Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**194**
Land:	Armenien
Kilde:	Observatory for the Protection of Human Rights Defenders
Titel:	Steadfast in Protest, annual report 2011, Armenia
Udgivet:	25. oktober 2011
Optaget på baggrundsmaterialet:	3. november 2011

ARMENIA

In 2010, proposed amendments to the NGO Law remained of concern as they might restrict freedom of association. In addition, while a new Law on Assembly was adopted in 2011, providing for a better protection of freedom of assembly, peaceful gatherings remained restricted in practice in 2010. On a positive note, 2010 was also marked by the end of judicial proceedings against three human rights defenders.

Political context

From June 14 to 18, 2010, the United Nations (UN) Special Rapporteur on the Situation of Human Rights Defenders, Ms. Margaret Sekaggya, undertook her first country visit to Armenia. At the end of her mission, she expressed her concerns about documented cases of ongoing violence, assaults, intimidation, harassment and stigmatisation of human rights defenders, in particular journalists documenting human rights violations. Her main concerns focused on illegitimate restrictions on freedom of association that could be triggered by the new draft NGO Law, impediments to freedom of assembly, restrictions on demonstrations and rental of meeting spaces, restrictions on freedom of expression, as well as impunity of abuses against defenders[1].

Moreover, on May 6, 2011, Armenia underwent its Universal Periodic Review (UPR) before the UN Human Rights Council, which recommended to Armenia, *inter alia*, to: "effectively investigate the cases concerning attacks against journalists, opposition members and human rights defenders; ensure that crimes and violations against human rights defenders, journalists and members of the opposition are effectively investigated and prosecuted, and that those responsible are brought to justice"; and also to "review its legislation and practices in order to guarantee the free exercise of the right to assembly and freedom of expression, without any limitations other than those permitted by international law; fully respect and promote freedom of expression; and guarantee freedom of expression and assembly for all political parties, media and human rights defenders"[2].

1/ See Statement of the UN Special Rapporteur on the situation of human rights defenders, June 18, 2010, and Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya - Mission to Armenia*, UN Document A/HRC/16/44/Add.2, December 23, 2010.
2/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Armenia*, UN Document A/HRC/15/9, July 6, 2010.

As of April 2011, the Armenian authorities had still not fully investigated neither the deaths and injuries that occurred during the clashes of March 2008 when excessive police force was used against demonstrators in the capital Yerevan in the wake of the presidential election[3], nor the allegations of ill-treatment in police custody and violations of due process. However, the political prisoners[4] who had remained detained since the 2008 events were all released following a presidential amnesty passed on May 26, 2011.

Among positive legal initiatives, on May 18, 2010, a package of amendments to the Civil Code, the Criminal Code and the Criminal Procedure Code decriminalising libel and insult was signed into law[5]. However, concerns remain for the independence of the media, in particular as fines for libel or insult at the civil level were increased almost by twice, creating the risk for media outlets of bankruptcy or closure. Among negative legal developments however, on June 10, 2010, the President signed into law the "Amendments and Supplements to the Law on Television and Radio", which give the National Commission on Television and Radio (NCTR) broad powers to revoke TV licenses and impose programming restrictions, thus undermining the diversity of TV channels. Despite numerous calls made by national and international NGOs, only small editorial changes were introduced into the bill. In application of this new law, in January 2011, the number of TV channels broadcasting in the capital was reduced from 22 to 18[6]. The print and online media remained more pluralistic but their reach is limited to the educated population living primarily in the

3/ The clashes had led to the death of ten people and hundreds wounded.

4/ In 2001, the Secretary General of the Council of Europe appointed a panel of experts to determine the criteria for identifying political prisoners in Armenia and Azerbaijan. According to Council of Europe experts, "a person deprived of his or her personal liberty is to be regarded as a political prisoner if: "(a) 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, religion, expression, information, assembly and association; "(b) The detention has been imposed for purely political reasons, unrelated to any offence; "(c) Due to political motives, the length of detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of; "(d) Due to political motives, he or she is detained in a discriminatory manner as compared with other prisoners; "(e) The detention is the result of proceedings that were clearly unfair, and this fact appears to be tied to political motives on the part of the authorities. See Secretary General of the Council of Europe, *Cases of alleged political prisoners in Armenia and Azerbaijan*, Document SG/Inf (2001)34, October 24, 2001.

5/ See HO-98-N Decree (amending Criminal Code) and HO-97-N Decree (amending Civil Code), dated May 18, 2010. See Civil Society Institute (CSI).

6/ In July 2010, implementing the new law, the NCTR, whose members are appointed by the President, declared a contest for broadcasting licenses. The results of the contests were announced on December 16 and 23, 2010. Broadcasters which are critical of the current administration, like *A1+*, *GALA* (Gyumri) and ALM television companies were not granted a license on the digital broadcasting network.

cities. The Committee to Protect Freedom of Expression (CPFE) also reported numerous cases of physical violence against journalists and pressure on the media mainly by law enforcement bodies[7].

Possible legal obstacles to freedom of association

As of April 2011, amendments to the NGO Law that were adopted by the Government on September 23, 2009 and tabled before the Parliament on October 1, 2009, remained of concern as they might restrict freedom of association. In particular, the amendments would request the re-registration of NGOs in case of change of address or change of the executive body of the organisation[8]. According to the draft NGO Law, NGOs would also be required to publish their financial information, their sources of income, the number of their members on a monthly basis, as well as the copies of all tax reports already submitted to tax offices. The bill also provides the necessity to publish the names of all the individuals involved in the leadership of the organisation, as well as any change that might occur in this leadership. The draft law, if adopted, would therefore put a considerable burden on NGOs, which would probably need to seek additional financial and human resources. Discussions of the draft NGO Law were postponed until the 2011 fall session of the National Assembly.

Legal improvements but persisting obstacles to freedom of peaceful assembly

On April 14, 2011, a new Law on Assembly was adopted, which contains a number of improvements. First, it provides that if for some reasons the administrative authority decides to forbid the organisation of an assembly at a date, an hour or in a place mentioned by the organiser in its notification, the administrative authority and the organiser of the assembly can meet and negotiate and find a compromise of the date, place, and other related issues. The law also explicitly mentions that the State or local governmental bodies and public officials must comply with the principles of proportionality and with the fundamentals of administrative action, provided in the Law on Fundamentals of Administrative Action and Administrative Proceedings. The law nonetheless provides that freedom of assembly can be restricted when it is justified by public interest and

7/ See Committee to Protect Freedom of Expression (CPFE), *Annual Report 2010 on the Situation with Freedom of Speech and Violations of Rights of Journalists and Media in Armenia*, February 2011.

8/ Following her country visit in June 210, the UN Special Rapporteur on Human Rights Defenders pointed in that regard that this requirement contradicted the recommendations of the Committee of Ministers of the Council of Europe (CM Rec 2007 14) on the legal status of NGOs in Europe, which stipulate that approval from the State is not required for changes to the statute of an organisation. See UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya - Mission to Armenia*, UN Document A/HRC/16/44/Add.2, December 23, 2010.

the protection of constitutional rights and freedoms of others. Concerns remain about its Article 19(3), according to which an assembly can be banned if it is organised at a distance from the residence of the President of the Republic, the National Assembly, Governmental buildings or courts or penitentiary institutions, which can "threaten their regular operation", not defining the distance which could be considered as threatening.

In spite of these legislative developments, in 2010, freedom of peaceful assembly remained restricted. The access of demonstrators to places where rallies usually take place remained in some instances restricted in practice. On May 28 and May 31, 2010, the police impeded the access of activists who were marching towards Liberty Square to protest against the fact that this square (where most demonstrations have been organised in the past few years) had been *de facto* closed to gatherings since the 2008 clashes. On May 31, the confrontation with the police lasted an hour and was accompanied by insults from both sides. Some individuals in civilian clothes joined the ranks of the police. Seventeen demonstrators were taken to the police station. Three of them, namely Ms. **Ani Gevorgyan**, correspondent for the *Haykakan Zhamanak* newspaper, her brother, Mr. **Sargis Gevorgyan**, an opposition activist, and Mr. **Davit Kiramijyan**, another opposition activist, were arrested and then prosecuted. The other fourteen were immediately released without charge. Ms. and Mr. Gevorgyan were charged on the basis of Article 316.1 of the Criminal Code ("violence against a Government representative"), before being released on parole on June 3, 2010, after they attested in written that they would not leave the country. Mr. Kiramijyan was charged on the basis of Article 258.3 of the Criminal Code ("hooliganism committed by a group of persons or organised group"). On June 3, 2010, the Court of First Instance of General Jurisdiction of Kentron and Nork-Marash Administrative Districts of Yerevan issued a decision of detention as a preventive measure against him. On July 2, 2010, the Court then decided to release him on parole, after he attested in written that he would not leave the country. In November 2010, the case against Ms. Gevorgyan was closed at the pre-trial stage. On December 28, 2010, the Court of First Instance sentenced Messrs. Kiramijyan and Gevorgyan to two years of imprisonment, with probation. Both appealed the decision but, as of April 2011, the Court of Appeals had not issued its decision yet. Moreover, in the evening of May 31, 2010, after the confrontation, the policemen forcefully pushed away from Kentron police station the representatives of human rights organisations and other political and human rights activists who had come to request the release of those arrested[9].

9/ See CSI Statement, June 3, 2010.

End of judicial proceedings against three human rights defenders

In 2010, judicial proceedings were dropped against three human rights defenders who had been prosecuted because of their activities. The proceedings that had been opened for "disrespect of court" (under Article 343.1 of the Criminal Code[10]) against Mr. **Mushegh Shushanyan**, the lawyer of five people arrested during the events of March 2008, were annulled after the Constitutional Court stated on January 14, 2010 that Article 343.1 contradicted the Constitution. The case against Mr. Shushanyan was then closed on January 22, 2010. On February 5, 2010, the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts decided to acquit Mr. **Arshaluys Hakobyan**, a member of the Armenian Helsinki Association and press photographer, for absence of evidence[11]. He had been charged with "violence against a Government representative". During the trial, Mr. Hakobyan claimed that he had been beaten and ill-treated in custody. Although he filed a complaint, the court never ordered an investigation. Likewise, on March 11, 2010, the charges brought against Ms. **Mariam Sukhudyan**, an environmental activist from the organisation "SOS Teghut", were dropped. She had been criminally charged for "defamation" on August 11, 2009, after she had reported a case of sexual harassment on national television *Haylur TV*[12]. On June 24, 2010, Ms. Sukhudyan filed a complaint with the office of the Prosecutor General, alleging the illegitimate and ungrounded character of the charges against her. However, on September 4, 2010, the Special Investigation Department refused to open a case. Ms. Sukhudyan appealed this decision before the Court of First Instance of the General Jurisdiction and the Court of Appeals but both courts rejected her appeals on December 23, 2010 and February 1, 2011 respectively. On March 12, 2011, another appeal was lodged before the Court of Cassation, which later dismissed the case, arguing that there was no violation of procedural or material law. On the other hand, on February 7, 2011, the Court of the General Jurisdiction of Kentron and Nork-Marash Administrative Districts dismissed Ms. Mariam Sukhudyan's complaint for violation of her right to presumption of innocence, demanding one million Armenian drams (about 2,000 euros) in damages against the Head of the Republic of Armenia police, Mr. Alik Sargsyan, and the Head of Police Information and Public Relation Department, Mr. Sayat Shirinyan, for having slandered her in public in 2008.

10 / Article 343.1 provides *inter alia* for fines and/or for one month in detention against lawyers for "disrespect of court" in case they would not appear at court sessions or would disobey instructions of the judge.

11 / Mr. Arshaluys Hakobyan had been arrested in June 2009 following his activities as an observer of the Yerevan municipal elections, and released on bail in October 2009. See Observatory Annual Report 2010.

12 / The first case was initiated on August 11, 2009 for "defamation", then on August 15, the charges were changed to "falsely reporting a crime", and on October 21, the crime was re-qualified as "defamation" again.

Urgent Intervention issued by The Observatory from January 2010 to April 2011

Name	Violations / Follow-up	Reference	Date of Issuance
Mr. Arshaluys Hakobyan	Acquittal	Joint Press Release	February 16, 2010