Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**184**
Land:	Armenien
Kilde:	Council of Europe
Titel:	Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011
Udgivet:	9. maj 2011
Optaget på baggrundsmaterialet:	29. august 2011

COMMISSIONER FOR HUMAN RIGHTS

COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 9 May 2011

CommDH(2011)12
Original version

REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Armenia
from 18 to 21 January 2011

Issues reviewed:

Human rights issues related to the March 2008 events; freedom of expression and freedom of assembly and association; human rights situation in the army

Summary

Commissioner Thomas Hammarberg visited Armenia from 18 to 21 January 2011 and held discussions on the human rights situation with the national authorities and other interlocutors, including representatives of civil society.

The present report focuses on the following major issues:

I. Human rights issues related to the March 2008 events: The presidential elections which took place in February 2008 were followed by large-scale protests. A violent confrontation took place in Yerevan on 1 and 2 March 2008, claiming the lives of ten people and leaving more than 130 injured. The Commissioner for Human Rights conducted three visits to Armenia in the aftermath of the events, in March, July and November 2008.

Over a hundred people were arrested in the context of the March 2008 events, virtually all of them opposition supporters, and many of them were subjected to criminal proceedings. As a result of the amendments to the Criminal Code of Armenia and the implementation of the amnesty decision adopted by the National Assembly of Armenia in June 2009, the majority of those deprived of their liberty in connection to the events of March 2008 were released. Several detainees were released in the second half of 2010 and some have been released in March 2011. The Commissioner discussed extensively with the Armenian authorities possibilities to release the remaining imprisoned opposition activists.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) Trial Monitoring report, which covered the period from April 2008 to July 2009, identified various shortcomings with regard to the adjudication of the trials related to the events of March 2008. This included allegations of ill-treatment being used by law enforcement officials to coerce individuals to testify against opposition figures who were charged in relation to the March events. According to the ODIHR report, apart from very few exceptions, both prosecutors and judges remained silent in the face of information indicative of ill-treatment by law enforcement personnel, and the courts often relied on evidence which was allegedly obtained unlawfully when handing down convictions.

International and national actors have repeatedly expressed serious concern over the lack of results of the investigation into the ten deaths that occurred during the March events. Of the ten fatalities, one person (a policeman) died as a result of the explosion of a hand grenade, five from bullet injuries, three from injuries caused by “Cheremukha-7” gas grenades and one from injuries to the head caused by a blunt object. To date, the investigation has not led to the identification of those responsible for the deaths, and it appears that command responsibility was not seriously examined in this context. The Commissioner met with families of the deceased persons who expressed their strong dissatisfaction with the investigation and judicial processes. The Commissioner urges the Armenian authorities to complete the investigation into the ten deaths and to take appropriate measures to bring all those responsible to account, in line with the standards for effective investigations set out in the case law of the European Court of Human Rights. It is essential for the public to be informed of the investigation process and outcome.

The Commissioner was informed of the work of the Ad hoc parliamentary committee entrusted with conducting an inquiry into the events of March 2008. The report of the Ad hoc parliamentary inquiry committee was made public in September 2009. The Armenian authorities have been drawing upon the report’s recommendations as a basis for reforms aimed at remedying certain structural deficiencies that were revealed by the March 2008 events. In their discussions with the Commissioner, the authorities provided extensive information about the police reform process and the work of the National Assembly Standing Committee on State and Legal Affairs, which is in charge of monitoring the implementation of the recommendations of the Ad hoc parliamentary inquiry committee.

The Commissioner considers that more should be done to address the remaining human rights consequences of the March 2008 events and to heal the wounds of the Armenian society, which remains tainted by a strong impression that justice was meted out in a selective manner. This implies both system-wide reforms as well as concrete steps related to the pursuit of accountability.

II. Fundamental freedoms: The Commissioner paid particular attention to freedom of expression and freedom of the media during his visit. He welcomes the decriminalisation of libel and insult through amendments to the Criminal Code in May 2010. However, concerns have been expressed about certain amendments to the Armenian Civil Code which introduce high monetary fines for insult and defamation through civil suits, and about the increase of cases brought against media outlets on this basis. The Commissioner is aware of the discussions on the amended Law on Television and Radio, and invites the Armenian authorities to take into consideration the comments from international experts and proposals submitted by the working group led by the Ombudsman. As for attacks and threats on journalists, they should be firmly condemned by the country's leadership. Investigation into these cases should be prompt and effective, and those responsible should be held to account.

Pluralism within the audiovisual media spectrum is the hallmark of a healthy democracy which attaches importance to the principle of freedom of expression. In this context, the Commissioner regrets to note that the last tender for broadcasting licenses did not contribute to the promotion of this principle. The Commissioner takes note of the reasoning provided by the National Commission on Television and Radio (NCTR) on the competition between *Armnews* and *Meltex*. He finds that the methodology used to assess the bids was problematic and that it affected the credibility of the tender.

The Commissioner supports the efforts of the Armenian authorities to amend the legal framework on freedom of assembly in accordance with international human rights standards. He emphasises that the recommendations from the Venice Commission and the OSCE ODIHR should be duly reflected in the law, and proper consideration should be given to the opinions expressed by civil society actors in this regard.

The implementation in practice of the right to freedom of peaceful assembly in Armenia remains a source of concern to the Commissioner. Unlawful and disproportionate impediments to the right of peaceful assembly, such as intimidation and arrest of participants, disruption of transportation means and blanket prohibitions against assemblies in certain places, should be immediately discontinued. The Commissioner also finds that it is unacceptable to place restrictions, as has been reported by several of his interlocutors, on indoor gatherings held by human rights organisations.

The Commissioner took note of the concerns expressed by representatives of civil society regarding recent governmental proposals - including the establishment of an inspectorate to supervise the lawfulness of activities of legal entities - which they perceive as a potentially disproportionate interference with their activities. Some provisions of the draft amendments to the law on public organisations could indeed be harmful to the independence and activities of human rights organisations.

III. Human rights situation in the army: The frequent reports of abuses in the Armenian army, ranging from the imposition of arbitrary disciplinary punishments to various forms of ill-treatment and hazing, and even non-combat fatalities, are very worrying. Although it is encouraging to see that these issues are now part of the public debate and that the authorities have expressed willingness to tackle them, the Commissioner remains deeply concerned about reports of ineffective investigations into these grave cases, a lack of accountability for perpetrators, as well as the role of certain commanding officers who have either been directly implicated or failed to react to abuses. Much needs to be done to dispel the distrust from the side of victims and their relatives in investigations relating to these cases.

The issue of imprisoned conscientious objectors – currently, all of whom are members of the Jehovah's Witnesses community - has been on the table for many years. Conscientious objectors are not willing to perform an alternative service option which is under the supervision of the military. There is still no alternative to military service available in Armenia which can be qualified as genuinely civilian in nature. The Commissioner strongly believes that conscientious objectors should not be imprisoned and urges the authorities to put in place an alternative civilian service.

One way to improve the human rights situation in the Armenian armed forces would be to enhance the role of independent human rights monitoring, which would provide regular and thorough assessments and concrete recommendations to the country's leadership on how to address human rights abuses and non-compliance with domestic law and international standards.

Introduction

1. The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, visited Armenia from 18 to 21 January 2011. The main aim of the visit was to review certain human rights issues in Armenia, including remaining issues from the events which took place on 1 and 2 March 2008, fundamental freedoms (expression, peaceful assembly and association) and the situation in the armed forces. In the course of the visit, the Commissioner held talks in Yerevan with the authorities, civil society representatives and media professionals. Commissioner Hammarberg also inaugurated the display of the Andrei D. Sakharov exhibition *Alarm and Hope* in Yerevan.[1]

2. In Yerevan, the Commissioner met with President Serzh Sargsyan, the Minister of Defence, Seyran Ohanyan, the Minister of Foreign Affairs, Edward Nalbandyan, the Minister of Justice, Hrayr Tovmasyan, the Deputy head of the National Police, Arthur Ossikyan, the Head of the Armenian delegation to the Parliamentary Assembly of the Council of Europe, Davit Harutyunyan, the Prosecutor General, Aghvan Hovsepyan, the Military Prosecutor, Gevorg Kostanyan, and the President of the National Commission on Television and Radio, Grigor Amalyan. He also held discussions with the Human Rights Defender, Armen Harutyunyan, and representatives of the international community and civil society.

3. In the course of the visit, the Commissioner went to the Prison Hospital in Yerevan, where he talked with Sasun Mikaelyan, former member of the National Assembly and opposition activist. He also travelled to Artik Prison in the northwestern region of Shirak, where he met the opposition activists Nikol Pashinyan, editor-in-chief of the *Haykakan Zhamanak* (Armenian Times) daily, and Harutyun Urutyan, as well as three conscientious objectors who are members of the community of Jehovah's Witnesses.

4. The Commissioner had the opportunity to meet with relatives of persons who lost their life during March 2008 events and with parents of soldiers who died in non-combat incidents. His interlocutors also included relatives of opposition activists imprisoned in relation to the March events.

5. In the course of the visit, the Commissioner also met former President Levon Ter-Petrosyan.

6. The Commissioner wishes to thank the Armenian authorities, and in particular the Ministry of Foreign Affairs in Yerevan and the Permanent Representation of Armenia to the Council of Europe in Strasbourg, for their valuable assistance in organising the visit.

7. The Commissioner engaged in a fruitful dialogue with the authorities, as well as civil society representatives, in order to better understand and address the situation of human rights in Armenia, especially in relation to the issues in focus. He wishes to thank all his interlocutors for their availability and willingness to share their knowledge and insights with him. The Commissioner would like to underscore his appreciation for the open dialogue and cooperation with the Armenian authorities, and in particular for the constructive discussions with the Minister of Justice, the Military Prosecutor and the Deputy Chief of Police.

8. In the present Report, the Commissioner focuses on the following major issues: Human rights issues relating to the March 2008 events (Section I); Fundamental freedoms (Section II); and Human rights situation in the army (Section III).

[1] During the visit to Armenia, the Commissioner was accompanied by Bojana Urumova, Deputy to the Director of the Commissioner's Office, and Christine Mardirossian, Adviser to the Commissioner.

I. Human rights issues related to the March 2008 events

9. The Armenian presidential elections which took place in February 2008 were accompanied by large-scale protests. Following the 1 March 2008 dispersal by the police of the tent camp set up by opposition protesters on Liberty Square in Yerevan, the situation escalated, eventually culminating in violent clashes which claimed the lives of ten people and left more than 130 injured. Over a hundred people were arrested in the context of the March 2008 events, virtually all of them opposition supporters, and many of them were subjected to criminal proceedings.

10. The Commissioner for Human Rights (the Commissioner) conducted three visits to Armenia in the aftermath of the above-mentioned events, in March, July and November 2008. At that time, he recommended that detainees who have not committed concrete acts of criminal violence be released; that cases of excessive use of force by the police and security forces and of ill-treatment of persons deprived of their liberty be investigated and that those responsible be held to account; and that an independent, impartial, transparent and credible (and perceived as such by the public) inquiry into the March 2008 events be conducted.[2]

11. At the request of the Armenian authorities, the Commissioner's Office provided the assistance of an international expert in the process of establishing a group of experts to investigate the March events (the fact-finding group).

1. Persons deprived of their liberty

12. During his visits in 2008, the Commissioner recommended that all detainees who have not committed concrete actions of criminal violence be released and that no charges and judicial procedures be initiated against persons on the basis of their expressed anti-government opinions. Furthermore, the Commissioner urged the Armenian authorities to investigate the use of ill-treatment against those who were arrested and detained in relation to the events, and to hold those responsible to account.

13. The Council of Europe Venice Commission and the Parliamentary Assembly of the Council of Europe (PACE) positively assessed the adoption, on 18 March 2009, of the amendments to Sections 225 (mass disorder) and 300 (usurping state power) of the Criminal Code of Armenia. These provisions had been widely used to arrest and sentence opposition activists and participants of the 2008 post-election demonstrations. The Venice Commission and PACE found that the amendments generally represented an improvement over previous provisions in that they reduced the scope for overbroad and abusive interpretation, in particular with regard to the cases still under consideration by the courts at the time.[3]

14. The amnesty decision adopted by the National Assembly on 19 June 2009 led to the release of the majority of those deprived of their liberty in connection to the events of 1 and 2 March 2008, i.e. those who were not charged with violent crimes or were not convicted to prison sentences of more than five years. As for the other cases falling within the scope of the amnesty, the remainder of the respective prison terms would be reduced by half.[4]

15. At the time of the visit, the Armenian National Congress (ANC), which is the principal extra-parliamentary opposition force, considered that there were still nine persons in prison on the basis of their political beliefs, some of them charged and sentenced in connection to the March events.

16. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) Trial Monitoring report, which covered the period from April 2008 to July 2009, referred to serious shortcomings concerning the adjudication of the trials related to the events of 1-2 March 2008.

[2] Cf. for example CommDH(2008)11REV, 20 March 2008 and CommDH(2008), 29 September 2008.
[3] PACE Resolution 1677 (2009) on the functioning of democratic institutions in Armenia, 24 June 2009.
[4] Decision of the National Assembly of Armenia on granting amnesty, adopted on 19 June 2009.

17. The concerns highlighted by the ODIHR report related to various aspects of the right to a fair trial and the right to liberty. According to the report's findings, judicial review of arrest and detention was not always in line with international standards, and custody decisions were not reasoned properly. In a number of trials, the monitors encountered practices which raised doubts as to whether the defendant was in fact presumed innocent until proven guilty. A number of judges made some adverse comments implying guilt of the defendants and sometimes failed to instruct them properly on their rights. Many of the monitored cases revealed shortcomings with regard to a genuine procedural equality of arms between the prosecution and the defence, contrary to fair trial guarantees. The ODIHR report also highlighted the reliance on written pre-trial testimonies given by witnesses and defendants, even when such information was contradicted by the oral testimony given by those persons at trial. In many cases, statements of police witnesses were the primary basis for convictions, sometimes despite procedural violations. The obligation to exclude unlawfully obtained evidence was not always respected. Throughout the trial monitoring, allegations of torture and ill-treatment by police were brought to the attention of ODIHR staff. Apart from very few exceptions, judges and prosecutors remained silent in circumstances in which national[5] and international[6] law required them to react.[7]

18. Judges relied on witness statements which were allegedly obtained under duress. There were several allegations of the use of ill-treatment by law enforcement officials to coerce individuals to testify against opposition figures who were charged in relation to the March events. Witnesses in criminal cases against Hakob Hakobyan, Sasun Mikaelyan, Miasnik Malkhasyan (the three of them former National Assembly members), Grigor Voskerchyan, Alexander Arzumanyan and Suren Sirunyan stated that they gave their testimony under duress and pressure. In May 2009, The Office of the Prosecutor General publicly stated that it had opened five criminal investigations in relation to these allegations. More recently, the Office of the Prosecutor General informed the Commissioner that the investigations have been terminated in four of the cases for lack of evidence, and in the lone remaining case the identification of the possible perpetrators was pending.

19. According to the ODIHR Trial Monitoring report, there were also a number of shortcomings identified in relation to the right to defence, in particular with the possibility to mount a defence and the effectiveness of legal representation. Concerns were revealed in a number of cases regarding judges' impartiality and their professional conduct.[8]

20. Out of the seven most prominent opposition figures who were considered by the authorities as playing a leading role in the March events, six were freed by mid-2009, mostly because they were eligible under the amnesty (Alexander Arzumanyan, Hakob Hakobyan, Shant Harutyunyan, Myasnik Malkhasyan,[9] Suren Sirunyan and Grigor Voskerchyan). Sasun Mikaelyan remains in detention.

21. Several detainees and opposition figures were released in November and December 2010 after serving half of their sentence or because they were eligible to be released on parole: Ashot Manukyan (1 November); Mushegh Saghatelyan[10] (24 November); Gabriel Gabrielyan (6 December) and Felix Gevorgyan (9 December).

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[5] The Armenian Constitution provides for the right not to be compelled to testify against oneself and prohibits the use of unlawfully obtained evidence (Article 22). Torture is prohibited under Section 119 of the Criminal Code. The Criminal Procedure Code prohibits the use of evidence obtained through the use of torture or other unlawful means (Sections 11 and 105).

[6] Torture is prohibited under Article 3 of the European Convention on Human Rights (ECHR) and States (Contracting Parties) have the duty to investigate allegations of torture and ill treatment raised by defendants on the basis of Article 13 of the ECHR. The European Court of Human Rights (ECtHR) has in its case law addressed the duty to investigate and stressed that the investigation should be capable of leading to the identification and punishment of those responsible.

[7] Final report on the Trial Monitoring Project in Armenia (April 2008-July 2009), Warsaw, 8 March 2010.

[8] Final report on the Trial Monitoring Project in Armenia (April 2008-July 2009), Warsaw, 8 March 2010.

[9] Myasnik Malkhasyan lodged an application against Armenia at the ECtHR on 20 September 2008 (Application No. 49020/08).

[10] Mushegh Saghatelyan lodged an application against Armenia at the ECtHR on 22 April 2008 (Application No. 23086/08). Also in relation to the March 2008 events, Aslan Avetisyan lodged an application against Armenia at the ECtHR on 24 May 2008 (Application No. 29731/08).

22. Out of the nine cases of detainees that provided by the ANC at the time of the visit, the Commissioner had the opportunity to discuss seven cases with the authorities, including as regards possibilities for their release.[11]

23. The Commissioner met with former member of the National Assembly Sasun Mikaelyan[12] who was being held in the Prison Hospital in Yerevan. Mr Mikaelyan was sentenced to eight years of imprisonment under Sections 225 (mass disorder) and 235 (illegal procurement, transportation or carrying of weapons, ammunition, explosives or explosive devices) of the Armenian Criminal Code. Certain witnesses in this case alleged that testimonies had been extracted from them under duress by law enforcement officials. The health situation of Mr Mikaelyan is fragile; he is suffering from heart disease and has undergone heart surgery three times while being deprived of his liberty.

24. In Artik Prison (Shirak region), the Commissioner met Harutyun Urutyan[13] sentenced to six years of imprisonment on the basis of Sections 149 (hindrance to implementation of the right to elect, to the work of election commissions or to the implementation of the authority of the person participating in elections) and 112 (infliction of willful heavy damage to health) of the Armenian Criminal Code. According to Mr Urutyan, he was arrested on the day of the presidential election, following his attempt to stop the occurrence of multiple and unlawful voting and an ensuing altercation with Serzh Sargsyan's proxy, Suren Avetisyan, who had reportedly been convicted previously for election-related offences. While Mr Urutyan claimed that he was the victim of a physical assault on that occasion, he found himself facing criminal charges, initially under Section 117 of the Criminal Code (inflicting willful light damage to health) and subsequently under Section 112 (infliction of wilful heavy damage to health). On 17 March 2011, i.e. about two months after the Commissioner's visit, Mr Urutyan was released.

25. Another person met by the Commissioner in Artik prison was Nikol Pashinyan, opposition activist and editor-in-chief of the daily newspaper *Haykakan Zhamanak* (Armenian Times). Mr Pashinyan, who had been at large since March 2008, turned himself in at the Prosecutor General's Office in July 2009 and was subsequently charged under Sections 225 (mass disorder) and 316 (violence against a representative of authorities) of the Criminal Code and remanded in custody.[14] On 19 January 2010, Mr Pashinyan was found guilty of "organisation of mass disorders" and sentenced to seven years imprisonment.[15] The verdict against him was upheld on 9 March 2010 by the Court of Appeal, which also applied the amnesty, reducing by half the remainder of Mr Pashinyan's prison term. The Court of Cassation rejected on 5 May 2010 the claim filed by Nikol Pashinyan's defence lawyers against the verdict of the Court of Appeal.[16]

26. During his meeting with the Commissioner, Mr Pashinyan alleged that the charges against him were not based on any concrete evidence and that the main element was the expertise of the speech he gave on 1 March 2008. The Prosecutor General confirmed that a detailed expert analysis of the linguistic and psychological aspects of Mr Pashinyan's speech had been performed, and that this was instrumental in proving his role in organising the mass disorders.

27. There have been some reports by the opposition, media and certain NGOs of pressure and attacks against Nikol Pashinyan while he was detained at Kosh Prison, especially in the period from September to November 2010. The authorities (Ministry of Justice) have disputed the veracity of that information, indicating that in reality there had been disputes between Mr Pashinyan and his cell-mates. Following the emergence of further allegations on 11 November 2010, to the effect that

[11] The cases discussed concerned: Aram Bareghamyan, Sargis Hatspanian, Ara Hovhanisyan, Sasun Mikaelyan, Roman Mnatsakanyan, Nikol Pashinyan, Harutyun Urutyan.
[12] Sasun Mikaelyan is a veteran of the Nagorno Karabakh conflict and former mayor of the town of Hrazdan.
[13] Harutyun Urutyan is a member of the ANC and was Levon Ter Petrosyan's election campaign manager in Maralik city, as well as his proxy during the February 2008 presidential elections.
[14] In other cases of persons turning themselves in to the authorities in the context of the March events, deprivation of liberty has not been applied. In its Resolution 1677 (2009), paragraph 5.3, PACE urged the Armenian authorities to allow the persons concerned to remain free pending the duration of their trial if they presented themselves to the authorities before 31 July 2009.
[15] Report of Council of Europe field office, DPA /Inf(2010)8.
[16] Report of Council of Europe field office, DPA/Inf (2010)22.

Nikol Pashinyan had been attacked in his cell at night by several masked men, the prison administration stated that a medical examination of Mr Pashinyan had not revealed any signs of a physical assault. After this episode, it was decided to place Mr Pashinyan in a solitary confinement cell for security reasons. In December 2010, he was transferred to Artik Prison in a "closed" regime with more restrictive possibilities as to contacts with the outside world. The Office of the Prosecutor General announced in the beginning of March 2011 that a criminal investigation was launched in the case of the alleged nocturnal assault against Mr Pashinyan.

28. It has been brought to the attention of the Commissioner that a key question which has been disputed in the case of Nikol Pashinyan was whether the period he spent in detention before his conviction should have been calculated in the time period to be halved through the application of the amnesty decision. The Commissioner understands that the prison authorities had taken the position that the period of remand in custody (detention pending trial) would not be included in the calculation of the reduction of the prison term as a consequence of the amnesty. The defence had appealed against this decision, arguing that the time spent in detention before conviction should also be calculated, which would reduce the total time of Nikol Pashinyan's imprisonment by about five months.

29. The Commissioner also had the opportunity to discuss with various interlocutors the case of Sargis Hatspanian, a French national of Armenian origin residing in Armenia with his wife (an Armenian national) and their two children. Mr Hatspanian was sentenced on 9 April 2009 to three and a half years under Section 333 of the Armenian Criminal Code (false crime reporting) on the basis of an interview he gave to an Armenian newspaper on 3 November 2008. His relatives have expressed concern that he will be expelled from Armenia upon his release from prison.

30. The Commissioner met with the relatives of those who are still imprisoned, who indicated that the situation had caused considerable strain to their families, one of the reasons being the loss of income of a primary breadwinner. Certain family members also claimed that they had encountered increased difficulties in finding or keeping employment because of their association with the opposition.

Conclusions and recommendations

31. While acknowledging that the Armenian authorities have taken certain measures which led to the release of many of those deprived of their liberty in connection to the 1 and 2 March 2008 events, the Commissioner continues to have serious concerns about those who remain in detention. The Commissioner has received a considerable number of credible allegations and other information strongly indicative of human rights violations and other serious deficiencies marring the criminal investigation and judicial processes in cases connected to the March 2008 events. This casts doubt on the credibility of the charges retained and the final convictions.

32. The Commissioner urges the Armenian authorities to release the remaining opposition activists jailed in connection to the March events. This might also contribute to healing the wounds of Armenian society, which is still affected by deeply-rooted political divisions.

33. The Commissioner believes that there is a risk of deterioration of Sasun Mikaelyan's health while in prison and would encourage the authorities to consider the possibility of releasing him on this basis.[17]

34. The Commissioner welcomes the release of Harutyun Urutyan and Roman Mnatsakanyan on 17 March 2011[18].

35. The Commissioner urges the Armenian authorities to allow Mr Pashinyan to meet with his lawyer in full privacy. Further, the Commissioner finds it problematic that the time of remand imprisonment is

[17] The Armenian Criminal Code provides the possibility for exemption from punishment as a result of severe illness (Section 79).
[18] On 2 May 2011, Aram Bareghamyan was released.

not counted in the period to be shortened (in the present case, halved). This means that the longer the period a person spends remanded in custody – during which he should be presumed to be innocent - the more total prison time he will ultimately have to serve. The Commissioner calls on the Armenian authorities to apply the more fair and generous option and to consider releasing Mr Pashinyan on the basis of his entitlement to early release.

36. The Commissioner urges the Armenian authorities to release Mr Hatspanian, considering that he is already eligible for early release, and to find a solution regarding his status in order to allow him to stay in Armenia with his family.

37. The Commissioner is also concerned over the situation of the relatives of those who are or have been sentenced and imprisoned as a result of the March events, and would like to recall that it is not acceptable to treat people differently because of their political beliefs.

2. Investigation into deaths

38. The Commissioner devoted particular attention to the issue of the ten deaths that occurred during the March 2008 events.[19] The lack of results of the investigation into these cases has been a source of grave concern. None of the perpetrators have been identified to date. Furthermore, it appears that command responsibility of senior officials within the police and the security services, who were in charge at the time of the events, was not seriously considered. The parliamentary inquiry committee reported that, in its opinion, the dismissals of several high-ranking officials of the police after the events of March 2008 were mostly connected with the events of 1 and 2 March.[20] However, this was not linked to a determination of responsibility for the ten deaths.[21] This situation has generated a strong sense of injustice, in particular on the side of the families of the deceased.

39. Of the ten fatalities, one person (a policeman) died as a result of the explosion of a hand grenade, five from bullet injuries, three from injuries caused by "Cheremukha-7" gas grenades and one from injuries to the head caused by a blunt object. Of the five deaths resulting from bullet wounds, in two cases, the bullets had been fired from a Makarov PM pistol; in one from a Kalashnikov 47 sub-machine gun; and in two cases the type of firearm used could not be determined, as the bullets could not be recovered from the bodies.

40. It should be noted that during the March 2008 events, the police was firing tracer bullets with Kalashnikov sub-machine guns over the heads of protesters. Taken together with the fact that the Makarov PM is the standard issue sidearm of the Armenian police, it would seem that there is a high likelihood that some of the bullets found in the bodies of the victims can be traced to the weapons that fired them. Nevertheless, the investigation services have indicated that they were unable to trace any of the bullets, despite performing checks with all available weapons used by the police. It has also been impossible to match the tear gas grenades that killed three persons to the weapon that fired them due to the fact that the bore does not leave a suitable ballistic signature on the plastic casing of the grenade[22] (a fact which had also been confirmed by a foreign expert).

[19] The ten persons who died as a result of the events of 1 March 2008 are: Tigran Abgaryan, Armen Farmanyan, Grigor Gevorgyan, Samvel Harutyunyan, Hovhannes Hovhannisyan, Zakar Hovhannisyan, Tigran Khachatryan, Gor Kloyan, Davit Petrosyan and Hamlet Tadevosyan.

[20] Conclusion of the ad hoc committee of the National Assembly of the Republic of Armenia on the investigation of the events which took place in the city of Yerevan on 1-2 March 2008 and the reasons thereof, Yerevan, September 2009, page 127.

[21] In May 2008, the Head of the National Police, Hayk Harutyunyan – who has since been appointed Head of the Prison Service (under the Ministry of Justice) - was replaced by Alik Sargsyan (previously Governor of the Ararat region); this was followed by the dismissal of the First Deputy Head of the National Police, Ararat Mahtesyan. Grigori Sargsyan (Alik Sargsyan's brother), the Head of the State Protection Service (the agency responsible for the security of high-ranking officials), was also dismissed at the time. The official announcements of the dismissals did not indicate any link to the March 2008 events.

[22] Information Note on the conclusions of the Ad hoc Committee of the National Assembly of Armenia on the events of 1 and 2 March 2008 and "the reasons thereof", Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, AS/Mon(2009)38rev2, 6 January 2010.

41. During his meeting with the Commissioner, the Prosecutor General of Armenia Aghvan Hovsepyan acknowledged that it has been impossible to resolve the death cases thus far.

42. Out of the four policemen who had been identified as using “Cheremukha-7” gas grenades during the March 2008 clashes, the investigation could not establish who fired the deadly shots which claimed the lives of three persons. Furthermore, the investigation could not identify witnesses present on the scene who could have helped in clarifying this question. The prosecutorial authorities have maintained that the “Cheremukha-7” gas grenades were used lawfully. In contrast, the report from the inquiry committee concluded that the tear gas grenades were used in contravention of safety rules, considering the injuries that the police servicemen themselves sustained.[23]

43. The Prosecutor General informed the Commissioner that the investigation for intentional murder would continue. He was of the opinion that the use of force by law enforcement officials and security forces during the March 2008 events has been lawful and necessary to prevent further casualties and attack of State institutions. At the same time, he indicated the willingness of his Office to consider new expertise, facts and elements for this investigation.

44. Several of the Commissioner’s interlocutors expressed the view that the investigation has not been conducted professionally. Moreover, as noted in the report by the parliamentary inquiry committee (cf. paragraph 67 below), important video footage materials from journalists and citizens had been erased by the police.

45. On 27 August 2009 the Special Investigative Service (SIS) presented charges against four police officers for using violence against protesters during the 1 March 2008 events.[24] They were charged under Section 309 of the Criminal Code (exceeding official authority). Two policemen were sentenced to three years imprisonment and two other policemen to two years; all four were released pursuant to the 19 June 2009 amnesty decision.[25] The foregoing information was confirmed by the Prosecutor General.

46. The Commissioner met with the relatives of most of the deceased persons, who expressed strong discontent with the investigation and judicial processes, and alleged that they had been confronted with unprofessional and/or disparaging behaviour by various representatives of the criminal justice system, including the police, investigators from the Prosecutor General’s Office and SIS, as well as judges. In particular, the relatives claimed that neither themselves nor their lawyers could have adequate access to information and materials related to the investigation of the cases. This breaches fair trial standards, in particular the equality of arms and the right to an adversarial trial,[26] as well as international standards for victim involvement[27] in the investigation of police actions. Moreover, the families have not received any compensation for the death of their relatives during the events of 1 March 2008.

47. On 16 April 2010, hearings started on one of four lawsuits against the Prosecutor’s Office and the SIS launched by relatives of victims who died during the 1-2 March 2008 events. The families complained about the lack of progress and "inactivity" of law enforcement bodies in clarifying the circumstances of the deaths and identifying the perpetrators. In May and June 2010, the Court rejected the four cases filed by relatives of victims of the March 2008 events. The reason given was that the investigation into the March 2008 deaths is still under way.

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[23] Conclusion of the ad hoc committee of the National Assembly of the Republic of Armenia on the investigation of the events which took place in the city of Yerevan on 1-2 March 2008 and the reasons thereof, Yerevan, September 2009, page 106.

[24] Report of Council of Europe field office, DPA /Inf(2009)32.

[25] Report of Council of Europe field office, DPA /Inf(2010)4.

[26] Cf. for example *Kuopila v. Finland*, Application No 27752/95, judgment of 27 April 2000 (§ 38); and *Jasper v. the United Kingdom*, Application No 27052/95, Grand Chamber judgment of 16 February 2000 (§ 51).

[27] Cf. for example *Güleç v. Turkey*, Application No 21593/93, judgment of 27 July 1998, § 82; and *McKerr v. United Kingdom*, Application No 28883/95, Judgment of 4 May 2001, § 338.

48. The question of police violence and abuse has been a recurrent issue in Armenia. The ten deaths which occurred during the March 2008 events, some of which most probably resulted from excessive use of force by a public authority, have turned a stark spotlight on underlying problems. Numerous allegations of physical ill-treatment were also made in reference to the widespread arrests and detentions that took place in the aftermath of the events. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that some of the allegations appeared to be consistent with the physical marks displayed by or conditions of these persons.[28]

49. During the Commissioner's recent visit, human rights NGOs raised specific cases of police abuse and violations, including as regards the case of Vahan Khalafyan, a 24 year old man who died from stab wounds in police custody in April 2010. In November 2010, the former head of the Charentsavan Police Investigation Department was sentenced to 8 years of imprisonment for abusing his official position and inciting Vahan Khalafyan to suicide. A police officer was sentenced to two years imprisonment and two others were freed. Human rights defenders and the victim's relatives have contested the official version according to which Mr Khalafyan was driven to suicide, and believe that he was in fact stabbed to death at the Charentsavan police station.

Conclusions and recommendations

50. The Commissioner finds that the use of force on 1-2 March 2008 was excessive and that it resulted in serious human rights violations.

51. The Commissioner urges the Armenian authorities to pursue vigorously the investigation into the ten deaths and the instances of police abuse during arrest and detention.

52. The investigation into the ten deaths, as it was conducted, falls short of the principles for the effective investigation of police actions which are essential to give practical meaning to the right to life under Article 2 and the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (ECHR). The basic criteria for effective investigations have been defined by the European Court of Human Rights (ECtHR) and include: independence, adequacy, promptness, public scrutiny and victim involvement. The investigation should be capable of leading to the identification and punishment of those responsible.[29]

53. In the present case, the investigation should clarify the circumstances of the ten deaths, identify the police officers who perpetrated these acts and hold them accountable. Further, the question of command responsibility should be examined thoroughly as concerns the senior police and national security officials who were in charge during the events of 1-2 March 2008.

54. The families of the ten victims should receive adequate compensation for the loss of their relatives and should be fully associated to and informed about the investigation.

55. It is essential that justice be seen to be done. The public should be informed of the progress and outcome of the investigation. This would contribute to promoting reconciliation within Armenian society.

3. Follow-up to recommendations made by the parliamentary inquiry committee

56. The Commissioner discussed extensively the lessons learned from the work of the parliamentary inquiry committee and the on-going efforts aimed at implementing the recommendations contained

[28] Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture from 15 to 17 March 2008, CPT/Inf(2010)7.

[29] Cf. for example *Oğur v. Turkey*, Application No 21594/93, Grand Chamber judgment of 20 May 1999; *Nachova v. Bulgaria*, Applications No 43577/98, Grand Chamber judgment of 6 July 2005; and *Ramsahai v. The Netherlands*, Application No 52391/99, Grand Chamber judgment of 15 May 2007.

in its report, with the ultimate goal of addressing the shortcomings revealed during March 1-2, 2008 events and their root causes.

57. In June 2008 the National Assembly established an ad hoc parliamentary committee to conduct an inquiry into the events of 1 March 2008 and "the reasons thereof". The inquiry committee's composition was dominated by representatives of the ruling coalition, as the opposition did not respond to the committee's invitation to participate. The non-participation of opposition representatives was seen by many as affecting the impartiality and credibility of the inquiry committee.

58. During his July 2008 visit, the Commissioner proposed the creation of a separate, smaller group of independent experts who would be tasked of establishing a factual account of the events of 1 and 2 March 2008, on the basis of which the inquiry committee could base its conclusions and recommendations. The fact-finding group was established by Presidential decree on 23 October 2008 after agreement of all parties and on the basis of parity between nominees proposed by the governing coalition and the opposition. However, political and internal tensions developed between members of the fact-finding group, eventually preventing the achievement of its intended objectives. Although the group was disbanded by the authorities in May 2009, it nevertheless managed to submit some materials and reports for the use of the parliamentary inquiry committee.

59. On 16 and 17 September 2009, Samvel Nikoyan, Chair of the parliamentary inquiry committee, presented the committee's final report. While acknowledging the authorities' responsibility in some of the aspects of the "root causes" of the March 2008 events, the report expressed the position that the exploitation by the opposition - in particular the forces supporting Levon Ter-Petrosyan - of these factors and of the resulting public discontent, directly instigated the mass disorders. The impression conveyed by the report of the inquiry committee is that the opposition and the demonstrators bear the bulk of the responsibility for the tragic succession of events. This rather categorical denouncement of the opposition's role and the relative absence of criticism of the authorities were seen by many as affecting the credibility of the report.

60. The report further concluded that police actions on 1 and 2 March 2008 were on the whole lawful and proportionate, albeit acknowledging that the police was ill-prepared and that there were instances of misconduct, disproportionate use of force and violence by the police, which should be duly investigated. More generally, in the inquiry committee's report examination of police actions, the emphasis was placed on a lack of professionalism rather than on a thorough review of concrete allegations of ill-treatment and other human rights violations.

61. The circumstances of the ten deaths were extensively discussed in the report, including on the basis of the questions raised by members of the fact-finding group. However, the inquiry committee was not able to bring new elements that would clarify the circumstances of the deaths and help in identifying those responsible. The report expressed hope that the on-going investigation would contribute to resolving these cases. It criticised the police for mistakes during the investigation process and when using special means, while making a generally positive assessment of the action of the Prosecutor General's Office.

62. Several recommendations contained in the report related to the need to reform the police, in particular through the review of all legal acts pertaining to the police, including the framework for the use of special means; increase of public confidence in law enforcement agencies; and enhancing police professionalism, including through training. The inquiry committee also proposed legal initiatives aiming at combating corruption and impunity.

63. In the legal and political field, the report of the parliamentary inquiry committee highlighted the need to reform the judiciary to ensure its independent functioning. It also insisted on the need to conduct political and electoral reforms.

64. Concerning the allegations of confessions under duress, the report of the parliamentary inquiry committee assessed that they were in fact the result of "pressure from the defendants' side", despite the fact that several defendants and witnesses claimed that they had been subjected to coercion by

law enforcement officials in this situation, which has also been reflected in the ODIHR Trial Monitoring report (cf. paragraphs 17 and 18 above).

65. The ANC condemned the inquiry committee's report, while the Ombudsman gave a largely positive opinion, criticising the report only for being too favourable in its assessment of the role of the Prosecutor General's Office.[30] The Armenian Revolutionary Federation (ARF), which has been in opposition since April 2009, mentioned to the Commissioner that it did not agree with the conclusions in the report and issued a dissenting opinion.

66. The Commissioner met with Samvel Nikoyan, who reflected on his experience as inquiry committee chair and upon the lessons learned from the exercise. Mr Nikoyan indicated that the two most significant setbacks in the work of the inquiry committee were the inability to bring the opposition in and the unresolved question of the ten deaths.

67. Mr Nikoyan also expressed dissatisfaction about the uncooperative attitude of the police towards the inquiries made by the committee, which had not been reflected fully in the inquiry committee's written report. He recalled that the police had confiscated and erased several video materials from journalists and citizens, which could have been crucial in clarifying the circumstances of the events.

68. The implementation of the recommendations contained in the report is being monitored by the Standing Committee on State and Legal Affairs of the National Assembly, which issued on 27 May the First Monitoring Report on Implementation of Recommendations proposed by the inquiry committee.[31] In November 2010, the National Assembly started to discuss the conclusions of the Standing Committee's monitoring report.

69. Several initiatives were undertaken by the Armenian authorities to implement the inquiry committee's recommendations. A significant part of the on-going activities concern the reform of the police service. It is interesting to note that a draft governmental order on alleged cases of violations committed by the Armenian police is under preparation. The Commissioner was also informed of the work being done on a draft legal act setting up a Commission supervising the activities of law enforcement bodies.

70. Other activities relating to the implementation of the inquiry committee's recommendations consist of monitoring the tender for broadcasting licenses and legislative amendments to the Law on Television and Radio with a view to enhancing pluralism in the media; preparing a draft Electoral Code, a new Law on Assemblies, and a new Criminal Procedure Code; and discussing avenues for implementing socio-economic reforms.

71. During his visit, the Commissioner was briefed about the on-going reforms of the police. The Deputy Head of the National Police, Arthur Ossikyan, underlined that the reform process was aimed at increasing people's trust in the police as well as its effectiveness. Significant international assistance has been provided in this field, and there have been trainings and other activities aimed at addressing issues such as the precise circumstances in which force may be used by the police, the role of the police during peaceful assemblies, and relations with the media. The Deputy Head of the National Police also referred to the introduction of additional safeguards regulating the use of special means and weapons.

Conclusions and recommendations

72. The Commissioner has carefully reviewed the work performed by the parliamentary inquiry committee in relation to the March events and their root causes, and noted the wide range of recommendations formulated in the inquiry committee's report. The recommendations have served as a basis for reforms which have been undertaken in several fields. The Commissioner supports these efforts and stresses that the authorities should consult closely with civil society actors in this

[30] Report of Council of Europe field office, DPA /Inf(2009)35.
[31] Report of Council of Europe field office, DPA/Inf (2010)22.

process, with a view to ensuring that both the relevant legislation and practice are in conformity with human rights standards.

73. As mentioned above, it is essential that the investigation into the ten deaths yield results and that it be perceived as credible by Armenian society. Furthermore, the police officials who were responsible for acts of violence and ill treatment, as well as those who confiscated and/or destroyed crucial video materials, should be identified and held accountable. Indeed, while many opposition activists or sympathisers were arrested, sentenced and imprisoned, hardly any officials have been held to account for abuses committed. This created a strong impression that justice was meted out in a selective manner.

74. The Commissioner encourages the Armenian authorities to carry out reforms in relation to the police, security services and other relevant law enforcement structures, with a particular view to eradicating the phenomenon of police violence and abuse as well as to combating impunity for any officials who violate the prohibition against torture and ill-treatment. In this context, the Commissioner also encourages the Armenian authorities to request the publication of the report on the CPT's visit to Armenia in May 2010.

75. Reform and independence of the judiciary are no less important. In this respect, the Commissioner calls on the Armenian authorities to continue close cooperation with the Council of Europe and other international actors in the process of judicial reforms, including the review of the Criminal Procedure Code, on the basis of the recommendations of the ODIHR Trial Monitoring Report.

76. The Commissioner believes that the establishment of a Commission supervising the activities of law enforcement bodies[32], including through the treatment of complaints, could contribute significantly to improving the level of public trust in law enforcement structures and to combating impunity. The mechanism to be established should be genuinely independent from law enforcement bodies and the executive branch. The Commission should also have an adequate scope of responsibilities, including the possibility to conduct an investigation in cases of serious human rights violations.

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77. The Commissioner strongly believes that it would be a mistake to disregard the remaining human rights consequences of the March 2008 events and to leave the foregoing matters unresolved. The frustration and resentment felt by certain parts of the population may yet again contribute to a deterioration of the environment which could lead to further outbreaks of violence. The authorities should further reach out to the opposition and the relatives of the victims, which is also important to promote reconciliation within Armenian society.

[32] The draft legal act mentions the following structures as law enforcement bodies concerned: including the police, the national security service, the military police, the tax service, the customs service, the penitentiary service, the special investigation service and the investigative department of the ministry of defence.

II. Fundamental freedoms

1. Freedom of expression and freedom of the media

78. Following his visit to Armenia in 2007, the Commissioner stated that measures should be taken to enhance freedom of expression and pluralism on public television and radio, as they are the main source of information in Armenia, in particular during electoral periods. He also considered that it was of the utmost importance to have an open and transparent process of appointment of members of the National Commission on Television and Radio (NCTR).[33]

a) Legislation

79. The Commissioner welcomes the fact that the National Assembly adopted on 18 May 2010 amendments to the Armenian Criminal and Civil Codes, decriminalising libel and insult. However, civil society actors have pointed out to the Commissioner that this was only a partial decriminalisation as, for example, the application of the criminal provisions on "false crime reporting" (Section 333 of the Armenian Criminal Code) still leaves open the possibility of undue restrictions of freedom of expression. There are also concerns related to the introduction of amendments to the Armenian Civil Code which foresee high monetary fines for insult and defamation through civil suits, which can be imposed upon media outlets.[34] NGOs have also referred to an increase in the number of lawsuits against Armenian media outlets for infringing upon a person's honour, dignity and business reputation, as well as the high amounts of compensation ordered by courts in this context, which could jeopardise the very tenability of the media outlet concerned. Recent lawsuits and court cases against *Haykakan Zhamanak* and *Zhamanak* dailies have been cited as examples.

80. Draft amendments to the Armenian Law on Television and Radio were adopted in June 2010. The amendments take into account a number of comments made by experts of the Council of Europe and the OSCE Representative on the Freedom of the Media. However, both local human rights defenders and international actors have expressed certain concerns as to the adopted amendments, fearing that they will adversely affect the plurality of the media and prevent the emergence of independent broadcasting. Civil society actors and organisations working in the field of the freedom of expression and freedom of the media have also claimed that their input had not been taken into account in the process of preparing and enacting the amendments to the Law on Television and Radio.

81. Experts of the Council of Europe and the OSCE Representative on Freedom of the Media have also pointed out several remaining shortcomings in the amended text of the Law. For example, the amendments provide for a more limited number of broadcast channels in Armenia, which is likely to have an impact upon the possible range and diversity of opinions that can be expressed.

82. According to NGOs, the decreasing number of licenses has also led to increased self-censorship among licensed media outlets out of fear of losing their license. In addition, the amendments provide that breaches under Section 22 of the Law on Television and Radio[35] should result in the automatic revocation of a broadcasting license. At the same time, the amended law does not provide for clear procedures and terms for the establishment of private digital channels. International experts also commented that the amended law does not contain clear rules for satellite, mobile telephones, and online broadcasting, and it aims to place all forms of broadcasting under a strict regime of licensing by the NCTR.[36]

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[33] Report by the Commissioner for human rights Mr Thomas Hammarberg on his visit to Armenia (7-11 October 2007), CommDH(2008)4.

[34] The amendments relate to Section 19 (Protection of honour, dignity and business reputation) and Chapter 60, paragraph 2.1, Section 1087.1 (Order and terms of compensation for harm caused to the honour, dignity and business reputation).

[35] Section 22 provides for a list of prohibited programmes and elements that, if broadcast, lead to termination of the term of license. Council of Europe and OSCE experts found that this would limit the freedom of the media and would not be in line with freedom of expression standards, including Article 10 of the ECHR.

[36] Press Release from the OSCE Representative on the Freedom of the Media "Armenia Broadcasting Law fails to Guarantee Media Pluralism", 15 June 2010. See also "Addendum to the comments on the amendments to the law of the

83. Since the fall of 2010, a working group led by the Ombudsman has been working on improving the legal and institutional framework in relation to freedom of expression and freedom of the media. Half of the members of the working group are government and National Assembly officials, and the remaining members are civil society representatives working on media issues. The working group held a meeting in mid-October 2010, with the participation of civil society actors, international experts from the Council of Europe and the OSCE Representative on Freedom of the Media, to discuss the way of improving the newly amended Law on Television and Radio. A package of proposals to further amend the law has been recently finalised by the working group.

84. The working group focused inter alia on the following issues: guarantees of independence of the NCTR and the Council for Public Television and Radio (CPTR) - selection, pluralistic membership, financial independence; competences and mechanisms of oversight of NCTR and CPTR; licensing scope and procedures – licensing criteria, mapping of frequencies, etc.; classification of satellite, mobile, internet, cable and digital networks; promotion of regional broadcasters; and issues related to re-broadcasting.

b) Attacks and pressure on journalists

85. The Commissioner is extremely worried by attacks and pressure on journalists that have taken place in the past two years. According to civil society actors, the second half of 2010 has marked an improvement in this respect as no cases of violent attacks were registered. However, in early 2011, several newspapers were ordered by court to pay rather high fines, which could jeopardise their future activities.

86. According to the information received by the Commissioner, acts of violation and intimidation against journalists have not been properly investigated. On 17 November 2008, three unknown assailants assaulted Edik Baghdasaryan, Chair of the Armenian Association of Investigative Journalists and editor of the on-line magazine *Hetq*. The assailants reportedly punched and kicked Mr Baghdasaryan, as well as striking him on the back of his head with a blunt object. Although the Armenian authorities condemned the attack and a criminal investigation was promptly opened, serious shortcomings were reported in this process, which led to only one of the three perpetrators being brought to trial.

87. On 30 April 2009, Argishti Kiviryan, coordinator of the websites *Armenia Today* and *Bagin info*, was violently attacked and had to be rushed to the Erebuni Medical Centre Resuscitation Division where he was diagnosed with multiple traumas. The investigation was reportedly affected by several significant deficiencies, including improper qualification of the criminal act by the police and negligence when examining the crime scene. At least five further cases of assault and harassment of journalists took place during the 2009 Yerevan Municipal Elections.[37]

88. The Commissioner welcomes the adoption of amendments to the Criminal Procedure Code in March 2010, which toughened the penalty for hindering the professional activities of journalists (Section 164). A new provision was added, according to which the same actions are punishable by 3-7 years of imprisonment if "committed with violence or threat of violence that is dangerous for the journalist's or his relative's life or health".

Republic of Armenia on Broadcasting and to the review on the concept paper on migrating to digital radio and TV broadcasting system made earlier (in May and March 2010) by the OSCE FOM experts", 10 June 2010.

[37] *Violence, intimidation and legal cases against journalists and the media in Armenia 2008-2009*, Investigative Journalists NGO, Yerevan, 2009.

c) Media pluralism

89. Since Armenia joined the Council of Europe in 2001, the Parliamentary Assembly of the Council of Europe has consistently insisted on the need to establish a pluralistic media environment in Armenia, including through legislative changes and an open, fair and transparent licensing procedure.

90. Civil society organisations expressed concern about diminished diversity in the broadcasting media with the disappearance of the television channels *A1+*, *Noyan Tapan*, *GALA* and *ALM*. Many interlocutors reported that the Armenian public relies more and more on online media.

91. In April 2002, the television channel *A1+* lost the call for tenders and was therefore not granted a broadcasting license for band 37 in the spectrum of frequencies. In 2004, PACE stated that "As regards freedom of expression and media pluralism, the Assembly is concerned at developments in the audiovisual media in Armenia and expresses serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licences, in particular as regards the television channel *A1+*".[38]

92. Between 2002 and 2008, *A1+* was effectively refused a broadcasting license eight times as it bid for tender calls for various bands.

93. In June 2008, the European Court of Human Rights found that there had been a violation of article 10 of the European Convention on Human Rights and fined the Armenian government to pay 30 000 Euros in relation to the case of *Meltex Ltd and Mesrop Movsesyan v. Armenia*. The judgment stated that "The Court considers that a licensing procedure whereby the licensing authority gives no reason for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression."[39]

94. In its decision N° 8 of 15 September 2010, the Committee of Ministers of the Council of Europe (CM/DH) "noted with concern the recent amendments to the TV and Radio Broadcasting Act whose provisions no longer explicitly require that reasons are given in respect of an unsuccessful competitor or applicant for a broadcasting licence"; and "welcomed the official statement by the Government Agent according to which "Article 49(3) of the TV and Radio Broadcasting Act should be interpreted in accordance with Article 10 of the Convention, and in the light of the Meltex judgment, in a way that a single decision of the Commission provides a full and proper substantiation and reasoning of the results of the points-based vote, including both in respect of the winner of the competition, as well as of all of its other participants".[40]

95. In December 2010, *A1+* failed once more to obtain a broadcasting license. All members of the National Commission on Television and Radio, except one who gave a '2' mark, scored the package presented by *A1+* with a '0' mark. Besides *A1+*, two other TV channels, *GALA* and *ALM*, did not get a broadcasting license.

96. The NCTR issued the Decree No. 96-A on 16 December 2010 on "Winners in the 11th competition" presenting the analysis of the bids submitted by *Armnews* and *Meltex* and explaining the rationale of the Commission's decision declaring *Armnews* as winner of the 11th competition under the six criteria considered for the competition. Regarding the bid submitted by *Meltex*, the NCTR members concluded that the "(…) capability to ensure pluralism, and sufficient professionalism, the quoted financial resources for the latter and for the needed equipment cannot be deemed sufficient, taking into consideration that a significant part of the documents certifying the availability of the funds proved forged and groundless".[41]

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[38] Paragraph 19 of the PACE Resolution 1361 (2004) on Honouring of obligations and commitments by Armenia, 27 January 2004.

[39] *Meltex LTD and Mesrop Movsesyan v.* Armenia, Application No 32283/04, judgment of 17 June 2008.

[40] Decision N°8 adopted t the 1092nd DH meeting, 15 September 2010, Meltex Ltd and Mesrop Movsesyan, judgment of 17/06/2008, final on 17/09/2008.

[41] Decree No. 96-A "On winners in the 11th competition", 16 December 2010, NCTR, Yerevan.

97. *A1+* chairman Mesrop Movsesyan has denied that there had been any falsification and explained that it had included in the bid all pledges for support it received. During a meeting with the Commissioner, Mr Movsesyan stated that even without the financial support of the disputed documents, there were enough financial means to realise the proposed bid.

98. On 11 January 2011, the Administrative Court of Armenia requested the NCTR to provide *A1+* with the package proposals of *Armnews* (winner of the bid) and *Armenia TV* by 20 January 2010. *A1+* reviewed the package proposals submitted by its competitors and stated that several obvious inaccuracies were identified in the *Armnews* bid which were apparently not identified by the NCTR. On this basis, *A1+* decided to appeal the NCTR decision from 16 December 2010.

Conclusions and recommendations

99. The Commissioner stresses that defamation and libel should be decriminalised and unreasonably high fines in civil cases relating to media should be avoided. At the same time, the media community should be encouraged to promote and apply ethical and professional standards in journalism and to develop a system of effective self-regulation.

100. As to the revocation of a license for a breach of Section 22 of the amended Law on Radio and Television, the Commissioner concurs with the Council of Europe and OSCE experts' view that such a measure is likely to be disproportionate, and in breach of Article 10 of the ECHR.[42]

101. The reduction of licenses to be granted to television [broadcasting] outlets runs counter to the States' obligation under Article 10 ECHR to ensure that "*the public has access through television and radio to … a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country*".[43] The Commissioner, therefore, recommends that this point should be reconsidered. Moreover, to place all forms of broadcasting under a regime of licensing by the NCTR runs counter to a Council of Europe Parliamentary Assembly Resolution, which provides that print media and Internet-based media should not be required to possess a State licence, other than a mere business or tax registration document.[44]

102. The Commissioner urges the Armenian authorities to review the national legal framework in compliance with international and European standards related to freedom of expression and freedom of the media. In this regard, they should give due consideration to the proposals made by the working group headed by the Ombudsman.

103. As pointed out by the Council of Europe and OSCE experts, the system of selecting and appointing members of the CPTR should be reformed in order to allow for the possibility of a pluralistic public broadcasting. The corresponding appointment procedures should also aim for, and result in, a pluralistic membership of the NCTR. In addition, the Commissioner recalls the Committee of Ministers' Recommendation on *the Independence and Functions of Regulatory Authorities for the Broadcasting Sector*[45], where emphasis is placed on the independence of the media authority's members from political interference and economic interests. Both the law and practice relating to the NCTR and CPTR should fully reflect the Recommendation of the Council of Europe Committee of Ministers.

104. The Commissioner recommends that the political leadership of the country send a clear message stating that violence and intimidation against journalists are unacceptable and will be duly punished. This is all the more crucial in the period surrounding elections. The effective investigation of

[42] Concerning the proportionality of sanctions see, for example, *Dammann v. Switzerland*, Application No 77551/01, judgment of 25 April 2006.
[43] *Manole and Others v. Moldova*, Application No 13936/02, judgment of 17 September 2009.
[44] Council of Europe Parliamentary Assembly Resolution 1636 (2008) on *indicators for media in a democracy*, paragraph 8.15.
[45] Council of Europe Committee of Ministers, Recommendation Rec(2000)23 on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector.

incidences of violence against journalists is of key importance; to fail to do so can only encourage impunity for human rights violations.

105. The Commissioner takes note of the reasoning provided by the NCTR that the perceived lack of financial means seriously jeopardised the feasibility of the whole bid by *Meltex*.

106. The Commissioner has misgivings regarding the methodology applied in the allocation procedure. He considers that each criterion[46] should be given a separate grade and those details should be made public. The manner in which the decisions were taken by the NCTR and the reasoning given for them leave some justified doubts about the fairness of the competition. The principle of media pluralism should be one of the key aims of any such procedure.

107. The principle of pluralism of the audiovisual media spectrum supposes that there is a variety of media outlets which, taken together, ensure that different views, opinions and information, including from minorities and political opponents, have an opportunity to be brought to the attention of a wide audience. Indeed, Article 10 ECHR obliges the Council of Europe member state "*to ensure (…) that the public has access through television and radio to … a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country*".[47] The Commissioner would like to stress that this obligation also applies when taking licensing decisions for broadcasting media. In this respect, it is of particular importance that media outlets which are complementary to one another are allowed to reach the airwaves. Licensing procedures and decisions should give strong considerations to the diversity of voices and topics offered by the different media outlets. Pluralistic coverage by the media contributes considerably to the formation of critical thinking within the population, which is of special importance in periods surrounding elections. As the ECtHR has declared, there can be no democracy without pluralism, especially in the realm of freedom of expression.[48]

2. Freedom of Assembly

108. During his 2007 assessment visit, the Commissioner stated that the violations of the right to freedom of peaceful assembly put in doubt the government's commitment to democratic values and that an end must be put to such violations.[49]

109. The 2004 Law on Rallies and Demonstrations was restrictively amended in the immediate aftermath of the March 2008 events. Following the joint expertise from the Council of Europe Venice Commission and the OSCE ODIHR, the Law was further modified toward greater compliance with international standards. However, concerns persist regarding provisions which amount to unjustified and excessive restrictions to the freedom of peaceful assembly. This is for example the case of Section 9 (4) (3) which states that a mass event could be prohibited on the basis of the opinion from the Police or the National Security Service to the effect that there are serious and imminent threats to security, public order, constitutional rights and freedoms of others, etc. Furthermore, the provision does not specify whether the information forming the basis of the opinion submitted by Police or National Security Service would be accessible to the organisers of the demonstration, or whether the opinion could be subject to appeal.

[46] The criteria are: volume of produced programmes; business plan; ability to ensure pluralism; technical means and equipment; staff professionalism and capacity.
[47] *Manole and Others v. Moldova*, Application No 13936/02, judgment of 17 September 2009.
[48] *Ibid*.
[49] Report by the Commissioner for human rights Mr Thomas Hammarberg on his visit to Armenia (7-11 October 2007), CommDH(2008)4.

110. A new Law on Assemblies has been drafted by the Office of the Ombudsman in cooperation with the Presidential Administration. The draft law has been reviewed by the Venice Commission and the OSCE ODIHR in December 2010. The experts assessed that the draft law is to a large extent in accordance with international standards. The Venice Commission and the OSCE ODIHR nevertheless made recommendations with regard to: the prohibition of assemblies in certain locations which should be clearly defined and limited; the fact that notification should not imply a system of permission; greater regulation of judicial review; define and limit the use of special means that can be applied by the police.

111. With regard to Section 5, paragraph 2, of the draft law, international experts pointed out that blanket prohibitions of assemblies aiming at forcibly overthrowing the constitutional order, inciting ethnic, racial and religious hatred, or advocating violence or war, should be conditioned by an imminent threat of violence. Article 19 par. 1.3 and 4 is potentially problematic as it contains a blanket prohibition of assemblies "organised at such a distance from the residence of the President of the Republic, the National Assembly, the Government or the courts, which threatens their ordinary activities". The notification period of seven days prior to the event is unusually long.[50] Several interlocutors mentioned to the Commissioner that the new draft law is expected to be discussed and adopted soon by the National Assembly. The new Law on Assemblies was adopted by the National Assembly in April 2011.

112. Civil society actors have expressed major concerns as regards the implementation of the right to freedom of peaceful assembly, in particular in public places. It has been reported that often, rallies and marches, mainly from opposition forces, in central Yerevan had been prohibited. In particular, applications from opposition parties to hold rallies in the Yerevan Freedom Square have been systematically rejected by the Yerevan city administration. There have also been instances of restriction of the freedom of movement for those travelling to Yerevan to participate in larger scale rallies of the opposition.[51] Despite this, unauthorised rallies have been tolerated in several cases, generally without incidents. The Commissioner was pleased to note, for example, that in March 2011, two rallies organised by the opposition were allowed to proceed in Freedom Square, after negotiations between organisers and the police.

113. Another worrying trend is the hindrance of in-door gatherings since March 2008. Several human rights NGOs and defenders reported that the use of private venues such as hotel conference rooms has been refused, sometimes at the last moment, apparently because the topics discussed, relating to the human rights and political situation in the country, were too sensitive. NGOs and defenders alleged that these impediments were mainly the consequence of instructions given by authorities.

114. In three cases[52], the ECtHR found that there has been a violation of Article 11 of the ECHR. The case *Helsinki Committee of Armenia v. Armenia*[53] concerns the ban of all public assemblies in Yerevan in post-March 2008 context, and the lack of effective remedy in contesting the mayor's decision.

115. The Commissioner supports the efforts of the Armenian authorities to amend the legal framework on freedom of assembly in accordance with international human rights standards. He emphasises that the recommendations from the Venice Commission and the OSCE ODIHR should be duly reflected in the law, and proper consideration should be given to the opinions expressed by civil society actors in this regard.

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[50] Interim joint opinion on the draft law on assemblies of the Republic of Armenia by the Venice Commission and ODIHR, CDL-AD(2010)049, 22 December 2010.

[51] Monitoring of the freedom of peaceful assembly in Armenia, Armenian Helsinki Committee, Yerevan, 2009.

[52] *Mkrtchyan v. Armenia*, Application No 6562/03, judgment of 11 January 2007; *Galstyan v. Armenia*, Application No 26986/03, judgment of 15 November 2007; and *Ashughyan v. Armenia*, Application No 33268/03, judgment of 17 July 2008

[53] *Helsinki Committee of Armenia v. Armenia*, Application No 59109/08, lodged on 10 November 2008 and communicated on 27 January 2010.

116. The Commissioner finds that unlawful and disproportionate impediments on peaceful rallies - including those criticising the authorities - such as the systematic prohibition of holding rallies in certain places, restrictions of transportation means aiming at preventing people to take part in assemblies, and arrest of opposition activists distributing flyers, should be immediately discontinued. It is crucial that the behaviour and actions of police forces during assemblies, especially sensitive ones, remain professional and lawful, with a view to guaranteeing the right to freedom of peaceful assembly.

117. Freedom of expression and freedom of peaceful assembly offer the possibility for critical voices to present their dissenting opinions though democratic means. This way, dialogue can prevail over violent confrontation. The Commissioner is of opinion that media pluralism and the holding of peaceful assemblies, including those with a critical message, should be guaranteed by the State.

3. Freedom of association

118. It has been brought to the attention of the Commissioner that a draft law on amendments to the Law on Public Organisations approved by the Armenian Government in 2009 raises serious concerns as their application would significantly burden the work of NGOs, and in some instances impede their work. For example, the amendments would expand the categories of cases in which public organisations are required to undergo a relatively complex procedure of re-registration (e.g. change of address or of head of organisation, etc.). Moreover, the amendments would require that public organisations issue annual activity and financial reports disclosing sources of funding and that one thousand printed copies of those reports be provided. According to the OSCE ODIHR expertise, some of the draft amendments are not in line with relevant international standards and constitute excessive interference with NGOs' work.[54] Parliamentary hearings on the draft amendments to the Law on Public Organisations took place on 23 September 2010.

119. The Commissioner discussed with the Minister of Justice another question which has drawn sharp criticism from NGOs. The National Assembly Committee on Human Rights discussed a governmental decision, adopted on 5 August 2010, creating a new inspectorate within the Ministry of Justice to supervise the lawfulness of activities of legal entities. NGO representatives have expressed concern that, with this decision, the government could try to gain additional control over their activities. The Ministry of Justice explained that the establishment of the inspectorate was intended for certain types of non-commercial organisations and would not interfere in the activity of NGOs.[55] According to the Minister, the creation of the inspectorate aims at ensuring accountability of the organisations concerned.

120. The Commissioner stresses that there should not be disproportionate interference of the State with the work and functioning of the civil society sector.

III. Human rights situation in the army

121. In his report on the visit to Armenia conducted in 2007, the Commissioner tackled the issue of the human rights situation in the army. In his recommendations, he called for thorough investigation of murders and acts of ill-treatment as well as the punishment of those responsible. He also recommended that civic control over armed forces be further promoted.

122. The Commissioner also found that the Law on Alternative Service did not provide for a genuine civilian service, as it was still under the supervision of the military structures. This appeared to be the main reason for conscientious objectors, who are mainly members of the Jehovah's Witnesses community, to refuse performing the alternative service as provided for by the law. In this context, the Commissioner recommended that imprisoned conscientious objectors be freed and that the

[54] Opinion on the draft law on amendments to the Law on Public Organisations, OSCE ODIHR, Warsaw, December 2009.
[55] Report of Council of Europe field office DPA/Inf(2010)33, 15 October 2010.

practical problems they encounter once liberated be resolved, for example with respect to a lack of registration documents.[56]

1. Acts of violence within the army

123. Acts of violence and various forms of ill-treatment, as well as non-combat death cases, have been recorded a number of times in the Armenian army since its creation. Civil society actors and human rights activists mentioned to the Commissioner that the prevailing customs within the military, which have reportedly favoured impunity among certain military commanders, corruption and penetration of criminal activities in the army - combined with the prevalence of sub-standard living conditions, including lack of adequate food and clothing – have contributed to the occurrence of serious human rights violations in the armed forces that are not related to military operations.

124. In 2009, the Ombudsman released an ad hoc report on "Human rights protection and disciplinary policy in the Armenian armed forces" singling out cases of hazing, abuses and misconduct by commanders and conscripts, as well as the lack of accountability for them. The report also highlighted the failure to register cases of ill-treatment and abuses; drafting of persons with health problems who are unfit for military service; and lack of access to information on all of the foregoing cases.[57]

125. The Minister of Defence indicated to the Commissioner that disciplinary sanctions and isolation are to be used as measures of last resort and that there should be an internal investigation preceding the imposition of disciplinary measures.

126. However, according to certain information received by the Commissioner, the use of the disciplinary penalty of isolation is relatively widespread in the Armenian armed forces. The monitoring conducted by the Civil Society Institute (an Armenian NGO) on the conditions of disciplinary sanctions and isolation assessed that, in practice, no investigation is carried out in cases of alleged disciplinary offences and when disciplinary punishment is applied. For the same offence, very different penalties are being imposed by commanders. This is not in line with domestic legal provisions[58] and violates the principle of presumption of innocence. Obviously, if disciplinary penalties can be imposed verbally, this may lead to the imposition of abusive penalties by commanders. Moreover, the right of servicemen to appeal before an independent complaint body (e.g. a court of law rather than a superior commander) is reportedly not effective in practice.

127. According to the report by the Civil Society Institute, persons kept in disciplinary isolators are generally not permitted to communicate with the outside world. As concerns the conditions of detention, bedding is generally not being provided to those receiving a disciplinary penalty of isolation and the possibility of showering is only provided after the first seven days of isolation.[59]

128. The Commissioner was informed by the Minister of Defence that a review of the army's disciplinary regulations was underway in order to remedy some of the above-mentioned shortcomings and to reduce the violations that are taking place in the armed forces, including non-combat death cases and other grave cases of violence. The Minister also stated that the new disciplinary regulations would lead to the elimination of "disciplinary isolators" and that in future disciplinary sanctions would take the form of enhanced educational measures within disciplinary battalions. The ODIHR has

[56] Report by the Commissioner for Human Rights on his visit to Armenia, 7-11 October 2007, CommDH(2008)4.

[57] Ad hoc report on human rights protection and disciplinary policy in the Armenian armed forces, Human Rights Defender of Armenia, 2009. According to the former Military Prosecutor, for the first 11 months of 2009, 38 military personnel were convicted for hazing and 45 more cases were under trial. The official data for 2010 has apparently shown that 176 military personnel were convicted for hazing and twelve more cases were under trial at the end of the year (the foregoing information is referenced in the 2009 and 2010 Human Rights Reports on Armenia by the Bureau of Democracy, Human Rights and Labor, US Department of State).

[58] The Disciplinary Statute of the Armed Forces of the Republic of Armenia provides that there should be an investigation to determine the imposition of penalty.

[59] "Confinement conditions of persons held in deprivation of liberty in the garrisons disciplinary isolators and the disciplinary battalion under the Ministry of Defence of the Republic of Armenia", Civil Society Institute NGO, Yerevan, 2010.

commented on the draft law on the disciplinary rulebook of the armed forces, with the aim of ensuring better compliance with international human rights standards. In particular, ODIHR recommended that the following issues be clarified: the enumeration of possible disciplinary breaches and corresponding punishments; the relationship between disciplinary liability and criminal liability; elements of grave disciplinary offences; the conduct of disciplinary and criminal investigations as well as their relationship; imposition of penalties; appeals and complaints (to a higher authority, court or Ombudsman).[60]

129. The Commissioner understands that the number of non-combat deaths in the Armenian army has decreased in recent years. However, statistical data on these cases remains subject to controversy, and civil society actors complain about the lack of reliable official information in that regard.

130. The Minister of Defence acknowledged that there were cases of violence and violations taking place in the armed forces. He highlighted the importance of improving legal and human rights education for officers and conscripts. Human rights organisations also insisted on that point, mentioning that increased legal and human rights awareness would encourage those whose rights were violated to use complaints mechanisms. The Minister also stressed that serious investigation into crimes and violations, as well as the sharing of information with the public on their outcome, are crucial.

131. In 2010 and 2011, civil society actors and the media continued to report on several cases of severe ill-treatment and death within the army.

132. In the end of July 2010, seven persons serving in the Armenian army died in violent non-combat incidents.[61] One case related to the death of the contracted officer Artak Nazaryan at a military unit located in the Tavush region.[62] The Commissioner met with the mother of the victim. The investigation concluded that he had been incited to commit suicide, whereas the family believes that it was intentional murder, given the numerous injuries found on the body and certain serious discrepancies in the investigation. The forensic expertise confirmed that serious injuries had been inflicted on Mr Nazaryan before his death. According to Mr Nazaryan's relatives, the victim had difficult relations with the commander and deputy commander of the unit. One officer (the deputy commander) and four conscripts have been arrested for ill-treating Mr Nazaryan and driving him to suicide. According to the information at the Commissioner's disposal, the commander has not been held accountable.

133. In the beginning of October 2010, an 18-year old soldier was found hanged in the basement of his military unit. One officer and six soldiers have been arrested on the suspicion of systematically beating and humiliating the victim. In November 2010, a young conscript was hospitalised, allegedly after having been brutally beaten by the commander of the Nubarashen military unit who had already been charged for mistreating another soldier. The commander was arrested in the beginning of November 2010 and sentenced to two and a half years imprisonment for the first case. In January 2011, the Minister of Defence relieved colonel Sergey Karapetyan from the post of commander of a military unit in Tavush following the death of a civilian from severe injuries to his head following an altercation at the military unit.

134. The Commissioner met with the relatives of soldiers who died in a non-combat situation. They all expressed their distrust in the investigation processes and outcomes, claiming there had been discrepancies in the forensic expertise, that murders were being covered up with suicides, etc. The relatives stressed that they had very limited access to the investigation and its materials.

135. The Commissioner also met with the newly-appointed Military Prosecutor Gevorg Kostanyan, who indicated that he was reviewing all cases and complaints submitted to his institution. He expressed

[60] Opinion of the draft law of the Republic of Armenia on the disciplinary rule book of the armed forces, ODIHR, Warsaw, 17 January 2011.
[61] In early August 2010, the Ministry of Defence announced that it had taken disciplinary measures against commanders and deputy commanders of military units as well as other officers.
[62] On 28 July 2010, in Martuni region military unit (Nagorno-Karabakh), 21 years-old Karo Ayvazyan allegedly shot five servicemen dead and then turned the gun on himself.

concern that criminal activities penetrating the military sphere would have negative consequences in society, as criminal deeds will be reproduced when soldiers go back to civilian life. Furthermore, given the sensitive security situation of the country, the Military Prosecutor considered that it is all the more important to ensure that discipline, trust and good order prevail, and that those committing abuses be held accountable. Mr Kostanyan stressed that cases thought to be problematic are being reviewed and that he did not exclude a re-opening of the relevant investigation when there is an appropriate basis for doing so.

136. The case *Zalyan, Sargsyan and Serobyan vs Armenia*[63] was brought before the ECtHR, which took a partial decision on the admissibility of the applications in question. This case concerns allegations of: unlawful deprivation of liberty; failure to provide the requisite medical assistance; torture and ill-treatment and lack of effective investigation in the course of a criminal investigation into the deaths of two Armenian soldiers in Nagorno-Karabakh (2004). The proceedings are still pending in Armenia in this case and the applicants have been released on the basis of a decision of the Court of Cassation.

Conclusions and recommendations

137. The Commissioner is gravely concerned over the cases of non-combat deaths, torture and ill treatment occurring in the Armenian army. He urges the Armenian authorities to fully acknowledge this phenomenon and intensify their efforts, through prompt and effective investigations, to put an end to the impunity of perpetrators and responsible commanders. The Commissioner believes that there is a need to exercise strong and firm political will of the country's top leadership to eliminate all such practices, which not only violate human rights but also dishonour the military.

138. The Commissioner understands that conscripts and officers who are victim of abuses are afraid to report them and very rarely use independent complaints mechanisms such as the Ombudsman and courts. The Commissioner urges the Armenian authorities and the military establishment to secure free access to independent complaints mechanisms (outside the military hierarchy and institutions) without fear for retaliation against the complainants.

139. The Commissioner encourages the Armenian authorities to amend the military disciplinary regulations in conformity with international human rights standards. In particular, the Commissioner wishes to stress that there should always be an investigation in cases of alleged disciplinary violations and that no arbitrary disciplinary sanction should be imposed.

140. The Commissioner welcomes the hotlines established by the Minister of Defence and the Military Prosecutor aimed at encouraging direct contacts with the population about issues relevant to the army. More generally, he considers it positive that human rights issues in the army are part of the public debate in Armenia, and that cooperation has been established between the Ministry of Defence and human rights organisations in this field (see paragraph 145 below).

141. The Commissioner finds that there is an urgent need to increase public trust into the investigations performed into cases of abuse in the army. The reasons behind the discontent expressed by the victims and their families regarding investigations should be addressed. In line with the principles of effective investigation defined by the ECtHR, investigative and judicial authorities are obliged to ensure the victims' involvement, by securing the complainants' participation in the investigation and their full access to the materials of the case.

142. The Commissioner encourages the authorities to duly provide information to the public on abuses in the army, including statistics about non-combat deaths and their nature. This would contribute to decreasing mistrust and suspicion about murders being misrepresented as cases of incitement to suicide.

[63] Application No 36894/04 by Arayik Zalyan, lodged on 23 September 2004, and Application No 352107 by Razmik Sargsyan and Musa Serobyan against Armenia, lodged on 9 November 2006.

143. The Commissioner invites the Armenian authorities to step up their efforts in providing human rights education and training to conscripts and officers with a view to preventing the occurrence of violations and encouraging the use of complaint mechanisms when abuses take place.

2. Independent civil society monitoring of the human rights situation in the army

144. Section 47 of the Armenian Law on Holding Arrestees and Detainees and Section 21 of the Penitentiary Code foresee the creation of a public oversight mechanism over institutions under jurisdiction of the Ministry of Defence.

145. For several years now, human rights NGOs and defenders have been gradually able to access and perform monitoring of military institutions. This has allowed the publication of several reports assessing concrete human rights issues pertaining to the army, and has contributed considerably to enhancing the public debate over questions which had been taboo previously. Cases of violations and deaths in the armed forces are now being discussed publicly, including through the media, which plays an important role in reporting on specific cases.

146. However, the army remains a closed institution in many respects. One NGO pointed out that conscripts who return from their military service do not wish to talk about their experience as soldiers. NGOs have noted that the information provided by the relevant authorities about statistical data on deaths and grave violations in the army, as well as on outcomes of investigations, remains insufficient.

147. There are several civilian institutions exercising some form of oversight over the armed forces. The Ombudsman institution has one representative dealing with army-related issues. The Standing Committee on Defence, National Security and Internal Affairs of the National Assembly plays a role in overseeing and discussing developments and issues related to the military, but its practical oversight remains limited. The Public Council established under the authority of the Ministry of Defence, which including representatives of civil society, is monitoring the defence sector. However, the Council does not report to the public.

148. The national preventive mechanism (NPM) established under the Optional Protocol to the UN Convention Against Torture (OPCAT), which consists of an 'Ombudsman plus NGOs' model, has the mandate to monitor places of deprivation of liberty under the authority of the Ministry of Defence. It appears that the OPCAT mechanism is not yet fully operational. Moreover, it is limited to monitoring places of deprivation of liberty, whereas there are many other human rights issues which deserve to be examined in the armed forces.

Conclusions and recommendations

149. The Commissioner believes that an independent human rights monitoring body composed of representatives of civil society, including experts, should be established in order to monitor the human rights situation in the armed forces. This mechanism should be able to monitor a wide range of issues, such as instances of hazing and ill-treatment, corruption, the drafting process, etc.

150. The Armenian authorities could refer to the model of the group of public observers conducting monitoring of penitentiary institutions and Ministry of Justice bodies, which is composed of independent civil society actors with experience in human rights monitoring and assistance projects in the penitentiary. The monitoring group, which was established in cooperation with the Ministry of Justice and with the assistance of international actors, issues reports and recommendations aimed at improving the respect of human rights standards in the penitentiary system.

151. The Commissioner strongly supports an enhanced role of the Ombudsman institution in improving the human rights situation in the armed forces through handling complaints from servicemen, monitoring various aspects of military life, and participation in legal and institutional reforms.

152. The Commissioner also considers that the Military Prosecutor might play an important role for improving the respect for human rights in the armed forces.

3. The right to conscientious objection

153. The right to conscientious objection remains an open issue in Armenia. Those asking to perform civilian service on the basis of conscientious objection are mainly members of the Jehovah's Witnesses community. Over 70 persons are currently imprisoned for their refusal to serve in the army or to perform alternative military service. The conscientious objectors have all been sentenced under Section 327.1 of the Criminal Code to imprisonment ranging from 24 to 36 months.

154. The Law on Alternative service was adopted in 2003 and entered into force in 2004. The performance of alternative service remains under the supervision of the military, which constitutes a major obstacle for members of the Jehovah's Witnesses community on the basis of their religious beliefs. Another issue is the potentially punitive length of the civilian service, which currently amounts to 42 months, while regular military service is 24 months. In this respect, the European Committee of Social Rights of the Council of Europe has found that a period of alternative service which is double the duration of military service is excessively lengthy and contrary to Article 1.2 of the European Social Charter. Under this article, alternative service may not exceed one and a half times the length of armed military service.[64]

155. In Artik Prison, he Commissioner met with three young conscientious objectors belonging to the Jehovah's Witnesses community. They claimed that conscientious objectors are being sentenced to different lengths of imprisonment for the same offence, depending on the judge in charge of the case. The young men mentioned that they would willingly accept to perform civilian service which is not under the supervision of the military. They appeared to have no complaints with regard to the prison conditions, saying that they were well-treated by the staff and other inmates. According to the three prisoners, conscientious objectors do receive a military booklet, with the mention that they are unfit to serve.

156. At their meeting with the Commissioner, officials from the Ministry of Defence expressed readiness to amend the Law on Alternative Service. In particular, the Minister indicated that on the basis of the amendments,[65] supervision will be exercised by a ministry designated for the implementation of alternative service (labour, health, defence, etc.), thereby suggesting that a genuinely civilian service would be available. The draft Law on Amendments to the Law on Alternative Service was adopted by the government in April 2011.

Conclusions and recommendations

157. The Commissioner urges the Armenian authorities to release all conscientious objectors who are in prison because of non-performance of military service. Alternatives to imprisonment should be found for these cases.

158. The Commissioner finds that there is an urgent need to review the Law on Alternative Service and to develop appropriate mechanisms in order to create a genuinely civilian service option in Armenia. It is also important that the length of the alternative service be adjusted – taking into consideration the duration of military service - in a way that it is not perceived as punitive, deterrent or discriminatory.

[64] European Committee of Social Rights, Conclusions XIX – 1 (GREECE), Articles 1, 9, 10, 15 and 18 of the Charter and Article 1 of the 1988 Additional Protocol, November 2008.
[65] As of the time of writing, the draft amendments have not been made public.

Appendix

Comments of the Government of Armenia regarding the report of the Commissioner for Human Rights following his visit to Armenia from 18 to 21 January 2011

5 May, 2011

Introduction

The Government of Armenia is a consistent supporter of the independent and impartial mandate of the Commissioner of Human Right and welcomes the on-going dialogue with him. The recent visit of the Commissioner to Armenia in January 2011 played an important role for the co-operation with his Office. While the promotion and protection of human rights is the sole responsibility of the authorities of Armenia, in engaging in the dialogue with the Commissioner the Armenian Government is guided by the principles of openness and pragmatic dialogue to address issues within the competence of the mandate of the Commissioner and to benefit from the advise and assistance of the Council of Europe.

In light of the above considerations the Government has carefully examined the report of the Commissioner following his visit to Armenia. While there are numerous aspects of the report, which constitute valuable advice for the authorities, there are at the same time contestable views expressed, which undermine the depth of his analyses and usefulness of his advice. Certain aspects of the report by their nature address issues within the confines of Armenia's domestic politics and, therefore, should have been treated with greater care for balance and impartiality in order to demonstrate sufficient sensitivity to the competitive nature of Armenia's domestic politics. The Commissioner should take every effort to desist from providing impression about a selective approach to the positions of the diverse political forces in Armenia and reliance on allegations. Certain parts of the report contain factual flaws and subsequent conclusions, which apparently stem from one-sided and partial information obtained by the Commissioner.

Below are the detailed responses of the Government in respect of the report.

I. Human rights issues related to the March 2008 events

1. Persons deprived of their liberty

1. It is first of all the primary interest and responsibility of the authorities of Armenia to take every effort in overcoming the consequences of the tragic events of 1-2 March. With this consideration in mind the President and the National Assembly have been continuously and extensively applying all available provisions and instruments prescribed by law to release persons imprisoned in connection with the events. In doing so, the authorities strictly adhere to the principles of the rule of law, as well as to the respect of the national legal system and its integrity. The three persons, who remain imprisoned in connection with the March 2008 events, namely, Mr. Sasoun Mikaelyan, Mr. Nikol Pashinyan and Mr. Ara Hovhannisyan, have been recognised by the Courts of Armenia as having committed particularly grave acts of violence and incitement to it. They have already been subject to amnesty declared by the National Assembly in June 2009, as a result of which their term in prison has already been reduced. The President of Armenia on numerous occasions declared his commitment to apply the remaining legal instrument available to him related to the granting of pardon. However, legal procedure must be followed and respected in this regard. The Commissioner has been briefed in detail about this position.

2. The judicial system of Armenia is subject to on-going comprehensive reform, which is a political priority for the authorities. At the same time, deficiencies in the judicial system do not absolve any person from legal responsibility for their actions and cannot justify selective exercise of justice. Allegations concerning the initiation of charges and judicial procedure on the basis of the political

views of the persons concerned are groundless and lack sufficient understanding of the political realities in Armenia. It is a demonstration of a failure to denote the highly competitive, diverse and considerably vibrant political environment in the country, as well as to distinguish between a strictly legal process on the one hand and exercise of political activity on the other.

2. Investigation into deaths

3. The Commissioner has been briefed in detail about the on-going investigation into the 10 deaths during the events of March 2008. Value judgments about the lack of professionalism of the investigation process represent a serious deficiency of the report. Initiation of criminal charges against suspected persons in connection with the deaths may only be based on credible legal grounds. The fact that the investigation into the 10 deaths has never been closed and is an on-going process has been clearly brought to the attention of the Commissioner. Ballistic investigation of all weaponry available in the national registry has been carried out with great care. The Commissioner has been briefed in detail about the on-going actions of the investigation unit to this end.

4. Investigation of command responsibility of the police during the events of March 2008 has also been carried out. This issue has been considered most seriously. The Commissioner has been informed that while there are no legal grounds to initiate criminal charges in this respect, extensive administrative actions have been taken with respect to the high command of the Police immediately in the aftermath of the events, including the discharging of the Head of the Police and other senior officers.

5. Achieving credible progress in the investigation into the ten deaths has been and remains important political priority for the authorities. There is no second thought about the primary interest and responsibility of the President and the Government to credibly close this tragic chapter of Armenia's history and to draw lessons from it, in light of which on 20 April 2011 the President of Armenia declared publicly and in most unambiguous terms his strong urge to the relevant bodies to step up every action in the investigation process. The Special Investigative Service of Armenia, tasked with the investigation of the events has undertaken a comprehensive review of the investigation process and appealed to the public to come forward with any information relevant to the investigation to assist the process with the full guarantee of confidentiality or protection if and when required.

6. Last, but not least, the ten deaths has been a tragedy that spares no one. The grief of the bereaved families is shared unreservedly by the authorities. This fact underlines the determination of the President and the Government to complete successfully and credibly the investigation.

7. The Armenian legislation prescribes limitations to access to information and materials related to pre-trial investigation of cases. However, given the special circumstance of significance and strong public interest to this particular investigation process in relation to the events of March 2008, the Special Investigation Service has consistently provided information to the public to the extent that it does not undermine progress in the investigation. All relevant information has been regularly updated on the official websites of the Office of the Prosecutor General and made available on regular basis through the media. The Human Rights Defender and his office, non-governmental organisations, as well as international organisations, have been regularly briefed about the process. Furthermore, all information and materials related to the investigation of the 10 deaths have been made fully available to the National Assembly ad hoc committee to conduct an inquiry into the events of 1 March 2008 and the reasons thereof, as well as to the Group of independent experts. In light of the comprehensive review of the investigation process, as mentioned above, the adopted policy of information sharing with the public will be strictly maintained.

8. The Armenian legislation contains specific provisions related to adequate compensation to the families of the victims. This issue is by no means overlooked by the authorities. The identification of persons directly guilty of the deaths as a result of the investigation will in turn ensue the consideration of the issue of compensations. At the same time, the authorities are fully mindful of the fact that the successful completion of the investigation and identification of persons directly responsible for the deaths will be the most important contribution to alleviating the plight of the bereaved families.

9. The Government has condemned in strongest terms the actions of Police officers, whose criminal actions led to the suicide of Mr. Vahan Khalafyan, and followed closely the investigation of this case. The investigation and the subsequent judicial process have been carried out in a most comprehensive and professional manner. Charges were brought against the Head of the Criminal Investigation Department at the Charentsavan district division of the Police, who has abused his powers and resorted to violence in order to extort confession of guilt for alleged robbery from Mr. Khalafyan. In a state of extreme tension Mr. Khalafyan has committed suicide. Charges have been brought against three other officers of the same department for complicity in the criminal acts of their fellow officer. All officers have been sentenced by the Court and are presently serving prison terms. Both during the pre-trial investigation and the Court proceedings the claims of intentional murder of Mr. Khalafyan have not been substantiated with sufficient evidence. At the same time, as it stands, this deplorable incident at the Police is a disgrace for the reputation of the Police and is addressed by the Government in a most serious manner.

3. Follow-up to recommendations made by the parliamentary inquiry committee

10. The fact that the Commissioner refers generically to the non-participation of opposition representatives in the work of the National Assembly ad hoc committee to conduct an inquiry into the events of 1 March 2008 and the reasons thereof, demonstrates insufficient understanding of the party political processes in Armenia. Indeed, the parliamentary opposition forces have been represented in the ad hoc committee, have been fully engaged in its work and have produced a dissenting opinion about its final report. At the same time, the one extra-parliamentary political force of Armenia refused to participate in the work of the committee. This is a purely political issue and concerns a choice of methods of political competition.

11. The Government reiterates its deep appreciation of the Commissioner's efforts and valuable assistance in establishing a group of independent experts to establish a factual account of the events. The expert group has been established at the initiation of the President of Armenia. The Commissioner is well aware of the subsequent developments, of the inability of the members of the group to ascertain the independent and impartial nature of their functions, the politicisation and internal tensions between the members of the group, which resulted in the failure of insuring effective functioning of the group, and its dissolution. In fact, this was the first national experience of its kind to establish an independent and impartial expert body. The lessons learned from this experience and from its shortcomings serve basis for developing an improved mechanism of its kind if and when such necessity arises.

12. The Government does not comment on the numerous political reactions to the report of the parliamentary ad hoc Committee. These have been subject of intensive domestic political debates. At the same time, it notes that by definition and common sense the ad hoc committee has not and could not perform investigatory functions into the events of March 2008. At the same time, the report of the ad hoc committee remains an important source of reference for the reforms of the Government in relevant fields, which, *inter alia*, stem from the recommendations of the report and are subject to on-going parliamentary oversight. These reforms are of both legislative and operational nature, they concern, in particular, but not limited to the Police and other law enforcement bodies, as well as the judiciary. The Government appreciates the support of the

Commissioner to these efforts and will continue to adhere to broad public consultations in the process of implementation of reforms.

13. With respect of the inception of a new oversight body for the activities of the law enforcement bodies, the Government has made its position known to the Commissioner, that the primary area of concern and therefore of immediate reform process are the immediate actors, i.e., the law enforcement bodies. The creation of an additional body at this stage from the practical point of view is premature as without addressing the core issues of effective functioning of the primary bodies any such new body may contain risks related to effectiveness and, not least, corruption risks.

14. The Government has already commented on the determination of the authorities to step up the investigation into the events of March 2008, including the 10 deaths. As regards the question of holding persons to account in relation of the events of March 2008, the investigative and judicial processes cannot be treated as a statistical exercise as a result of which unsubstantiated and empirical conclusions are drawn.

15. Finally, no one can bear more interest and responsibility for effectively overcoming the consequences of the tragedy of March 2008 than the authorities of Armenia. The determination of the authorities to this end is unwavering. The relatives of the victims are of particular of importance for the authorities as they have suffered an unrecoverable loss of their beloved ones. Their plight and bereavement is fully shared by the authorities, whereas the successful completion of the investigation is the responsibility of the Government. The political field of Armenia, whether in the Government or in the opposition is represented by highly responsible and experienced figures who recognise their particular responsibilities before the society and are committed to a civilised and democratic political competition.

II. Fundamental freedoms

1. Freedom of expression and freedom of the media

16. In May 2010 upon the initiative of the Government the National Assembly introduced respective amendments to the Criminal Code and the Civil Code, which decriminalise libel and slender. Armenia, as a result, has taken a considerable step further than many other members of the Council of Europe in this respect. Prior to the introduction of the amendments the authorities have extensively consulted relevant international experts, including from the Council of Europe and received their positive assessments. However, the Government shares the concerns of the civil society representatives in relation to the increase in the number of lawsuits against media outlets. It is also the view of the Government that the Courts should treat such lawsuits with due respect to the protection of freedom of speech. The Government shares the view expressed by the Human Rights Defender of Armenia in his letter to the judicial authorities of Armenia in April 2011 and expects the latter to heed these views. At the same time, the Government does not consider the levels of monetary fines to be the primary problem. Finally, the problem with increased lawsuits also brings about another question related to promoting professionalism and ethics among the media professionals.

17. There exists a fundamental misunderstanding of the question of broadcasting frequencies made available for licensing at this transitional stage towards digitalisation of broadcasting. This question is of highly technical nature and eventually leads to a significant increase of frequencies at the end of the transitional period by 2015.

18. With respect to the issue of automatic revocation of licenses as a result of breaches under Article 22 of the Law on Television and Radio, there is strictly no interpretation of this provision outside the scope of the Constitution of Armenia and the European Convention on Human Rights.

19. The Government has no intention to place any form of licensing by the NCTR on satellite, mobile telephony and online broadcasting.

20. With respect to the attacks on journalists, the Government unconditionally denounces such criminal acts. It has been taking every effort to address the problem and notes with satisfaction that the situation has considerably improved. The actions of the Government include, in particular considerable increase of the length of imprisonment for acts of violence against journalists or the threat of it. Section 164 of the Criminal Procedure Code was duly amended to this effect in March 2010. This amendment, in particular, has increased the length of punishment to up to 7 years in cases when acts against journalists or their relatives are committed with violence or threat of violence that endanger their lives or health.

21. The investigation into the case of assault against Mr. Edik Baghdasaryan, editor of the *"Hetq"* on-line magazine, resulted in the identification of one of the assailants. The assailant was convicted to 5 years of imprisonment by the Court and is presently serving his sentence. There is an on-going investigation into the identification of the accomplices of the assailant, as a result of which the proceedings of the criminal case are presently suspended.

22. There is an on-going thorough investigation into the case of a violent attack against Mr. Argishti Kiviryan of "Armenia Today" on-line publication. While regretfully the investigation has not so far resulted in the identification of the perpetrators of the attack, and while it is understood that every effort is taken to carry out the investigation in the most professional manner, the Government attaches importance to the progress in the investigation and continues to closely follow this case in order to bring the perpetrators to justice.

23. The Government will not share the view of the Commissioner with respect to "justified doubts about the fairness of the competition" in the licensing procedure involving *Meltex Ltd*. The lack of financial resources by the applicant is a fact, established as a result of due process conducted by NCTR. It is not a matter of perception. It is noteworthy, that Mr. Mesrop Movsesyan, chairman of *Meltex Ltd* has never contested the fact of fraudulent financial pledges in their bid. The provision of financial resources is of considerable importance as it ensures full sustainability of the broadcaster over the licensing period. The licensing procedure has been fully respected during the tender of the 11th competition, at which *Meltex Ltd.* has participated. Nothing prevents the company from contesting the results in the courts. However, this would constitute a new case in the context of the judgment of the European Court. As far as media pluralism is concerned, the availability and easy accessibility of information of importance and interest to all segments of the population is not hindered in any way whatsoever. The A1+ media outlet, operated by the company is a valuable but not sole player in the media field providing diversity of views and opinions. The multiple views and opinions of all from the public and from the political circles without exception are freely expressed in all available media outlets, including electronic, print and online media. The Government remains committed to further strengthening the culture and practice of freedom of expression and encourages the Public TV and Public Radio of Armenia to further promote professionalism and quality in providing their public service.

2. Freedom of Assembly

24. The new law "On freedom of assembly" has already entered into force. This law is a significant step forward towards the realisation of the constitutional right of the freedom of assembly without hindrance or obstruction. It considerably restricts the prohibition or dispersion of rallies to cases when there are manifest threats to the constitutional rights of citizens and interests of the society. Responsibilities for breaches of the Law are restricted to only administrative measures.

25. The claims about the prohibition of rallies and marches in central Yerevan are absolutely wrong. It is quite simple to establish that the location around the Museum of Ancient Manuscripts, which is consistently provided by the Municipality of Yerevan for holding rallies by numerous political forces, is absolutely central in the geography of Yerevan. Furthermore, anyone familiar with the history of Armenia of the past 23 years would acknowledge the political significance of the location. The established route for marches, as provided in applications of the political forces and consistently approved by the Municipality, covers Mashtots Avenue, Amiryan Street, the Republic Square, Nalbandyan Street, Toumanyan Street, Abovyan Street and the Northern Avenue. To challenge the centrality of all these locations in Yerevan is comparable to challenging the centrality of Avenue de Chaps-Elysees in Paris, Place Kleber or Place Guttenberg in Strasbourg.

26. The Freedom Square or Opera Square is located only 500 meters from the area around the Museum of Ancient Manuscripts, the Matenadaran. The distance is comparable to that between the Piccadilly and the Trafalgar Square in London. The Freedom Square, amongst other things signifies the beginning of the confrontation between the police and the demonstrators and the subsequent tragedy of the events on 1-2 March 2008. It bears clear psychological pressure in relation to the overcoming the tragedy and requires an exercise of sensitivity and restraint. Having said that, it should be noted that as a result of careful negotiations between the Police and the demonstrators in the past two months it has been possible to stage orderly rallies in the Freedom Square on several occasions. The degree of responsibility and maturity exercised by the Police and the political forces underlines the gradual overcoming of the psychological pressure. In light of the above, it is noteworthy, that the notification for the latest rally of 28 April by certain opposition forces was duly received by the Municipality and the rally was subsequently lawfully held in the Freedom Square. Finally, the Square has been a location for staging other forms of protest by political forces as per their choice, including for example, the hunger strike of a leader of one of these forces in March 2011.

27. Rallies, marches and demonstrations have a long tradition in Armenia since 1988 and are an established political instrument. This instrument is applied for expressing protest of a general political nature, as much as of expressing discontent with certain Government policies. The tragedy of March 2008 has indeed revealed considerable shortcomings of the law enforcement bodies in policing rallies, marches and demonstrations. Both legislative improvements and the reform process of the Police have significantly increased the professionalism of the Police, which reflects the significantly improved manner of holding orderly and lawful public actions of protest. The reform remains an on-going process and a priority activity area for the authorities. The Commissioner has been briefed in detail about this.

3. Freedom of association

28. The Commissioner has been briefed in detail about he withdrawal by the Government of the previous draft amendments to the Law on Public Organisations on the grounds of their deficiencies. Presently, this process is completely overhauled with a view to insuring the consistency of the Law with established European standards.

29. The authorities do not intend in any way whatsoever to interfere disproportionately with the work and functioning of the civil society organisations.

III. Human rights situation in the army

1. Acts of violence within the army

30. The Government has briefed the Commissioner most extensively and in full detail about the issues raised. This is an area of ultimate priority for the Government. The policy of the Government is based on absolute openness. The Ministry of Defence has been the primary source of disseminating information about the acts of human rights violations in the Army and deaths.

31. It is regretful that the Commissioner does not recognise the full acknowledgment of negative phenomena in the Army by the Government and the determination to address them comprehensively. The political will of the Government to this end is beyond dispute.

32. Certain groundless generalisations afforded by the Commissioner in his report about the conditions of service in the Army undermine the value and usefulness of his report. While the Government does not intend to discuss issues of combat readiness with the Commissioner and will therefore not comment about this matter for reasons outside the scope of the report and the present comments, it deeply regrets the Commissioner's ill-informed view on this.

33. The Government highly values international co-operation to promote human rights education in the Armed Forces. Amongst examples of such effective co-operation is the support of the OSCE Yerevan to translation of a Handbook on human rights and fundamental freedoms in the armed forces, elaborated by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The Handbook is widely disseminated and applied in human rights education in the Military Academies and Army units. Ministry of Defence is currently elaborating a textbook on army leadership and management issues to promote human rights awareness while exercising formal and informal leadership amongst the military personnel. Within the framework of co-operation with the European Union the Ministry of Defence has initiated projects to promote democratic civil control of the armed forces.

34. With respect to the ad hoc report of the Human Rights Defender on "Human rights protection and disciplinary policy in the Armenian armed forces", the Government has reacted with certain reservations about the lack of reliable statistical information contained therein and reliance on unverified information. At the same time, the report is most valuable in that it contains extensive and useful analyses of the situation with respect to promotion and protection of human rights in the armed forces. The recommendations of the report have been duly studied by the Ministry of Defence and constitute an important source in the elaboration and implementation of reforms in the Armed Forces, *inter alia,* in conceptual drafting of reforms of disciplinary measures.

35. In relation to the exercise of disciplinary measures in the armed forces, at the outset it is important to distinguish between the act of investigation, which is an act of a criminal procedure, and examination, which applies to disciplinary offences. It is assumed, that paragraph 126 of the Commissioner's report addresses the issue of examination, rather than investigation. Article 91 of the Disciplinary Code of the Armed Forces prescribes that a commander should carry out examination, clarify and identify the abuse before imposing disciplinary sanctions. The Code requires a filing of formal records of the examination. Failure to carry out examination carries disciplinary measures for a commander with disciplinary powers. The Government admits that the present Disciplinary Code is deficient with respect to specific definitions of punishment for specific offences and therefore lacks legal certainty. However, such deficiency does not in itself constitute a violation of the principle of presumption of innocence. Having said that, it is important to recall that the present Disciplinary Code is subject to reform. The Commissioner has been informed about this.

36. The Government admits that conditions of disciplinary isolators, which are governed by the present legislation, should be reviewed. These issues are subject of the on-going reform, as a result of which disciplinary isolators will be abolished completely. Instead, the reform aims at the establishment of disciplinary units in the armed forces with enhanced educational activities.

37. As regards disciplinary battalions, it should be noted that presently there exists only one disciplinary battalion, to which servicemen can be assigned solely by a decision of a Court for committing criminal acts as prescribed by the Criminal Code. Service in a disciplinary battalion is a specific form of punishment for criminal acts committed in the armed forces, and is outside the scope of the Disciplinary Code of the Armed Forces, both current and the future.

38. In the same context, the Ministry of Defence has no authority whatsoever over the investigation of criminal cases in the armed forces. The Investigation Service of the Ministry of Defence vested with such powers, falls only under administrative supervision of the Ministry. The Investigation Service is not reporting to the Ministry on procedural or substantive issues of investigation. The Service is under the control of the Office of the Military Prosecutor, which in turn has no administrative or other relationship with the Ministry.

39. The Commissioner in his report acknowledges the determination of the Government to carry out serious investigation into crimes and violations, as well as the sharing of information with the public on their outcome. The report also refers to the meeting with the newly appointed Military Prosecutor who, *inter alia*, stated that "cases thought to be problematic are being reviewed and that he did not exclude a re-opening of the relevant investigation when there is an appropriate basis for doing so". The Government strongly disagrees with the view communicated to the Commissioner, according to which there exists an environment of impunity in the armed forces. Since 2010 until the present day only three criminal cases have been discontinued on the basis of lack of evidence. In all other cases the perpetrators of violations and criminal acts have been brought to justice.

40. With respect to the case of a tragic death of a contracted officer Artak Nazaryan, criminal investigation has been instituted accordingly. As a result of an extensive and thorough investigation, criminal charges have been brought against a total of 5 persons, including 3 conscripts and 2 officers, directly responsible for the abuses and degrading treatment resulting in the commitment of a suicide by their fellow serviceman. The pre-trial investigation is presently on-going.

2. Independent civil society monitoring of the human rights situation in the army

41. The Government has extensively briefed the Commissioner about the consistent and co-ordinated policy of the Ministry of Defence and the Office of the Military Prosecutor to sustain a policy of openness and co-operation with the civil society organisations concerned with human rights and conditions of service in the Army. In addition to this it is notable that Public Council to conduct a democratic oversight of the Armed Forces has been functioning in Armenia since 2009. The Ministry has also elaborated a concept of co-operation between the media and the armed forces. An Adviser to the Human Rights Defender on human rights in the armed forces has been functioning since 2007. This position has been created with the active support of the Ministry of Defence, who co-operates closely with the Adviser. Furthermore, the Office of the Human Rights Defender is granted large powers by the acting legislation to examine human rights violations in the armed forces, including powers to conduct sudden visits to military units and confidential meetings with servicemen.

42. An OPCAT mechanism in Armenia is stipulated by the Law on the Human Rights Defender. An OPCAT Section is functioning in the Office of the Human Rights Defender, with the Expert Council comprising lawyers, social workers and psychologists. The Council is mandated to

conduct visits to closed institutions and to submit observations, which are made public and presented to the Government for comments. The European Union is currently providing financial assistance to the enhancement of the mechanism.

3. The right to conscientious objection

43. While the exercise of the right to conscientious objection, which primarily concerns Jehovah's witnesses, contains certain remaining deficiencies, the Government has fully briefed the Commissioner about the intention to introduce further legislative amendments intended to promote civilian control over alternative service. The new mechanisms envisaged in the legislative reform have been extensively discussed and agreed with parties concerned. The amendments to the Law on Alternative Service have been approved by the Government and will subsequently be forwarded to the National Assembly. The draft amendments envisage complete withdrawal of military control of alternative service. This function is prescribed to a new structure in the form of Committees to comprise representatives of the Ministry of Health, Ministry of Labour and Social Affairs and strictly civil service officers of the Ministry of Defence.

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