to the list of issues on the implementation of the  
Convention against Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment  
in the Republic of Armenia  
in relation with the review of Armenia's 3<sup>rd</sup> periodic review at the  
United Nations Committee against Torture**

The report was prepared with contribution from Armenian human rights organisations, which are members of the South Caucasus Network of Human Rights Defenders and partners of the Human Rights House Network:

- Asparez Journalists' Club
- Helsinki Association for Human Rights
- Helsinki Citizens' Assembly – Vanadzor
- Human Rights House Foundation
- Jurists against Torture
- Shahkhatun Women's Democracy Promotion NGO
- Public Information and Need of Knowledge NGO (PINK)
- Women's Resource Centre
- And Relatives of Victims in Armed Forces

Yerevan and Geneva, April 2012

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## Articles 1 and 4

### Q 1

1. Article 119 of the Criminal code has not been amended.

### Q 3

2. Discriminatory behaviour on the basis of gender identity or sexual orientation is not covered in the Republic of Armenia's legal system and does not provide aggravating circumstances or criminal liability. Crimes committed on the ground of gender or sexual orientation are qualified as crimes of non-discriminatory character.

3. The Republic of Armenia's legal system does not legally recognise discrimination on the grounds of sexual orientation or gender identity and thus does not prohibit this type of discrimination. The prohibition of discrimination on the grounds of sexual orientation or gender identity would provide the grounds for the Republic of Armenia legal system to acknowledge the different attitudes behind discriminatory behaviour on the basis of sexual orientation or gender identity as aggravating circumstances to criminal liability cases.

4. In the Republic of Armenia Criminal Code, crimes committed on the basis of the sexual orientation of the victim do not constitute corpus delicti and do not lead to aggravating factors.

5. In reference to gender, the aggravating circumstance of "the crime evidently committed against a pregnant woman" can be observed as gender issue, but generally such circumstances are dealt with under the protection of mother and child.

### Q 4

6. In the Criminal Code of the Republic of Armenia, the confusion in the application of categories of "violence", "torture", and "severe damage" remains in full.

7. In the Criminal Code the concept of "violence" only refers to physical violence.

8. The Criminal Code distinguishes in part torture, infliction of wilful light damage to health, and battery.

9. Wilful light damage to health is considered a corpus delicti and it is defined as a short-term disorder or insignificant loss of the capacity to work, whereas battery is a violent act that did not cause short-term health disorder or insignificant loss of the capacity to work (i.e. does not constitute infliction of wilful light damage to health, Article 117).

10. According to the Criminal Code, in order for an action to be understood as torture, neither danger of medium gravity (protracted health disorder or significant and permanent loss of no less than one third of the capacity to work) nor of serious gravity (infliction of willful bodily damage which endangers one's life; causes loss of eye-sight, speech, hearing or any organ; loss of functions

of any organ; damage which results in irreversible disfigurement of the face; damage which is life-endangering or which results in a disorder, accompanied by a permanent loss of no less than one third of the capacity to work, or with complete loss of the professional capacity to work; or which causes disruption of pregnancy, mental illness, drug or toxic addiction) should be inflicted.

## Article 2

### Q 5

11. Despite contravening the Convention against torture, both Article 119 of the Criminal Code (see paragraph 1), and Articles 308 and 309, which set liability for persons who commit abuse or exceed official authority, remain unchanged.

12. Armenia has not made any amendments to Articles 19, 308 and 309 of the Criminal Code and has not undertaken any action to ensure that all individuals who engage in conduct that constitutes torture are charged with offenses commensurate with the gravity of the offense

13. Individuals sentenced by Articles 308 and 309 have the possibility to be granted amnesty

### Q 6a

14. The Court of Cassation on the 18 December 2009 immediately applied the international rights norms and declared that the person who is taken into custody or arrested should have those minimum assurances mentioned in the report. However, nor the Criminal Code or any other legislation have yet defined such kind of assurances. The Law application practice continues to be led by laws and not by decisions of the Court of Cassation, as such, the direct stipulation of the internationally accepted norms is an issue of utmost importance, which is not being addressed.

### Q 6b

15. According to the Criminal Code and the 'Law on Police' a detained person does not have the status which is anticipated according to Article 5 of the European Convention. That is why the minimum assurances are not ensured for the detained person as per Article 5 of the Convention.

16. The Republic of Armenia Court of Cassation set a precedent in Gagik Mikaelyan's case, according to which, notwithstanding the circumstance that the legislation does not ensure those minimum standards, a detained person must have minimum rights equal to those of a person who has been arrested. But in the implementation of the law, as there are no legal amendments, in the police office the rights which are guaranteed for the arrested are not ensured for the detained. When the status of the detained person is changed and he becomes arrested, only then he is given minimum assurances (the rights of an

arrested person to a lawyer, a medical examination by an independent physician, notifying the relative on the detained person's situation, and a written form describing their rights translated into different languages).

17. From November to December 2010, the Helsinki Citizens' Assembly - Vanadzor (HCAV) conducted a monitoring in all 17 active investigation divisions of Lori and Tavush Regions and collected relevant information regarding witnesses' interrogation conditions. The results showed that the investigators routinely inform the witnesses about their obligation to reveal all the details of the case without restraining information and the criminal liability for false testimony or avoiding or refusing to testify. Furthermore, the witness is informed that he/she is not obligated to give testimony convicting his/her spouse or a family member of committing crime.

18. In addition, the findings of the study revealed that the witness is requested to sign a report form or a memo about witnesses' rights prior the interrogation. 12 out of 17 investigation divisions use a memo of witnesses' rights, which includes all the articles defining rights of witnesses, while 5 make use of an interrogation report form, which merely indicates the numbers of the articles of the Republic of Armenia Criminal Procedure Code prescribing witnesses' rights and obligations.

19. The analysis of the mentioned report form shows that an individual without legal education cannot understand the legal significance and consequences of the indicated articles. Therefore it can be unequivocally stated that the witness "signs a document stating that he/she was informed about his/her rights", whereas in reality the contents of the rights and obligations of the witness are not explained to him/her. In other words, notification about rights and obligations is in some cases only of formal nature, conducting witnesses to often testify against a family member. This is also connected with the fact that while presenting the rights and obligations to the witness, the investigator emphasizes the obligation to testify..

## **Q 6d**

20. In the case of Vahan Khalafyan, only the head of the police department has been convicted. The relatives have applied to the European Court of Human Rights. The Court of Cassation rejected all the appeals, including those of the aggrieved side. And the Court of Appeal examined the case as per Court of Cassation case of trial and did not implement any kind of inspection in order to determine the method of suicide.

21. In the case of Levon Gulyan, so far no state official has been held responsible for his death in May 2007. On 30 June 2011, the Court of Criminal Appeals, presided by judge Khachatryan, declined the complaint of General Prosecutor's Office in connection with Levon Gulyan's case. Prosecutor Harutyun Harutyunyan asked to reverse the decision of Court of the First Instance of Kentron and Nork Marash on 25 May 2011.

22. On 2 September 2010, members of the Group of Public Observers Conducting Monitoring of Penitentiary Institutions and Agencies of the Republic of Armenia Ministry of Justice, Avetik Ishkhanyan, Artur Sakunts, and Arman Danielyan, visited Nubarashen PI. The visit revealed that The Republic of Armenia Citizen, Sargis Manuk Poghosyan was arrested at the Republic of Armenia Zvartnots Airport and detained in Nubarashen PI from 5 August to 1 September 2010, without an appropriate court decision. Research revealed the following: the personal card of the inmate states that "He entered the institution on 5 August 2010 and was released on 1 September 2010, based on 21/32-570-10 note of the Republic of Armenia Prosecutor General." The 21/32-570-10 note by the

Deputy Prosecutor General, M. Sargsyan, to the Head of Nubarashen PI, T. Navasardyan, states that “On 2 August 2010 ... Sargis Manuk Poghosyan, who was under pursuit by the US law enforcement bodies since 29 July 2010, was taken to the detention facility of the Yerevan Police Department.” S. Poghosyan was released upon conclusion of the 72-hours-arrest prescribed by Article 11, part 3, of the Republic of Armenia Criminal Procedure Code, as no detainment warrant was received. Taking into consideration the gravity of the crime committed by S. Poghosyan, the Republic of Armenia Prosecutor General instructed to take into account the circulated decision by the Central National Bureau of the US Interpol and to detain S. Poghosyan until the reception of the relevant documents from the US Law Enforcement Bodies.

23. According to the letter of the Head of International Legal Relations of the Republic of Armenia Prosecutor General addressed to the Head of the Consular Department of the Ministry of Defense on 2 August 2010, the Republic of Armenia Prosecutor General was aware that Sargis Manuk Poghosyan was an Republic of Armenia citizen and was not subject to handing over to the law enforcement body of another country; Nevertheless, Sargis Manuk Poghosyan remained in custody until his release on 1 September 2010.

24. The Richmond Courthouse of the US District Court for the Eastern District of Virginia had ordered its officers to arrest Sargis Poghosyan and to refer him to the closest US Court for indictment. However, there is no bilateral international contract signed between the Republic of Armenia and USA regarding the legal assistance of criminal cases. Moreover, according to Article 280 of the Republic of Armenia Criminal Procedure Code, an Republic of Armenia Court did not issue a detainment warrant for Sargis Poghosyan.

25. On 3 September 2010, the Group of Public Observers Conducting Monitoring of Penitentiary Institutions and Agencies of the Republic of Armenia Ministry of Justice informed Republic of Armenia Prosecutor General about the evidence of illegal detention and length of detention of Sargis Poghosyan, and requested measures to punish the perpetrators. However, the Head of International Legal Relations of the Republic of Armenia Prosecutor General, Y. Avagyan, chose to ignore the complaint.

26. On 19 October 2010, the complainants submitted a crime report to the Republic of Armenia Prosecutor General about “evidently illegally detaining the individual and evidently illegally keeping him in detainment”. The response signed by the Head of International Legal Relations of the Republic of Armenia Prosecutor General on 15 November 2010, replicated the 21/32-570-10 note by the Deputy Prosecutor General, M. Sargsyan, to the Head of Nubarashen PI, T. Navasardyan.

27. On 10 December 2010, the President of the “Civil Society Institute”, Arman Danielyan, the President of “Republic of Armenia Helsinki Committee”, Avetik Ishkhanyan, and the Chairman of the “Helsinki Citizens’ Assembly - Vanadzor Office” NGO, Artur Sakunts, applied to court to force the Republic of Armenia Prosecutor General to institute a criminal prosecution against the Deputy Prosecutor General and the Head of Nubarashen PI, based on the crime report filed by the complainants. On 18 January 2011, the Court of Common Jurisdiction of Kentron and Nork-Marash Administrative Districts rejected their claim. The court based its decision on the fact that on 17 January 2011, Sargis Poghosyan submitted a note to the court and informed them that there was no infringement upon his rights and he did not authorize anyone to speak on his behalf and he requested to leave the claim unexamined.

28. On 25 March 2011, they filed an appeal with the Republic of Armenia Court of Appeals and requested to reverse the 18 January 2011 decision by the Republic of Armenia Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts, and to adopt a new legal act

obligating the Republic of Armenia Prosecutor General to institute a criminal prosecution against the Deputy Prosecutor General and the Head of Nubarashen PI, based on the crime report filed by the appellants. In particular, the following issues were brought to court: 1) Whether Sargis Manuk Poghosyan's detention and detention length were in line with the requirements of the Republic of Armenia Legislation and the European Convention for the Protection of Human Rights and Fundamental Freedoms; 2) Whether a detention warrant issued by a US State Court can become a basis for the detention of an individual in the Republic of Armenia and for keeping him at a penitentiary institution; 3) Whether a note from the Republic of Armenia Deputy Prosecutor General can be a basis for the detention of an individual in the Republic of Armenia and for keeping him at a penitentiary institution.

29. On 30 May 2011, the Republic of Armenia Criminal Court of Appeals satisfied the appeal and reversed the 18 January 2011 decision by the Republic of Armenia Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts and obligated the body of criminal proceedings to restore the violated rights and freedoms of the individual. The Republic of Armenia Prosecutor General appealed to the Republic of Armenia Court of Cassation. However, on 27 September 2011, the Republic of Armenia Court of Cassation ruled to return the appeal.

## **Q 7**

30. To date, the Public Defender's Office (PDO) has 36 staff members. Among them, 17 work in Yerevan, and 19 in regions of Armenia. It also has 1133 advocates.

31. The number of public defenders is very limited and at times the large amount of work (up to 30 cases at time) impedes their productivity.

## **Q 8**

32. Armenia did not take specific measures to implement all recommendations made by the United Nations Working Group on arbitrary detentions, following its visit of the country. It is particularly worrying that Armenia does not have a systematic approach to investigate all cases of alleged torture and ill-treatment by police officers. As illustrated by the following cases, a serious effort is needed in order to prevent the use of torture and ill-treatment by security forces, including the police.



*Case of Genya Grigoryan at Artashat Police Station*

On 30 March 2011, Genya Grigoryan and her underage child were asked by Artashat Police Officers to go to Artashat Police Station, where they remained from 20:30 to 22:30. At that time an investigator, who introduced himself as Haykaz, approached them and said that he wanted to talk about some money issues connected with the investigator. They remained at the police station for about 2 hours, and the investigator kept repeating: "Even detention was possible, and if she did not come in when asked, she would be detained." Genya Grigoryan stated that another similar case happened to her again. This time she went to the police station at around 4:00 p.m., and told the police that she had to see the investigator. The investigator came and told her that he would arrange a confrontation with those who gave the money. Then, the head of the investigation division came and told Genya Grigoryan that she "would be detained."

*Case of Julieta Hovhannisyan*

On April 13, 2011, Julieta Hovhannisyan received a phone call from a police officer named Ayvazyan, who asked her to go to the police station (without a warrant or a legal status). Once at the police station, J.H. was inquired about drugs. Ayvazyan threatened her, telling her that she would get arrested and fired from her work if she refused to admit guilt. After dismissing her, Ayvazyan said that she should not tell anyone about what had just happened. On 21 April 2011, he called her again and requested her (again without warrant or legal status) to go to the police station. This time, she went to the police station with a legal representative. However Ayvazyan behaved the same way he did last time and even spoke to the lawyer in the same aggressive tone. Afterwards, Julieta Hovhannisyan was requested to go to the police a third time although this time through a warrant, however the legal status was still not mentioned.

*Case of Srбуhi Baghdasaryan*

S.B. informed the police that she had had a strong argument with her daughter-in-law that had worsen and turned into a fight. The police sent her to a forensic doctor to examine her wounds. After the visit, the forensic doctor informed S.B. that he would notify the police department about her case. S.B. together with a representative of HCAV went to the investigation division to obtain more information, but the investigator refused to answer without presentation of a written request. S.B. was later on requested to go to the investigation division, where she was psychologically and physically pressured to give testimony. She was soon forced to say what the investigators wanted her to say and to sign a false written testimony. In a second round interrogatory, S.B. was tortured by police officers at the Bazum Police Station. She lost consciousness twice; forcing police officers to call the ambulance that would took him to the hospital. HCAV received an alert about the case and visited the hospital. However the case could not be brought to justice; the police forced the mother of S.B. to make an agreement to not file a complaint using similar methods of torture.

*Case of Artur Kharatyan*

Artur Kharatyan was called to the police station for interrogation without a warrant and not knowing his legal status. Artur Kharatyan was told he had the right to be interrogated in the presence of an attorney but, despite his insistence, could not find out his legal status and consequent rights and responsibilities before the interrogation.

*Case of Silva Ramazyan at Tumanyan Police Department*

On 7 September 2011 at 16:00 hours S.R. was taken to the Tumanyan Police Department. The police maltreated and insulted her while asking questions about her son. After 8 hours, she found the way to escape but was rapidly stopped by two police officers who dragged her into a car and took her back to the police station for a few more hours. On 8 September at 16:00 she was again taken to the police station for interrogation, which lasted this time 7 hours. HCAV filed a crime report.

*Case of Arman Ramazyan at Tumanyan Police Department*

On 6 September 2011, 3 officers of the Tumanyan Police Department requested Arman Ramazyan to go to the police station, arguing that he had not fully reported since his release from detention. Once at the police station, Arman Ramazyan was charged with rape and arrested. During the interrogation, Arman Ramazyan was subjected to violence and forced to give false and self-incriminate testimony. The victim would later on not recognise him as her aggressor.

*Case of Artyom Arakelyan*

On 6 October 2011, at approximately 21:30, A.A. was invited to the police as a witness for the case of knife assault that had happened on the same day in Vanadzor. Artyom Arakelyan remained at the police station until 01:00 and was requested to return to the police station on the same day at 10:00. He was then kept there 15 hours, until 01:00, and ill-treated to extort testimony. He was let go only when his mother told the police that she was going to HCAV. Artyom Arakelyan was immediately let go and advised to go home. Artyom Arakelyan's physical injuries were recorded by a medical forensic examination, which he went for with the head of HCAV. HCAV filed a complaint but the victim changed his mind and withdrew it, denying to the prosecutor's office that anything had happened.

*Case of Arman Yengibaryan*

In June 2011, 29 years old Arman Yengibaryan was shoot to death by a police officer while he was running away from police officers suspecting him of having committed a crime. The Police claimed that they were trying to neutralize him. Yengibaryan had a gas pistol while the Police shot with live bullets. Assassination and neutralization are quite different things. Neutralization means averting someone's harmful actions. In this case, shooting the suspect in the leg could have been considered neutralization, because in that case the suspect could not escape or run away. More precisely, shooting him in the arm could have prevented the exchange of gunfire. The police official simply decided to kill Arman Yengibaryan and his act had nothing to do with neutralization. The suspect was shot twice in his belly and in his head; he was brutally killed.

*Case of Garnik Melikyan*

On 11 October 2010, Garnik Senik Melikyan was beaten in a police car, following an incident with a the father of a police officer. He identified the two police officers as being the following: Edmund Dumikyan and Zohrab Tsarukyan, an officer of the Patrol Service of the Tashir Police Station. 3 days after the incident, Garnik Melikyan could still feel a sharp pain in the upper left area of his chest that worsen until impeding him to go to work for 3-4 days. On 17 October, HCAV visited Garnik Melikyan. Garnik Melikyan went to see a doctor at Tashir medical center.

Afterwards, he went to the Tashir Police Station and filed a report about the incident. On 25 December 2010, SIC Investigator of the Republic of Armenia Special Investigation Service, G. Hovakimyan reviewed the materials prepared on Garnik Melikyan's report and decided to reject the initiation of a criminal case. On 24 January 2011, the 25 December 2010 decision of the SIC Investigator to reject the initiation of the criminal case, was appealed with the Republic of Armenia Prosecutor General.

Simultaneously, the head of the Internal Security Department of the Republic of Armenia Police informed Garnik Melikyan that based on the results of the internal investigation of his complaint, the officer of the Patrol Service of the Tashir Police Station, Senior Sergeant of the Police Zohrab Tsarukyan was subjected to disciplinary punishment for undue interference with money issues between citizens. On 2 February 2011, a letter signed by the Senior Investigator of the Republic of Armenia Prosecutor General's Office, H. Harutyunyan stated: "As provided by Article 103 of the Republic of Armenia Criminal Procedure Code, I am informing you that your appeal against the 25 December 2010 decision to reject the initiation of the criminal case based on the materials prepared by the Republic of Armenia Special Investigation Service was rejected by the 2 February 2011 decision, for being groundless." However, the decision that would explain why the complaint submitted by the HCAV was groundless was not attached to the letter.

On 26 February 2011, the 25 December 2010 decision by the SIC Investigator of the Republic of Armenia SIS, G. Hovakimyan to reject the initiation of the criminal case, was appealed in the Republic of Armenia Court of Common Jurisdiction of the Yerevan Kentron and Nork Marash Administrative Districts.

On 14 March 2011, the Republic of Armenia Court of Common Jurisdiction of Yerevan Kentron and Nork Marash Administrative Districts examined the claim and the 25 December 2010 decision by the SIC Investigator of the Republic of Armenia SIS to reject the initiation of the criminal case and rejected them for being groundless

On 6 June 2011, the Republic of Armenia Criminal Court of Appeals examined the appeal of the representative of G.M., Edmon Marukyan, against the 14 March 2011 decision of the Court of Common Jurisdiction of Yerevan Kentron and Nork Marash Administrative Districts and rejected the appeal leaving the 14 March 2011 decision of the Court of Common Jurisdiction of Yerevan Kentron and Nork Marash Administrative Districts in effect. It is noteworthy that at one of the hearings in the Republic of Armenia Court of Appeals, the investigator presented a letter from Garnik Melikyan, verified by a notary, in which he was informing the Court that he was renouncing the appeal by his advocate and was requesting the Court to leave the appeal without an examination. The advocate motioned to postpone the court examination, so that Garnik Melikyan would personally appear in Court and assure that the opinion expressed in the letter was his and was not imposed upon him. At the following hearing Garnik Melikyan submitted a note where he requested the Court to ignore his previous letter.

The Republic of Armenia Court of Cassation returned the appeal against the decision by the Republic of Armenia Court of Appeals with a routine decision without any justification. Currently the case is sent to the European Court of Human Rights, claiming to recognise ill-treatment and torture under Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

*Case of Vladimir Tonoyan*

On 29 September 2009, a criminal case was instituted at the Lori Region Investigation Division against residents of Gyumri, Vladimir Tonoyan and Armen Melkonyan for a robbery. On 2 October 2009, V. Tonoyan and A. Melkonyan were indicted and detained. On 8 November 2009, Artur Sakunts, Chairman of Helsinki Citizens' Assembly-Vanadzor, visited the Detention Facility of the Vanadzor Police Department, where V. Tonoyan informed him that on 29 September, the officers of the Spitak Police Department, dressed as civilians, used violence against him in order to extort confession testimonies. The officers repeatedly hit different parts of his body with rubber sticks; V. Tonoyan lost consciousness several times during the beatings.

On 11 November 2009, the HCAV filed a crime report on bodily injuries caused to V. Tonoyan. To date, after a long process in various court levels, the case is still pending in the judicial system.

**Q 9**

33. The RA has neither the practice in the implementation of the law nor the legislative obligation to ensure that witnesses' rights are properly explained to them. Furthermore, the summons do not include verification of the situation or any explanation of the criminal case about which the witness is summoned, nor are witnesses informed that they have the right to access to a lawyer.

34. In the case of Vahan Khalafyan, the victim was taken into custody as a witness, but was asked questions of an accusatory nature, and was not guaranteed the right to have a lawyer. He was subjected to pressure, was forced to admit the deed which was attributed to him and after 8 hours in disputable circumstances according to the official version committed suicide by stabbing himself with a knife in the presence of three police officers.

35. HCAV often receives citizens that complain that their family members were taken to the police station and kept there for several days without legal grounds. In some cases, the suggested solution to release the person under unlawful custody is to file a report with the prosecutor's office for kidnapping.

**Q 11**

36. In 2011, 39 persons in the Republic of Armenia Armed Forces died; 11 as a result of a violation of ceasefire; 4 as consequence of a violation of a regulatory policy regarding army relationships, 6 were accidents, 10 were suicide or incited suicide, 3 were caused by the violation of safety regulations, 2 resulted from a health-related disease, 1 cause of death remains unknown, 1 resulted from service negligence, and 1 case was qualified as wilful murder.

37. The Republic of Armenia Ministry of Defense or the NK Defense Army is a primary source of information in 32 out of the 39 cases. In the remaining 7 cases, no information is published. However, according to HCAV, 6 of the initiated criminal cases are in the preliminary investigation

stage and 1 case has been submitted to court and will be appealed to the Republic of Armenia Court of Appeals.

38. In 2010, 54 persons in the Republic of Armenia Armed Forces died. HCAV has registered 44 of them. 9 of those deaths were caused by a violation of ceasefire, 24 by a violation of regulatory policy regarding army relationships, 2 were accidents, 1 was suicide or incited suicide, 3 were the result of the violation of safety regulations, and 5 were the consequence of health-related problems.

39. The Republic of Armenia Ministry of Defense or the NK Defense Army is a primary source of information in 10 out of the 54 cases. According to HCAV information, in 2010 there was a criminal case initiated on 15 cases; 9 of which are at the preliminary investigation stage; 2 cases are being examined in court; 3 cases were dismissed; and 1 case remains indefinite, it is unknown under which article it was initiated and the stage of the criminal proceeding.

### **Q 11a Vardan Sevian**

40. On 19 August 2011, a suicide case was recorded in one of the military units of Goris. Vardan Sevyan, a 19-year-old soldier entered the tent during the camp gatherings and shot himself in the head. The official version is suicide driven by a tragic love affair, as stated in the suicide note. A criminal case was filed and the preliminary investigation carried out following the suicide version. According to the information provided by the Investigation Department of the Republic of Armenia Ministry of Defense, the forensic examination of the body was performed on 24 August 2011; over ten witnesses who were near the tent were interrogated; besides Vardan, there was another soldier in the tent, he was asleep and woke up from the sound of the gunshot. Nobody has been detained yet.

41. The mother of the soldier recalls the trace of the shot, a small black hole below his left ear and two parallel cuts on his neck. V. Sevyan was right-handed; it would thus have been difficult for him to handle the pistol with his left hand. In addition, there is no explanation for the cuts on his neck.

42. On 16 September 2011, V. Sevyan's parents were not recognized as his successors; as a result they did not receive any documents other than his death certificate. The case is in pre-trial phase.

### **Q 11b Gevorg Kotinian**

43. On 6 February 2011, 19-years-old regular soldier Gevorg Kotsinyan, died as a result of an incident in # 25918 military unit, located near the Dashkestan / Ara Mountain settlement in Hadrut, an area of Nagorno-Karabakh. A criminal case was filed pursuant to Point 2, Part 2 of Article 359 of Republic of Armenia Criminal Code: "Violation of fundamental laws of the Republic of Armenia Criminal Code by military servicemen interrelations conditioned by subordination and degradation of individual's dignity and honour or neglect parallel with violations or persecutions, carried out 2) by a group of individuals" as well as according to Point 6 and 14, Part 2 of Article 112 of Republic of Armenia Criminal Code: "Deliberately inflicting severe damage to health..., which was implemented by 6) an individual or a group of individuals, 14) unintentionally causing victim's death".

44. On 11 February 2011, the Investigation Service of the Republic of Armenia Ministry of Defense noted that regular soldiers, Taron Suvaryan and Vahe Aghajanyan, were detained and charged according to Point 2, Part 2 of Article 359 of Republic of Armenia Criminal Code (quoted in G. Kotsinyan's case above) as well as Point 6 and 14, Part 2 of Article 112, of Republic of Armenia Criminal Code (quoted in G. Kotsinyan's case above). Junior Sergeant, Margar Davtyan, was arrested in this case, and is charged under Point 2, Part 2 of Article 359, as well as under Point 2, Part 2 of Article 38-359 of the Republic of Armenia Criminal Code (supporting the crime), Point 6, 9, 14, Part 2 of Article 112, and Part 1 of Article 375 on "Exceeding authorities and command negligence". Detained Senior Lieutenant Armen Rafayelyan is charged under Part 1 of Article 375.

45. Forensic, chemical, medical and crime scientists' experts conducted examination of G. Kotsinyan's body and crime scene, investigators interrogated eyewitnesses and the case counted with the support of psychiatric expertise. The Minister of Defence concluded that the death was the result of violent beatings, as evidenced by the autopsy.

46. HCAV and a correspondent of "Azatutyun"/RFL Radio Station visited the relatives of G. Kotsinyan to clarify some details related to the case. They learned that, at first, the Military Commissariat had referred to the death as a result of a heart attack. However, the autopsy's result that evidenced haemorrhage around the soft tissues of the chest, the left lung, the right kidney, soft tissues of the right waist area, cardiac haemorrhage and dislocation of the clavicle led to a different and indisputable conclusion: G. Kotsinyan had been severely beaten.

47. On 14 November 2011, the Syunik Region Court of Common Jurisdiction sentenced Junior Sergeant Margar Davtyan to 11 years and 6 months of imprisonment; privates, Taron Suvaryan and Vahe Aghajanyan, to 11 months of imprisonment; and Senior Lieutenant Armen Rafayelyan to 3 months of imprisonment. Armen Rafayelyan was released in general amnesty.

48. In December 2011, the Republic of Armenia Court of Appeals took into proceedings the case of G. Kotsinyan, beaten to death by his 4 fellow servicemen (presiding Judge, Sergey Chichoyan). The initial court hearing scheduled for 26 December 2011 was postponed; the new date has not been set yet. Both sides filed the appeal. In the appeal, Edmon Marukyan, representative of the victim's successor, demanded that the court recognise that G. Kotsinyan's right to life was violated.

### **Q 11c Artak Kotinian**

49. On 27 July 2010, Lieutenant Artak Nazerian, contracted military officer graduated in oriental studies and Iranian specialist, 30 years old, working in the border with Azerbaijan, was found dead with a bullet in his head. The military office first called the family and mentioned that Artak was badly wounded in one finger. As soon as his mother arrived to the camp enquiring about an injured soldier, she was informed that her son had committed suicide.

50. A press release from the Ministry of Justice soon corroborated the suicide version and a suicide note was handed over by the investigators to the family shortly after. The family assisted to the autopsy. They witnessed clear signs of ill treatment and pushed for further investigations. Formally, Artak had 57 bruises on his body. Some wounds dated 2 days prior Artak passing, others 6 hours earlier and some had been inflicted immediately before the gunshot.

51. The killing of Artak created outrage in the Armenian society. The investigation of the crime scene was incomplete and contained plain contradictions. Investigators did not check for fingerprints, blood traces seemed to indicate that the body had been moved, the number in the bullet shell did not correspond with the

one in the crime scene, and Artak still owned his 120 bullets given to him at the camp. The military police ended up concluding it could have been an instigated suicide.

52. The Ministry of Defense and the Military prosecutor's office, despite their openness to receive the relatives, manifested to be strongly opposed to consider any other element than suicide into the investigation. It is particularly worrying to learn that the Military prosecutor in Armenia is judge at the European Court for Human Rights. The family also appealed to the Ministry of Justice, which refused to take into consideration any claim arguing "relatives were too emotional to talk about it".

53. The preliminary investigation by the Operative Service under the Ministry of Defense took 12 months. It was supervised by the Military Prosecutor's office, which is defending the charge at the court. During the preliminary investigation, the relatives of A. Nazaryan were kept aside the investigation. After its conclusion, the materials from the case handed over to the family were incomplete; pictures from the autopsy and the examination of the scene were missing. The 3 instances' courts rejected the appeals of the family that is now challenging the accordance of the law and its interpretation to the Constitution.

54. In September 2011, the case entered the court in Tavush, a far North-East region of Armenia. After many requests, it was moved 2 months later to Yerevan, the capital city of Armenia, where most of the participants of the process live. The witnesses were unable to recall their testimonies given for the preliminary investigation. Therefore, their testimonies often contradict not only what they said to the coroners, but also what they say now to the court. On 18 January 2012, the judge suddenly made the decision to move the trial back to Tavush.

#### **Q 11d Artur Hakobian**

55. On September 2010 at 09:30, a resident of Vayk Artur Hakobyan, junior sergeant, serving on contract, and responsible of a battalion depot, committed suicide in one of the Vayk military commissariats.

56. V.A. Hakobyan asked a member of the depot battalion to help him carrying a box, steal his weapon left unattended and shot himself. He died on the spot.

57. A criminal case has been initiated in the garrison investigative department by part 1 of article 110 of Republic of Armenia Criminal Code (Causing somebody to commit suicide).

58. Thorough medical forensic, forensic ballistic and forensic tracing examinations were carried out, but the results were not published.

#### **Q 11e Tigran Ohanjanian**

59. On 30 August 2007, Tigran Ohanjanian, 18 years old, university student graduated in Russia, was allegedly accidentally electrocuted during his military service in the Karchaghbyur military unit of Vardenis. The investigation of his case is still ongoing. The accidental electrocution is the only version circulated by the Investigative body although it has been twice refuted; the first time in 2009 by the National Bureau of Expertises", a State non-profit structure, and a second time, on 4 April 2012, by 4 experts of the Radio-physics Research Institute who concluded that the transition



of the voltage from the network to the antenna was impossible in case of failure or damage of any of the high voltage blocks of the station”.

60. According to the results of the above expertise, R-419 sub-block cannot produce 180 V tension and can thus not be pointed out as the reason for electrocution. The experts asked to be provided with R-419 radio-electric device and also mediated for organizing inspection of the area. However, according to T. Ohanjanyan’s father, Suren Ohanjanyan, the device was not present at the crime scene any longer, and the experts fulfilled their expertise on another device of the same type.

61. In addition to the arguments refuting the accident version, the autopsy of T. Ohanjanyan revealed that all the teeth of his lower maxilla were missing but failed to mention other compelling signs of ill treatment. The pictures of the body in the hands of his family show distinguished bruises in his face and hands, burned left foot, blood in his ears, and a cut in the right side of his neck.

62. In October 2007 and end February 2008, Suren Ohanjanyan was repeatedly threatened to stop his investigations by Prosecutor Harutyun Marutyunyan.

63. The investigation of the committed forensic medical fabrications has not started, and although the case is assigned to a new investigator, the former investigator was not held liable for his negligence.

#### **Q 11f Varda Martirosian**

64. On 29 September 2010, Vardan Martirosyan, Commander of the Ararat Army Unit accused of illegally extorting money and humiliating soldiers, was released on bail. At the end of 2010, his case and the one of another officer were closed.

65. The criminal case had been initiated based on the testimony of a demobilized soldier, who unanimously told a newspaper about several instances of violence and humiliation by the commander against soldiers.

66. Yuri Khachaturov, head of the Republic of Armenia AF General Staff, restored V. Martirosyan -a close friend of his son- in a position of the Operative Department of the General Staff of the Armed Forces and justified its decision arguing that his case had been closed and that he thus V. Martirosyan had the legal right to continue his military service.

#### **Q 11 Other related cases not mentioned in the list of issues**

##### **Tigram Hambardzumyan**

67. In 2011, the father of Tigram Hambardzumyan saw his 19-year-old son lying lifeless in the forest 30 meters away from the fences of the military unit. The skin from his head, ears and neck was removed. Cause of death: suicide. It was on June 28, 2011. At 16:00 hours that day, the head of the military unit’s headquarters notified the family of the escape of Tigram. His father went to the unit on the next morning. His son had served for 1,5 years and never ran away before. Once in the military camp he learned that Tigram had died. The chief of military police took him to his body but prevented him to go closer than 3 meters. He was then confronted to an appalling scene. The medical expertise did not determine the exact time of death and got along with the version of wolves

tearing apart Tigran's lifeless body after he had decided to taken away his own life. The official version also states that the dogs of the chief of the military police found the body. Tigran's father remembers that his son was not wearing his vest, but only an undershirt, despite of the cold and that the skin of his uncovered shoulders was intact. A suicide note was found 2 months later.

### **Valery Muradyan**

68. On 15 March 2010, Valery Muradyan, a fresh 18 year-old recruit attending his mandatory military service in Karabakh, was found hanged from a steel bar that was 40 centimetres inferior to his own height. He had distinctive wounds in his shoulders, neck, nose and mouth. Cause of death: suicide. He had joined the army 3.5 months earlier. The pictures of the crime scene revealed that the height of the steel bar was manifestly insufficient for a 1.80-meter person to commit suicide by hanging. They showed Valery hanging on his knees. The family filed a complaint. However and despite the evidence, the report of the Prosecution changed in its report the height of the steel bar to 2 meters.

69. After her son's passing and during the second semester of 2010, the mother, Nanna Muradyan, received various threats from Prosecutor Harutyun Marutyunyan. She clearly remembers how in one occasion he distinctively told her to remember that she had yet another child.

### **Q 12**

70. Followers of the Jehovah's Witnesses faith who refused to enlist in the military or to participate in the civil service offered as an alternative to enlistment were imprisoned by the order of RA Defense Minister S. Ohanyan.

71. In 2007-2012 in RA there 157 Jehovah Witnesses have been imprisoned.

72. According to the data up to March 2012 Armenia had not released the 52 Jehovah's Witnesses who had been charged under the Criminal Code for their conscientious refusal of military service on religious grounds. They have been tried, convicted, and imprisoned; no one is being held in pretrial detention; no one received a suspended sentence (see also at [www.hahr.am](http://www.hahr.am) in the section "Freedom of Religion").

73. Since the summer of 2008, Jehovah's Witnesses began receiving military IDs. Prior to that period, people who had been sentenced to prison were not able to get residency, without which they were unable to receive a personal identification card or passport. As a result, they were unable to be employed by the Government, leave the state or marry. A military ID is an on official RA identification document RA during the period of military service. It grants the right to exercise one's civil and political rights, and vote during the elections, but does not allow travel out of the country.

74. Currently, there are 58 Jehovah's Witnesses who have been charged under the Criminal Code for their conscientious refusal of military service on religious grounds. Of these, 58 have been tried, convicted, and imprisoned; no one is being held in pretrial detention; no one received a suspended sentence.

75. In April 2011 Armenia offered changes and amendments to the Law on Alternative Service, which does not however reduce the length of the required term of alternative service and the character of the labour services, which are of humiliating nature.

### Q 13

76. Local NGOs with the support of international organisations prepared and suggested a draft of law on domestic violence that is being discussed in the Parliament.

77. Sexual violence is widespread in the Republic of Armenia. Many of the beneficiaries of NGOs' programs were sexually molested in public transports, victims of exhibitionists in public transports, victims of sexual harassment and inappropriate jokes in the workplace, etc. It is very difficult to conduct research on sexual violence in the Republic of Armenia due to taboos and customary norms that impede open discussions.

78. During 2008-2009, in the framework of the project "Combating gender based violence in Armenia" UNFPA conducted a Nationwide inquiry on "Domestic Violence against Women" interviewing a total of 2749 women. The inquiry revealed:

79. Violence by the Intimate partner:

- 61% of women were subjected to supervising behaviour
- 25% of women were subjected to psychological violence/ abuse
- 8.9% of women were subjected to physical violence
- 3.3% of women were subjected to sexual violence
- 9.5% of women were subjected to physical and/or sexual violence

80. Economic violence:

- 7.4% of women stopped working or refused to work because their partners did not want them to work
- 8.7% of women reported that their partners took their income against their will
- The results of the inquiry show that 35-44 and 45-59 age group women are subjected to maximum risk.

81. In 2011, UNFPA organized a survey on "Public opinion on domestic violence in the Republic of Armenia". 64.6% of the participants believed that domestic violence had increased during the last 3 years and only 19.8% thought that the domestic violence had decreased. 2695 people took part in the inquiry.

82. The NGO Sexual Assault Crisis Center deals with gender-based violence in the Republic of Armenia and publishes an annual report that contributes to enhancing the scarce research available. The victims of domestic violence exclusively rely on the support services offered by NGOs as there are no state services. NGOs are disseminated in different regions of the Republic of Armenia and provide a wide range of services, such as free psychological, legal consultation and other necessary resources. The state does not supply or finance temporary accommodation for the victims of domestic violence; there is only one NGO in the Republic of Armenia that receives financing for

accommodation (the financing comes from abroad); it can house a limited number of victims of domestic violence. In 2011, 67 women applied to the "Sexual Assault Crisis Center", and 2302 people applied to the "Women's Rights Center Armenia".

#### **Q 14**

83. Magistrates and judges disproportionately grant requests made by prosecutors and deny those made by defense lawyers. Cases in which the accused persons are acquitted are rare. In cases where the person is acquitted, they are often charged on another offense by the same court soon after. Therefore, the procedure is of an artificial character. As a rule, in cases of preliminary arrest, the courts satisfy the petition of the accused side and most often detention is chosen as a precautionary measure. In case of other circumstances, when the petition for detention is denied and the accused escapes, the judges are subjected to disciplinary sanction.

84. On June 24, 2011 the RA Council of Justice investigated case of Judge Samvel Mnatsakanyan, initiating disciplinary proceedings against him, and made a decision to apply to the President of the RA with a petition for the early termination of Samvel Mnatsakanyan's powers. Judge Samvel Mnatsakanyan was punished for not providing justification for his decision to replace a defendant's detention as a precautionary measure with bail. The judge's decision was not appealed in Court of Appeal by either sides. At the time of investigation of Mnatsakanyan's case the person for whom Judge Mnatsakanyan had chosen bail as a precautionary measure was acquitted due to a lack of the formal elements of a crime. Judge Samvel Mnatsakanyan was subjected to disciplinary sanction and was deposed for the release on bail of the accused, towards whom detention had already been chosen as a precautionary measure.

#### **Q 15**

85. Following the Presidential election of 19 February 2008, the opposition held nine days of round-the-clock demonstrations in Freedom Square accompanied by marches through the centre of Yerevan, in the Liberty Square.

86. The protests were peaceful and legal. Protesters were women and men civilian manifestly non-violent and unarmed.

87. In the early hours of 1 March 2008, the police dispersed the protesters, alleging that they were conducting a search operation of weapons.

88. Police operations rapidly turn violent as protesters, many of whom were still asleep at the time, were brutally beaten and their tents destroyed by the police forces. Forced out of the square, protesters sought safe haven in the area near the French, Italian, and Russians Embassies.

89. Opposition supporters and other concerned citizens spontaneously gathered alongside the protestors. Simultaneously, individuals and groups with more dubious motivations also arrived in the area.

90. In the evening of 1 March, police and military forces surrounded the area. Clashes between protestors and police and military forces left 10 protestors killed, dozens of them physically injured

and hundreds of them arrested. More than one hundred demonstrators were imprisoned for different periods of time, a dozens of them were prosecuted.

91. More than three years after the events of 1 March 2008, death circumstances of citizens remain unrevealed. Upon the suggestion of Thomas Hammerberg, Council of Europe Commissioner for Human Rights on 23 October 2008, the President of Armenia signed an order to establish a Fact-finding Group to examine the events of March 2008<sup>1</sup>. The Fact-finding Group provided results only for the death of one of the 10 victims, Hamlet Tadevosyan<sup>2</sup>. Details of the case and interviews of investigation witnesses and medical employees revealed obvious inconsistencies in the criminal procedure.

92. Relatives of killed 1 March protestors were recognized as assignees 5 months after the tragic events and action scenes were not examined.

93. In April 2010, human rights lawyer Artak Zeynalyan, the representative of assignees of 9 victims of 1 March 2008, appealed the inaction of the Special Investigation Service on the ground of failure to disclose anything related to the 1 March killings. A. Zaynalyan represented the claims of deceased Grigor Gevorgyan, Hovhannes Hovhannisyan, Samvel Harutyunyan, Tigran Abgaryan, Tigran Khachatryan, Armen Farmanyan, Gor Kloyan, Davit Petrosyan, Zakar Hovhannisyan, all of them killed on 1 March 2008. All national court instances have dismissed the appeal. Recently Artak Zeynalyan submitted a claim to the General Prosecutor's office in order to reactivate the Special Investigation Service. However, the claim was qualified as ungrounded and rejected.

94. Despite the report of the United Nations Special Rapporteur on the Situation of Human Rights Defenders<sup>3</sup>, and the repeated demands of international organizations, including international NGOs and local human rights groups, for real investigation of the deaths and injuries resulting from the 1 March 2008 clashes between the protestors and the police and military forces, and the thorough study of allegations of ill-treatment and violations of due process, the Government asserts that satisfactory investigations into the allegations of police ill-treatment have already been completed. As an unresolved issue, this and other concerns including corruption, impartiality of the judiciary, lack of independence of the media and restrictions to freedom of assembly and association have formed the basis of a lingering resentment towards the authorities."<sup>4</sup>

95. With parliamentary and presidential elections on the horizon, there is serious reason to fear that the problem of politically motivated arbitrary detention and arrest may grow worse in the near future.

### **Arbitrary detention**

96. In connection with the presidential election of 19 February 2008 and the demonstrations that followed, more than 100 supporters of the opposition candidates were arrested, dozens of

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<sup>1</sup> The Fact-finding Group was dissolved on the reason that there were disagreements between the members of the Group. In 2009, the Group presented its report, as well as reports of individual members.

<sup>2</sup> See: [http://hahr.am/images/stories/cases/march1/TadevosyanEngTrans\\_May18.doc](http://hahr.am/images/stories/cases/march1/TadevosyanEngTrans_May18.doc).

<sup>3</sup> Report of the United Nations Special Rapporteur on the Situation of Human Rights Defenders on Armenia, 23 December 2010 (UN Doc.: A/HRC/16/44/Add.2).

<sup>4</sup> Report of the United Nations Special Rapporteur on the Situation of Human Rights Defenders on Armenia, para. 16.

whom spent more than a year in jail. The arrests of these people were regarded as politically motivated and their trials as flawed by local and international observers, as discussed below.

97. Although as of June 2011 they had all been released, for time served or as a result of two amnesties, their convictions still continue to stand. In addition, they have not received any financial compensation for their detention.

98. Starting on 1 March 2008 and continuing for the next week, thousands of people were interrogated, more than a hundred opposition leaders and activists were arrested, and as many more went into hiding. The political motivation of these arrests can be inferred from a 5 March directive of the Special Investigation Service addressed to the prosecutors of Vayots Dzor, Gegharkunik and Aragatsotn regions, the police, and the National Security Service (NSS) calling upon them to identify and question rally organizers and participants, with the aim of eliciting information on “any conversations at political rallies about foreign assistance, activists' perceptions about instability being advantageous to foreign agencies or states, and any talk of eliminating Russia's influence in the country.”<sup>5</sup> The directive also called for:

99. Gathering personal information on rally participants and their family members, including property, obtaining telephone numbers of local Ter-Petrosyan campaign officials along with permission to wiretap them;

100. Obtaining copies of their passports;

101. Identifying the drivers of the minibuses and taxis who had had transported people to Yerevan for the rallies, and finding out who had accompanied their passengers, who had paid their fares, and what they had said about the rallies.<sup>6</sup>

102. Arrests and detentions were accompanied by beatings, mistreatment, and procedural and substantive violations. At the same time, phones were tapped, houses were searched without warrants, and families were threatened and harassed. As documented in a report by Council of Europe Commissioner for Human Rights Thomas Hammarberg first published on 20 March 2008, people were routinely detained on the same charges regardless of their particular circumstances and actual involvement<sup>7</sup>: “The Prosecutors have applied standardized language in the charges against the arrested. The judges seemed not to have entered into a serious test of the charges, the legality of the apprehension and the proportionality of deprivation of liberty vis-à-vis the gravity of the crime.”<sup>8</sup>

103. On 17 April 2008, in the first of several resolutions, the Parliamentary Assembly of the Council of Europe criticized the arrest and continuing detention of opposition supporters on seemingly artificial and politically motivated charges. In particular the resolution stated that “in the absence of adequate judicial control, the arrests and continuing detention of persons on seemingly

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<sup>5</sup> US State Department Country Report, Armenia, 2008

<sup>6</sup> Idem.

<sup>7</sup> Charges under Article 225(3) of the Criminal Code of the Republic of Armenia (organising mass disturbances accompanied by violence and possession or use of firearms or explosives that led to murder) and Article 316 of the Criminal Code (violence against a representative of authorities).

<sup>8</sup> See the follow up report on the special mission to Armenia on 12-15 March 2008 by the Council of Europe Commissioner for Human Rights Thomas Hammarberg.

artificial charges after contesting the fairness of the presidential elections or their participation in the protests after the elections could only point to the political motivation of such acts.”<sup>9</sup>

### **Right to fair trial**

104. Those arrested during the March 2008 events were kept in detention and tried, and the trials almost always resulted in conviction. Hence, during his second fact-finding mission to Armenia on 20-22 November 2008, Commissioner Thomas Hammarberg characterized the prosecution of the opposition as “political vendetta” and told reporters, “I am critical about some of the trials that have already been concluded and about the preparation of the major case against the seven prisoners<sup>10</sup>... I have not so far seen any strong evidence which would make it possible for an independent court to sentence these seven for attempting to change power in this country with violence.”<sup>11</sup>

105. The politically-motivated arrests were followed by investigations and trials that gave rise to serious doubts about their independence, impartiality, and fairness.

106. The Trial Monitoring Project conducted by the Office for Democratic Institutions and Human Rights (ODIHR) from April 2008 to July 2009 found serious shortcoming with regard to the right to liberty, presumption of innocence, equality of arms, the right not to be compelled to testify, the obligation to exclude unlawfully obtained evidence, the right to defense, excessive application of sanctions for contempt of court, and judges’ impartiality and professional conduct.<sup>12</sup>

### **Freedom of expression (Article 19, ICCPR)**

107. During the run-up to the elections, journalists were beaten and arrested and the access to the press was limited. During the 20-day emergency rule, censorship was applied only to independent newspapers, online media and Radio Free Europe. Newspapers, such as *Chorrord Ishkhanutyun* and *Zhamanak Yerevan*, were closed. Access to online media was also limited, for example, *You-tube* was blocked<sup>13</sup>.

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<sup>9</sup> Council of Europe Parliamentary Assembly Resolution 1609.

<sup>10</sup> A reference to the “Case of Seven”, which began as a joint trial of seven oppositionists including three MPs and Levon Ter-Petrosyan’s campaign manager.

<sup>11</sup> See Radio Liberty: <http://www.azatutyun.am/content/article/1598507.html>.

<sup>12</sup> Trial Monitoring Project in Armenia (April 2008-June 2009), OSCE/ODIHR Final Report

<sup>13</sup>See:

<http://www.caucasusnetwork.org/admin/editor/uploads/files/pdf/World%20Press%20Freedom%20Day%20Statement.pdf>.

## Article 10

### Q 25

108. The Republic of Armenia has a strategic project on gender policy for 2011-2015. Events' Project on Gender Policy for 2011; Against Gender Violence National Project; Strategic Project Against Gender Violence for 2011-2015; Events' Project Against Gender Violence for 2011; in the frameworks of the abovementioned projects it is anticipated that correspondent training courses should be organised by Republic of Armenia Ministry of Labour and Social Affairs organised similar trainings with the aim to train the social workers (orphanages, nursing homes, centre of state social security, employment service agency, etc.) on working in the structures, which are included in the Ministry's system.

109. There are no expansive projects of further training that include all the specialists working the public; doctors, policemen, psychologists, etc.

110. Numerous NGOs work for raising public awareness. These are the NGOs that mainly deal with human rights, protection of interests and women issues. There are NGOs that are ready to implement training courses, but they do not receive support from the government and there is no demand for these courses.

## Article 11

### Q 29

111. There is no internal mechanism of complaints in penitentiary institutions. The state, namely the Prosecutor General, presents the statistics on the crimes committed while in detention, but not any statistics regarding complaints by inmates their investigations and applied sanctions.

### Q 30

112. The Republic of Armenia Ministry of Justice informs about reforms in the penitentiaries; however so far there has not been any specific action undertaken. Since 2004 there is the Group of Public Observers Conducting Monitoring of Penitentiary Institutions and Agencies of the Republic of Armenia Ministry of Justice, which can visit any inmate in any penitentiary at any time of the day. In February 2011, the group presented a package of recommendations for reforms in penitentiaries; however up to date there is no information about their implementation. Moreover, to this date, a number of unsolved system issues remains, specifically the issue of conditional early release from



service. There are numerous complaints about the interdepartmental committee for applying unjustified decisions that cannot be appealed. In case of illnesses preventing from serving the term, the government lists these, but the interdepartmental committee makes the decision about the early release without defining the time period of exam. As a result, many convicts suffering from serious illnesses and not receiving adequate care at Penal institutions are under constant uncertainty and suffering; they, in some cases, die while in detention.

113. The President of the Republic of Armenia appoints the head of the Department of Corrections -a structural unit of the Republic of Armenia Ministry of Justice- who, in terms of administrative subordination, only reports to the President and is formally subordinated to the Minister of Justice. In the last few years, the heads of the Department of Corrections have been high-ranking police officers. The current head is a former minister of internal affairs; the previous was the former head of the Department against Organized Crime.

114. Inadequate funding of the Penal institutions has a direct negative impact in the quantity and quality of the food as well as in the access to healthcare provided at the Penal institutions.

### **Q 31**

115. When considering a measure of restraint, the Republic of Armenia Courts applies detainment as a rule not even considering other options. Every 2 months, the investigators apply to courts with a motion to extend the detainment; these requests are generally granted. As a result, a person can remain in detainment for up to 1 year. Moreover when the investigator finishes the investigation and the prosecutor writes the indictment and files the case with the court, the court does not consider the measure of restraint at that stage and the person remains in detainment during the trial as well. This practice is one of the reasons for overpopulation in penal institutions.

116. According to the data of 28 November 2011, 4,567 persons are being held in RA Penitentiary Institutions, among them 1,259 detained persons and 3,308 convicted persons.

117. In 26 May 2011 an amnesty was announced, but reduction of the prison population was not among its stated aims.

118. Overcrowding in penitentiary institutions forces detainees to put in place a rotational system to share the insufficient number of beds.

119. The procedures of the exemption from punishment on parole are very complicated and unproductive. They cannot be carried out on the initiative of the convict. The penitentiary institution initiates the procedure by applying to the Commission. The Commission is represented as an advisory body adjunct to the President. If the Republic of Armenia penitentiary institution gives its approval, the penitentiary institution administration applies to the Court with the demand of exception from punishment. In this procedure, all the actions, inactions and decisions of all entities, are subject to appeal from the convict to all 3-instance courts. Additionally, there is lack of legislative mechanisms for compulsory enforcement of court decrees. The procedure of the exemption from punishment of the convict only becomes effective in practice by the direct order of the state supreme authorities.

## Q 32

120. With the aim to tackle overpopulation of the penal institutions, the President of the Republic of Armenia and the national assembly granted a general amnesty; however the measure did not last long as courts continue to convict people, acquittals are very rare and alternatives ways to imprisonments are scare.

## Q 33

121. The competent bodies of the Republic of Armenia do not make enough efforts to ensure the equal treatment of all apprehended persons, especially the treatment of apprehended persons who are homosexual, bisexual or transgender. There is a discriminatory attitude towards homosexual, bisexual or transgender apprehended persons, which has mainly been reflected in inhuman and degrading treatment and torture towards them that has been accompanied by both physical and psychological violence by the representatives of competent authorities (police forces).

### *Illustration of discrimination against LGBT people in detention*

On 27 September 2011 a transgender person (male to female transgender person), who was in her car on Shahumyan Street at the time of an accident, was apprehended for no reason by some police officers and taken to the Central Police department, accompanied by name calling, an inhuman attitude towards the victim, and beatings. Moreover, the person was isolated in a dark room in the police station, where she was repeatedly beaten and subjected to inhuman and degrading treatment. After some time, she was apprehended for the second time from hospital, where she was recovering from the beatings by the police officers. She was harassed and threatened with physical violence to sign a blank paper, later to be filled by the officers.

Aside from the above mentioned human rights violations of apprehended persons, many cases concerning human rights violations of the MSM (men having sex with men) prisoners themselves are known, which have also been accompanied by inhuman and degrading treatment of other detainees, and neglectful and indifferent attitude of prison inspectors.

MSM behavior is considered as a reason for humiliating a prisoner. It is common practice to separate the MSM prisoner's chair and household utensils from the other inmates, and to force them to clean the toilet and surroundings, etc.

The above-described situation is considered to be a part of prison culture, which the inspectors not only do not interfere with in order to prevent future violations and to maintain order, but also adapt to.

**Q 34**

122. To date in Republic of Armenia there are no specific laws, procedures or juvenile courts. During pre-trial detention, visitors' access is still limited. Moreover, no facilities exist for the physical and psychological recovery and social reintegration of juvenile offenders.

123. Armen Martirosyan is accused together with Karen Karapetyan and Petros Hakobyan in several robbery attacks in 2009. A. Martirosyan was arrested on 19 January 2010. A. Martirosyan's mother Ofelya Martirosyan applied to Helsinki Association to object against torture committed against her son to obtain a confession. According to Martirosyan's mother, approximately 10-15 police officers in civilian clothes broke into their house by breaking down the door, and searched the apartment. A. Martirosyan was detained in Gyumri city and, according to his mother, was subjected to ill treatment, torture and battery through the whole way up to Yerevan police department of Arabkir community. After 2-3 days, A. Martirosyan (juvenile at the time) was moved to a juvenile colony, where his mother saw the impact marks on the boy's body. A. Martirosyan's kidney was bleeding for 2 months. The boy said that he was forced to jump from the window. Martirosyan tried to commit suicide. Ofelya Martirosyan also informed the Helsinki Association that she had seen Karen Karapetyan in the police department and that she had been beaten so much that she could barely move.

**Q 35**

124. Corruption is rather common in penal institutions. There is a huge amount of information about it, but the complaints are few, because the inmates are intimidated and fear retaliations from the staff. It is common practice for detained and convicted individuals to give bribes for receiving some food prohibited by normative acts, and to be asked to pay for practicing their right to use the bathroom once a week and to use the telephone. The Interdepartmental Committee responsible for early releases is also pointed out as corrupted.

125. Corruption is rather common in penal institutions. There is a huge amount of information about it but the complaints are a few, because the inmates are afraid of intimidation from staff. Detained and convicted individuals give bribes not only for receiving some food prohibited by normative acts, for practicing their right of using the bathroom once a week, for using the telephone. There are some corruption risks connected with the decisions regarding early release made by the interdepartmental committee.

## Articles 12 and 13

### Q 38

126. Article 98 of the Republic of Armenia Criminal Procedure Code states: “Any person participating in the criminal proceedings, who can provide information, which can be significant for solving the crime or discovering the perpetrator and which can create danger to life, health, property, rights, and legal interests of the individual, his/her family member, or a close relative, has the right to protection.”

127. 33 of the 88 advocates practicing in Lori, Tavush, and Shirak Regions of the Republic of Armenia stated that they did not see the need for applying security measures for the witnesses in the cases they were involved in.

128. At the same time, all advocates participating in the inquiry believe that the security measures prescribed by the legislation do not have implementation mechanisms (the law does not prescribe how security measures are applied), thus the legal norm become useless and meaningless. Referring to the cases they have dealt with, the advocates state that the most common protection measure is warning and classification of the individual’s personal information. The possibility of altering the person’s documents or appearance has never been used.

129. In one of the studied cases, the advocate motioned for changing the place of residence of the witness, as a protective measure provided by Article 981 of the Criminal Procedure Code. By the way, the case referred to a military crime involving a multiple murder, where the individual was engaged as a witness and was undergoing medical treatment in a town. When there was a real threat against the witness, the investigator decided to move him to a medical institution in another town upon the motion filed by the advocate. During the same period, the witness became a suspect and was moved back to the same town without any justification. By the way, the advocate did not object the action of the investigator, because there was no perspective.

130. The investigators gave the following answers to the questions asked in the questionnaire:

- *Was there a protection measure initiated and if yes, how many times?*

Only 1 of the 79 investigators interviewed in Lori, Tavush, and Shirak Regions applied a protection measure in his practice, up to 5 times.

- *The basis and reason for the decision about the protection measure*

The basis of the applied protection measure was the written request from the witness, where he justified all the potential dangers or threats, which could occur if he/she testified. The investigator applied the protection measure to ensure the effective examination of the case. It should be noted that there is an opinion among investigators that the classification of the personal information as a protection measure, is the best option of neutralizing the affect of the unwritten rules of the criminal world.

- *The most frequently used measure of protection of witnesses*

In the stated single cases, when a measure of protection of witnesses was selected, classification of personal information of the protected individual was applied. In 2011, in

one particular case, the Lori Region Court of Common Jurisdiction, despite the numerous motions filed by the defendant party to disclose the personal information of the witness and provide an equal opportunity for the defendant party to interrogate the witness, who testified against the defendant, the court did not disclose the information about the individual taken under protection by the decision of the investigator.

- *The type of crime, where a protection measure is initiated*

The abovementioned investigator applied a protection measure toward a witness in a crime against one's health. It is noteworthy that crimes against one's health are both non-grave crimes, e.g. "Intentionally causing minor damage to health," as well as grave and particularly grave crimes, namely, murder or rape crimes in intensifying circumstances. By the way, in almost all countries, where there are witness protection programs or legislation, the law covers witnesses in grave or particularly grave crimes, whereas Article 981 of the RA Criminal Procedure Code does not clarify, in what kind of cases witnesses can receive a protection measure.

- *Are there witness protection mechanisms?*

61% of investigators completing the questionnaires stated that there are witness protection mechanisms, and 39% believe that the mechanisms partially exist. In other words, no one denied their existence. It should be noted that the measures of protection of witnesses are prescribed by 25.05.06 AL-91-N addition in the Republic of Armenia Criminal Procedure Code. Article 981 of the Republic of Armenia Criminal Procedure Code also states: "The procedure and conditions of implementing the protection measures are prescribed by the Legislation of the Republic of Armenia." However, up to date such document has not been adopted.

- *The body providing the measure*

The investigators participating in the survey mentioned the body of inquest, law enforcement body, and the investigator, as an agency providing protection for the witness. Whereas point 3 of Article 98 of the Republic of Armenia Criminal Procedure Code states: "Upon discovery of the need to protect the persons participating in the criminal proceedings, the body of criminal proceedings, at the request of these persons or by its own initiative, takes measures of necessary protective measures, which should be implemented immediately." In other words, it is not stated who is responsible for implementing the measures prescribed by the investigator.

- *Does the witness need legal protection?*

The majority of the responding investigators believe that witnesses need legal protection. At the same time, all 79 interviewed investigators state that there is no need to provide a public defender for insolvent witnesses.

## Article 14

### Q 39

131. The mechanism of compensation and the means for rehabilitation, which must be provided by the state to the victims of torture or their families, is absolutely lacking in the Republic of Armenia.

132. In the RA legal system, the institute of moral/non-financial compensation is lacking (although it is established by law in a 30 March 2010 decision of the Republic of Armenia Constitutional Court). None of the people subjected to torture had the judicial opportunity to apply for or to receive moral compensation. In order for the victim of torture to be allowed to introduce a demand for financial compensation, the incriminated person must have been convicted, excluding the right to compensation during preliminary arrest and prolonged trial or in cases where the perpetrator is not found.

133. The Republic of Armenia signed the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 which obliges the state to give equivalent compensation to the victims of violent crimes, even in a case when the person who has committed the crime cannot be followed and punished. However, the mentioned convention has yet not come into force and is pending the approval of the National Assembly of the Republic of Armenia (NA RA). If it comes into force, the victims of torture and degrading treatment will have the chance to get compensation.

## Article 15

### Q 41

134. In the implementation of the law, a claim that the testimony of the accused or a witness has been elicited by torture does not lead to the suspension of the judicial proceedings. The investigation of the allegation of torture is implemented parallel to the judicial proceeding. Various similar legislative demands are lacking in the legislation. Only after a claim of torture is accepted or denied can a ruling be made as to the admissibility of the testimony in question. As a rule, the determination of the presence or absence of the torture is tasked to the same subdivision against whom the claim has been made. Or there are certain cases in which the person who made the claim is being questioned on it the argument in the presence of the same policeman to whom the torture is attributed. In practice, the hard work of proving the realization of torture mainly is given to the person who had made the announcement.

## **NGO coalition**

### **Asparez Journalists' Club**

Established in February 2000, the Asparez Journalists' Club works on issues related to freedom of expression and human rights violations in Armenia, with a specific focus on media rights and protection of journalist.

*Website: <http://www.asparez.am>.*

### **Helsinki Association for Human Rights**

The Helsinki Association was established by a group of human rights activists in April 1997. It is committed to upholding the terms and conditions of the 1975 Helsinki Agreement on European cooperation and security, as well as all other international treaties and agreements that the Republic of Armenia has signed guaranteeing fundamental human rights to its citizens. The Helsinki Association is concerned solely with activities related directly to human rights issues and has no political, religious or national affiliation.

*Website: <http://www.hahr.am>.*

### **Helsinki Citizens' Assembly Vanadzor**

Founded in March 1998 as a branch of Helsinki Citizens' Assembly Armenian Committee, Helsinki Citizens' Assembly Vanadzor was established as an independent organisation in April 2001. The geographical scope of the organisation's activity covers the Lori Region and it works in whole Armenia on certain projects.

*Website: <http://hcav.am>.*

### **Jurists against Torture**

Jurists against Torture support individuals in their claims for justice and as lawyers association provides legal support to individuals victims of torture and ill-treatment and their relatives.

### **Shakhhatun Women's Democracy Promotion NGO**

Shakhhatun was founded in 2009 to establish an independent home for the continuing work of the Political Prisoners' Wives collective, a group of women that came together when their family members were arrested as part of the government crackdown on peaceful protests against massive vote-rigging in the 2008 presidential election. Shakhhatun's mission is to fight political repression by maintaining awareness of and seeking to redress violations that took place in connection with the 2008 presidential election, and by trying to prevent political repression before it happens, through the promotion human rights awareness and civic participation among women and young people.

*Website: <http://www.shakhhatun.am>*

### **Public Information and Need of Knowledge NGO (PINK)**

Established in 2007, PINK Armenia promotes the ideas of equality and acceptance of vulnerable groups. We want to bring into being acceptance and appreciation of diversity in our society through encouraging cultural sensitivity, acceptance and through eliminating any kind of discrimination. It was an initiative of a group of young people to create an organisation, which would encourage safe sexual relations and foster human rights protection.

*Website: <http://www.pinkarmenia.org>.*

### **Women's Resource Centre**

The Women's Resource Center was founded in 2003 by women from Armenia and the diaspora, and is the first resource center created in the post-soviet Armenia for young women. WRCA is working in the area of women's human rights, reproductive and sexual rights, sexual violence and women's role in the conflict resolution and peace building in the region of South Caucasus.

*Website: <http://www.womenofarmenia.org>.*

### **South Caucasus Network of Human Rights Defenders**

The South Caucasus Network of Human Rights Defenders unites 30 human rights NGOs in Armenia, Azerbaijan and Georgia. The Network seeks to facilitate creation of a safer and enabling environment for human rights defenders in the South Caucasus and to strengthen their voices in the region and internationally.

*Website: <http://caucasusnetwork.org>.*

### **Human Rights House Network**

The Human Rights House Network (HRHN) is a forum of cooperation between established and emerging Human Rights Houses, uniting 70 NGOs in 15 countries in Western Balkans, Eastern Europe and South Caucasus, East and Horn of Africa, and Western Europe. HRHN's aim is to protect, strengthen and support human rights defenders and their organizations. In the South Caucasus region, HRHN is active in Armenia, Azerbaijan and Georgia.

Based in Oslo (Norway) and Geneva (Switzerland), the **Human Rights House Foundation (HRHF)** is the secretariat of the Human Rights House Network.

*Website: <http://humanrightshouse.org>.*