Administration of Justice in the Republic of Armenia

December 2012

The administration of justice in Armenia has been of concern for many years and remains a serious issue. Analysis founded on comprehensive monitoring conducted by local human rights defenders indicates that key issues like lack of judicial independence, use of torture and ill-treatment, and poor conditions and overcrowding in penitentiaries remain outstanding and urgent. In late 2010 and 2011 political prisoners incarcerated after events in March 2008 were released. Nevertheless, specific cases of politically motivated persecution continue.

In 2010 the International Federation for Human Rights (FIDH) together with its member organisation in Armenia, the Civil Society Institute (CSI), and other Armenian NGOs, released a briefing paper outlining serious concerns regarding the functioning of the justice system in the Republic of Armenia. Concerns included violations of the right to a fair trial encompassing also the abuse of pre-trial detention, violations of the presumption of innocence and the rights of the defense, and the use of illegally obtained testimony secured through torture and ill treatment. These concerns were also at the center of discussions during the 2010 International Forum on Justice organised by FIDH in Armenia, as well as the recommendations transmitted directly to the Armenian President and the Minister of Justice. Two years on, FIDH, CSI and the Norwegian Helsinki Committee have conducted a thorough assessment of recent developments in this field. Sadly, significant improvements are still badly needed to shift the general pattern of human rights breaches in this context. Moreover, the individual cases previously highlighted by our organisations have still not been resolved.

The current briefing highlights these deficiencies in six key areas, namely torture and ill treatment, political prisoners, investigations into March 2008 abuses, judicial independence, juvenile justice and the system for early conditional release. In doing so, it will provide factual examples to illustrate concerns, before making a series of recommendations to the Armenian authorities to remedy this situation.

Our organisations, the International Federation for Human Rights, Civil Society Institute and the Norwegian Helsinki Committee express our deep concern about the issues raised in this briefing. We call upon the authorities to eliminate violations in the administration of justice

and ensure the establishment of an independent judiciary and the rule of law. These steps are fundamental to the further democratic development of Armenia.

Torture and Ill-treatment

As highlighted, once again, by the UN Committee against Torture in considering Armenia's third periodic report in May 2012, the definition of torture in the Armenian Criminal Code[1] has still not been brought into compliance with the UN Convention against Torture.

Moreover, as mentioned in the report from its December 2011 visit to Armenia (published 3 October 2012), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) "[continues to be] concerned to note that the bulk of the recommendations made after the 2010 visit with respect to life-sentenced prisoners remain unimplemented".[2]

Most acts of torture perpetrated in Armenia are inflicted by law enforcement officials (usually police officers) in a bid to obtain confessions during arrest and interrogation. In practice, Armenian courts generally fail to act upon allegations of torture and/or ill-treatment that are made in the course of proceedings.

Police mistreatment is overwhelmingly unreported due to fear of retaliation, and where such allegations *are* reported effective investigations are extremely rare. The factual circumstances surrounding cases of torture and ill-treatment are usually only subject to a higher degree of public scrutiny from human rights defenders and the general public where they have resulted in a victim's death (e.g. the cases of Levon Gulyan and Vahan Khalafyan).

The independence and effectiveness of investigations into allegations of torture are compromised because the police themselves are charged with conducting such enquiries. A Special Investigation Service (SIS) was established in 2007 to specialise in investigating cases involving possible abuses by public officials. However, the prosecutor's office does not send all allegations of torture to the SIS for investigation; instead police investigators continue to handle most cases themselves. Consequently, communications about torture continue to be investigated within the framework of the very entity to which the perpetrators of torture themselves belong.

Notably, the prosecutor's office oversees the lawfulness of inquests and preliminary investigations, as well as pursuing charges relating to such inquiries in court, thus creating a conflict of interest. These functions should therefore need to be separated and vested in different bodies.

The same prosecutor supervises the legality of investigations, approves indictments submitted by the investigators upon the completion of the investigations and defends the relevant charges in the court. The same prosecutor therefore exercises three different powers relating to the same case, namely: supervision, approval and defence. This fact creates a situation in which prosecutors lack sufficient impetus to prevent abuses during investigations, due to the

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[1] See Criminal Code of the Republic of Armenia, Article 119.

[2] Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 7 December 2011 available at: http://www.cpt.coe.int/documents/arm/2012-23-inf-eng.htm. See the recommendations of the CPT after its visit to Armenia from 10 to 21 May 2010 on http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.htm

fact that they are reliant on the evidence thereby produced. Furthermore, the prosecutor's disincentive to exclude unlawfully obtained evidence is further compounded by the fact that accepting such evidence requires acknowledgement that the prosecution has failed to properly carry out its supervisory functions during the investigation.

The following cases represent some of those that have managed to make it into the public arena, thus facilitating a glimpse of the illegal practices carried out by state officials in the administration of justice in Armenia – practices that have been known to escalate into death in custody. They also highlight the inadequate investigative and judicial responses with which such cases have been met.

The Levon Gulyan case

Twelfth May 2012 marked the 5th anniversary of the death of Levon Gulyan, a witness in a murder case who died in police custody in 2007. Mr. Gulyan's case is symbolic of other such cases due to the endless trail of failed though persistent attempts to obtain justice for this death. Indeed, to date, no state official has been held responsible for Mr. Gulyan's demise.

Levon Gulyan died on 12 May 2007 after falling from a second floor window of the police headquarters in which he was being held. Officers insisted that Mr. Gulyan jumped from the window in a bid either to commit suicide or escape. Nevertheless, having had Mr. Gulyan's body returned to them after his death, members of Levon Gulyan's family discovered bruises on his body indicating that he had been a victim of violence. Lawyers present at the forensic medical examination of Levon Gulyan's body further stated that it evidenced signs of violence.

The investigation into this case was opened in 2007, and has since then been terminated several times by the investigative body only to be reopened on the basis of subsequent court decisions.

On 8 February 2012, the Special Investigation Service of the Republic of Armenia closed the criminal case on Levon Gulyan's death for the fourth time. In so doing it breached the decision made by the Court of Cassation of the Republic of Armenia on 27 August 2010 that it should "eliminate the violations of the rights and the freedoms of a person during the pre-trial investigation", and ran counter to strong civil society demands for accountability in this case.[3]

On 22 February 2012 the representatives of Levon Gulyan's legal successor petitioned the European Court on Human Rights (ECtHR), demanding recognition of violations under Article 2 (right to life), Article 5 (right to freedom and personal integrity), and Article 13 (right to effective justice) of the European Convention on Human Rights.

The Stepan Hovakimyan case

Stepan Hovakimyan and Vahram Kerobyan were both charged with theft, occurred at the Moscow Cinema hall in Yerevan in January 2010. Both were charged with violations of Article 177(3)(1) of the Criminal Code of the Republic of Armenia and detained in pre-trial detention for two and a half years. This detention was based solely on the confession of

[3] 'Armenia : FIDH, CSI and the Armenian Helsinki Committee call on the authorities to investigate and re-open Levon Gulyan's case', FIDH Press Release, 18 May 2011, available at: http://fidh.org/Armenia-FIDH-CSI-and-the-Armenian.

Hovhakimyan – a confession that he later stated had been elicited through the use of torture. The detainees did not obtain a judicial pronouncement on their guilt until 25 September 2012; Stepan Hovakimyan was found guilty and sentenced to three years imprisonment, while Vahram Kerobyan was acquitted. The principal evidence founding Hovakimyan's conviction remained his confession statement.

Hovakimyan had already been detained in Yerevan police station on 11 and 14 January 2010, where he remained in custody for over 10 hours and was allegedly subjected to violent treatment, before being released without confessing. On 6 February 2010 Stepan Hovakimyan again attended Yerevan police department where he was subjected to torture and inhumane and degrading treatment. In the course of this treatment Hovakimyan was beaten on the head, undressed, had his shoes removed and the soles of his feet beaten with a rubber baton until he confessed to theft. He claims to have been invited to the Yerevan police department on that occasion without a proper summons and before any complaint had been lodged by the victim or criminal proceedings instituted. Only after signing the confession statement was Hovakimyan permitted to inform his relatives of his custody, and given access to a lawyer for the first time.

A complaint concerning Hovakimyan's torture on 6 February 2010 was lodged with the Special Investigation Service (SIS). However, the complaint proved unsuccessful. The SIS decided not to institute criminal proceedings against those responsible, preferring instead to rely on the account of events provided by the police officers involved and declining to investigate the torture allegations further. This decision was appealed in the Court of General Jurisdiction of the Kentron and Nork-Marash districts, but rejected on 2 August 2011. A subsequent appeal to the Court of Appeals culminated in the first instance judgment being upheld on 26 December 2011; in February 2012, the Court of Cassation further dismissed the complaint. A petition to the ECtHR was submitted on 28 May 2012. It alleges violations under Articles 3, 5, 6 and 13 of the European Convention.

No thorough investigation into Hovakimyan's complaints of torture has been conducted in Armenia to date. CSI and FIDH have been calling for action in this case for some time.[4] Having now received a determination in the criminal proceedings against them, it is clear that not only is Stepan Hovakimyan's conviction questionable, but a man found by the Armenian justice system to be innocent– Vahram Kerobyan – has spent two and a half years in Noubarashen detention facility due to pre-trial detention founded solely on a confession allegedly elicited through torture. No police official has been brought to account for their acts of abuse.

The Sasha Davtyan case

In September 2008 a criminal case was opened into the rape of under-age girl, Sh.D. On 6 February 2009 the case was suspended due to a failure to identify the perpetrator of the crime. In May 2009 the case was re-opened under a new investigator. Sh.D's father, Sasha Davtyan, was eventually charged for his daughter's rape, as well as for the torture of his two daughters, Sh.D and T.D, under Articles 138.2(3), 119(2) and 119.2(3) of Armenia's Criminal Code.

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[4] 'Civil Society Institute Calls for Investigation in Torture Allegations', CSI Press Release, 17 May 2011, available at: http://hra.am/en/events/2011/05/17/statement, 'FIDH and the Civil Society Institute Demand Fair Trial in the Stepan Hovakimyan and Vahram Qerobyan Case', CSI Press Release, 23 February 2012, availabile at: http://hra.am/en/events/2012/02/23/statement.

In August 2009 Sh.D and T.D refuted their testimonies and filed a complaint to the Armenian Prosecutor General's Office. In court Sh. D testified that she and her sister had been taken to Kentron Police Station on 7 May 2009, where they were subjected to torture, inhumane and degrading treatment for 4 days. During this time they were forced to make statements that their father, Sasha Davtyan, had tortured and raped Sh.D. These statements, which had been obtained using physical pressure, served as the ground for accusations against their father.

Sasha Davtyan too was repeatedly beaten and tortured during the investigation. Mrs. Souhayr Belhassen, FIDH President, visited Mr. Davtyan in prison with Mr. Arman Danielyan, CSI President, on 5 February 2010. Here, they documented Mr. Davtyan's testimony on the ill treatment to which he had been subjected and certified that he had lost 8 teeth as a result of beatings. They also met with the head of "Nubarashen" prison and the prison doctor, who presented documents certifying the poor state of Mr. Davtyan upon his arrival at the prison.

On 17 December 2009 the Court of First Instance of Aragatsotn region acquitted Sasha Davtyan of the rape of his daughter. Nevertheless, the Court found him guilty of the ill-treatment of his daughters, convicting him to 4 years of imprisonment under Article 119.2(1). This sentence was reduced to 3 years on appeal, and following the application of the Amnesty Act decreed by the Armenian National Assembly on 19 June 2009 to Sasha Davtyan, he was immediately released.[5]

In spite of the well documented evidence of physical violence and explicit reports of torture, no investigation has been carried out into the allegations of police ill-treatment of Sasha Davtyan and his daughters. Their attorney states that this lack of investigation may be because the aggrieved parties have stopped filing complaints on the matter. However, having already testified on this matter in court, the statements provided by the victims should be sufficient to conduct an urgent investigation to bring those responsible to account.

The total absence of clear and effective steps seeking to end such grossly abusive practices, demonstrates a lack of political will on the part of authorities to deal with such issues.

The Vahan Khalafyan case

On 13 April 2010, at around 17.00 pm, 24 year old Vahan Khalafyan died in Charentsavan town police station as a result of knife stab wounds to the stomach. Whilst the police claimed that the stabbings had been an act of suicide by Mr. Khalafyan, his relatives insist that he could not have stabbed himself twice in the stomach.[6] They believe that he was probably murdered.

A criminal case was launched on 13 April 2010 by the Kotayk Province Investigation Department under Article 110, part 1 (causing somebody to commit suicide) of the Armenian Criminal Code.

On 29 November 2010, the Court of First Instance of General Jurisdiction of Kotayk region accepted the police explanation of Vahan Khalafyan's death finding him to have committed suicide by stabbing. It also found that Mr. Khalafyan had been subjected to beatings by the Head of the Criminal Investigations Division of Charentsavan police, Ashot Harutyunyan.

[5] 'FIDH and CSI welcome the release of Sacha Davtyan on February 26, 2010 and call for an immediate investigation of the alleged use of torture against him', FIDH Press Release, 9 March 2011, available at: http://fidh.org/FIDH-and-CSI-welcome-the-release,7628.

[6] 'Death of a suspect at the Charentsavan Police Department', FIDH Press Release, 29 April 2010, available at: http://fidh.org/Death-of-a-suspect-at-the.

The latter was found guilty of exerting violence to obtain a confession, thereby exceeding his powers which negligently caused grave consequences. He was sentenced to eight years of imprisonment under Article 309(3) of RA Criminal Code. According to the court, Harutyunyan's actions induced such a psychologically tense state in Vahan Khalafyan that it led him to commit suicide by stabbing himself in the stomach twice with a knife.

Moris Hayrapetyan, a policeman from the Criminal Investigations Division, was sentenced to two years of conditional imprisonment under Article 308 (1) of the Criminal Code (Abuse by official authorities). He was present during Khalafyan's beatings by Ashot Harutyunyan and did not prevent them. Moreover, Hayrapetyan signed and dated the protocol for bringing Khalafyan to the police station for 17.00 pm, when Khalafyan had, in fact, already been at the police station since 10:00am on 13 April 2010.

Following an amnesty decision adopted on 26 May 2011, Ashot Harutyunyan's sentence was reduced by one third of his unserved sentence, whilst Moris Hayrapetyans' conditional imprisonment was waived.

Armenia's periodic review by the UN Committee against Torture

In May 2012 the United Nations Committee against Torture considered Armenia's third periodic report under the UN Convention against Torture. A number of civil society organisations, including FIDH together with CSI, submitted alternative reports concerning the compliance of Armenia's legislation, acts and policies with the UN Convention against Torture.[7] Following the open and constructive dialogue that ensued, the Committee adopted concluding observations that expressed serious concerns over a number of issues. The Committee declared it is "seriously concerned by numerous and consistent allegations […] of routine use of torture and ill-treatment of suspects in police custody", especially to extract confessions to be used in criminal proceedings, as well as by military personnel. The Committee concluded that prompt, impartial and effective investigations and prosecutions are not being conducted, and that consequently the punishment of perpetrators is not ensured and compensation for victim's families not provided.

The Committee also found that "victims and witnesses of torture and ill-treatment do not file complaints with the authorities because they fear retaliation". It found there to be no effective mechanism to facilitate the submission of complaints, and to ensure in practice that complainants are protected against ill-treatment, intimidation or reprisals as a consequence of their complaint.

Among a number of recommendations, the UN Committee stressed that in the context of current legislative reforms, the Republic of Armenia should take "prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their deprivation of liberty". These include the rights to access to a lawyer, to an independent medical examination, to notify a relative, to be informed of one's rights, and to be brought promptly before a judge. In addition, measures should be taken to ensure audio- or videotaping of all interrogations in police stations and detention facilities as a further preventive measure.

Moreover, the Committee recalled that under international law confessions obtained through torture should never be used as evidence in judicial proceedings. Appropriate action should

[7] 'UN Committee against Torture to examine Armenia's record on torture', FIDH Press Release, 9 May 2012, available at: http://fidh.org/UN-Committee-against-Torture-to.

be taken to ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with Article 15 of the Convention and statements obtained by torture not invoked as evidence in any proceeding.[8]

On 26 September 2012, FIDH and CSI addressed an open letter to the President of Armenia urging him to take measures to follow up on the Committee's recommendations. This letter has remained unanswered.[9]

Political prisoners

Following the Presidential elections of March 2008 over a hundred opposition activists were arrested and tried. Many were released following the 2009 Amnesty Act, with more than ten political prisoners released in the last two years. However, in certain instances politically motivated persecutions persist.

Tigran Arakelyan's case is illustrative of concerns in this regard:

"Tigran Arakelyan and others"

On 20 July 2012, young members of the Armenian National Congress, Tigran Arakelyan, Artak Karapetyan, Sargis Gevorgyan, and Davit Kiramijyan were sentenced to imprisonment by the Court of General Jurisdiction of Kentron and Nork Marash administrative districts. Tigran Arakelyan was sentenced to six years in prison under Article 258, part 3(1) and (2) (Hooliganism) and Article 316 part 1, and part 2 (Use of violence against a representative of the authorities). The other members were sentenced to between 2 and 3 years in prison.[10]

The case against these activists was instituted following an incident on 9 August 2011 in Yerevan, near the children's library named after "Knko Aper". A confrontation occurred between the young activists and police, and involved insults from both sides.

The activists were brought to the police station, where upon arrival they were allegedly denied access to a lawyer and subjected to severe beatings.

No thorough investigation has been conducted into the allegations of torture made by the four activists and no police official has been held liable. The Court before which the activists were tried found that their injuries could have occurred through the exertion of lawful physical force within permissible limits in the course of bringing them into police custody. This finding was made despite supporting testimony that loud voices and shouting could be heard in the rooms of the police station indicating that the activists were being beaten there.

Tigran Arakelyan was accused of breaking a police officer's nose with his head whilst being transported to the police station in a police car. Arakelyan's attorney has emphasised that Arakelyan was not in a position to intentionally break the officer's nose; rather the officer had tried to immobilise Arakelyan and to strangle him. Arakelyan's attorney submitted that whilst it was possible that Arakelyan might have harmed the officer through accidental movement during his struggle in this position, he lacked the intention to strike.

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[8] 'Joint Open Letter to the President of Armenia - From words to acts: putting an end to torture and ill-treatments in Armenia', FIDH and CSI, 26 October 2012, available at: http://fidh.org/Joint-Open-Letter-to-the-President-12341.

[9] Ibid.

[10] See the decision of the Court of General Jurisdiction of Kentron and Nork Marash administrative districts of 20 July 2012, case N: ե կ դ /0225/01/11.

Those monitoring the trial of these activists have noted that the Court exhibited a biased attitude throughout, with the judge at times tending to treat the parties differently, violating the equality of arms principle enshrined in national and international legislation. Furthermore, the judge readily accepted the testimonies of police witnesses without asking for corroborating evidence, whilst still relying heavily on this police evidence in their final judgment.

On 3 October 2012 the Parliamentary Assembly of the Council of Europe (PACE) voted on a definition of the term political prisoner. PACE summed up the criteria as follows:

> "A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':
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> a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights (ECHR) and its Protocols, in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
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> b. if the detention has been imposed for purely political reasons without connection to any offence;
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> c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
>
> d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
>
> e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."

The case of Tigran Arakelyan, Artak Karapetyan, Sargis Gevorgyan, and Davit Kiramijyan should be examined in the light of these criteria. Indeed, the allegations of ill-treatment and judicial bias seem to indicate discriminatory treatment in this case, which could be connected with their political activities as young Armenian National Congress activists.

Investigation into events of 1 March 2008

In the aftermath of the demonstrations following the Presidential elections of February 2008, on 1 March 2008, excessive use of force by law enforcement bodies occasioned numerous clashes between police and opposition activists. During this unrest 10 people were killed and 200 injured. To this day, the circumstances surrounding these 10 deaths, including gunshot wounds and bodily injuries, remain unexplained. Indeed, although criminal cases were opened and have been neither suspended nor terminated, no progress has been made, and victims have received no reparations so far.

On 20 April 2011, President Serzh Sargsyan highlighted the importance of investigations into the 1 March 2008 events. FIDH and CSI welcomed this acknowledgement as a positive sign. However, President Sargsyan's statement was not followed up with concrete steps in this regard. Our organisations note that the relatives of victims of the 1 March 2008 events have still not been provided with the adequate reparation for which they have been waiting since 2008.

Independence of the Judiciary

One of the main impediments to a fair trial in Armenia is the lack of an independent judiciary. The judges in Armenia are appointed and their powers can be terminated by the President, upon recommendation from the Council of Justice.[11] The President approves the candidate list provided by the Council, selecting those candidates "who are acceptable to him".[12] The criteria used by the President remain entirely unclear as he is not required to explain his decision. Thus, the Council is only empowered to recommend and has no actual decision-making power. This arrangement is not in line with European or international standards on judicial appointments.

Under Article 106 of the Judicial Act, the Council of Justice has the power to elect a disciplinary committee made up of three members of the Council.

In accordance with Article 155 of the Judicial Code, the Minister of Justice is also vested with this right. Disciplinary proceedings against judges are usually seen as a matter of self-governance; thus, the involvement of executive branch in this task is unacceptable. Indeed, paragraph 5 of Article 155 (listing grounds for raising disciplinary action) is further cause for concern in this regard. Under this article the disciplinary committee and/or the Minister of Justice may each act on the following grounds:

1. Following a decision of the Court of Cassation confirming that a clearly illegal judicial act was carried out in the administration of justice or determination of a substantive case, or a judge has committed an obvious and grave violation of the rules of procedural law in the administration of justice;
2. following an application by an individual;
3. following a communication from a state or local government body or official;
4. upon the filing of a motion by the Ethics Committee of the Council of Court Chairmen;
5. upon the discovery arising from a review or study of court practice of an act giving rise to disciplinary liability; or
6. upon the discovery by the person instigating the proceedings of an act giving rise to disciplinary liability.

The sixth ground for disciplinary action makes clear that the committee and the Minister of Justice can act of their own volition in instigating such action, as well as in the presence of the five other grounds.

Our organisations believe that disciplinary sanctions should not be permitted to be imposed by the government on members of the judiciary.

Moreover, under paragraph 2(2) of Article 156 of the Judicial Code, the Minister of Justice can "[i]n court, familiarize himself with materials relating to any criminal, civil or other case on which there is still no final judgment". In entitling the Minister to look into any ongoing legal action this provision facilitates improper influence being exerted upon a judge in proceedings. This is a cause for serious concern and has been raised in a report by the Council of Europe Directorate General of Human Rights and Rule of Law published in

[11] Constitution of the Republic of Armenia, Article 55, paragraph 11.

[12] Judicial Code of the Republic of Armenia, Article 117, paragraph 2.

September 2011 under the auspices of its “Enhancing Judicial Reform in the Eastern Partnership Countries” joint project. [13]

Attorneys report that the Court of Cassation has repeatedly and directly been involved in dictating the outcome of numerous cases to lower court judges. These judges are very vulnerable to dismissal for their decisions, and are therefore easy to influence.

For example, on 11 July 2011 the Armenian President removed Samvel Mnatsakanyan, Judge of the Court of General Jurisdiction of Avan and Nor Nork administrative districts from office for granting a defendant’s motion for release on bail. Two days after Judge Samvel Mnatsakanyan approved the motion to apply bail as a preventive measure, the Chairman of the Court of Cassation, Arman Mkrtumyan, appealed to the Council of Justice to initiate disciplinary proceedings against Mnatsakanyan, resulting in his removal from office. Notably, the prosecutor in the case in contention had not objected to the grant of bail and the defendant was ultimately acquitted on the charges against him. There are strong suspicions that Mr. Mnatsakanyan was punished because he did not receive “the green light” from the Cassation Court to grant the bail. The Council of Justice stated in its decision to remove Mnatsakanyan that the judge had not substantiated his decision to grant bail. However, attorneys state that it is not uncommon for judges not to substantiate decisions when applying detention as a preventive measure, and they are not usually held accountable for such failures. On 7 July 2011, 200 attorneys protested against Judge Mnatsakanyan’s removal, and a statement concerning this incident was released by them.[14]

Juvenile Justice

The UN Committee on the Rights of the Child has periodically expressed its concern about “the absence of a system of juvenile justice, in particular the absence of specific laws, procedures and juvenile courts”.[15] Monitoring of juvenile trials conducted by CSI has highlighted that prosecutors are inclined to impose custodial measures on juvenile defendants. Moreover, judges predominantly grant such requests without paying due attention to the vulnerability of the child or the need to use alternative non-custodial measures where possible.[16] In addition, pre-trial detention is not used as a measure of last resort for the shortest period and there is a worrying lack of specialisation among legal professionals dealing with juvenile offenders. There are no specialised prosecutors, investigators, or lawyers to work on juvenile cases. Certain judges are appointed to hear such cases but the assignation of juvenile cases to these judges does not appear to be coherently applied in practice. A comprehensive approach to administering justice with regard to juveniles must be developed.

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[13] ‘Project Report on Judicial Self Governing Bodies and Judge’s Career’, Working Group on Independent Judicial Systems, Council of Europe Directorate General of Human Rights and Rule of Law, September 2011, available at: http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/Project_report_final.pdf.

[14] 7 July 2011, available at http://hra.am/en/point-of-view/2011/07/07/fairtrial 5 July 2011, available in Armenian at http://www.hra.am/hy/events/2011/07/05/samvelmnacakanyan.

[15] Concluding Obersvations of the Committee on the Rights of the Child: Armenia, 24 February 2000, CRC/C/15/Add.119, para.56 and Concluding Obersvations of the Committee on the Rights of the Child: Armenia, 30 January 2004, CRC/C/15/Add.225, para.70.

[16] Trial monitoring of juvenile cases was conducted by the Civil Society Institute. For further see ‘Trial Monitoring Report’, CSI, 2011, available at: http://hra.am/upload/JJ_FINAL_Eng.pdf.

Some cases of ill treatment towards juveniles at the initial stages of arrest and detention by police have been reported, though none have been investigated. There are also instances in which children below the age of criminal responsibility (14 years) have not been registered upon being brought to police stations "to talk". CSI monitoring shows that applicable safeguards like access to a lawyer, involvement of a pedagogue or legal representative, notification of a relative, and being informed of rights and responsibilities, are not respected in these cases in practice.

Early Conditional Release

Finally, our organisations note that no changes have been made to the system of early conditional release in Armenia, despite the obvious and often reported need to reform current practice. At present, the system does not operate efficiently and raises a number of concerns. These include lack of criteria for release and an overly burdensome three-level system that engages two committees - one within the penitentiary institution, and another independent committee that operates under Presidential decree NH-163-N of 31 July 2006 - before a final decision is made by a court. Moreover, committees function with insufficient transparency and the decisions of independent committees are not substantiated. These independent committees are composed of representatives from various state agencies (the Police, Ministry of Health, National Security Service, President's Administration, the Department of Penitentiaries of the Ministry of Justice), which logically creates conflicts of interest. Moreover, international experience shows that any early conditional release system should be staffed exclusively by people with specialist education and training, because the information discussed and decisions taken by such bodies are highly specialised. This is not the case in the Armenian system.

Conclusions

Our organisations are deeply concerned by the seemingly pervasive culture of impunity for crimes committed by or under the responsibility of law enforcement bodies in Armenia. We are further concerned about the slow progress made in the other aspects of the administration of justice in the country.

FIDH, CSI and the Norwegian Helsinki Committee therefore call on the Armenian authorities to take measures aimed at correcting these persistent practices and implementing the recommendations of the Council of Europe and United Nations without undue delay. The Armenian authorities should amend national law by reforming Armenia's substantive and procedural Criminal Codes and taking other action to bring law and practice in line with international standards. At the same time, it should exhibit strong political will to sanction all abuses committed in this sector, ending impunity for perpetrators of rights violations.

Recommendations to the Armenian authorities:

The following recommendations are tailored to address the problems raised in this briefing.

Torture and ill-treatment

a. To adequately prevent acts of torture and ill-treatment throughout the country action must be taken to criminalise torture and to bring its definition under the Criminal Code of the Republic of Armenia in line with the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

b. Ensure prompt, thorough and impartial investigations into all incidents of torture, ill-treatment and death in custody, and bring those responsible to justice. Reports on the outcomes of such investigations and prosecutions must be made public.

c. Victims of torture should be provided with just compensation.

d. The practice of founding judicial decisions on self-incriminating confessions must be eliminated and authorities ensure that evidence obtained through torture and ill-treatment is excluded from proceedings.

e. The enforcement of effective internal and external complaint mechanisms must be ensured, including the confidentiality of complaints, in particular on torture and ill-treatment cases.

f. Structural reforms should be adopted to ensure that all allegations of torture are duly and promptly reported to and investigated by the Special Investigation Service (SIS).

g. Prosecutors exercising supervision over the legality of an investigation conducted by the SIS must be different from those exercising supervision over the legality of an investigation conducted by the Police.

h. It must also be ensured that prosecutors supervising the legality of an investigation into a case and prosecutors presenting such cases in court, are also different.

i. Armenian legislation must be amended to prevent the use of *de jure* status obstructing access to legal safeguards in practice; amendments must ensure in practice that *all* detainees are afforded *full legal safeguards from the moment of de facto* deprivation of liberty. These safeguards include access to a lawyer from the very outset of detention, as well as the notification of a relative about arrest, information on one's rights, and a medical examination.

j. Measures should be taken to ensure the involvement of defence attorneys from the very beginning of a pre-trial investigation.

k. The Criminal Procedure Code should be amended to provide that whenever a person is interrogated in the absence of a defence attorney, even where they have waived the right to an attorney's presence, written testimony may not be relied upon unless the interrogated person affirms the veracity of the statement before the court.

l. Legislation should be amended to allow the exclusion of tainted evidence if a judge has reasonable doubt as to the legality of the means through which it was obtained.

m. It should be ensured that persons in custody and detention, have the practical possibility of being medically examined by a doctor, out with the presence of police and penitentiary officials, as stipulated in national legislation.

n. Lawyers should be ensured prompt access to medical documentation and conclusions about arrested persons.

o. Create the possibility for independent doctors to obtain a forensic qualification, and entitle detainees to an examination by an independent doctor with recognised forensic training without prior authorisation from an investigator, prosecutor or judge.

p. Ensure that the Police Monitoring Group has unhindered access to the police departments where most cases of torture occur.

q. Take all necessary steps to improve detention conditions so that they reach conformity with national legislation and international standards.

Political Prisoners

Eliminate all forms of political persecution and review the case of "Tigran Arakelyan and others" in light of current fair trial standards.

Investigation into events of March 2008

a. Ensure independent and thorough investigations into the 1 March 2008 cases, in particular into the ten deaths that occurred during the events of 1 March.

b. Provide the relatives of the ten victims of 1 March 2008 events with adequate reparation.

Independence of judiciary

a. Fully comply with paragraphs 19 to 23 and paragraph 26 of the General Comment No. 32 of the UN Human Rights Committee, regarding the implementation of Article 14 of the International Covenant on Civil and Political Rights.

b. Ensure implementation of the principle of equality of arms in practice, and eliminate the exercise of prosecutorial bias by judges.

c. Ameliorate the current threat to the independence of the judicial branch in Armenia, by taking appropriate measures to adjust the President's function in judicial appointments to that of a formal role, removing from this position any greater powers in this regard.

d. Take appropriate measures to remove from the Ministry of Justice any authority to institute disciplinary sanctions against judges.

Juvenile Justice

a. Fully comply with paragraphs 42 to 44 of the General Comment No. 32 of the UN Human Rights Committee, regarding the implementation of Article 14 of the International Covenant on Civil and Political Rights.

b. Facilitate and encourage the provision of specialist investigators, prosecutors, and lawyers to work within the juvenile justice system.

c. Reduce the application of custodial and pre-trial measures against juveniles.

d. Take prompt and effective measures to ensure that all detainees, especially juveniles, are afforded all legal safeguards from the very outset of their de-facto deprivation of liberty, in both law and practice.

e. Take measures to prepare and implement effective juvenile reintegration programmes as part of the juvenile corrections system.

Early conditional release

Reform the system of early conditional release to ensure that the decision making process is transparent, predictable, efficient and based on relevant criteria, involving specialists in the decision making bodies. Also, introduce an effective appeal mechanism.

National legal framework

To enhance Armenia's compliance with international and regional human rights standards, and strengthen the national framework within which the administration of justice operates, the authorities should:

a. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989.

b. Ratify the Rome Statute of the International Criminal Court.