

Armenien (85)



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Armenia¹

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In January 2001, when Armenia joined the Council of Europe, its government undertook several commitments to improve the country's poor human rights record as soon as possible. However, the September 2002 report of the Council of Europe's Committee on the Honoring of Obligations and Commitments by Member States revealed that the Armenian government had failed to honor most of its commitments.

On September 26, the Council of Europe Parliamentary Assembly (PACE) adopted Resolution No. 1304 on Armenia² noting as a positive step the ratification by Armenia of several European conventions, including the European Convention on Human Rights (ECHR) and its Protocols 1, 4 and 7 and the European Convention for the Prevention of Torture and Protocols.³ Armenia has signed 20 other treaties.⁴ Despite the fact that the Venice Commission noted that urgent constitutional reforms for the effective execution of ECHR provisions were indispensable, the referendum on constitutional amendments was postponed until 2003.

The main emphasis of PACE's resolution was, however, serious criticism. It noted that Armenia had failed to meet its commitment to ratify Protocol 6 to the ECHR concerning the abolition of the death penalty within one year of accession; to amend the law on the police in order to clarify the roles of the different judicial bodies in terms of investigation and arrest; and to revise the Administrative Code without delay. The resolution urged the government to abolish the provisions concerning administrative detention and to refrain from applying them in the interim. Moreover, it called on the authorities to carry out thorough investigations into alleged cases of torture, violence, ill-treatment and bribery perpetrated by law enforcement bodies.

PACE also pointed to problems in the field of freedom of religion, urging the authorities to register the Jehovah's Witnesses as a religious organization.

Further, attention was paid to the fact that there was still no law on the office of the ombudsperson, nor had the draft law on the media been submitted to the National Assembly. PACE particularly pointed to the procedure for acceding radio and television broadcasting licenses which had given rise to strong protests in April 2002; called on the authorities to amend the law without delay and urged them to organize a new call for tenders.

On December 28, the chairman of the Ruling Board of Armenian Public Television, Tigran Naghdalyan, was shot dead. His death triggered a wave of mass arrests of members of different parties and NGOs belonging to the oppositional block of the Socialist Armenia Union (SAU).

¹ Based on the *Annual Report 2002* of the Armenian Helsinki Association.

² See <http://assembly.coe.int/Documents/AsoptedText/ta02/ERES1304.htm>

³ The other conventions ratified by Armenia were the General Agreement on Privileges and Immunities of the Council of Europe and its additional Protocols; the European Convention on Extradition; the European Convention on Mutual Assistance in Criminal Matters; the Convention on the Transfer of Sentenced Persons; and the European Charter for Regional or Minority Languages and the European Charter of Local Self-Government.

⁴ Including the European Social Charter; the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities; and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

The illegal conscription of men to serve in the Armenian forces in Nagorno-Karabakh and the occupied Azerbaijani territories continued as of the end of 2002. The Minister of Defense, Serj Sargsyan claimed that only volunteers were allowed to serve there, but in reality most draftees were not even notified in advance about which military unit they would serve in.

The Commission on Human Rights under the Armenian President Robert Kocharyan failed to play an active role in addressing human rights questions and in taking effective measures to resolve them.

Elections

On June 7, in compliance with recommendations of the Council of Europe, Armenia adopted amendments to the Election Law to align it with European standards.

On October 20, local elections were held and they were monitored both by local and foreign observers. Following the elections, the Council of Europe monitors stated that "Armenia has taken another substantial step towards democracy. The elections were held almost corresponding to international standards." Nevertheless, the ambassadors of the USA, Great Britain, Germany, France and the OSCE, as well as the representatives of the UN and the International Foundation of Election Systems (IFES) addressed a letter to the Central Election Commission stating that it was indispensable to remove a number of deficiencies registered during local elections before the upcoming presidential elections on February 19, 2003 and parliamentary elections on May 25, 2003. In particular, they said, it was necessary to make sure that names of deceased persons no longer appeared on election registers and that proxy voting was not possible; during the local election, in some instances individuals who were outside Armenia during the polling were registered as having cast their ballots.

Other irregularities included simultaneous voting in the same booths by many persons; extension of election registers, multiple voting, and the failure of police officers to exercise their duties during the polls. According to experts, the Election Code must be amended to improve the formation of election commissions to ensure that the non-parliamentary opposition is adequately represented in them⁵ and enjoys the capacity to effectively supervise the process of the elections. Further, the procedure of nominating candidates for both parliament and presidency should be differentiated in order to enhance the role of political parties in society.⁶

The representatives of the Helsinki Association, who observed the 2002 local elections in the Prefecture of the Center, recorded numerous irregularities. For example, voters were taken in an organized way by bus from one polling-station to another to vote several times under different names. Several authorized observers were not allowed to enter polling stations despite the fact that they showed authorization, and some were forcefully removed from the stations. In some cases, polling stations were closed down before the end of official opening hours. At some stations, additional names were entered on the voter registers (in the town of Gumri the number of voters was extended by an additional 21,000). In addition, prominent individuals – including the president and the mayor of Vanadzor – tried to encourage people to "make the right choice."

⁵ Now, the election commissions at all levels (the central, circuit and territorial ones) were formed according to the following principle: three members represented the president and one member from each party (or block) represented in the National Assembly.

⁶ According to the law in force in 2002, both in presidential and in parliamentary elections, parties and initiative groups were entitled to nominate candidates for elections. However, for a presidential candidate, it was necessary to collect 35,000 signatures of supporters, while 500 signatures were needed for a candidate to the National Assembly. The parties did not have any advantage as compared with initiative groups of civilians when nominating either a presidential candidate or a candidate to the National Assembly.

Freedom of Expression and the Media

The two basic laws regulating the media in Armenia were the Law on the Press and the Mass Media (hereinafter the Media Law) and the Law on Television and Radio, both in force since 2001. There was no law on access to information. Despite the fact that the Media Law and the Armenian Constitution provided for the right to receive information, the absence of a specific law hampered the receipt of information particularly from public authorities.

The Media Law did not meet international legal standards, which moved the Council of Europe to urge Armenia to adopt a new law within one year of its accession. The law was amended in 2002, but it was still not in line with European regulations. At the same time the new, elaborated draft law, which had not been adopted by the end of 2002, was considered by experts to be very restrictive in terms of media freedom and access to information.

For the broadcasting media (with the exception of cable network), operation was permitted on the basis of a license obtained in a government-organized tender in which the National Commission on Television and Radio (NCTR) used its discretion. However, under European standards, the licensing authority must be an independent body – not a body nominated largely by the president, as it was in Armenia.⁷ PACE strongly criticized the spring tender, which had given rise to wide protests, urging the authorities to amend the Media Law without delay.⁸

The NCTR had the power to deprive television and radio stations of their license under article 55 of the Media Law, among other reasons, if a media outlet violated license regulations and ignored three warnings given within a year; if its technology did not meet the given standards; if it constituted a threat to human health; if it hampered the work of other television or radio stations; if the standards of its programs did not correspond to the set standards and the media outlet ignored warnings; or if the outlet failed to start operation within six months after the issuance of the license.

- On April 2, the NCTR deprived independent television companies A1+ and Noyan Tapan (NT) of their license to broadcast on 37 and 35-decimeter channels because their new applications for a license had been rejected. The channel A1+ was given to the pro-government Sharm company.⁹ A1+'s efforts to challenge the NCTR's decision in domestic courts were unsuccessful, and it filed a case with the European Court of Human Rights.¹⁰
- On April 4, police officers guarding the court building did not allow A1+ journalist, Rusanna Amirjanyan, to enter the courtroom. Amirjanyan was accredited to cover court proceedings of the October 27, 1999 act of terrorism in the Armenian parliament. The police officer cited A1+'s loss of license as the reason. Amirjanyan's explanation that the information sought was for publication on the company's official website was ignored.

On April 10, several television stations, newspapers and news agencies signed a statement reading "...the freedom of speech in Armenia is not threatened and there is no obstacle for the work of Media." Later they apologized and said they had been manipulated into signing it. It also turned out that, among others, Shant TV company has signed the statement after having received a warning to keep in mind that its license needed to be renewed in April.

⁷ In 2002 the following members were still in office in the NCTR: the head of the Commission staff was David Harutunyan, brother of the president's adviser, Alexander Harutunyan, while the Chairman of the Commission, Grigor Amalyan was his childhood friend.

⁸ PACE, Resolution No. 1304, paragraph 12, September 26, 2002. See also Document 9640 of the Parliamentary Assembly on the Freedom of Expression in the Media in Europe, paragraphs 22-25, at <http://assembly.coe.int>

⁹ According to the Armenian Helsinki Association, the NCTR's decision violated articles 5, 8 and 24 of the Constitution, article 52 of the Civil Code, articles 48, 49 of the Media Law and article 159 of Civil Procedure Code.

¹⁰ See the Parliamentary Assembly report 9640, par. 22.

The NCTR announced a new tender for licenses for November 2002.

- In the November tender, the application of the Noyan Tapan TV company was rejected by the NCTR on the basis that the application was not properly filed. In particular, the NCTR found that the NT had failed to specify the particular channel in its application form although this requirement was not required by the law. The court of first instance ruled in NT's favor and an appeal court upheld the ruling on January 17, 2003.

Numerous other regulations curbed media freedom. For example, authorities could close printers for three to six months under articles 11 and 12 of the Media Law, for *inter alia* publishing state secrets, which contain issues on war, violence, incitement to national or religious, or advocacy to prostitution, drug addiction or other penal actions, as well as private information on individual citizens without their consent – all topics subject to wide interpretation.

Moreover, several media outlets were controlled and unofficially regulated by political figures, political parties and business people. The minister of defense unofficially controlled the newspapers *Golos Armenii* (in Russian) and *Hayots Ashkhar*, as well as the Prometeys and Armenia TV companies. In light of this situation, it was easy to dismiss a journalist for various reasons, a fact which led to self-censorship.

State subsidies were usually allocated to newspapers and magazines printed in minority languages and those covering issues such as culture, sport and children as well as to the newspapers *Hayastani Hanrapetutyun* and *Respublica Armenia* which were founded by the National Assembly.

Censorship was prohibited by the Constitution and the Media Law. However, the term "abuse of speech" in article 6 of the Media Law suggested some form of censorship. In practice, censorship existed unofficially both in oppositional and pro-governmental or state-run media. For example, not on one occasion did public television grant air time to the political opposition, nor did the pro-governmental media report on human rights violations – in contrast, they labeled human rights activists as western spies.

The Criminal Code provided for up to six years imprisonment for libel under article 131 and up to one year for insult under article 132. These provisions as well as "espionage" or "treason" charges were used to restrict freedom of expression and media freedom. Other forms of media harassment included ill-treatment of journalists.

- On September 10, a court in the city of Vedi (Ararat region) acquitted Djanik Adamyan and Emma Sahakyan of charges for "propagating libel" on the president of Armenia and "assistance to libel propagation," respectively. On July 12, Djanik Adamyan had posted 12 copies of self-composed poetry on buildings in Vedi in which he blamed the president for complicity in the terrorist act of October 27, 1999. Adamyan was held in pre-trial detention facility for two months and one week pending trial and Sahakyan was released but ordered not to leave the town. However, by law, libel cases could be initiated only on the basis of a complaint from the injured party, not by the prosecutor alone, as had happened in this case. The case was still pending as of early 2003.
- On October 22, an unidentified individual threw an explosive at the Deputy Chief of the Caucasus Press Institute, Mark Grigoryan. Grigoryan suffered physical injuries. According to the police, Grigoryan was probably hit accidentally, but Grigoryan and his colleagues believed that the assault was linked to his professional activities. The Prosecutor's Office of the Center and Norq-Marash District of Yerevan initiated criminal proceedings for attempted murder.
- On December 16, a court sentenced the correspondent of the Turkish television Company NTV, Murad Bodjolyan to 10 years' imprisonment with confiscation of his property for "treason to homeland" under article 59 of the Criminal Code. Bodjolyan was a former employee of the first presidential staff during the previous government and he had also

worked for the Foreign Ministry. Bodjolyan was accused of transferring to Turkey information classified as state secrets but his defense proved that he had used information that had already been published by other media. The information was related to the political situation in Armenia and Nagorno-Karabakh, the social and economic situation, the budget, human rights, Russian military bases, and the Kurdish community in Armenia. Even the Prosecutor Aram Amirdjanyan in his closing statement admitted that there was no evidence that Bodjolyan had divulged state secrets, but he said Bodjolyan should be imprisoned as a "dangerous criminal."

- The October 31 issue of the opposition periodical *Aravot* was confiscated. It was taken from the printers by the distribution agency Haymamul, but the newspaper never reached the news stands. Haymamul refused to reveal who had ordered the withdrawal of the whole print. According to the Editor-in-Chief of *Aravot*, Aram Abrahamjan, two articles of the issue could have irritated the authorities; one was on a treason lawsuit against Murad Bodjolyan (see above), the other on abuse in the privatization process by close relatives of Prime Minister Andranik Markarian.

Internet

There were several Internet providers in Armenia but their functioning entirely depended on Armentel, the telephone network monopol. Armentel regularly increased tariffs for Internet providers in an apparent attempt to become a monopoly also in Internet services.

- On June 25, the General Director of Armentel, Nikos Ergulis, accompanied by security guards, burst into the room leased by Arminco, the largest Internet provider in Armenia, and began searching the premises without any explanation. On June 26, the premises where Arminco's servers were operated, were sealed by Armentel security guards.

Peaceful Assembly

According to article 26 of the Constitution, "citizens have the right to peaceful assembly...to conduct meetings, rallies, processions and demonstrations." This right can be limited only during wartime. However, due to the absence of a law on holding meetings, rallies and demonstrations, issues related to public meetings were regulated by municipal authorities. Moreover, article 180 of the Code for Administrative Offenses, that was adopted in 1988 during the Soviet era, provided for administrative punishment for holding meetings, rallies, demonstrations and street processions, and it was still applied in 2002.

Order No. 542 of the minister for culture, youth and sports of December 30, 2000 prohibited culture and sport facilities from allowing public and political organizations, including political parties, to use their facilities, but the order was not promulgated and thus did not have legal force. However, throughout 2002, cultural and sport facilities and halls were provided to those public and political organizations that claimed to support the president during the upcoming presidential elections.

- On April 8, law enforcement officials arrested students distributing leaflets in centre of Yerevan, calling on citizens to attend the opposition rally scheduled for 10 May. The police officers said they were acting on the order of the Police Deputy Chief Petrosyan. The students were released only after a phone call from the Deputy Chief of the Department of the Interior.
- More than 80 people from different opposition parties were subjected to administrative punishments in connection with participation in mass meetings, demonstrations and street rallies held in 2002. Most of the incidents occurred in connection with public meetings in Yerevan, Gumri and Abovyan organized to support the television stations A1+ and Noyan Tapan which had been shut down by the authorities. All the arrestees were accused of violating article 180 and were either fined 500-3,000 drams (€0.86-5) or placed in administrative detention for up to 15 days. However, none of the people were arrested during

the demonstrations but in the following night. The court proceedings lasted only a few minutes, witnesses were not heard, and the sentences were handed down without sufficient basis for charges. Most trials were held in the First Instance Court of the Center and the Norq-Marash District of Yerevan, whose Judge Oganessian stated that the sentences were not subject to appeal. Moreover, on May 21, in one case linked to the demonstrations, the Chairman of the court, Jora Vardanyan ruled against the Chairman of the regional branch of the opposition party Republic, Jora Stepanyan in the defendant's absence.

- More than 10 citizens were given administrative punishments for participation in the October 25 public event dedicated to the memory of the October 27, 1999 terrorist act at Armenia's parliament and to its victims.

Judicial System, the Independence of the Judiciary and Fair Trial

The new Criminal Code was not adopted by the end of 2002 despite Armenia's commitment to the Council of Europe to adopt it by January 2002. The new Civil and Criminal Procedure Codes were not in line with international standards. It generally appeared that the legislature was unwilling to carry out the necessary reforms.

When deciding on preventive punishment (taking into custody suspected persons and deciding on their possible release on bail or upon a written undertaking not to leave a location), the courts were not entitled to investigate evidence but had to base their decision entirely on the account brought by the investigative agencies.

The physical conditions of many courts were completely substandard despite the subsidies granted for reconstruction and the construction of new court houses. For example, the Courts of First Instance of the Center and the Norq-Marash, Achapnyak and Davitashen, Arabkir and Qanaqer-Zeytun regions of Yerevan, as well as those in the towns of Vanadzor and Gumri worked under unacceptable conditions. Court employees even had to charge people for copying or printing out their documents.

In practice, judges were directly dependent on the executive power, in particular of the minister of justice who drew up lists for appointments for judges and decided whether they had sufficient qualifications. The list then went to the Council of Justice that submitted the final list of candidates to the president of Armenia for approval. The Council of Justice, presided by the president, exercised the right to discipline and dismiss judges. Other members of the council were the minister of justice and the prosecutor general. Judges were appointed for a life term, but could in practice be dismissed solely on personal grounds; for example, the prosecutor could address a letter to the Council of Justice reporting alleged mistakes committed by a judge, the council could consider the issue and submit a proposition to the president to dismiss the judge.

There was a lack of qualified judges, which became particularly evident after the Justice Ministry decided to renew the courts' staff. The move resulted in a lack of practical experience and professionalism amongst candidates, which brought an array of protests to the Court of Appeal on the decisions of the courts of first instance.

The judicial reforms did not touch upon the issue of corruption and the influence of politicians on the courts. In practice, however, they seemed to play an important role for example in appointments of judges: many officers of the Justice Ministry were appointed judges of the Court of Appeal and chairmen of the courts of first instance. Generally, it was believed that judges must pay a large sum to have a positive attestation to work as a judge.

Bribery was a growing problem, which was also evident in the growing number of complaints about it to the Helsinki Association; people were required to pay bribes to simply get their cases settled. However, there was not a single known case of proceedings for bribery against judges.

The recent reforms allowed defense lawyers to work independently. After passing a test prepared by the Justice Ministry, a defense lawyer was obliged to become a member of one of the two bar associations. However, court rulings subject to appeal could be handled only by about ten defense lawyers specially authorized for this purpose. Merely to appeal for such authorization cost about €500.

The sentencing policy was not just. The sentences were generally harsh (in criminal cases usually imprisonment), but there were big discrepancies between sentences handed down by different courts and judges for the same crime. The work of the Public Prosecutor's Office was politically motivated when it came to initiating criminal proceedings.

- In August, the Court of First Instance in Khorhrdayin sent the case of Koryun Sargsyan – charged with assault and murder – for additional investigation due to a lack of evidence without handing down a judgment. The Public Prosecutor's Office appealed the decision to the Court of Appeal and to the Court of Cassation, both of which sent the case back for additional investigation due to a lack of evidence. In November, six men forced their way into Sargsyan's apartment and took him to the Department of the Interior in Khorhrdayin "to get some issues clarified." He was ill-treated there for three days. His mother and wife had to give witness statements during the night, and in one session, an investigator ill-treated his mother, breaking her arm. Between November 18 and December 17 Sargsyan was on hunger strike demanding for his release pending sentence and retrial in the Court of First Instance within reasonable time. As of the end of 2002, Sargsyan continued to be held in a medical ward of a pre-trial detention facility, suffering from heart, kidney and stomach diseases.

Although judicial reforms provided for prompt court proceedings, they did not show any improvements in practice. Primarily, the delays could be attributed to the poor labor discipline of the prosecution that often failed to appear in sessions at the right time, the late opening of sessions and short hours (e.g. sessions only on three days a week at the Court of Appeal and the Court of Cassation), the lack of space for the higher level courts, and poor organization (leading, for example, to judges being appointed to two different trials taking place at the same time).

Detainee's Rights

Arbitrary detentions were commonplace. According to the Criminal Procedure Code, the maximum term of detention without bringing charges was 72 hours. In practice, police arrested people suspected of a specific criminal act, registered it as "minor hooliganism" and kept them in detention for 15 days during which time they carried out investigation to see if there was evidence to fill in the detention protocol. Despite such misconduct, no officers are known to have been held accountable for arbitrary detentions.

In most cases, suspects were held in custody pending trial. Bail could be used in cases of minor or average offenses. A bail could be given only upon payment of a large sum of money, starting from 200 times the minimum monthly salary, i.e. 200,000 drams (€342).

On the basis of the laws "On the Holding of Detainees and Arrested Persons" (adopted on March 7, 2002), "On the Police," and the Criminal Procedure Code, law enforcement agencies were obliged to inform relatives about the whereabouts of detainees, and detainees had the right to contact a lawyer and doctor. The police informed detainees about these rights by giving them a paper listing their rights without explaining them.

According to the Criminal Procedure Code, the maximum term of pre-trial detention was two months, which, however, could be prolonged by two months, but not longer than for a total duration of a year.

There was a right to state-appointed and paid lawyers, but the defendants usually rejected their services due to the poor performance in defending them: in some cases, such defense lawyers had even

pressured their clients into pleading guilty on the basis of an arrangement with the prosecution or judge and for money.

Parity of the two parties was undermined by the fact that during preliminary investigation, the defense did not have legal access to the case file and therefore could not properly prepare the case, including challenging the prosecutor's claims for the necessity to detain a suspect or to prolong detention.

In cases which provoked public attention, the principle of the presumption of innocence was frequently violated by the government-controlled media.

- During the preliminary investigation in the case of Murad Bodjolyan, state-controlled newspapers *Hayots Ashkhar*, *Erkir*, *Azg*, *Golos Armenii* and *Novoye Vremya* published articles accusing Bodjolyan of espionage. Information published by *Hayots Ashkhar* about investigation results appeared to follow the orders of the prosecutor to print them.

Prosecutors frequently submitted to courts forged information as evidence or based their cases on poorly investigated material.

Torture, Ill-Treatment and Police Misconduct

Armenia is party to both the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and – since 2002 – the European Convention for the Prevention of Torture and its Protocols 1 and 2. Just like these conventions, the Armenian Constitution, Correctional Labor Code (CLC) and the law “On the Police” prohibited torture and inhuman or degrading treatment. Yet, torture and other forms of inhuman treatment were a widespread problem.

Article 121 of the new Criminal Code defines torture and establishes accountability for it, but article 110 of the Code still in force in 2002 did not define torture although it provided for a punishment for its use. Under article 105 of the new Criminal Procedure Code the court must dismiss all evidence obtained under illegal means, however, judges typically ignored the defendants' claims that they had been tortured or ill-treated to confess.

In practice, police frequently abused the fact that witnesses invited to a police station did not enjoy the right to legal counsel.¹¹ They would invite suspects as witnesses to a police station, arrest them for a minor administrative offense (e.g. resisting police), take them before a judge (usually at night) and get a warrant to hold them for 5-15 days in administrative detention. During this time the officers resorted to illegal means to coerce a confession of a crime the police actually suspected them of.

- On March 30, Vardan Grigoryan was brought to the Department of the Interior of the town of Vardenis (Gegharkunik region) suspected of having caused a traffic accident resulting in death. A court sentenced him to a 10-day administrative detention during which he was regularly beaten by police officers. Only later in April was he registered as a suspect for a traffic accident.
- On August 9, four men – Karen Arutyunyan, Arayik and Argishti Movsisyan and Gurgun (family name unknown) – were arrested by officers of the Yerevan Board of Internal Affairs (IAB). All of them were ill-treated and beaten to make them confess a robbery and murder. In the meantime, their houses were searched without warrant. A court sentenced them to a ten-day term for misconduct in public (e.g. swearing in public which qualified as an administrative delinquency or “minor hooliganism”). The judge ignored the obvious signs of ill-treatment on the men, resulting from their systematic torture or ill-treatment. For example,

¹¹ See Detainees' Rights.

their hands were cuffed behind their back and they were beaten with truncheons and chair-legs, but never in the face to conceal obvious injuries. According to Arayik Movsisyan, he was beaten by six officers at a time while he was lying on the floor: one policeman stood on his feet, the second held a belt tightly around his neck and the third squeezed a gas mask (that was sometimes filled with water) on his face while the other three beat him. Subsequently, pins were stuck under his nails. Three of the men were finally released while Arayik Movsisyan was accused of "possession of military ammunition" because cartridges had been "discovered" on the roof of his house during a house-search.

In compliance with the law, a control board of the Prosecutor's Office formally oversaw the legality of preliminary investigations. However, it did not fulfill its task – quite the contrary, it sometimes did everything in its power to conceal the fact that violations had taken place.

Legal proceedings about alleged torture of detainees at police stations were initiated only in case of the death of a detainee. Since 1991, only two cases have been brought to court, the rest¹² have been interpreted as suicides and have been closed. The sole attempt to indict a police officer of murder was the case of Galust Dilanyan; as of the end of 2002, it had been pending for five years.¹³ Another trial against 15 recruits and officers for killing a draftee, Artjem Sarksjan in February was pending as of the end of 2002.

Conditions in Prisons and Detention Facilities

Pursuant to Armenia's commitments upon accession to the Council of Europe, all 14 penitentiaries in Armenia, except for pre-trial facilities, were moved under the control of the Ministry of Justice; 13 of them were moved as of October 1, 2001, while the investigating isolator of the National Security was transferred on January 1, 2003. In June 2002, the Helsinki Association was granted the right to monitor the penitentiary system of Armenia from February 2003.

According to the Ministry of Justice, the total number of inmates in the above-mentioned 14 penitentiaries was 6,390. All detainees due to be imprisoned had to undergo a mandatory medical survey and spend 15 days in quarantine. The mentally ill persons were sent to a special prison hospital and placed in psychiatric care.

According to the ministry, the quality of food for the prisoners was acceptable, but the inmates claimed that it was seriously substandard, and most of them lived off food parcels from their families or friends. No special diet was allowed for religious reasons. For example, Muslim prisoners, who did not want to eat pork, could largely only eat the food brought by their relatives.

The prison budget allowed for the daily expenses of about €1.3 per day and per prisoner (including food, electricity, etc.). Toilets in investigation isolators were situated in the cells, while in the colonies they were outside the barracks. There was no central heating in prisons, but the inmates were allowed to bring electric heaters to their cells. Floors in some cells were of asphalt. The inmates were allowed to shower once a week. The International Committee of the Red Cross pointed in 2002 to a serious lack of proper health care in penitentiaries which was due to the lack of sufficient funding, according to the Ministry of Justice.

¹² The Armenian Helsinki Association is aware of seven cases.

¹³ In 1998 L. Abrahamyan and three other officers of the 3rd Department of the Interior of Gumri (Shirak region), were charged with abuse of power and incitement to suicide of 23-year-old Galust Dilanyan in August 1997. The Armenian Helsinki Association assisted the father of Dilanyan in seeking justice in the case. Despite compelling evidence against the alleged suicide of Dilanyan, Abrahamyan was sentenced to five years and two days imprisonment, but was granted amnesty immediately and was ordered to pay fines worth about €200 for "incitement to suicide." The others were sentenced for "abuse of power" and "negligence."

The inmates had one hour per day for open air walks in investigation isolators while in colonies the convicts could freely move about until sleeping time. In the colonies, the inmates could watch TV in specific rooms and listen to the radio. In the investigation isolators the detainees were allowed to keep TV sets in their cells brought by relatives. Newspapers were available upon payment and all of them were pro-governmental.

Since the summer of 2002, inmates in investigation isolators were allowed to make telephone calls – in colonies this practice had existed for several years unless it was specifically prohibited by the investigation agencies. Such a ban was, however, illegal as according to the law "On the Conditions of Maintenance of Detainees and Arrested Persons," nobody was authorized to prohibit phone calls.

In common regime colonies long-term meetings (up to three days) with relatives were permitted twice a year, short-term meetings (up to four hours) three times a year. In strict regime colonies long meetings were restricted to one per year and short-term to two a year while in special regime colonies one of each meeting was allowed every year.

In some cases provided by the Corrective Labor Code, a colony inmate who had violated internal regulations could be placed in isolation for up to 15 days, juveniles for ten days. Also the ban on receiving parcels was used as punishment.

In 2002, a new prison hospital for prisoners infected with tuberculosis was opened. Its capacity was 220 patients but, as of the end of 2002, only 88 convicts with acute tuberculosis were cared for. The overall number of the diseased in prisons or colonies was about 300, most of whom underwent outpatient treatment.

- On December 22, 21-year-old David Grigoryan died in one of the municipal hospitals of Yerevan, officially from hematogenous tuberculosis and meningoencephalitis. He had been held in the Kosh common regime colony. However, Grigoryan's mother told the Helsinki Association that she had met her son on December 10 when he was in good health. She intended to ask authorities to initiate investigations into the death of her son.

As of the end of 2002, three prisoners were known to be infected with AIDS.

The metal blinds were removed in the investigation isolator of Nubarashen in 2002 and there were plans to do this in all the other isolators - however, lack of funds slowed down the work.

The amnesty law provided that some prisoners could be released ahead of their term, but convicts claimed this was possible only by payment of about €500 to the director of the institutions.

Social and psychological rehabilitation of the prisoners due to be released soon was not well developed, but a new, comprehensive program was to be launched soon in the Ministry of Justice with the creation of special departments in all the institutions to deal with the issue.

Right to Privacy and Security Services

The Constitution, the Criminal Procedure Code, the Civil Code, the Family Code, and the Media Law provided for respect for privacy. However, in practice, their provisions were not implemented.

The National Security Service was renamed on December 17 and moved to operate under the government instead of the Ministry for National Security. However, some services working under the Ministry of Defense and the police served also as *de facto* security services.

There was no public control of the security services. Articles 239-241 of the Criminal Procedure Code provided for wiretapping and correspondence of persons "who may possess criminal data" if an investigator applied and a court allowed for it on the condition that proceedings against a person had been initiated.

However, the law was not always followed.

- Criminal prosecution against Murad Bojolyan, a journalist, was initiated in January 2002 (see above). His phone, however, had been tapped by the national security agencies since 1999 without a court decision and upon the motion of the interrogator. The Court of First Instance of the Center and Norq-Marash in Yerevan had allowed wiretapping despite the fact that no criminal proceedings had been initiated.

By government decrees (no. 441 of March 28, 1999 and 5/31 of December 8, 2001), all Internet providers were obliged to operate a mechanism which would enable them to search, locate and monitor the correspondence of subscribers at the request of the intelligence services. However, in 2002, all Internet providers refused to give any information about whether or not they employed such special mechanisms.

Religious Intolerance

Under the law "On the Freedom of Conscience and Religious Organizations," all religious organizations or confessions had to register in order to be granted legal status in Armenia. One of the requirements was to have at least 200 adherents in order to be eligible for registration. Registration was conducted by a governmental body on religious affairs. This body was loyal to the Armenian Apostolic Church.

According to law, all registered religious organizations enjoyed equal rights; for example, under the Law on Value Added Tax, all religious organizations were exempted from VAT. In practice, however, the Armenian Apostolic Church enjoyed privileges. For example, in school curricula, the history of the Armenian Apostolic Church was introduced as a new subject in several Armenian schools. It was not compulsory in all schools, but there were no exemptions in those schools that had it in their curricula.

The Jehovah's Witnesses, in particular, were targeted, while their organizations were not granted registration.

- The Jehovah's Witnesses had made six unsuccessful attempts to register since 1995. Each time, the organization was asked to provide specific information that was not required by law. In particular, in September 2002 the state body for registration demanded a statement expressing the official position of the organization on issues such as family, education, health, civil duties and human rights.¹⁴
- The Armenian customs held approximately 80 kg of literature confiscated earlier from the Jehovah Witnesses because they had not been officially registered.
- On April 17, the Court of Cassation ruled in favor of the Jehovah's Witness Levon Margaryan who was charged for "impinging on the rights and freedoms of citizens under the pretext of religious freedom" under article 244(1) the Criminal Code. The ruling overturned the decision of a first instance court of September 2001 and the Court of Appeal of March 2002. Margaryan was the leader of Jehovah's Witnesses in the town of Metsamor. The charges had been brought by the regional prosecutor of Armavir in June 2001 because of the involvement of 12 children in the services of the unregistered organization despite the fact that the children had permission from their parents to do so. This was the first time article 244 of the Criminal Code had been applied in twenty years. The Court of Cassation established that Levon Margaryan's religious activities as a Jehovah Witness could not be defined as a criminal

¹⁴ See paragraph 15 of the Resolution 1304 where the Parliamentary Assembly urges the Armenian authorities "...to register the Jehovah Witnesses as a religious organization."

offence and that his activities were under the protection of the Constitution guaranteeing the freedom of worship.

In two other instances, the courts ruled in favor of plaintiffs who were Jehovah Witnesses. The first was the divorce case of Olga Kirakosyan, and the second was the property dispute case of Naira Kegyan.

Conscientious Objection

In compliance with commitments undertaken before the Council of Europe, Armenia must adopt a law on alternative military service that meets European standards within three years of its accession to the Council. Before adopting the law, Armenia must pardon all conscientious objectors from military service.

Contrary to this commitment, the courts in Armenia continued to sentence Jehovah Witnesses to imprisonment. During 2002, a total of 37 men were convicted under the Article 75(1) of the Criminal Code for "objection to military service."

- In November, the Court of Appeal extended the sentence of Arthur Grigoryan and Karen Abajyan from one to two and a half years. The proceedings were initiated by the Public Prosecutor's Office.

As of the end of 2002, seventeen Jehovah Witnesses were serving prison terms for conscientious objection to military serve. An additional four were in pre-trial detention facilities awaiting court proceedings.

The draft law on alternative service was elaborated in 2002 by a standing commission on defense, national security and internal affairs at the parliament. Only those civil society organizations who basically agreed with the contents were consulted.¹⁵

Death Penalty

A moratorium on capital punishment was imposed in 1991, however, *de jure*, the death penalty was preserved for certain crimes in the Criminal Code still in force. To comply with the commitments undertaken before the Council of Europe, Armenia should have ratified Protocol 6 of the European Convention on Human Rights and abolish the death penalty within one year of its accession to the Council. However, Armenia failed to do both. In September, the PACE of the Council of Europe expressed its "shock" about the National Assembly's decision to maintain capital punishment. The Armenian delegation to PACE noted that a new Criminal Code without the death penalty would be adopted by the end of 2002 – which, however, did not happen.

As of the end of 2002, 42 men were on death row, four of them being sentenced in 2002. The death penalty was not applicable to juveniles or women whose maximum sentence was 10 years in prison.

Homosexuals' Rights

Article 116(1) of the Criminal Code provided for a five-year sentence for same sex relations. However, in 2002, no homosexual was convicted under this provision. Under pressure from the Council of Europe, this article has been removed from the new draft Criminal Code.

¹⁵ The Armenian Helsinki Association drew up a draft law as early as 1997 but it was not consulted for the new law.

Public attitude towards homosexuals was clearly negative. Even human rights activists were largely unwilling to deal with problems related to homosexuals' rights.

Earlier, homosexuals were frequently taken to a police station and put under pressure to give names of other homosexuals. They had to pay a bribe in order to be released. However, following publicity on those cases as a result of the Helsinki Association's activities, it appeared that no such cases took place in 2002.

Nevertheless, as the Helsinki Association found out, military conscripts, who revealed their sexual orientation during a medical check-up they had to undergo upon recruitment, were assigned to a mental hospital for further examination. Based on the results of such an examination, doctors exempted the draftee from military service with the diagnosis "split personality" or "sexual perversion." At least in cases of two homosexual draftees, their parents and their place of education were informed about their sexual orientation.

Although there seemed to be a secret order to prevent homosexuals from joining the army, those who were conscripted and revealed their sexual orientation later became targets of violence or other harassment, beating and even rape and were refused medical treatment. Many times they were practically segregated from other soldiers.