ARMENIA'S ENP IMPLEMENTATION IN 2010

PARTNERSHIP FOR OPEN SOCIETY PERSPECTIVE

www.partnership.am

November, 2010


This publication was supported by the Open Society Foundations – Armenia

TABLE OF CONTENTS

PREFACE

The Partnership for Open Society (POS), a coalition of civil society representatives, has acknowledged the European Neighborhood Policy (ENP) as an exceptional opportunity for implementation of democratic, political, economic, and social reforms in Armenia.

The Partnership for Open Society Initiative (Partnership) is happy to present its fourth annual report[1] on the implementation of the European Neighborhood Policy (ENP) Action Plan (AP) in Armenia. The report covers AP implementation in 2010, the fourth year of a 5-year Action Plan. While there is only one year remaining, the obligations undertaken within the AP are far from being a conclusive accomplishment and we believe that providing a contextual analysis for the reform, at least in some areas, along with the 4th year "snapshot," can prompt a more coherent and systemic approach to fulfilling the Action Plan.

The time seems ripe for such assessment also because the country is entering into an important phase of European integration by conducting negotiations of the Association Agreement and more deeply engaging with Eastern Partnership. Throughout the entire ENP implementation we have been recording underperformance both in terms of fulfilling the commitments and enforcing change, since we believe the Report and a contextual assessment of how the reform process is progressing can provide necessary insight and resource for formulating priorities for EaP and the Association Agreement and provide against possible deficiencies and superficiality of the reform.

This year, too, we added new areas to our monitoring and analysis. The 2010 monitoring covers human rights (freedom of assembly, penitentiary, armed forces, and police, freedom of religion), civil society participation, gender equality and domestic violence, judiciary, media, corruption, environment, economic development, labor rights, tax, customs and public procurement and evaluates progress against the EU-Armenia Action Plan and the Implementation Tools for 2010.

While the Report presents topical analysis and results in each area, we would like to stress that facts and practices generically and deeply contradicting the nature and spirit of democracy persist. Moreover, while the year in review is marked with increased legislative-drafting activity in the name of democratic advancement and fulfillment of PACE requirements and recommendations, virtually none of the drafts or processes vouches, even with reservations, for real democratization and empowering the society with more and guaranteed freedoms. On the contrary, some acts have been unequivocally directed towards more controlling and intrusive government.

Most notoriously this refers to the changes in the Law on Radio and TV, the digitalization process, proposed changes to the NGO legislation and enacted the Government Decree from August 5, 2010 instituting new mechanism of control and interference into NGO activities.

In the meantime, most anti-democratic practices of last years have persisted and continued in 2010. Thus, freedom of assembly continued to be violated, extreme police brutality was registered, cases of hazing in the army took place with a number of deaths that increased compared to last year. Rights to fair trial and access to justice are problematic at best – no real improvement of judiciary per recommendations of the ODIHR monitoring report and local experts have been carried out or even initiated. Cases of ostracizing minority groups, particularly religious minorities and groups that openly state different, non-conventional views, persist. Polarization of the society increases along

[1] The previous reports are available on *www.partnership.am*

different lines and has reached troubling levels. Monopolization of certain industries and merging of politics and economy is not addressed in any adequate or systemic way.

Repeating ourselves, we would like to reinstate that continuing undemocratic practices bears enormous costs to the country and the Armenian society and this has already brought to rising emigration from the country. We believe that the only way forward is implementing real democratic reform to improve justice and governance and to empower the society with true participation and voice.

The analyses and recommendations compiled in this document have been prepared with support of the OSF- Armenia by the following experts:

Maria Aghajanyan, Open Society Foundations – Armenia
Sona Ayvazyan, Transparency International Anti-Corruption Center
Stepan Danielyan, Collaboration for Democracy NGO
Kristina Gevorkyan, Member of the Chamber of Advocates of the Republic of Armenia
Vahagn Ghazaryan, independent expert
Hrayr Ghukasyan, Yerevan State University
Haykuhi Harutyunyan, Helsinki Citizens' Assembly Vanadzor Office
Jemma Hasratyan, Armenian Association of Women with University Education
Siranush Sahakyan, Protection of Human Rights without Borders NGO
Avetik Ishkhanyan, Helsinki Committee of Armenia NGO
Varuzhan Hoktanyan, Transparency International Anti-Corruption Center
Boris Navasardian, Yerevan Press Club NGO
Artak Manukyan, Armenian State University of Economics
Tatevik Melikyan, Open Society Foundations – Armenia
Larisa Minasyan, Open Society Foundations – Armenia
Hasmik Ohnikyan, Member of the Chamber of Advocates of the Republic of Armenia

ENP AP Priority Area 1: *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

REFORM OF THE JUDICIARY

Specific Actions under Priority Area 1

Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government.

Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006).

Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers

ENP Implementation Tools, measure 25: Effective continuation of the reforms foreseen by the Constitutional amendments, including better separation of powers

ENP Implementation Tools, measure 27: Take practical steps to ensure independence of the judiciary and increase public trust towards the judiciary.

ENP Implementation Tools, measure 30: Implementation of reforms in judicial system and modernization of Prosecution Law aiming at strengthening prosecutors' independence, impartiality, procedures of appointment and promotion.

Overview of the Situation

Though the Constitutional amendments marked the beginning of the second phase of judicial reform in the Republic of Armenia, in the framework of which positive improvement were made, real separation of powers, existence of guarantees for genuine independence of judges and prosecution and consistency of the reforms remain questionable.

The general rationale behind the reforms introduced into the Armenian Judicial Code in 2007 was enhancement of the independence and professionalism of the judiciary. In addition to the previous three-tier system of judiciary - a Court of Cassation, Civil and Criminal Courts of Appeal and courts of general jurisdiction-specialized criminal and civil courts were established together with a distinct Administrative Court. The 2008 judicial code assigned new roles to the Court of Cassation, including the provision of uniform application of law, its correct interpretation, and support in the development of legislation.

Following the public statement by the President of the Republic of Armenia on the work of the Chairman of the Court of Cassation, the latter resigned the next day. With the appointment of a new chairman, the newly launched judicial system began to crumble and the previous judicial reform policy and newly created specialized courts were abandoned. The judiciary reverted to its original model: a three-tier system: courts of general jurisdiction, courts of appeal and the Court of Cassation.

The Constitutional reform was aimed at creating not only an independent judiciary, but also a Prosecutor's Office independent from all the branches of the power. It also implied a structural

change of the prosecution system, which was reflected in the new Law on the Prosecution of the Republic of Armenia, adopted on February 22, 2007.

The Law enshrined the main principles of the organization and functioning of the Prosecutor's Office, the new procedure for the appointment of the Prosecutor General of Armenia (upon nomination by the President of the Republic, the Prosecutor General is now appointed by the National Assembly for a term of 6 years; in cases prescribed by law, the National Assembly may, upon recommendation by the President of the Republic, remove the Prosecutor General by a simple majority vote of the members of the National Assembly), the prosecution system, structure, the terms and procedure of the subordination, appointment, and dismissal of prosecutors, as well as guarantees of immunity and material and social safeguards for the prosecutor. Undoubtedly, the main achievement of the Law was the removal of the criminal case investigation function from the Prosecutor's Office, as a result of which the Prosecutor's Office is now expected to focus mainly on supervising the lawfulness of the pre-trial investigation of criminal cases.

On the other hand, the legislative changes were proved to be ineffective in securing genuine independence of the judiciary and prosecution. The analysis of the legislation and practice demonstrates shortcoming in the following directions:

INCONCLUSIVE AND INSUFFICIENT LEGISLATIVE GUARANTEES OF THE JUDICIAL INDEPENDENCE FROM THE PRESIDENT

The current legislation provides the President with undue leverage over judiciary, which curbs its independence and undermines all legislative improvement to ensure independence. Particularly, while the Official Lists for appointment and promotion of judges are compiled in by the Council of Justice, the President has discretion to choose "candidates acceptable to him" to be appointed judges (Article 117 of the Judicial Code), to promote judges (Articles 137(9) and 138(8) of the Judicial Code). Moreover, if not selected by the President to be appointed or promoted, the judge is deemed rejected and drops out from the process. The procedure is effectively the same for the appointment of candidates nominated for the vacant position of judges of the universal jurisdiction court. If the candidate agrees, the Chairman of the Cassation Court proposes the candidacy to the Council of Justice. Through an open vote, the latter issues a positive opinion on the proposed candidacy, if the procedures stipulated by the Code have not been violated. If the Council of Justice issues its positive opinion, the candidacy is presented to the President of the Republic. If the President does not appoint the judge within two weeks of receiving the proposal, the candidacy is deemed rejected, the person's name is removed from the List of Judge Candidates, and the nomination for the vacant position starts anew (Paragraphs 9 and 10 of Article 123 of the Judicial Code).

These provisions vest the President with wide discretionary power and leave loopholes for abuses and arbitrary use of powers. In practice, the above-mentioned leverages that are planted in the legislation are often used to pressure judiciary. Most explicitly, disciplinary measures are used to "punish" judges who attempt to go against the executive's control. Direct pressure on the judges by the executive is a clear message to the rest that the executive will not tolerate disobedience.[2] This is easily done since the legislative regulation does allow for that: it is only with the presidential approval that the Council of Justice can go through with such disciplinary measure as removing a judge (Article 157 (1) of the RA Judicial Code). Moreover, if in the course of two weeks the President does not give its approval, the motion of the Council of Judges is considered to be rejected and a different, much milder, punishment (25% salary cut for a year and a reprimand) goes into force (Article 166 of the RA Judicial Code).

[2] 2008 Human Rights Report: Armenia. US Department of State

Examples of executive control and pressure are numerous; most recent ones are the following. While the Chairman of the Court of Cassation resigned per his own will by submitting resignation letter, this happened on the next day of the President's highly critical speech with explicit hints "to go." Another judge who ruled against the tax authority (a rare-if not unique-case) was removed from the office. And yet another proof of the fact is absence of a single ruling in favor of plaintiffs from the Northern Avenue cases, even though the Constitutional Court ruled that the government's expropriation of property on the Avenue to be unconstitutional.

DEPENDENCE ON THE COURT OF CASSATION

Practice indicates that in reality the judges of first instance courts and appeal courts are not independent from the Court of Cassation. According to Article 153 of the Judicial Code, serious violation of material and procedural rule is a ground of disciplinary responsibility. In practice if the case is not agreed beforehand with the Court of Cassation, in reversing the court decision, the Court of Cassation artificially qualifies the violation "serious" irrespective of the nature and seriousness of the violation, which leads to disciplinary proceedings. In contrast, if the outcome of the case is agreed with the Court of Cassation even the most serious violation and arbitrary ruling of the court will not entail any negative consequences for the judge.

INSUFFICIENT GUARANTEES FOR SOCIAL INDEPENDENCE OF JUDICIARY

The judiciary is financed from the state budget. Each year the National Assembly approves the annual budget for the courts. The draft of state budget is prepared and sent for the National Assembly's approval by the government, with its approval and objections. Therefore, in financial and social security matters the judiciary is also dependent on the Executive.

LACK OF INDEPENDENCE IN THE PROSECUTION

Practice shows that despite legislative improvements investigative functions were not removed from the Prosecutor's Office. Moreover, not only the former position of the Prosecutor's Office was restored through legal amendments but also further privileges were delegated to this organization in the sphere of criminal justice.

The first step was the adoption of a Law on the Special Investigative Service on November 28, 2007, which created a new, formally independent body to investigate criminal cases (the Head of the Investigative Service is appointed by the President of Armenia upon nomination by the Prosecutor General).

In line with this Law, amendments were also made to the Criminal Procedure Code of Armenia to provide that investigators of the Special Investigative Service shall conduct the pre-trial investigation of cases related to crimes committed by or with the participation of senior officials of the legislative, executive, and judicial authorities of Armenia or persons performing special state service in connection with their official position, as well as of criminal cases related to the electoral process (Articles 149, 150, 154.1, and 154.2 of the Criminal Code of the Republic of Armenia).

Besides, another provision stipulated that, if necessary, the Prosecutor General may take from the investigators of other investigative bodies and transfer to investigators of the Special Investigative Service criminal cases related to crimes committed by or with the participation of the aforementioned persons, or cases in which such persons were recognized as victims (Article 190(6) of the Criminal Procedure Code of Armenia).

In effect, the former powers of the Prosecutor's Office were restored in full, failing to match them with any duties or accountability.

OPERATIVE INVESTIGATIVE ACTIVITIES

RA Law on Operative Investigation was adopted on 22 October 2007. Although the adoption of the Law should be regarded as a significant step forward, the Law disregards a number of significant international requirements and standards, which may lead to serious human rights violations especially given that the Law does not include effective measures for legal protection of rights. Particularly,

- The Law does not give a clear distinction between operative investigation carried out in relation to national security issues and operative investigation of other crimes.
- The Law does not prohibit use of equipment and resources of National Security bodies for investigation carried out by other government officials (police, other government agencies).
- Absence of legal requirement for minimum substantive standards for approval of operative investigation raises issues of proportionality and legality under Article 8 of ECHR.
- The Law provides that results of specific actions of operative investigation may be regarded as evidence, which contradicts RA Criminal Procedure Code. The Law should clearly stipulate which results of operative investigation may be regarded as evidence and should be in conformity with Criminal Procedure Code.

STRONG LINKS AND RELATIONS BETWEEN JUDGES AND PROSECUTORS

Conflict of interests between the judiciary and prosecutors is not regulated and close relatives (fathers and sons, siblings) serve in both camps. In these cases, career advancement of a judge depends on how complacent the judge is with the Prosecutor's Office. This conflict of interest comes on top of a strong tradition of prosecutorial dominance in the trials, which is still very much enshrined in the Criminal Procedure Code. In the course of the last year all new judges were former prosecutors or police servicemen. Such practice only reinforces the judicial dependence upon prosecution.

The dependence of judiciary on prosecution is easily demonstrated by a telling fact of almost non-existent acquittals. The acquittal rate is less than 1% of all rulings. This low figure of 'acquittals' even includes cases where one of the numerous charges does not stand. Another vivid proof of judicial dependence on the Prosecutor's office is provided by the overview and disciplining of judiciary. More specifically, the judge might get the most serious reprimand for a minor and quite questionable "mistake in favor" of the defendant, while in the case of the most serious violation of rights "in favor" of prosecution, the punishment is symbolic, if imposed at all.

EFFECTIVENESS OF IMPLEMENTATION OF JUDICIAL ACTS

General objectives and actions: Political dialogue and reform: Judicial reform

Increase the effectiveness of implementation of judicial acts envisaging alternative bodies (services) for enforcement of these acts.

ENP Implementation Tools, measure 27: Ensure effective execution of court decisions pursuant to national legislation.

ENP Implementation Tools, measure 27: Modernization of service for the compulsory enforcement of judicial acts and adjustment to EU standards.

Enforcement of a judgment given by any court is regarded as an integral part of the "fair trial". Enforcement of decisions is of even greater importance in the context of administrative proceedings. Where administrative authorities refuse or fail to comply, or even delay doing so, the fair trial guarantees enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose.

In 2004, the Law on the Service for compulsory enforcement of judicial acts was adopted, on the basis of which a Service was established within the Ministry of Justice. This Service fails to execute court decisions in practice. This statement is particularly relevant in disputes with the involvement of executive bodies. The court decisions delivered against the state authorities usually remain unenforced.

The analysis of the legislation and practice demonstrates that the major problem of malfunctioning of the Service is its weak organizational structure. As it is established within the Ministry of Justice, it acts within the overall control of the executive. Upon the suggestion of the Minister of Justice the President appoints the Chief Bailiff, who heads the Service. Therefore, the Service lacks institutional independency, acts under the control and influence of the Executive, thereby serving to the best interests of the Executive and refusing to enforce court decisions against state and executive. Besides, appropriate procedures are not provided in cases of non-implementation of a judicial decision by an administrative authority. Public officials in charge of the implementation of judicial decisions are not held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them.

FREE LEGAL AID

Specific Actions under Priority Area 1

Improve the legal and particularly free legal aid system by improving and strengthening the system of advocates and develop a school of professional practice for young graduates in law.

ENP Implementation Tools: *Ensure access to justice in line with EU standards (measure 26), expansion of free legal aid (measure 32)*

A crucial component of a judicial reform is provision of effective access to justice, especially the expansion of the scope of free legal assistance and establishment of effective mechanisms to ensure the availability of such assistance. The requirement for granting legal aid in Armenia is insufficient to ensure access to court in practice, which can be remedied through systemic legal reforms and adoption of a Law on Free Legal Aid, which will reflect well-recognized international standards and approaches.

There is no effective legislative regulation of provision of free legal aid. Article 6 of the Law on Advocacy provides a limited number of cases, when a person can get free legal aid. These cases involve certain types of criminal cases and civil cases in only two instances. In remaining cases provision of free legal aid is not possible irrespective of the financial situation of a person or the interests of justice. For instance, in all administrative cases a person cannot seek free legal aid, or the victims of torture cannot be provided with free legal assistance to enforce their rights, or child witness cannot be assisted by state-funded lawyer, etc. On the other hand, given institutional shortcomings of the Public Defender's office, very limited financial means and restrictive human resources, provision of effective and qualified legal aid seems illusory.

Though on 15.11.2010 a draft law amending the Law on Advocacy was included in the list of laws to be considered in the upcoming session, Armenia is far from being in compliance with its international obligations of ensuring access to justice.

Section 7 of the amended law will be devoted to public defense and the Public Defender's Office. It gives more expanded categories of persons entitled to legal aid, but fails to offer a comprehensive coherent and forward-looking policy aimed at ensuring effective access to justice in all judicial instances (such as commercial, administrative) and to all proceedings, irrespective of the capacity in which the persons concerned act. On the other hand, there are no clear-cut and objective criteria for

determining who is insolvent. Secondly, there are no mechanisms for providing the needed aid, which can have far-reaching negative consequences of the relevant stakeholders. The procedures for granting legal aid, remedies in cases of unjustified refusal are not regulated. Finally, without structural and institutional changes within the Public Defender's Office, the latter cannot ensure the provision of free legal aid and its involvement will have formal nature without promoting effective protection of the clients' interests.

RECOMMENDATIONS

- Ensure genuine safeguards for the independence of judges, by restricting the President's discretionary powers in endorsing the list of judges, by removing the test of "acceptability of the candidacy of the judge for the President" from the text of the Law, as well as terminating the duties of judges.
- Exclude any pressure from the executive on judiciary.
- Ensure independency of the judges within the judicial system.
- Reform the service for the compulsory enforcement of judicial acts to ensure effective and timely enforcement of court decisions, especially in administrative matters.
- Improve the free legal aid system by adopting a special law on free legal aid.
- Amend the Criminal Procedure Code of Armenia and the Law on Operative Investigative Activities to preclude the *de-facto* performance of criminal investigation functions by the Prosecutor's Office and to abolish total control of the Prosecutor General over the investigation agency; and
- Amend the Law on Operative Investigative Activities in order to put in conformity with the international and regional standards.

ENP AP Priority Area 1: *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

CORRUPTION

Overview of the Situation

During the reporting period, which covers the period from November 1, 2009 to December 1, the new national Anti-corruption Strategy and Its 2009-2012 Action Plan adopted by the Armenian government, entered into effect (on December 2009). However, so far, there is no information on how the government is implementing the measures enlisted in the Action Plan. Private conversations with relevant public officials, representatives of international organizations, involved in assisting the government in the fight against corruption, as well as independent experts, revealed that no steps have been taken to establish the governmental structural unit affiliated to the Council on the Fight against Corruption. In the new Strategy its creation is considered crucial in the monitoring and evaluation of the Action Plan and involving civil society in it, and was one of the measures of the Action Plan that should have been implemented yet in 2009 (see Measure 123.3).

Among other important developments were (more on some of them see below):

- Establishment of the Court of Administrative Appeal, as a result of which, the system of administrative courts also became three-stage as for the civil and criminal courts.
- Adoption of the Rules of Conduct of Judges by the General Meeting of RA Judges. The Rules supplemented those, defined in the Judicial Code and better meet corresponding European standards.
- Completion of the GRECO Joint First and Second Round Evaluation by the adoption of the Addendum to the Compliance Report on Armenia by GRECO and start of the Third Evaluation Round.
- During 2009 the Special Investigation Service (SIS) investigated 69 corruption cases, out of which 30 were completed and sent to court together with resolutions on criminal incriminations against 54 persons. Seven of them were convicted by court verdicts.[3] According to the report of SIS on its activities during the first half of 2010, 41 corruption cases were investigated and 27 public officials were convicted, among them 13 police officers, 5 officers of penitentiary institutions, 3 National Security Service officers, a head of an inspection from the Ministry of Nature Protection and his deputy, and others.[4]
- The Chamber of Control (CoC) carried out oversight and audit in various state institutions and according to its reports it revealed violations and abuse, in some cases rather serious in all of the audited institutions. According to CoC home-page during 2010 (by November 1) it conducted audits and submitted reports on their results in the Armenian Pedagogical University, State Agrarian University, State Conservatory, several communities of Vayots Dzor marz and Central Electoral Commission.[5]
- Start of the process of transition to unified system of public service with the introduction of the Law on Public Service (adopted in the first reading).

[3] See http://www.investigatory.am/am/News/item/19/
[4] See http://www.investigatory.am/am/News/item/49/
[5] See http://www.coc.am/ReportsArm.aspx

At the same time poor enforcement of laws aimed to curb corruption, absence of cases of conviction of high level public officials and politicians, high levels of political corruption,[6] deteriorating economic situation, and other problems brought to the worsening of the perception of corruption among the population, business community and experts. The Corruption Perception Index (CPI) of Transparency International went down from 2.9 in 2008 to 2.6 in 2010 (on the 0-10 scale, where 0 is "absolutely corrupt" and 10 – "absolutely clean").[7] With such a low score (if CPI is below 3, it means the existence of systemic corruption in the country) Armenia now shares 123rd to 126th places among 178 countries in the world.

According to the survey conducted by the Caucasus Research Resource Center (CRRC) in 2009, 86% of Armenians considered corruption as very serious problem, permeating the whole Armenian society.[8] The same survey shows that corruption is especially high in the electoral system (66%), police (66%), healthcare (61%) and education (58%).

Data published by Freedom House in the *Nations in Transit 2010* Report shows no improvement in the situation with corruption in Armenia (5.50 both in 2009 and 2010). The major reason for absence of progress Freedom House sees in absence of adequate punishment for public officials, despite of the numerous cases revealed by law enforcement bodies.[9] Finally, deterioration of the situation with corruption in Armenia is detected through the World Bank Governance Indicators.[10]

Specific Actions under Priority Area 1

- Review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of civil society and business representatives in monitoring implementation

  The 2009-2012 Action Plan includes a number of measures aimed at the participation of civil society and private sector in monitoring and evaluation of the implementation of the Strategy and Its Action Plan (in particular, see Measures designed to implement Provisions 120 and 121 of the Strategy). Considering the very short period of implementation for year 2009 (December 3-31), the Action Plan envisaged only one expected output for 2009, namely, submission of the 2009 Report on Action Plan Implementation. During the October 12, 2010 meeting of the Council on the Fight against Corruption, the Council discussed and took into notice the reports on the results of the monitoring of Action Plan implementation for 2009 and the first quarter of 2010[11]. However, so far these reports have not been made public and are not posted on the Internet page of the Council on the Fight against Corruption - http://www.gov.am/am/councils/reports/2/

GENERAL OBJECTIVES AND ACTIONS

4.1 Political dialogue and reform

4.1.1 Democracy and the rule of law, human rights and fundamental freedoms

[6] This is expressed in the continued unwillingness of authorities to seriously investigate violations and fraud during the 2008 presidential and 2009 Yerevan City Council elections, as well as failure to introduce changes and amendments in the Law on Parties, which is among the measures in the ENP Action Plan for Armenia in 2009-2011 (see Measure 20).
[7] See http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results
[8] See www.crc.am/index.php/en/159
[9] See http://www.freedomhouse.org/images/File/nit/2010/NIT2010Armeniafinal1.pdf
[10] See http://info.worldbank.org/governance/wgi/index.asp
[11] See *Hayastani Hanrapetutyun* (Republic of Armenia) daily for October 13, 2010

Strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law

Fight against corruption

- *Ensure the effective monitoring of the declaration of assets and income by officials through amendment to the Law on Declaration of Assets and Income by High Level State Officials to establish sanctions in case of wrong doing*;

  During the reporting period no new legal or sub-legislation acts have been adopted. Also, unlike previous years there is no information available on how many persons were fined for not submitting declarations in a timely manner. Nor there is information on sanctions against submission of wrong information on assets and income[12]. The problem of effective monitoring of the accuracy of the submitted declarations is still in place with no progress in its solution, primarily through the establishment of specialized department within the Republic of Armenia (RA) State Revenue Committee.

The list of **measures to implement the ENP Action Plan for Armenia in 2009-2011** includes four measures related to the fight against corruption:

1. Continue meeting requirements of the "National Program of Corruption Combat" provisions, if required arrange for and carry out additional day-to-day-preventive measures.
2. RA Draft Government Decree "About Setting the Order for Assessing Consequences of Enforcing Normative Legal Acts and Assessing Impact of Regulations in Anti-Corruption Domain".
3. RA Draft Law "About Making Amendments and Addenda in the RA Law about State Registration of Legal Bodies"
4. Drafting and adoption of RA Draft Law "About Organization and Implementation of Control at Individuals' (natural persons)" and Draft Government Decree "About Approval of the Order for Substantiating Availability of the Property Subject to Be Declared by Declarant, the Right on the Property Ownership, Source of Income and Its size"

For each of the mentioned above measures the list also sets expected concrete outputs for each year. For 2009 these outputs should be:

1. a) Development and approval of the Anti-corruption Strategy and Its Action Plan.

   The new, second Anti-corruption Strategy and Its Action Plan for 2009-1012 was finalized and approved by the Anti-corruption Council on its October 6, 2009 meeting[13] and two days later, on October 8, 2009, the RA Government adopted the document through its Decree N1272-N. It entered into effect on December 3, 2009, the next day after its publication in the Official Bulletin of the Republic of Armenia.[14] It is worth mentioning that on September 7, 2007 the RA Council on the Fight against Corruption announced about the completion of implementation of all activities, foreseen by the previous Strategy's Action Plan[15], which

[12] In the previous years the mentioned information becomes available only when media outlets request them from the State Revenue Committee (SRC). However, during the reporting period, as TIAC's ongoing monitoring of the print media revealed, no media outlet requested such information from SRC. In addition, SRC itself is not obliged by law to publish such information.
[13] See *Hayastani Hanrapetutyun* (Republic of Armenia) daily for October 7, 2009
[14] See *Official Bulletin of the Republic of Armenia, #60(726), December 2, 2009, pp. 61- 243*
[15] See *Hayastani Hanrapetutyun* (Republic of Armenia) daily for September 8, 2009

entered into force on December 2003. As a result, for almost 27 months the country had no formal anti-corruption strategy.

The 2009-2012 Action Plan includes a number of measures aimed at the participation of civil society and private sector in monitoring and evaluation of the implementation of the Strategy and Its Action Plan (in particular, see Measures designed to implement Provisions 120 and 121 of the Strategy). Considering very short period of implementation for year 2009 (December 3-31), the Action Plan envisaged only one expected output for 2009, namely, submission of the 2009 Report on Action Plan Implementation. During the October 12, 2010 meeting of the Council on the Fight against Corruption, the Council discussed and took into notice the reports on the results of the monitoring of Action Plan implementation for 2009 and first quarter of 2010.[16] However, so far these reports have not been made public. In particular, they are still not posted on the Internet page of the Council on the Fight against Corruption - http://www.gov.am/am/councils/reports/2/

b) Development of action plans and implementation time-tables for each area mentioned in the Strategy, stemming from the Anti-corruption Strategy and Its Action Plan

As of January 1, 2010 no such action plan has been submitted.[17]

2. Submission of the RA Draft Government Decree "About Setting the Order for Assessing Consequences of Enforcing Normative Legal Acts and Assessing Impact of Regulations in Anti-Corruption Domain".

   The mentioned Decision was adopted by the Armenian government on October 22, 2009 (Decision N1205-N) and signed on October 28, 2009. However, its promulgation is delayed and it will enter into effect from January 1, 2011.

3. Submission of the RA Draft Law "About Making Amendments and Addenda in the RA Law about State Registration of Legal Bodies".

   The Armenian government submitted to NA the mentioned Draft Law only at the beginning of the fall, 2010 session of NA. On September 22, 2010, the Minister of Justice presented the draft to NA floor. NA decided to ask the government to reconsider some of its provisions and resubmit it later. On October 25, 2010 the Minister of Justice resubmitted the draft with some changes in it. NA discussed it, but it was not put to vote.[18]

4. Legislative regulation of joint control over accuracy, reliability and integrity of data contained in declarations of property and incomes, of rights and duties of persons participating in the process of control over legislation which regulates declaration of property and incomes by declarants.

[16] See *Hayastani Hanrapetutyun* (Republic of Armenia) daily for October 13, 2010

[17] At the November 4, 2010 meeting of the RA Government, Prime-Minister Tigran Sargsyan sharply criticized the ministries of agriculture, education and science, and health for not taking measures against wide-spread corruption in the mentioned areas and gave assignments to the relevant ministers to take within 10 days concrete administrative and other types of steps to address the problem. In response to that, on November 14 the Ministry of Education and Science posted on its web-site (www.edu.am) the 2011-2012 Comprehensive Action on the Fight against Corruption in Education Sector (see http://www.edu.am/index.php?id=4117&topMenu=-1&menu1=217&menu2=440&arch=0). This action plan could be considered as the only sector action plan developed so far after the adoption of the new Anti-corruption Strategy.

[18] On its November 15, 2010 session NA voted on the draft of the mentioned law and it was adopted in the first reading.

Analysis of NA (www.parliament.am) home-page and the "Drafts of Legal Acts" page of the State Revenue Committee's home-page (http://www.taxservice.am/index.php?menuID=195&tid=2&pid=&lng=9) did not reveal the existence of the mentioned legal acts.

The 2009-2012 Action Plan includes a number of measures aimed at the participation of civil society and private sector in monitoring and evaluation of the implementation of the Strategy and Its Action Plan (in particular, see Measures designed to implement Provisions 120 and 121 of the Strategy). Considering the very short period of implementation for year 2009 (December 3-31), the Action Plan envisaged only one expected output for 2009, namely, submission of the 2009 Report on Action Plan Implementation. During the October 12, 2010 meeting of the Council on the Fight against Corruption, the Council discussed and took into notice the reports on the results of the monitoring of Action Plan implementation for 2009 and first quarter of 2010.[19] However, so far these reports have not been made public. In particular, they are still not posted on the Internet page of the Council on the Fight against Corruption - http://www.gov.am/am/councils/reports/2/

RECOMMENDATIONS

- Demand implementation of the new Anti-corruption Strategy and 2009-2012 Action Plan, as well as laws aimed at curbing corruption.
- Create real functioning anti-corruption bodies as is foreseen by the 2009-2012 Action Plan.
- Involve civil society in the monitoring of Anti-corruption Strategy and Its 2009-2012 Action Plan.
- Maintain regular and efficient communication between state institutions, donors and all interested non-state parties.
- Better coordinate international assistance (programs) aimed at reducing corruption in Armenia by making the existing donor working group effective or adopting a new format for coordination.
- Regularly take appropriate sanctions in case Armenia does not meet the ENP and other obligations in the field of anti-corruption.
- Demand implementation of effective mechanisms of checking the information related to the declarations of assets and income of high level officials, make available the content of submitted declarations for the public, and apply strict punishment for false declarations.
- Make information on statistics on corruption cases more content-rich and detailed.
- Press on the Armenian authorities to address political corruption and detect corruption cases, involving high-ranking officials.

[19] See *Hayastani Hanrapetutyun* (Republic of Armenia) daily for October 13, 2010

ENP AP Priority Area 2: *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN)*

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Overview of the Situation

Since the post-electoral outbreak of 2008 Armenia has been in a completely new situation with lack of true commitment to abide by human rights and fundamental freedoms standards. For the first time, Armenia encountered the problem of having political prisoners, some of whom have not been released. The right to fair trial and access to justice for March 1 detainees and arrestees was grossly violated and there is no tendency for restoration of these rights and despite subsequent release of some of them the tension between government, opposition and society as a whole will persist as long as the government delays the release of all political prisoners, and proper investigation and restoration of rights.

Although the pre-emptive censorship instituted in the aftermath of March 1 was discontinued, freedom of speech and independence of media, particularly broadcast media is in no better shape. In fact the recent changes to the Law on TV and Radio and the process of digitalization to date make the situation worse than it was. Police brutality continues in the atmosphere of impunity. While the case of death in police custody of Levon Ghulyan has not been properly investigated and addressed, we now have another case of death in police custody. The government's intention not to liberalize and allow for full exercise of civil liberties is apparent in the light of continuous restraints posed on the right to freedom of conscience, freedom of expression, freedom of assembly and association both through legislative drafting as well as in practice. Particularly in the light of upcoming elections of 2012 these tendencies are alarming and subsequent attempts to limit the exercise of these rights may lead to more violence.

Below we refer to a number of areas that are not found in the Action Plan, since these developments clearly go against honoring human rights and international standards.

Specific Actions under Priority Area 2

FREEDOM OF ASSEMBLY

Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations.

There is no reference in the implementation tools for 2009 -2011 regarding this goal. At the same time the right to freedom of assembly is problematic both at the legislative level as well as in practice.

The main legislative obstacle is paragraph 4(3) of Article 9 of the Republic of Armenia (RA) Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, according to which the competent authority may prohibit a public event, if there is credible information that the holding of the event creates an immediate threat of violence or poses a real threat to state security, public order, public health and morals, etc. Such information may be considered credible, if the police or the national security service have issued an official, grounded opinion on this. The same bodies provide an opinion on the removal of these grounds, in accordance with a similar procedure.

The Human Rights Defender drafted a new law on peaceful assembly jointly with the RA President's Staff and with the assistance of GTZ experts. The first discussions on the Draft Law took place on November 9, 2010 with the participation of the OSCE/ODIHR and Venice Commission experts. Despite some positive changes, mainly procedural changes, the main issues remain. Particularly, the competent authority may still prohibit a public event, if there is credible information that the holding of the event creates an immediate threat of violence or poses a real threat to state security, public order, public health and morals, etc. In addition, more authority is give to the Municipality in suggesting alternative venues for gatherings, which may be used by authorities to artificially limit gatherings in the city center.

In practice, demonstrations by opposition or civil society (however small) are routinely banned. Particularly, after the re-opening of the Liberty Square, the Armenian National Congress (ANC, alliance of non-parliamentary opposition) was repeatedly denied permits[20] to organize mass public events on the Square. Not only the ANC or "political" public events are obstructed. Throughout the year environmental groups also encountered problems in organizing mass public events. Yerevan Municipality failed to authorize the mass public event to be organized by Teghut Defense Group[21] which eventually led to a conflict with the police. The event which was planned to be a concert-demonstration had to continue only with the demonstration part as the café that had previously agreed to provide electricity for the concert refused to do so on the day of the event (the management was called and warned not to provide electricity).

The practice of calling event-organizers by authorities with suggestions to stop planning any further activities maintains. This pressure was exerted on members of the Teghut Defense Group as well as allegedly on the organizers of anti-uranium mining rally in Syunik to discontinue their efforts in mobilizing the population to stop the uranium mining project.

Use of force by police is common. In one of those cases when the youth representatives of ANC attempted to enter the Square to organize a non-mass event on May 31, 2010 about 10-15 people were detained and two of them, Davit Kiramijyan and Sargis Gevorgyan, were charged with exerting violence on the representative of the authorities and hooliganism respectively. Similarly, the activists of ANC were beaten up and detained while picketing in front of the venue where the EU Delegation was conducting a conference on independence of judiciary (November 9-10) and only in 200 miters away from the venue where at the very same time the Ombudsman, GTZ, Venice Commission and ODIHR were discussing the new Draft Law on Holding Demonstrations and Rallies (November 9).

The practice of not renting out halls for meetings to critical civil society was abandoned in 2010; however religious organizations and critical opposition and civic groups[22] still encounter problems in finding venues for their events.

RECOMMENDATIONS

- Revoke Article 9(4)(3) of RA Law on Conducting Meetings, Rallies and Demonstrations
- Guarantee proper investigation of cases where use of force by the police was illegal and disproportional
- Immediately abandon the practice of excessive use of force against nonviolent protesters, and stop persecution and harassment of activists
- Stop the practice of not renting out venues to critical groups

[20] The ANC had applied about 30 times

[21] The concert-demonstration was planned for October 23, 2010 by the Teghut Defense Group, a group of environmental activists working to stop the destruction of the Teghut forest in favor of mining

[22] "Sardarapat" movement is repeatedly denied venues for public discussions

FREEDOM OF ASSOCIATION

The implementation tools for 2009-2011 do not include provisions for improvement of freedom of association. At the same time this area is of particular concern in the light of continous process of introducing changes into the NGO Law, which aims at increasing control over non-governmental organizations. This process of amending the NGO law started late in 2009 without any consultation with relevant stakeholders. Due to the pressure that came from the civil society the process of amending the NGO was temporarily brought to a halt. Nevertheless, on August 5, 2010 the government approved a Decree on Approving the By-Laws and Structure of the RA Ministry of Justice (MoJ) Inspectorate Supervising the lawfulness of Activities of Legal Entities which was aimed at enhancing the MoJ's control over the NGOs.

Shortly after, (November 15) the Amendments to the NGO Law were introduced and are currently in the Parliament, which if passed will enable the MoJ to exercise double administration. Specifically, the inspectorate will be able to conduct program and financial audit of non-governmental organizations. Along with imposing undue control, these changes also contradict the provisions of RA Law on Fundamentals of Administration and Administrative proceedings, which provide that administrative bodies have no right to once again request documents (data, information) that have already been submitted to administrative bodies. In this case, the MoJ would be requesting infromation from legal entities that they normally submit to RA state and other bodies in the manner and timeframe prescribed by a number of laws. Both the Draft and the Decree from August 5, 2010 do not specify MoJ authority in case it considers the NGO activity inappropriate or not in accordance with its charter. In view of upcoming elections the fear is that such power of the MoJ will be widely "used" to cease functioning of active monitoring groups. No only is this bad legislative writing, but it is also prone with possible abuse of power and control.

RECOMMENDATIONS

- Remove the Amendments to the NGO Law from the Parliament's agenda
- Stop the process of Amending the NGO law, conduct public hearings with engagement of all stakeholders
- Revoke Government's Decree on Approving the By-Laws and Structure of the RA Ministry of Justice

FREEDOM OF RELIGION

Although there is no reference to freedom of religion in the ENP Action Plan we find this area to be an integral part of the priority area of strengthening respect for human rights and fundamental freedoms. In this area too, both legislation and practice remain problematic.

The RA Law on Freedom of Conscience and Religious Organizations, adopted in 1991, does not correspond to Armenia's current reality and contradicts the Constitution and international standards and the country's commitments. In 2009 the RA National Assembly in the first reading passed the draft law on the amendments to the abovementioned Law (which would pose restrictions and bring forth arbitrary interpretations) but the amendments were negatively reviewed both by local civil society as well as the Venice Commission. Subsequently, the process was brought to a halt and there were no further discussions on improvements to the legislation. On November 30, 2010 a new version of the Draft Law on Making Amendments and Supplements to the Law on Freedom of Conscience and Religious Organizations of the Republic of Armenia and Draft Laws on making supplements to the Administrative Offences Code, the Law on Charity and the Criminal Code of the Republic of Armenia appeared on the website of the Venice Commission. From what we can judge from information on the website of Venice Commission the Amendments still include most of the

problems it was previously criticized for. None of these pieces of legislation have been sent to the civil society or discussed.

Religious intolerance is on the rise and is subject for serious concern. The Prime Minister made a shocking statement during one of his public appearances that the divide between state and the church is an outdated concept. At some schools children start their day with prayers. History is revisited and revised. Famous names in literature and science that had happened to say something against the Armenian Apostolic Church are off the list from the school program. These are all cases reported to human rights organizations in the country.

Acts of intolerance towards religious organizations do not receive adequate response[23] or investigation from state authorities though the Criminal Code contains an article on religious hostility. In Mass Media, all religions other than the Armenian Apostolic Holy Church are called "sects". Leaflets containing religious hatred and violence are freely distributed. Jehovah's Witnesses are particularly targeted.

RECOMMENDATIONS

- Institute accountable and transparent process for improving the legislation
- Provide against the current problems which are: labeling religious organizations or other denominations as sects, restricting the right to freedom of conscience and religion only to Armenian citizens, exclusive rights of the Armenian Apostolic Church, etc.
- Provide adequate reaction to appeals, TV programs and articles containing religious intolerance, hatred or discrimination

REFORM OF PENITENTIARY

Further reform of the penitentiary system in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions

Towards this aim the RA government has singled out the following policy priorities in the 2009 – 2011 Implementation Plan.

Further reform of the penitentiary system: in this regard, take concrete measures in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Committee against Torture, particularly through adoption of a program of actions for the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, as well as through facilitation of public oversight over the penitentiary institutions and preliminary detention facilities.

Although the RA government's primary objective as stated in the Implementation Tools is further reform of the penitentiary the specific actions outlined by the government do not solve any of the long pending and systemic issues. Particularly, building new institutions may resolve the issue of overcrowding but does not address more fundamental problems such as bad treatment, lack of access to healthcare, etc.

The Criminal Executive Institutions in RA do not meet international standards for similar institutions. The Monitoring Group over Penitentiary repeatedly reports that overcrowding, food quality, hygiene, access to health services remain a problem.

[23] See the report on "Religious Tolerance in Armenia" prepared by "Collaboration for Democracy" Centre.

In recent years there has been a sharp increase in the number of persons deprived of liberty: in the last year only the number of detainees has grown by more than 20%. Overcrowding remains a serious issue. As of 1 July 2010, the penitentiary system accommodated 4850 persons instead of the envisaged 4396. For instance, in Noubarashen Penitentiary, a cell intended for 8 people often accommodates double as many, sometimes even up to 20 people. As a result, the detainees sleep in shifts during daytime and nighttime. Each detainee gets an area of less than 2 m^2, while according to the RA legislation as well as the international standards; they are entitled to at least 4 m^2. Overcrowding generates health and psychological problems, anoxia, deterioration of health condition, psychological tensions and conflicts. The public monitoring group of the penitentiary institutions has qualified these conditions as inhuman and degrading treatment.

Current regulations effectively limit access to justice for convicts serving terms. By the decree of the President, Commissions for conditional pre-release of prisoners are formed to decide on parole. However, the law does not define clear criteria while deliberating on parole, which leads to arbitrariness in practice. On the other hand, their activity restricts access to a court, as in the case of rejection of an appeal for parole; the prisoner cannot seek recourse to judicial proceedings. The commissions that are entitled to mild the regime of punishment or release on health grounds also consistently reject the requests of prisoners without any defined criteria, as a result of which the rights of prisoners are routinely violated.

Similarly the commissions charged with deciding on easing the terms of service (upon completion certain terms on the sentence duration) do not have any written criteria based on which they grant or reject changing the terms of incarceration.

RECOMMENDATIONS

- Improve conditions/standards of incarceration per recommendations of the monitoring groups and per international standards for similar institutions
- Enshrine the right to a court for the prisoners to challenge the rejections of the commissions for conditional pre-release
- Define clearly and explicitly specific criteria that prisoners have to fulfill in order to be conditionally released: arbitrariness and discretionary powers should be avoided in law and in practice

ILL TREATMENT AND TORTURE

Closely cooperate with OSCE and CoE to reform the police, in order to eliminate the use of torture, other mistreatment and corruption and to set up more trust between police and society.

Implementation tools for 2009-2011

Secure investigation into ill-treatment and torture, ensure the criminal prosecution of torturers, including in the armed forces, secure practical legal measures for victims suffered from ill-treatment and torture, their compensation and restoring them in their human rights.

Police Facilities

Inaccessibility of facilities where witnesses and detained are interrogated remains a major concern given persistent cases of ill-treatment and torture that reportedly happen in there. This concern is exacerbated by the recent case of death in police custody (second since May 2007) when the detained committed suicide allegedly stabbing himself. The fact that numerous claims by defendants during later trials of ill-treatment and torture remain unaddressed in any way (no decent

investigation and prosecution follows even in the gravest cases such as the case of witness's death during interrogation in May 2007) makes the situation critical from the human rights perspective[24].

Prolonged pre-trial detention without any record of it remains a common practice. RA Criminal Procedure Code stipulates a time limit of 72 hours for detention, which starts from the moment of de facto apprehension and that the protocol of detention should be drawn up within 3 hours of apprehension. Public Monitoring Group over Pre-Trial Facilities of the RA Police[25] continuously reports on extended detention of people without any record, which also increases the risk of ill-treatment and torture. The Group is still the only civic monitoring mechanism over the pre-trial facilities that is granted access to the detention centers while lacking access to the interrogation facilities of RA police where allegedly ill-treatment and torture are practiced. According to non-governmental organizations and public monitoring groups, the police system still relies on torture to extract self-incriminating evidence.

Lack of access to interrogation facilities results in continuous cover-up of police brutality and impunity. Essentially, the public becomes aware of the current situation in interrogation facilities only in case of a fatal outcome or most atrocious violations. Levon Ghulyan's death in the police custody where he was invited as a witness has not had any conclusive resolution during the 2,5 years since it happened[26]. No police officer was convicted and punished. The case is currently in the ECHR.

Civil society's monitoring of trials reveal the fact that often when participants of a trial (defendant, witness, defense attorney) make torture allegations during pre-trial investigation, judges do not properly consider these statements and the evidence allegedly obtained through torture, is not deemed inadmissible.

OPCAT and functioning of NPM

Armenia ratified the Optional Protocol to UN Convention against Torture in 2006. In 2008 the National Assembly of Armenia amended RA Law on Human Rights Defender (HRD) to designate

[24] **Cases:** Vahan Khalafyan was detained on April 13, 2010 along with several other young men as a suspect in a theft investigation. Later on that day Khalafyan died in the police custody allegedly by stabbing himself to death with a knife. Khalafian's family and leading human rights groups, however, challenged the official version of the events, claiming that the young man was tortured and subsequently killed by his interrogator, or interrogators. Khalafyan's case was speedily tried and the former chief of criminal investigations at the police department of Charentsavan was convicted. The whole process of investigation has been marred by lack of accountability and trust towards the pre-trial investigation.

Lusine Abrahamyan reported that her husband and three other persons have been subjected to beatings, torture and degrading and inhuman treatment in the Mashtots department of the Yerevan Police (from a statement on October 27 by the Office of the RA Human Rights Defender).

Slavik Voskanyan, died in Vanadzor penitentiary institution under unclear circumstances on October 24, 2010. Prior to his death, Voskanyan had sent a letter to the Helsinki Citizens' Assembly Vanadzor Office bringing facts of his innocence and elaborating on the pressure and threats he was subjected to.

[25] The Group was established in 2006 by the decree of RA Head of Police and with an aim to do civic monitoring over detention facilties of the police. For more information on the Group please visit http://policemonitoring.org/

[26] In 2009, the RA Prosecutor's Office once again discontinued the criminal case of L. Gulyan's death. This time, both the first instance court and the appeal court dismissed the complaint of the victim's legal successor on re-opening the criminal proceedings. Following this, on 27 August 2010, the RA Cassation Court quashed the decisions of the first instance and appeal courts on the criminal case. By its decision, the Court obligates the preliminary investigation body (the special investigative service that was last in charge of the proceedings) to eliminate the violation of L. Gulyan's legal successor's right, annul the decision on discontinuing the case and undertake a preliminary investigation.

the Defender as a National Preventive Mechanism (NPM) envisaged by the Optional Protocol. Since then, the HRD has published only one report on the work and findings of the NPM.

On 6th of January, 2010 the HRD established Torture Prevention Council within NPM, with the Defender chairing the Council *ex officio*. It consists of NGO representatives and three independent experts. The Council is authorized to make unrestrained visits to any place where persons are or may be deprived of their liberty, either by virtue of an order or decree given by a public authority or public official or at its instigation.

Currently the NPM is not regulated by a law and civil society's involvement is not institutionalized and is simply left to the good will of the Human Rights Defender. Subsequently, the NGOs that are part of the Ombudsman + NPM model cannot conduct visits of closed/semi-closed institutions on their own without participation of an expert from Ombudsman's office. At the same time, expert's participation should be sanctioned by the Ombudsman. Such centralized and vertical subordination of the civil society groups makes effective implementation of OPCAT unfeasible.

ARMY

Army remains one of the most closed institutions in Armenia. Despite numerous international commitments, there is no independent civic oversight over armed forces, which in turn makes timely detention and response to human rights violations nearly impossible. In the period between January-November, 2010, 42 incidents of deaths have been recorded in the army.

Throughout 2010 public attention towards the army intensified primarily because of a better and more frequent reporting on cases of hazing in army. A controversial video was released on YouTube picturing an unidentified male humiliating two boys dressed in military uniform. The initial response of the Ministry of Defense focused on condemning those who prepared and disseminated the material instead of thoroughly examining and investigating the case. Subsequently, the perpetrator was identified and criminal proceedings were initiated.

Incidentally, human rights organizations report that nearly half of the deaths are result of non-statutory relations in the army. Ministry of Defense reflected only on ten out of 42 via public statements. At the same time, the Ministry does not provide information to the requests of civil society about official information on the death rate in the army under the pretext of it being a state secret.

Absence of proper and independent investigation of deaths in the army remains a serious issue. In many instances, these deaths are qualified as suicides without proper investigation.

RECOMMENDATIONS

- Ensure access for Public Monitoring Group over Pre-Trial Facilities of RA Police including all premises and facilities of the Police where people may be kept.
- Ensure proper and thorough investigation of torture cases and hold perpetrators accountable. Make the investigation accountable to Armenian public by reporting on the results of each such case (without opening the process and jeopardizing the investigative process).
- Ensure thorough consideration of all accusations of torture made in courts during the trial and, if confirmed, evidence obtained through torture must be inadmissible.
- Investigate each death in the army and provide a complete and full account for public information. End the atmosphere of impunity, ensure transparent and independent investigation of cases as well as fair trial standards.
- Provide a legislative basis for the NPM of the OPCAT and ensure institutionalized participation of the civil society.

- Open up the army for real oversight by civil society; provide accurate data on casualties in the army.

Draft and approve a national plan of actions for ensuring protection of human rights, which will thoroughly review the domestic requirements for the protection of human rights, will be aimed at implementation of concrete actions and will set up clear priorities, responsibilities, deadlines and success indicators. Involve in the process of drafting of the plan representatives of the National Assembly and civil society.

The RA National Security Council with participation of the European Union advisors has been drafting a human rights plan. However, the public is not aware of its content and no public discussions have been organized.

Evaluate and improve opportunities for alternative service of civilian nature in line with the Council of Europe recommendations.

The RA Law on Alternative Service was adopted by Armenia in 2003 as part of the country's commitments to the Council of Europe. However, the Law does not guarantee a fully alternative civilian service. Particularly, Article 14 of the Law stipulates that the military is charged with management and oversight of alternative service. Also, the Law has a punitive nature as it stipulates an excessively lengthy duration for alternative service[27].

As a result, representatives of "Jehovah's Witnesses" religious organization refuse alternative military service. According to Jehovah's Witnesses leaders in Yerevan[28], as of June 1, 2010, 76 of their members remained in prison for refusing to perform military service or alternative labor service on conscientious and religious grounds. Jehovah's Witnesses representatives stated that all of the prisoners had been given the opportunity to serve an alternative to military service rather than prison time but had refused because they objected to the fact that the military retained administrative control over the alternative service[29].

RECOMMENDATIONS

- Pardon all current conscientious objectors
- Draft and adopt a new Law on Alternative Service, which will ensure a fully civilian service
- Guarantee that the new law does not have a punitive nature

[27] Military service is for a period of 24 months, while the Law on Alternative Service stipulates 36 months for alternative military service and 42 for labor service
[28] International Religious Freedom Report 2010 http://armenia.usembassy.gov/news111810.html
[29] US Department of State Report

GENDER AND DOMESTIC VIOLENCE

Paragraph 53.B.30 of Implementation Measures envisages:

- adoption of a Concept Paper on National Gender Policy and implementation of measures towards improvement of legal relations in this area
- submission of the draft Law on Ensuring Equal Rights and Opportunities for Men and Women to the National Assembly of Armenia by the government of Armenia.

GENDER EQUALITY

The principle of equal rights in national legislation

Constitution of the Republic of Armenian provides for gender equality. By the Electoral Code the number of women candidates on party lists has been increased from 5% to 15% for National Assembly elections.

Government Program for 2008-2012 for the first time includes a commitment to ensure gender equality in all areas of social and political life in the country.

Overview of the Situation: Implementation of Armenia's Commitment towards Achieving Gender Equality

Towards implementation of the measures for 2009-2011 of the EU-Armenia European Neighborhood Policy Action Plan the government of Armenia approved the Gender Policy Concept in February 2010. The Ministry of Labor and Social Issues was assigned the task of submitting to the government an action plan for implementation of the Concept developed in coordination with other ministries within six months, i.e. in August 2010. However, the government has not approved the action plan for implementation of the Concept to this date.

Analysis of gender situation in the country demonstrates that necessary and timely efforts are made to overcome discriminatory practices that have led into a gender misbalance and limitation of rights of women in politics at the decision-making level and in the labor market.

In ensuring equal rights the main problem remains lack of equal opportunities for women.

Presence of de-jure constitutional guarantees do not exclude de-facto discriminatory practices in regard to women in the majority of government institutions and local government of the country.

Despite the high educational (women account for 60% of people with higher education) and civic potential (in average women account for 30% in political parties, in some parties the number is over 50%, women are active in NGO-s) women are underrepresented in the legislative branch, are excluded from governance system both on decision making level and on all levels of governance and local self-governance.

The constitutional provision on ensuring equal rights for both genders in holding offices in the system on national and local governance in practice is being violated which has led to a situation of inequality in representing men and women in legislator and leadership positions.

In the National Assembly of Armenia women account for 9,2% of members, in 7 commissions out of 12 no women are included. The parliamentary faction of Republican Party (party led by President

Serzh Sargsyan) has only 2 women, i.e. 3,2% female presence. In 2010 a negative trend was observed in political representation of women: Deputy Speaker of National Assembly Arevik Petrosyan was forced to resign.

The trend of gender imbalance on high-ranking public service positions continues and here women account for 11%. Women are underrepresented in discretionary positions: only 5 women among 65 deputy ministers, one woman among deputy governors. Governor of Shirak Marz Lida Nanyan was removed from her position without any motivation or reason.

Gender imbalance continues to be observed in municipal and local governance. Among 48 urban mayors and deputy mayors there is only one woman. Women account for 0,5% in community councils in urban areas and 6,2% in rural areas, and only 2,6% of rural communities are headed by women.

The masculine style of leadership contradicts to the basic principles of representative democracy and leads to deficit of democracy.

In the labor market and in the area of employment, in particular, the gender situation is characterized with instances of discrimination in regard to women in the form of horizontal and vertical segregation.

Economic activeness of women in all age groups remains to be considerably low than for men: economically active women amount for 48,8% and men to 75,9%.

Women account for 70% among the officially registered unemployed. Unemployment rate is 60.1% among economically active women in age group of 30-39.

Outflow of women from prestigious and well-paid jobs in the area of lending, insurance and banking continues (from 73% to 50% only in recent five years).

Limited access to financial, lending and property institutes and managing land complicates integration of women into new economic relations, impedes to their career growth and advancement in business. According to official statistics only 10,3% of employers are women.

Average salary of women in the country is equal to about 59% of men's salary and in areas of predominantly female employment, such as education, healthcare, culture, social services women as a social and employment group are paid less than men.

Further worsening of the economic situation of working women is due to the adoption of a new Law on Temporary Working Disability Benefits, adopted on October 27, 2010. The law puts a cap on maternity leave benefits[30] if the salary is higher than the amount fixed in the Law. This recent initiative of the government, in the name of fighting corruption, was a blow to women working in well-paid position, who plan to have children. It is interesting that the government, preoccupied with writing concepts and strategies on increasing the birth rate in the country, in reality takes concrete measures that contradict its adopted concepts. This decision is also unconstitutional, since it contradicts the notion of a 'welfare state,' stated in the Constitution.

Economic power is distributed unevenly between men and women; access to economic and social resources is not identical for both genders, in economic leadership positions there is misbalance in representation of men and women.

[30] The cap imposed by the law is five times the amount of the minimal salary (approximately 415 USD per month). According to the previous Law, women employees were entitled to their full salary during the duration of the maternity leave.

The government is not taking measures to develop light industry and food industry with a focus on larger women employment; development of outwork and micro-lending system is implemented without considering the gender issue.

Involvement of women in decision-making positions on regional and local levels, promotion of gender equality, and enhanced representation of women in entrepreneurial activities would contribute to the establishment of the culture of democracy and eventually lead to an established civil society.

Measures for 2009-2011 of the EU-Armenia European Neighborhood Policy Action Plan call for a draft Law on Ensuring Equal Rights and Equal Opportunities for Men and Women to be submitted to the National Assembly by the government in 2010.

In 2008-2009 a group including members and experts from the National Assembly of Armenia, Ministry of Justice, National Institute of Labor and Social Issues, Institute of Philosophy, Sociology and Law, and NGO-s developed the draft Law on Ensuring Equal Rights and Equal Opportunities for Men and Women. In 2009 in all regions of Armenia roundtables and meetings were conducted to present the draft Law on Ensuring Equal Rights and Equal Opportunities for Men and Women to the society.

The draft law was discussed with all ministries and agencies.

Comments and recommendations from ministries and agencies, as well as from civic groups in regions were incorporated into the final draft.

The draft law was also reviewed and positively evaluated by international experts.

However, the government has not submitted to the National Assembly the draft Law on Ensuring Equal Rights and Equal Opportunities for Men and Women.

Failure to enact the Law on Ensuring Equal Rights and Equal Opportunities for Men and Women, which provides for gender-sensitive quotas, has led to a situation whereby the suggested amendments to the Electoral Code of the Republic of Armenia to be discussed in October-November, 2010 recommend in Article 107 that "every 10^{th} candidate on party list should be a woman" though representation of women on party lists is increased from 15% to 20%. This will not lead into higher representation of women in the parliament.

It should be noted that the recommendation does not take into consideration:

- Recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) on "ensuring over 20% quotas for women representation in parliament". This provision refers to the seats women are holding in the parliament and not on partly lists. It should be noted that world average representation of women in parliament is 18,2%, which is twice higher than the current rate of women representation in Armenian parliament;

- Comments and recommendations of 23 organizations on gender quotas submitted a year ago called for not having either gender to hold more than 70% of the seats in parliament and saying that 1 out of three should be a woman. If a woman parliamentarian gives up her mandate it should be offered to the next woman on the list. Suggested quotas would ensure gender balance in parliament.

Introduced changes are not consistent with the recommendations of Council of Europe either, specifically:

- With paragraph 6.3.1 of Resolution 1706 (2010) of the Parliamentary Assembly of the Council of Europe (PACE) on "Increasing women's representation in politics through the electoral system": "in countries with a proportional representation list system, consider introducing a legal quota which provides not only for a high proportion of female candidates (ideally at least 40%), but also for a strict rank-order rule (for example, a "zipper" system of alternating male and female candidates), and effective sanctions (preferably not financial, but rather the non-acceptance of candidacies/candidate lists) for non-compliance, ideally in combination with closed lists in a large constituency and/or a nation-wide district";

- With paragraph 2.1.1.of Recommendation 1899 (2010)) of the Parliamentary Assembly of the Council of Europe (PACE) on "Increasing women's representation in politics through the electoral system": "in countries with a proportional representation list system, consider introducing a mandatory quota which provides not only for a high proportion of female candidates (ideally at least 40%), but also for strict rank-order rule (for example, a "zipper" system of alternating male/female candidates), and effective sanctions (preferably not financial, but rather the non-acceptance of candidatures/candidate lists) for non-compliance, ideally in combination with closed lists in a large constituency and/or a nationwide district".

DOMESTIC VIOLENCE

Paragraph 53.B.30 of Implementation Measures envisages submission of the Law on Domestic Violence to the National Assembly of the Republic of Armenia

According to this point the Law on Domestic Violence is to be adopted in 2010 with other legal acts ensuring its enforcement will be adopted in 2011.

Yet the government of Armenia and the National Assembly have not developed a draft law on domestic violence. A Draft Law on Domestic Violence was developed by the Women's Rights Center NGO, in partnership with the Ministry of Labor and Social Issues, Office of Prosecutor General and the Police, however, it has not been submitted to the National Assembly yet.

The Draft Law on Domestic Violence was finally presented to the government of RA on November 12, 2010 for the further circulation and decision making. The adopted Law will request elaboration of a relevant package of necessary legal acts and mechanisms for appropriate implementation.

Measure 132 of Implementation Tools envisages increasing public awareness and supporting efforts aimed at eliminating domestic violence

According to this point the government of the Republic of Armenia was required to develop the legal acts to ensure enforcement of the Law on Domestic Violence. Since the law was not adopted, it goes without saying that legal acts could not be developed.

RECOMMENDATIONS

- Recommend the government of the Republic of Armenia to speed up and submit to the National Assembly the draft Law on Ensuring Equal Rights and Equal Opportunities for Men and Women. The process needs to be speeded up given the forthcoming parliamentary elections.
- Recommend the government of the Republic of Armenia after adoption of the Law on Ensuring Equal Rights and Equal Opportunities for Men and Women start working on legal acts to ensure enforcement of the Law on Domestic Violence as envisaged by Implementation Measures for 2010-2011.

- Speed up the development and adopt in 2010 the action plan for the strategy, for implementation of the National Gender Policy for 2010-2015 with a focus on eliminating gender discrimination in all areas of social and political life.
- Recommend the National Assembly of the Republic of Armenia to act in accordance with PACE Recommendation 1899 (2010) on "Increasing women's representation in politics through the electoral system" saying that "in countries with a proportional representation list system, consider introducing a mandatory quota which provides not only for a high proportion of female candidates (ideally at least 40%), but also for strict rank-order rule (for example, a "zipper" system of alternating male/female candidates), and effective sanctions (preferably not financial, but rather the non-acceptance of candidatures/candidate lists) for non-compliance, ideally in combination with closed lists in a large constituency and/or a nationwide district" and introduce a provision into the Electoral Code of the Republic of Armenia with the following language: "In party lists of parliamentary candidates either gender cannot be represented by more than 70% and every third person in the list shall be a woman. When a woman parliamentarian gives up her mandate it shall be offered to the next woman in the list."
- Recommend the government of the Republic of Armenia to speed up the process of legal regulation measures for prevention of violence, ensure development of the Law on Violence, which will also cover domestic violence with a view of submitting it to the National Assembly in 2011.
- Amend the new Law on Temporary Working Disability Benefits, lift the cap on the benefits for the women with higher salaries to continue receiving a full salary throughout the maternity period, specified by the Law, as was the case in the past.

CIVIL SOCIETY PARTICIPATION

Implementation Tools, measure 19: Improvement and stimulation of co-operation with NGOs, with application of comprehensive lawmaking procedures and stakeholder participation

Implementation Tools, measure 42: Further improve and activate cooperation with public organizations, particularly in the framework of drafting new legislation specifying lawmaking procedures, which will ensure participation of all stakeholders in the process.

As a specific outcome, ENP Implementation Tools mention developing and adopting the Decree "About Specifying the Order to Organize and Run Public Consultations."

The Decree on Defining the Order to Organize and Run Public Consultations was adopted by the government at its session on March 25, 2010. It is to be enforced in 2011. In 2010, and before that, there has not been any provision that would ensure civil society participation at the policy level. The Decree stipulates that any government agency developing a law publish it on its website for at least 15 days prior to its submission to legislature. There is no mechanism for "public consultations" but rather a general request for public information about proposed legislative initiative with no strings attached except for acknowledgement of comments if such are sent to the indicated web address.

Participation of Civil Society in implementation and control of the state strategy remain a non-existing concept at practical level. Participation is purely case-based and is not regulated by any working mechanism. It is largely the decision of the executive if and to what extent to involve the society and its institutes such as NGOs, academia, or interest groups in the process. Recent practice of "expedient" legislative process when laws are passed in three readings during one day, and this is done for most important pieces of legislation, makes such participation even less meaningful.

There is an institutionalized and systemic participation of non-governmental entities only when stipulated by the donor (e.g. PRSP, MCA, and EaP). In these cases, systematic and successful attempts are made to tame the participation and to reduce it to "rubber-stamping" of policies by engaging and promoting loyal, if not accommodating, organizations and by marginalizing critical voices.

During this year, a new and dangerous trend has surfaced. That is the practice of "handpicking" civil society representatives in small numbers (2-3) and without any transparent or accountable procedure by simple presidential decision, often communicated orally, to engage them in ad-hoc groups to draft legislation. The practice is damaging in a number of ways – first it substitutes for institutionalized coherent process for civil society participation by being a fully ad-hoc and one-person-decision. Secondly, this forming of ad-hoc legislative groups has been done for drafting of most critical and controversial pieces of legislation such as the Law on TV and Radio and the Law on Conducting Rallies and Demonstrations. These are the pieces, which the government has failed to reform in conformity with democratic standards for years and has been heavily criticized. Outsourcing their drafting to groups with "no belonging" and no proven capacity or commitment is a sure way to fail the process and to divert the responsibility and, hence, criticism.

In general, the government is highly dismissive of civil society watch dogging activities, even those that have been well established and conducted with considerable expertise and in accountable manner. Reports of such monitoring are ignored and discussions are rarely attended by relevant government representatives.

As a positive development in 2010, there have been fewer reports on cases of illicit ban for renting space to civil society organization.

RECOMMENDATIONS

- Amend the decree from March 25, 2010 on Defining the Order for Organizing and Implementing Public Consultations with provisions for real consultations with the civil society, namely simple and transparent mechanisms for consultations and feedback from and to civil society.
- Stop the practice of manipulating participation by favoring loyal and ostracizing critical organizations.
- Stop the practice of administrative abuse to ban rentals to certain civic groups.

ENP AP Priority Area 2: *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).*

MEDIA

Overview of the Situation

The government of Armenia has spoken eloquently about its democratic progress in recent years. The TV & Radio law is a crucial measure of this progress. The current law on broadcasting poses restrictions to freedom of media and pluralism. The digitalization process, which would otherwise pose a great opportunity for pluralism, is used by the government of Armenia to pose even more restrictions for media. In June 2010, the government announced that after the transition to DTT, there would be only 18 digital channels in Yerevan and 10 in the regions, a reduction from the current numbers (currently 22). The government claimed that this reduction was necessary for technical reasons related to the number of useable frequencies in Armenia. However, according to statements made on September 30, 2010 by an official of the National Commission of TV and Radio (NCTR), the government agencies that imposed this reduction did not receive the results of the frequency audit commissioned by the government until September 2010. Thus the reduction in channels, and therefore in broadcast licenses, appears not to have been based on frequency availability. Furthermore, no neutral technical experts have had an opportunity to comment on the viability of the transition plan or the necessity of the reduction in channels.

No essential steps were taken during last years in terms of ensuring the independence and diversity of the broadcast regulatory body - the National Commission on Television and Radio (NCTR). Neither the recent amendments to the RA Law "On Television and Radio" (June 10, 2010), nor the previous ones entail mechanisms for transparent, competent and fair regulation of that sphere. According to the acting legislation, half of the NCTR members are elected by the National Assembly, and the other half is appointed by the RA President. Given the current composition of the RA National Assembly and the established political tradition in Armenia the RA President and the Parliamentarian majority represent the same coalition, which allows the authorities to form the regulatory body according to their interests. Moreover, the RA Law "On Television and Radio" still does not prescribe any mechanisms of accountability of the managing body of the public broadcaster, which is unilaterally formed by the RA President. This contradicts the RA Constitution, which includes the public broadcaster under the competence of NCTR. Thus, almost whole broadcast media, which is the most powerful tool for influencing the public opinion, remains under full control of the ruling political force.

Another important issue in the existing broadcast legislation is the absence of a clear regulation of the licensing procedure. It imposes even more challenges now, taking into account the ongoing digital switchover process in Armenia. Both the Concept on Switching to Digital Broadcasting, approved by the RA government and the followed amendments to the RA Law 'On Television and Radio", adopted by RA National Assembly on June 10, 2010 were strictly criticized by the local and international experts for not addressing most of the problems of the digitalization process and further restricting the diversity of the broadcast sphere.

In addition to the longstanding broadcast legislation issues the following developments in the media sphere are worth to be mentioned in the context of freedom of information. Despite demands of Armenian civil society no steps were made to examine and take respective measures against the illegal and arbitrary preemptive censorship of print media, as well as selective blocking the web media following the tragic post-election events of March 1, 2008. Absence of such examination and respective measures provides for new possibilities of serious violations of European standards to

impart and receive information, which in its turn could strongly reflect on the upcoming national elections in 2012 (parliamentary elections) and 2013 (presidential elections).

On February 15, 2010 the National Commission on Television and Radio (NCTR), in compliance with Article 22 of RA Law "On Television and Radio" approved the criteria for erotic TV and radio programs, films containing horror and violence scenes, as well as programs, which could have negative influence on the health, mental, physical growth and education of minors. On April 21 heads of 11 prominent TV companies of Armenia signed the Charter of Ethical Principles of TV and Radio Broadcasters of the Republic of Armenia, upon the initiative of the Public Council at the RA President. Both the defined criteria by NCTR with its blurred wordings and the abovementioned Charter were considered by the journalistic community as another endeavor of the government's interference in the media activities, corruption of the principles of media self-regulation.

On May 18, 2010 the RA National Assembly adopted the package of draft laws "On Introducing Amendments and Supplements to the RA Civil Code", "On Introducing Amendments to the RA Criminal Code" and "On Introducing an Amendment to the RA Criminal Procedure Code". The necessity of the law decriminalizing libel and insult has been consistently voiced by both international and local organizations. However, the present law still has a number of important shortcomings. Particularly: the unjustified size of compensation for moral damage; the presence of vague formulations as to the grounds of prescribing fines, which are fraught with arbitrary court decisions; the unclear distinction between "libel" and "false crime reporting" in Civil and Criminal Codes, does not permit to talk about the full decriminalization of insult and libel.

Thus, the Armenian public policy in the sphere of media implemented during recent 5-6 years in most cases was not compliant with the principles of freedom expression, expectations of local democratic circles and international commitments of the country. This leads to the lack of diversity, dissemination of politically bound information and decrease of trust within the society towards the traditional media.

Implementation of ENP Action Plan in 2010

Point 4.6.3 "Information Society and media" of the ENP Action Plan reads as follows: "Switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards".

Meanwhile the amendments to the broadcast legislation signed by RA President on June 17, 2010, encounter a number of problems, persistently voiced by local and international experts, but still remaining unresolved. Mainly:

- The Law cuts off the number of actual broadcast media companies, which is unacceptable as digital broadcasting offers a more efficient use of frequency resources. Furthermore, as a matter of fact, the digitization shall not be at the expense of media diversity, thus, even if today it is not possible to preserve the number of currently operating broadcast companies due to technical reasons, exact dates and further plans for increase in number of broadcasters shall be envisaged by the Law.

- In a new digital environment, especially taking into account the de-facto decreasing number of terrestrial broadcasters TV companies, it is required to liberalize satellite broadcasting market. In other words, to guarantee existence of operating companies and pave the way for new entrants, the Law shall enforce simplified licensing procedure for satellite broadcasting, regardless the fact whether the TV company holds a digital broadcast license or not.

- The Law "On Television and Radio" does not specify the boundaries of its application. Whether it touches upon digital broadcasting only or online media too might be interpreted equivocally.

-It is known that digitalization brings new players-gatekeepers such as network and multiplex operators. In this regard, it is noteworthy that the Law does not clearly define them and distinguish the status of broadcast companies from signal distributors; nor does it provide for the mechanisms for regulating complex activities and relations between these entities, especially in the light of antitrust policy to avoid media concentration. Furthermore, there are serious concerns about empowerment of the state as a single multiplex operator. Although it is a temporary measure, there is no clear provision in the Law regarding the entrance of private multiplex operators as in our opinion such issues must be foreseen not by Government Decision but by the Law itself. This fact impedes private sector development and keeps market monopolized.

- The Law does not foresee the principles for licensing multiplexers, network operators that, in fact, contribute to Legal uncertainty and give room for NCTR decision-making discretion. Thus, the functions, the responsibilities, as well as their definitions must be clearly determined by the Law, in order to make the digitalization process in Armenia more predictable and transparent.

- In fact, the broadcast digitalization might constitute a threat to pluralism. Therefore, it is essential to initiate a simultaneous enhancement of the role and independence of the regulatory body (NCTR). Moreover, the Law does not define additional mechanisms for ensuring the independence of the NCTR. According to the current procedure, half of the NCTR members are appointed by the RA President, while the other half is elected by parliamentary majority. This cannot ensure the social diversity of the NCTR structure.

-At last the entire logic behind the current Law does not create favorable conditions for fulfilling international obligations undertaken by Republic of Armenia as a Council of Europe member. Particularly, shrinkage of broadcast media market stemming from the current Law does creates new obstacles for restoration of A1+ TV Company's violated right to freely impart information and ideas, as it was upheld by the ruling of the European Court of Human Rights on June 17, 2008.

In view of the abovementioned issues, in September 2010 a working group on improving the broadcast legislation and headed by RA Human Rights Defender (HRD) was established upon the RA President's initiative. The working group involves members of civil society and representatives of the State. However, even if the work of that group will be successful and it produces draft amendments strongly improving the present legislation, it will not influence the ongoing process of tenders for the licenses which in fact will form the Armenian broadcast media market for the next 10 years.

RECOMMENDATIONS

- Develop a comprehensive document envisaging the leading principles and activities to be undertaken in the course of digital switchover, as well as after the complete digital switchover in 2015.
- Provide for a legislative framework to regulate the relations between the main role players in the digital broadcasting era, their activities, as well as their licensing mechanisms.
- Deregulate broadcasting via mobile phones, internet and satellite.
- Introduce guarantees of the NCTR and the Public TV and Radio Council, including the order of formation, member selection criteria, ensuring participation of civil society in these processes, financial independence, etc.

- Guarantee the independence of the members of NCTR, through establishing effective provisions of their appointment mechanisms.
- Clarify the range of competencies and responsibilities and mechanisms of oversight of NCTR and the Public Council for TV and Radio.
- Set forth a provision entitling the NCTR to duly justify every decision on granting and not granting broadcast licenses. This was the main demand imposed to the Armenian government by the ECHR ruling on the case of "Meltex" LLC, founder of "A1+" TV company.
- Release the results of the frequency audit, referred to by government officials when justifying the limited number of available frequencies, for public review.

ENP AP Priority Area 3: *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

ENP AP Priority Area 4: *Further improvement of investment climate and strengthening of private sector-led growth*

ECONOMIC DEVELOPMENT

The impact of the global financial crisis on the RA economy was deep and negative despite the fact that the financial market in the country is underdeveloped; RA economy is not deeply integrated with the global economy and the main sources for income are the export of raw materials and the financial remittances sent by RA nationals in foreign countries. The crisis resulted in an unprecedented economic downturn. A certain level of rise compared with the previous year was registered in the first 9 months of 2010, in particular, the GDP in AMD (Armenian drams) has grown by 2.8% while the volume of industrial production, by 10%. However, the volume of agricultural production decreased by 18%. Construction also went down by 6% in the light of the 54% drop of the previous year. Considering the loans attracted by the RA government from international financial institutions and other states, which by the end of the year will amount to 47-48% share of the GDP (in 2008 the foreign debt was 13,2% of GDP, in 2009 36%), the RA economy stabilized in the first 9 months of 2010 and is at the level of the figures of the previous year. Based on these figures, it is possible to maintain that in conformity with the Specific Actions of Priority Area 3 of the RA-EU ENP AP, the present macroeconomic stability has been maintained. However, in view of the size of the RA foreign debt and the fact that in 2012 the RA will provide significant resources to service the foreign debt, it is difficult to foresee that the present 'stability' will contribute to the long-term goals of sustainable development.

According to the data of the first 9 months of 2010, the RA foreign trade turnover amounts to 3383,7 mln USD, a 23,6% increase compared with the figure of the same period of the previous year, the imports have grown by 19,2% compared with the 9 months of the previous year and currently amount to 2678,4 mln USD, the exports have grown by 43,9% reaching 705,3 mln USD. The foreign trade turnover deficit is 1973,1 mln USD or 3,8 times. The trade turnover with EU Member States has increased by 29,1% compared with the 9 months of the previous year and amounts to 1085,4 mln USD, the exports have grown by 66% amounting to 361,3 mln USD, while the imports have grown by 16% amounting to 724,1 mln USD. The main exports include mineral and raw materials, as well as base metals.

According to the official data of 2009, the poverty rate in Armenia constituted 25,6% of the overall population, while the World Bank experts believe that in 2010 it can reach 27,9%[31].

The actions of RA government in the area of social harmonization in the process of implementation of RA-EU ENP AP have had a negative impact. Both RA official data and the reports of international organizations show that *the polarization of income distribution and social inequality have deepened in the RA*. The Gini coefficient[32] of income inequality has increased in recent years, reaching 0,369 in 2006, 0,371 in 2007, 0,389 in 2008 and 0,396 (forecasted) in 2009.

[31] http://www.panarmenian.net/eng/economy/details/48676/

[32] The Gini coefficient is a measure of the inequality of distribution, a value of 0 expressing total equality and a value of 1 maximal inequality.

In the course of recent years, Armenia's efforts in obtaining the status of a country with market economy from the EU have yielded no results and the RA, although a member of the WTO, has not been recognized as a country with a market economy. *According to the reports of international organizations (World Economic Forum), by its level of intensity of local competition the RA is the 136th out of 139 countries, while by the level of effectiveness of anti-monopoly policy, 138th out of 139 (not ceding to Venezuela only).*

In the first 9 months of 2010, the state budget revenues collected by tax authorities amounted to 426653,8 mln AMD, which makes 119,4% compared with that of the same period of the previous year.

The RA government initiated amendments to the RA Law on Taxes, according to which the surplus revenues collected by the tax authorities are returned to taxpayers upon their demand within a 90-day period. In case of failure to return, the state will have to pay fines for each unpaid day. The mentioned amendment is mainly aimed at non accumulation of tax arrears and subsequent tax reduction.

In addition to this and to improve the process of tax collection, legislative amendments were made, as a result of which the large companies operating in the RA had to appoint tax representatives. However, this practice did not yield positive impact and at present these tax representatives are called back from companies.

The rate of tax collection has improved by 1% compared with the rate of the previous year and the taxes and duties amounted to 17,9% of the GDP in the first months of 2010.

At the same time, it should be mentioned that an electronic system of submission of tax reports was introduced and is operational now. However, an organization with a state share and a monopoly in supplying with electronic signatures has been created for the parties to be able to make use of this system, the work of which is far from being of adequate quality and does not encourage economic competition in the RA.

Priority Area 4. Further Improvement of the Investment Climate and Strengthening of Private Sector-Led Growth

By its Decision N97-N, dated 21 January 2010, the RA government annulled the Plan of Actions for the improvement of business climate approved by the RA government in 2008 and a new 2010 Plan was approved, indicating clear deadlines, objectives and responsible agencies for the implementation of its actions.

In particular, the actions envisaged by the RA government's Decision N97 are the following:

1) Payment of taxes
    a) Unify tax payments;
        i) in the framework of the pension system reform, ensure submission of the current income tax and mandatory social security payment reports as one single report.

The action has not been implemented and the reports are submitted separately.

    b) Introduce an electronic system of tax declaration;

The system has been introduced and is operational.

2) Founding of companies
    a) Clarify the procedures for founding companies based on the principle of one-stop shop

According to the reports submitted by the RA and the studies of international organizations, the company registration procedures are easily accessible and not time-consuming. However, in fact, following the acquisition of RA state registration, the founder of an organization does not have a possibility to engage in economic activity. In order to do so, it is necessary to be registered in other state bodies, which is quite time-consuming. It is necessary to get registered with the tax authorities, the territorial pension unit, the state statistical service, approve the relevant forms, etc.

b) Gradual elimination of the mandatory requirement for use of a seal

The relevant legislative amendments have been made and the mandatory requirement for use of a seal is being gradually eliminated.

3) Receiving loans
   a) Circulation of information on loans and improvement of the activities of loan bureaus;
   b) Accessibility of loans;

Despite the fact that the relevant documents have been developed and adopted by the RA Central Bank, it is not easy for the parties engaged in economic activity in the RA to attract financial resources, and according to the reports of international organizations, for its rate of access to financial resources, Armenia ranks 124 out of 139 countries.

RECOMMENDATIONS

- Involve all stakeholders, including the civil society, in the process of developing programs aimed at the improving the business climate. Institutionalize organizing transparent and broad discussions with the involvement of all stakeholders.
- Clarify the system of complaints against unlawful actions of the tax and customs authorities through reforming current legislation. Ensure the participation of NGOs in existing appeal councils. Make the decision-making procedures transparent (publish cases, decisions, etc)

Specific Action 1 under Priority Area 4: Stimulate agricultural development and production

Despite the actions taken by the RA government, agriculture remains vulnerable in the RA. The programs developed and implemented by the RA government do not envision any targeted assistance to agriculture. So far no strategy for assistance to agriculture in line with the WTO rules has been developed and introduced in the RA, no actions for providing accessible agricultural loans are taken, as a result of which agricultural production decreased by 18% in the first 9 months of this year.

RECOMMENDATIONS

- Develop and introduce a system of targeted subsidies in the agricultural sector in line with the rules of the World Trade Organization.
- Develop and introduce accessible loan mechanisms for the agricultural sector: Encourage the local producers who are engaged in the acquisition and processing of agricultural products.
- With state support, create laboratories conforming to international standards for the export of agricultural products to provide quality certificates in forms acceptable to developed countries.

Specific Action 2: Stimulate sustainable development

By its Decision N 1207-N, dated 30 October 2008, the RA government approved the Sustainable Development Program and established relevant inter-agency structures to implement and monitor the progress of the Program.

RECOMMENDATION

- In the framework of the Sustainable Development Program, establish a group for periodical review and monitoring of the Program, involving civil society representatives.

4.4.1 Movement of Goods
Trade Relations

The RA legislation regulating trade and economy essentially complies with the EU standards and the WTO rules. *However, in the course of the last year, certain legislative amendments have been made which contradict one of the key principles of international trade, the principle of National Treatment*. In particular, amendments have been made in the RA Law on Excise Tax (AL 51-N, 26 February 2009, AL 126-N 7 October 2010) and unequal conditions have been introduced for local and imported goods.

At the initiative of the EU, studies of the legislation regulating the RA trade and economic framework have been undertaken to explore the possibilities of concluding an RA-EU Deep and Comprehensive Free Trade Agreement.

RECOMMENDATION

- Review the RA legislation and ensure its compliance with the international obligations undertaken by the country.

Specific Action 4: Standards, technical instructions and compatibility assessment procedures (EU harmonization spheres)

The quality infrastructures reform strategy of Armenia, which envisions reforming the current quality infrastructure in Armenia in accordance with the EU standards, has been developed with the participation of European experts and is currently at the stage of discussion. The actions are to be implemented by 2020.

RECOMMENDATION

- Clarify the costs and the sources of the costs related to the quality infrastructure reform program and foresee in the RA state budget relevant means for its implementation.

Specific Action 5: Anti-monopoly policy and oversight of state support

Despite the ongoing legislative reform and measures to upgrade the capacity of the Economic Competition Commission, the level of economic competition in the RA is consistently dicreasing. According to the reports of a number of renowned international organizations, the RA is a centralized economy with no competition. In particular, the results of the study of the World Economic Forum in 130 countries demonstrate that for the level of internal competition Armenia ranks 136, for the dominating market the country ranks 133 and for the effectiveness of antimonopoly legislation it ranks 138.

RECOMMENDATIONS

- Ensure rule of law for all economic entities.
- Tighten the oversight over organizations that have a monopoly or dominant position in the market.
- Ensure transparency of the revenues and taxes of the organizations that have a monopoly or dominant position and publish information on official web sites.
- True legislative amendments set a normative profit threshold and progressive taxes for surplus profit.

Specific Action 6: The right to intellectual and industrial property

The current RA legislation is fully in line with the standards of the relevant EU legislation and international conventions and treaties. In 2010 a number of laws and legislative acts have been adopted in the area of protection of the right of intellectual property and relevant rights, in particular, the RA laws on Geographic Samples; on Trademarks; on Trade and Service Marks and Places of Origin of Goods and a number of other legal acts stemming from them.

Notwithstanding this, the level of protection of intellectual property and the related rights in the RA is disastrous. Laws are not applied by the relevant bodies, the level of awareness in the judiciary (including judges), customs officers, law enforcement officers, as well as the holders of intellectual property rights is quite low, and no adequate action is being taken in the area of protection of the relevant rights.

RECOMMENDATIONS

- Deliver training to the holders of intellectual property rights and to the bodies protecting them.
- Organize measures directed at raising the awareness of the protection of intellectual property and the related rights in the inner market.

Priority Area 5. Further convergence of economic legislation and administrative practices.

Specific Actions under Priority Area 5

- Implement progressively the National Program for PCA Implementation

The National Program for PCA Implementation has not been implemented. Instead, the legislative amendments taken under other programs aim at the approximation with the relevant EU legislation but not to a sufficient level.

- As an alternative commercial dispute resolution option, define by law arbitration procedures conforming with international standards.

There is an arbitration court in the RA. However, the level of awareness of its functioning and the relevant procedures is not sufficient, as a result of which the arbitration court is not fully operational.

ENP AP Priority Area 3: *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

PROTECTION OF LABOR RIGHTS

Overview of the Situation

Analysis of the current situation in the country related to regulation of employment and labor rights shows that the rights of employees are mostly violated:

- Illegal/shadow labor force is used as a result of the employer's failure to conclude an employment contract, which deprives the employee of the respective social contributions, the employment record, and social protection in general.
- As a consequence of unstable employment relations, employers abuse the possibility of concluding an employment contract for a term.
- Due to the current level of economic development, the instability of the labor market, and the employees' financial dependence on the employer, employers are able to violate massively the duration of work stipulated by law.
- The problem of low remuneration for the work of employees is exacerbated by the failure to make additional payments for overtime work and the inadequate remuneration for nighttime work.
- A new Law was adopted on Temporary Working Disability Benefits on October 27, 2010 to the detriment of working women in well-paid positions by putting a cap on maternity leave benefits, that would be equal to five times the amount of minimal salary (30000 AMD (83 USD), 415 USD per month) if the salary is higher than the amount fixed in the Law (according to the previous Law, women employees were entitled to their full salary during the duration of the maternity leave, specified by the Law.
- Due to the weak nature of trade unions, employees are often unable to gain access to effective remedies of their violated employment rights; and
- Practices of discrimination based on age, gender, and disability occur in recruitment.

Implementation Tools, measure 22: Enhancement of the Role of Trade Unions

The number of trade unions is still minimal, and the nature of the existing ones remains formalistic. Not all companies in Armenia have trade unions. There are companies in which employee interests are currently not upheld. According to the Republic of Armenia Law on Trade Unions, three persons may come together and create a trade union; however, in reality, in a company with 50 or more employees, a trade union of 10 employees cannot protect the interests of the collective. However, some progress by the trade unions can be noted in that they are organizing training courses to raise the awareness of young people of their labor rights. For trade unions in Armenia to be able to function properly and adequately to perform their role in protecting labor rights, it is important not only to make them more active, but also to integrate them in our society so that employees trust the trade unions to protect their interests.

Implementation Tools, measure 23: Measures Stipulated by the Collective Agreement

Starting from 2009, some steps have been implemented by the state to regulate employment relations; in particular, on 27 April 2009, the government of Armenia, the Confederation of Trade Unions of Armenia, and the Republican Union of Employers of Armenia signed a Republican Collective Agreement in accordance with the Labor Code of the Republic of Armenia, which

pursues the aim of prescribing additional safeguards of the regulation of social-employment relations.

Despite the steps taken to implement the Republican Collective Agreement and its provisions, real progress in the area of protection of labor rights still cannot be observed in Armenia.

To enforce a number of provisions of the Collective Agreement, amendments and additions to the Labor Code of the Republic of Armenia were enacted by Law HO 117 dated 24 June 2010.

Though the amendments have in some ways improved the rights of employees, they also contain provisions that encroach upon the rights of employees. In particular, Paragraph 1(9) of Article 113 of the Labor Code of the Republic of Armenia, which was declared unconstitutional by the Constitutional Court of the Republic of Armenia on 24 February 2009, was reintroduced into the Labor Code, albeit worded differently, under the 24 June 2010 amendments. Essentially, the employer now has the right to initiate termination of the employment contract with the employee on the ground that the latter has reached retirement age, unless the contract prohibits doing so. To protect themselves for the whole term of the employment contract, employers may avoid the inclusion of such a clause therein; even though contracting parties are free in the expression of their will, the employer practically always dictates the terms of the employment contract due to high unemployment in Armenia.

The amendments and additions to the Labor Code have overlooked the fact that employers abuse their right to conclude employment contracts for a term, which makes employment unstable and give the employers ample opportunities for arbitrariness. Our proposal to amend Article 95 of the Labor Code to require that the conclusion of an employment contract for a term be justified was rejected.

Implementation Tools, measure 38: Guarantee of the labor rights protection system

On October 27, 2010, the government adopted a new law on Temporary Working Disability Benefits to the detriment of working women having well-paid jobs by putting a cap on maternity leave benefits to equal five times the amount of minimal salary (approximately 415 USD per month) if the salary is higher than the amount fixed in the Law (according to the previous Law, women employees were entitled to their full salary during the duration of the maternity leave. This recent initiative of the government, in the name of fighting corruption, was a blow to women working in well-paid position, who plan to have children. This decision is also unconstitutional, since it contradicts the notion of a 'welfare state,' stated in the Constitution.

Implementation Tools, measure 85: Improvement of the Effectiveness of Regulation of External Labor Migration

The Confederation of Trade Unions of the Republic of Armenia plays an active role especially in providing information to the public, which is primarily aimed at combating labor migration and forced labor. An awareness-raising program, implemented jointly with the International Labour Organization since 2008, plays a precautionary and preventive role for victims of unemployment who are tempted by offers of employment abroad. The program is implemented not only in the large cities, but also in the remote, especially borderline villages of the Republic of Armenia.

Implementation Tools, measure125: Existence of Core Rules and Provisions on the Safety and Health of Employees

The safety and health of employees are protected under the Labor Code of the Republic of Armenia; in reality, however, these rights are not protected by either the state or private employers. The health and safety of employees are often related to the insufficiency of financial resources, due to which employers are frequently unable to comply with the basic rules and standards on employee health and safety. For instance, employers must meet the fire safety requirements in all high-rise buildings where they have employees; however, not all buildings have such facilities. Wheelchair ramps do not exist in virtually all places of employment. Improvements still cannot be noted in this area. .

Implementation Tools, measure 126: Enhancement of the Internal Control System

The State Labor Inspectorate, a subdivision of the Ministry of Labor and Social Affairs that has the mission of preventing and detecting abuse by the employers and restoring violated rights, constantly avoids enforcing sanctions against employers violating the rules. Moreover, the experience of organizations, citizens, and advocates that have cooperated with the Inspectorate and the monitoring have revealed that, in its letters responding to allegations concerning reports of violations found during inspections, the Inspectorate constantly cites the provisions of the Labor Code that concern the judicial remedies of employee rights, but never to the Republic of Armenia Law on the State Labor Inspectorate.

Thus, both the trade unions and the State Labor Inspectorate, which are created to protect rights of employees, are formalistic. We believe that the issue can be addressed by means of making the existing state agencies more active through tighter supervision and accountability, rather than concluding various collective cooperation agreements, signing memoranda, and setting up new commissions.

Article 12 of the Republic of Armenia Law on the State Labor Inspectorate provides that, within three months of the end of each year, the Inspectorate shall present an annual report on its activities to the authorized state body, which shall then publish it in the press. The annual reports presented by all the relevant agencies, with the exception of the State Labor Inspectorate, are posted on the website of the Republic of Armenia Ministry of Labor and Social Affairs. As an administrative body, the State Labor Inspectorate constantly overlooks the requirements of the Republic of Armenia Law on Fundamentals of Administration and Administrative Proceedings concerning administrative proceedings.

RECOMMENDATIONS

- Amend the Law to stipulate a provision that will require the State Labor Inspectorate to provide to an applicant a copy of the act of its inspection;
- Implement supervision mechanisms that will enhance the accountability of the Inspectorate;
- Remove from the Labor Code of the Republic of Armenia the provision (in Paragraph 1(11) of Article 113) that was declared unconstitutional in February 2009; and
- Review Article 95 of the Labor Code and require providing justification for the conclusion of an employment contract for a term.
- Amend the new Law on Temporary Working Disability Benefits, lift the cap on the benefits for the women with higher salaries to continue receiving a full salary throughout the maternity period, specified by the Law, as was the case in the past.

Specific Actions under Priority Area 4

Continue the modernisation and simplification of the tax administration in order to simplify the tax system, to improve coherence and reliability of the system and to reduce corruption risks and shadow economy. Define the necessary administrative structures and procedures, including a fiscal control strategy, audit and investigation methods, co-operation with the tax payers in order to increase tax compliance and effectiveness of tax collection. Identify all needs in terms of financial, human, logistic and IT resources.

TAX ADMINISTRATION

Thirty-five to forty percent of Armenia's Gross Domestic Product is comprised of "shadow business"; i.e. these activities fall outside any governmental monitoring, and, needless to say, constitute a huge loss to the tax base.

Expansion of shadow economy is also due to tough and inefficient taxation policies, government regulations and restrictions, and widespread corruption. To avoid unreasonable and complicated tax administration, small businesses occasionally do not declare their income to tax authorities and do contribute, albeit in a small degree, to thriving of shadow economy. Small businesses complain, however, that they are the target of government officials and policies and not the oligarchs, owing big businesses and operating in shadow economy. The shadow economy in Armenia is mainly based on the sectors of economy controlled by oligarchs (the mining sector, construction, import of consumer goods (e.g. petroleum, diesel, sugar, etc). The major representatives of the shadow economy enjoy protectionism by different state structures.

Shadow economy constitutes a serious obstacle for implementing reforms and economic development in Armenia. To improve the situation the significant actions should be made in the Tax administration.

The main ENP AP provisions, concerning improvement of Tax system and administration in Armenia was declared and scheduled in the "2008-2011 Tax Administration Strategy," approved by the Government Decree 941-N dated 7 August 2008.

According to amendments to Government Decree N941 made in 2010, implementation of more than a third of actions envisaged to be implemented in 2010, has been postponed.

Trends

In the area of tax administration, the following are the main aspirations and perceptions of society and the existing problems:

- The principle of horizontal equity is not fully implemented to ensure a "level playing field" and equal treatment for all the taxpayers. The legislation has not been tightened enough to prevent official abuse and patronage. What is even worse, there is a plan to eliminate the property and income disclosure system.

- The administration of taxpayers that account for a considerable share of state revenues is flawed and not sufficiently transparent.

- The delay in introducing a risk-based audit system undermines the establishment of trust between the private sector and the state.

- The tax legislation is not sufficiently stable, and tax interference in business remains excessive. The legislative amendments often generate undesirable consequences for the taxpayers.

- The tax administration is still not transparent and competitive, which affects the public perception of its fairness and credibility.

Observations

These observations focus on key issues related to the 2009-2011 ENP Implementation Tools, including the 2008-2011 Tax Administration Strategy approved by Government Decree 941-N, dated 7 August 2008. The amendments to certain provisions of the Strategic Plan under Government Decree 185-N dated 25 February 2010 are also taken into account (they are presented below in respect of the specific measures).

1. ENP Implementation Tools, measure 180.F.26: increase the share of large businesses in the state revenues collected under the Tax Administration Reform Plan

Although the 2010 August data[33] showed large taxpayers accounting for revenues of about 16 billion AMD (51,9% of the total tax revenue collection), the large taxpayer inspectorate revenue collection performance for the first eight months of 2010 from 343 large taxpayers was only 128,3 billion drams[34] (43,7% of the total revenues of 293,2 billion AMD collected during the first eight months of 2010[35]). It is assumed that either truly large taxpayers were not covered by the Inspectorate and the administration of this tax body was ineffective, or tax administration is still unable to get large taxpayers to declare their turnover completely and to collect the full amount of taxes due.

RECOMMENDATION

- Targeted administration of large taxpayers, including severe sanctions for non-compliance, publication of information on delinquent taxpayers, transparency of information, and review of their selection criteria, if necessary.

2. ENP Implementation Tools, measure 181.F.27: reduce tax arrears by 20 percentage points in 2010.

Amendments to the Tax Administration Strategy Plan stipulate reduction of existing tax arrears every year. However, according to the published information,[36] arrears grew by 103,5% in September 2010 compared to the same period in 2009 (in 2009, they had grown by 115,2%). However, as opposed to 2010, in 2009 the arrears increased due to the economic crisis and squeezed liquidity. Taking into account that, in the first nine months of 2010,[37] tax authorities have much more frequently resorted to lien on the property of taxpayers, confiscation, insolvency proceedings, and decisions on imposition of administrative penalties, it is assumed that the measures to revealing appears have essentially been limited to tighter state enforcement measures.

RECOMMENDATION

- It is necessary to have a Strategy for Arrears Management, which should not be limited to tighter state enforcement measures only. In particular, the strategy should also envision classification of

[33] *http://www.taxservice.am/uploads/pdf/monitoring_ogostos.pdf*
[34] *http://www.taxservice.am/index.php?menuID=295&tid=2&pid=&lng=9*
[35] *http://www.taxservice.am/index.php?menuID=18&tid=2&pid=&lng=9*
[36] *http://www.taxservice.am/index.php?menuID=18&tid=2&pid=&lng=9*
[37] *http://www.taxservice.am/uploads/pdf/vichakagrutyun_9.pdf*

arrears according to their size, dates and groups of subjects, an action plan based on the size of the arrears and behavior of the subjects, identified through monitoring activities, as well as preventive activities (such as awareness raising) to avoid accumulation of arrears.

3. ENP Implementation Tools, measure 180.F.27: implement a risk-based system of VAT refunds.

The amendments to the Tax Administration Strategy Plan stipulated the fully-fledged implementation, by yearend 2011, of an automated risk-based system of tax refunds (earlier, the plan was to refund over 80% of the claims in 2010). The information published by the tax authorities does not reflect the general situation of refunds; rather, only general information on the monitoring of refund claims by large taxpayers is presented.[38] As of 1 September 2010, the stock of tax credits was 75,1 billion AMD, of which 52,6 billion was in VAT. In the first eight months of 2009, the VAT credit stock was 12,2 billion AMD. Legislative amendments introduced in May 2010 were expected to resolve the issue of the refund of tax credits by prescribing that the government would have to pay penalties to taxpayers in case of delaying the refund claim processing beyond 90 days. However, the law stipulated that the penalty accrual and payment procedure would be defined by the government, and the latter has still not defined such a procedure. The National Assembly of the Republic of Armenia enacted new legislation in 2010 stipulating that, based on an application by the taxpayer, the VAT and excise tax credit may be returned without a tax audit, but only for the taxpayers that are not considered risky under the established risk criteria, and only if the claim is under 5 million AMD in 2011 and under 10 million AMD in 2012. In case of claims in excess of the thresholds and in case of taxpayers that are considered risky, audits will be carried out before refunding the claims.

The existing stock of tax credits has built up over many years. The first serious steps towards refunding tax credits were taken in 2009. An understandable concern is that universal return of tax credits will create a heavy burden for the state budget. On the other hand, there is a justified concern connected to the refunding of tax credits without checking their credibility.

RECOMMENDATION

- It is necessary to have a strategy for the management of tax credits, which will include monitoring the tax credits and appropriate action and response by the tax authorities, so that the refund system is fully and genuinely implemented.

4. ENP Implementation Tools, measure 180.F.26: lenient tax administration of small and medium businesses under the Tax Administration Strategy Plan, documentation of transactions, and regulation of self-assessment.

The administration changes in the aforementioned areas have revealed the following:

- The impact of Government Decree 785-N dated 24 June 2010 approving the list of large taxpayers with which representatives of the tax authorities were introduced, as well as the impact of applying the "excise warehouse" regime in relation to domestically-produced and imported beer, alcohol, vodka, and tobacco since 2010 have still not been evaluated and published.
- The mechanisms of applying invoices with special numbers and series acquired from the tax authorities and of electronic invoices are being implemented from 2010.
- Changes to the delivery and revenue recording bookkeeping,[39] as well as the introduction of electronic filing of books are planned.
- There is a plan to implement mandatory stamping of goods[40] with controlling stamps.

[38] *http://www.taxservice.am/index.php?menuID=295&tid=2&pid=&lng=9*
[39] *http://www.taxservice.am/uploads/pdf/2_SIGNATURE_HAXAGIC.pdf*

- The law expands the circle of entities paying licensing fees to include not only natural persons, but also sole entrepreneurs that had a turnover of less than 6 million AMD (as opposed to the current cap of 2,5 million AMD) during the previous year. The timeframes of presenting reports and paying fees will be unified.
- Subject to the condition of paying 11% income tax for acquisitions without documents, taxpayers continue to report unjustified acquisitions and income tax amounts as expenses.
- The cash register receipt lottery and bonus system were retained in 2010 with the aim of promoting the practice of buyers demanding the receipts and identifying the real turnover.

The results of the contemplated mechanisms can be measured after they have been implemented. However, in spite of the positive impact of the existing mechanisms, the transaction documentation and real sale turnover reporting issues have not been finally resolved yet, and self-assessment is still connected to the severity of state enforcement measures. So long as there is the additional tax burden "transferred" to the buyers of documents and services without documents, the sale turnover that would reimburse it will not be declared. The results of these measures are hardly visible or measurable, because they are mostly initiated on an ad-hoc basis, and some are not implemented fully.

RECOMMENDATION

- The administration process for small and medium business should be realistic, streamlined, targeted, with measurable results, relatively stable, transparent, competitive, fair, and credible in order to create an environment conducive of self-assessment and voluntary compliance.

5. ENP Implementation Tools, measure 181.F.27: risk-based selection of taxpayers for audits in more than 80% of the cases in 2010.

Amendments to the Tax Administration Strategy Plan contemplated fully-fledged implementation in 2010 of the system of risk-based selection of taxpayers for audits. It would represent progress, had the implementation of the new system of audits not been based on the concept note approved under Government Decree 23 dated 4 June 2009, which stipulated audits on the basis of analysis and risk criteria. One of the measures necessary for the implementation of the concept note was the State Revenue Committee Electronic Governance System Introduction Plan approved under Decree 2737-A of the State Revenue Committee Chairman dated 14 October 2009,[41] which contemplated integrated automated systems of risk sector and taxpayer selection, assessment, and control.

RECOMMENDATIONS

- It is necessary to implement and operate the risk-based assessment system in a short period of time, securing the training of the appropriate staff, using the results of the audits for improving the effectiveness of the risk criteria, and introducing legislation to limit deviations from the system.

- It is imperative to eliminate frequent, irregular, irrelevant, and non-transparent audits and inspections.

6. ENP Implementation Tools, measure 57.C.3: strengthen the IT capacity of the tax authority. Outcome anticipated in 2010: automated processing of more than 80% of the reports received.

The same measure was also contemplated by the Tax Administration Strategy Plan, but the amendments to the Tax Administration Strategy contemplated an increase of 20% in the share of the

[40] *http://www.parliament.am*
[41] *http://www.taxservice.am/uploads/pdf/2737.pdf*

reports filed electronically and by mail. The introduction of e-government is extremely important for the reforms, as it will enable automation, introduction of a system to manage information flows with other bodies and taxpayers, operation of an integrated database, enhanced effectiveness of the tax authorities, and delivery of high-quality services to the taxpayers. The measures contemplated in this area are commendable. The website of the tax authority already contains[42] a real-time tutorial on issuing tax invoices. As of 1 January 2010, the number of reports in the electronic system of accepting reports[43] had increased from 16 to 27. Reducing direct contacts is not only more convenient for the taxpayer, but also more effective in mitigating the risks of corruption. However, it is also necessary to take into account the existing challenges, such as:

- The human factor: skills, knowledge, experience, and behavior of tax servants and taxpayers in Yerevan and in the regions; and
- Technical factors: existence of technologies and telecommunication facilities in Yerevan and the region.

7. ENP Implementation Tools, measure 180.F.26: enhance confidence in the appeal procedures of the tax authority under the Tax Administration Strategy Plan.

An important measure for restructuring the system of appeals in the tax authority was the creation of the appeals council by Government Decree 1361-N dated 21 October 2010, as well as the approval of the procedure of reviewing the decisions of the appeals committee of the tax authority. The council will review appeals not granted or partially granted by the appeals committee. The council's opinion will serve as a basis for rendering a decision on the appeal (contested issues will be discussed with the Prime Minister). This can be considered as progress in terms of ensuring the transparency of appeal process by means of external influence on the decision-making process of the appeals committee of the tax authority.

8. ENP Implementation Tools, measure 180.F.26: under the Tax Administration Strategy Plan, improve the mechanism of providing clarifications to taxpayers on the application of laws.

Government Decree 1007-N dated 29 July 2010 approved the procedure of issuing official and unofficial clarifications on the application of provisions of legal acts regulating matters related to taxes, duties, and other mandatory payments, where by the tax authority is obliged to clarify the contested provisions of such acts in agreement with the Ministry of Finance of the Republic of Armenia. In 2010 alone, the tax authority issues around 18 official clarifications.

9. ENP Implementation Tools, measure 180.F.26: limit the scope of the presumptive tax frameworks.

Major legislative reforms were implemented in this area in relation to the activities taxed by the excise tax and presumptive taxes.

- From 1 January 2013, the organizers of casinos or lotteries will no longer be treated as presumptive taxpayers. Every quarter (in advance), they will pay a stamp duty at a rather high rate, which will replace the profit tax and the VAT. It is assumed that, unless the gaming business shrinks considerably, this legislative amendment will have a positive impact on tax revenues.
- From 1 January 2011, the presumptive taxes for imports of gasoline and diesel fuel will be replaced with general taxation procedure. Import excise tax rates have been established. Gasoline imports will be taxed with VAT, while diesel fuel imports and sale will be exempt of VAT. One issue that can be expected is that, because of the VAT exemption of diesel fuel, entities purchasing diesel fuel for industrial needs will no longer be able to deduct 16,67% of the supplier's invoice

[42] *http://e-invoice.taxservice.am*
[43] *https://file-online.taxservice.am*

value from their accounts of payable VAT (which is currently the case), which will significantly increase the cost of production, as well as products. Retail sale of gasoline will for the time being remain subject to the presumptive tax, and entities purchasing gasoline for industrial/production needs, too, will be deprived of the aforementioned advantage.

Starting from 1 January 2014, the presumptive taxes for tobacco produce will be replaced with general taxation: for VAT calculation purposes for tobacco producers or importers, the highest retail price of tobacco produce will be used as a basis, while entities that do not produce or import tobacco produce will be exempt of VAT. An issue here is that additional accounting difficulties will be created for retailers that are in the VAT framework.

RECOMMENDATIONS

- It is necessary to remove retail sale of gasoline and diesel fuel from the presumptive tax framework, as well, and to introduce an offset mechanism for buyers of diesel fuel.

10. ENP Implementation Tools, measure 181.F.27: adopt a unified tax code.
There is no information on the progress of the tax code submitted to the National Assembly for discussion in 2008.

11. ENP Implementation Tools, measure 29.B.6: legislative regulation of the integrated process of property and income disclosure and control.

In June 2010, the National Assembly adopted the draft Law on Public Service in the first reading. It is planned that the Republic of Armenia Law on Property and Income Disclosure by Natural Persons (enacted in 2006) will be repealed in 2011. Based on the new law, only a limited number of senior officials will be required to file declarations, and their conflict of interest declarations will be submitted to an Ethics Committee. To evaluate the disclosure process to date and the contemplated changes, it can be concluded that the disclosure procedure essentially did not generate the anticipated results.

12. ENP Special Actions: continue efforts to conclude treaties on the avoidance of double taxation between the Republic of Armenia and EU Member States.

New treaties on the avoidance of double taxation were not concluded between Armenia and EU Member States during 2010. However, the treaty with the Czech Republic took effect in 2010. Besides, treaties were concluded with Croatia and Luxembourg, which will enter into force in 2011.

CUSTOMS

Overview of the Situation

First of all it should be noted that all the observations and comments reflected in the previous year report regarding the requirements and progress towards implementation of provision 4.1.1. of the EU-Armenia ENP Action Plan and paragraphs 175-178 of the EU-Armenia ENP Action Plan 2009-2011 Implementation Tools are still valid. Though there are some areas where progress is reported, but the overall situation is far from being satisfactory. All the components that have a significant impact on foreign trade require serious review and improvement.

Compared with the previous year, the number of documents required for customs clearance and control have not been reduced; the widespread practice of using reference prices for valuation continues, furthermore that practice is unfailingly growing and reference prices for some goods are almost equal to the actual sales prices in the Armenian domestic market; customs authorities continue the policy of assigning code and value to a broad range of goods. Also continues the practice of granting permissions by the State Revenue Committee (SRC) in case of transactions implemented on the basis of invoices, though the importer himself shall define and declare the customs value in accordance with customs legislation. The SRC also requires a special permission for exports clearance, which is not grounded by any law. Given the above-mentioned the post-clearance control system consistent with international standards turns into a secondary process. The latter is mostly applied for punitive purposes rather than for supporting and facilitating foreign trade and for preventing violations.

Procedures for customs clearance for goods released at customs checkpoints on the border also require a serious review. Procedures applied differ from checkpoint to checkpoint. Queues are observed regularly and the reason for them is not the customs control but imperfect procedures, numerous documents required and forms to be filled, lack of coordination with other border structures, such as veterinary and phytosanitary services (it is high time to introduce integrated MIS, which will allow to share any information on movement of people and vehicles between border services, e.g. once one of the border services enters the vehicle number plate into the system, then it will be automatically available to all the users/services connected to the network). All the above-mentioned processes are serious non-tariff regulatory mechanisms for foreign trade and they significantly slow down and hinder the movement of goods through customs border, considerably increase the time required for customs processing and increase the costs to businesses. Furthermore, often some of the costs are non-official costs, which push businesses into shadow economy.

Priority issues that need to be revised are:

- Selectivity based on risk management. Risk criteria are reviewed very slowly. The share of goods processed through red and yellow channels is rather high. These are the procedures whereby the goods (red channel) and supporting documents (yellow channel) are subject to screening. This envisages additional contact between customs officers and importers, often unnecessary obstacles and, consequently, abuses. Customs screening of goods sometimes focus on unnecessary details. Oftentimes serious penalties are applied to importers for minor mistakes that have no impact on customs fees. For example, when goods imported from China or the U.A.E. or their packaging is marked as “made in Malaysia” and it is not reflected in supporting documentation. The importer, unaware of that and governed by information in the documents, indicates in the declaration that goods are manufactured in China. *In such cases a customs violation is reported and a fine is imposed equal to the total value of goods* (Article 203 of the Customs Code of Armenia). To avoid a similar mistake

the importer will have to study the whole shipment, individual goods, their packaging to find the "made in" marks. In turn, this creates ample grounds for abuse in terms of thorough screening.

- There are certain positive developments in the area of customs brokers. In the customs clearance process the role of customs brokers has significantly increased and the latter are vested with additional rights and authorities. The level of their professional training has been improved. In line with positive developments, however, one should note that some processes related to the operations of customs brokers, such as licensing and issuance of certificates to customs clearance specialists, are not transparent, and sometimes not understandable.

In addition, customs brokers dealing with large volume of operations have "merged" with officials from customs authorities and broker offices belong to the latter directly or indirectly. This leads to an unhealthy competition and to excessively high fees for services (e.g. for customs clearance of one printed promotion catalogue one has to pay the customs broker a fee of AMD 20,000-30,000). Often serious obstacles are created for those who want to handle customs processing on their own and they eventually get things done through a customs broker pointed out by a customs officer.

RECOMMENDATIONS

- Make the process of customs brokers transparent. Exclude convergence of customs officers and customs brokers. By making legislative changes in licensing procedure, set real and not exaggerated rates for services rendered by customs brokers. Minimize or exclude the interference of customs officials when the system selects a green channel during the clearance of goods.
- Non-intrusive selective examination based on risk management system.
- Defining customs value by the declaring person, independently, without using reference prices.
- Minimum interference by customs authorities in foreign trade.
- Introduction of post-clearance system in accordance with advanced international standards, a systematic approach to screenings, especially for large importers with a focus on identifying deficiencies in their systems and pointing out ways of addressing them, rather than applying penalties.
- Improvement of customs administration by clearly defining roles, rights and responsibilities of the sections dealing with receipt of customs declarations, customs screening, anti-smuggling issues and clearly defining the functions to exclude duplication; applying mechanisms for reimbursing damages to businesses.
- Reviewing the entire procedure of customs clearance at border checkpoints and applying unified procedures across the board; introduction of streamlined customs clearance processes, technology schemes that meet the requirements of Kyoto Convention; Enhanced cooperation between all border services.

ENP AP Priority Area 3: Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.

ENVIRONMENT

Preface

The Armenian government's activities appear to be generally targeted towards extensive and intensive use of natural resources, including forests, protected areas, water, mines, etc., and are in total contradiction to the declared goals for sustainable development. Many resources, e.g. forests, plants or animals, are allocated and used without due estimation of respective reserves and assessment of environmental impacts. Most of decision-making demonstrates fulfillment of short-term interests of a small group of people rather than general benefits for a larger population.

Decisions related to the environment are usually made behind closed doors, at the high levels of the government, without valid justification of those, due notification and engagement of the public, including experts. Hence, the public learns about the decisions once the permitted activities actually start taking place and when the possibilities for access to justice are limited. As a consequence, the public continuously campaigns against the decisions of the government, rather than provides constructive input into the decision-making process.

Most of the environmental problems are believed to be associated with corruption. Bribery and fraud take place throughout the entire chain of decision-making and involve all levels of the government. Although they appear to be concentrated at the highest levels, there are no cases of detention of high-level officials for mismanagement or illegal use of natural resources.

ENP Implementation Tools:

Measure 119/E2: Improve mechanisms for poverty reduction and gradual poverty eradication, ensured implementation of the provisions of the Sustainable Development Program 2008-2021.

- Develop the action plan for the sustainable development program 2009-2011
- Develop the conceptual framework of the SDP monitoring indicators system and institutional capacity building for implementation of the monitoring

Measure 146/E29: Enforcement of further economic development, increase in the efforts aimed at poverty reduction and social harmonization, thus contributing to long-term goals of sustainable development

- Agreement for the vision of the sustainable economic development of the country, implementation of a respective program

Measure 147/E30: Activation of efforts aimed at protection of the environment, for the purposes of eliminating environmental degradation and protecting human heath, in accordance with the agreements reached at the International Summit in Johannesburg

- Implementation of the actions approved by the RA Government Decision of October 30, 2008, #1207-N on "Approval of the Program of Sustainable Development"

The government does not actually demonstrate commitment for sustainable development. Instead, the government's decision-making practices prove to comply with the pursuit of short-term gains, usually by a limited number of beneficiaries.

There was not a single session of the National Council for Sustainable Development held in 2010 (last session was in winter 2009) and this institute has proved to be dysfunctional. Indicators for monitoring of the progress of the Sustainable Development Program are not developed and adopted yet.

Below-mentioned examples highlight decision-making trends and enforcement practices, which indicate de facto divergence from the sustainable development objectives declared by the government of Armenia. Some of those are associated with high-level corruption.

Mining

Mining continues to remain the major focus of the government's plans for economic growth and there are even suggestions to establish a separate ministry for mining. In January – September 2010, about 256 ha of forest and agricultural lands were allocated for mining. Uranium exploration project continues to be endorsed by the government in spite of the strong opposition of civil society and local communities in the Syunik region.

The Draft Mining Code developed in consultation with the World Bank was approved and pushed forward by the government very quickly - within 2 months - without ensuring due publicity of the document and effective consultations with the public concerned. By the time the NGOs and experts got acquainted with the document and were ready to provide comments, the law was submitted to the National Assembly leaving fewer chances for consideration of those. Meanwhile, according to experts, the new Code is oriented rather towards facilitation of the mining industry than to the sustainability of the use of natural resources, promotion of good mining practices and solution of environmental problems resulted from the mining activity. In addition, it creates barriers for accessing any information related to mining.

Enforcement of the environmental legislation remains to be inadequate and corrupt. This is proved by the detention of two employees of the State Ecological Inspectorate for taking bribes of about 10,000 USD from a mining company in order for the mining company to pay less in environmental penalties, a phenomenon believed to be commonly practiced in the mining sector. Another piece of evidence is the recent exposure by the Chamber of Control. It appears that the "Geopromining" company, which in 2009 was aggressively promoted by the government to build a gold processing company on the shores of Lake Sevan in breach of the environmental legislation, has not paid taxes to the state budget for 2 years.

Lake Sevan

Due to extensive construction, there is little actual public access to the shores of the lake. Special Commission under the President announced about the plans to remove illegal constructions on the shores of Lake Sevan, which may also affect the quality of the water of the rising lake. However, there have been no significant actions towards this direction and some of the illegal buildings have been merely moved to other locations. Most of the illegal buildings are owned or sponsored by high level officials, including the Minister of Nature Protection.

According to the reports of the Chamber of Control, the public funds allocated for the cleanup of the shores of Lake Sevan were misused and the plantations on the shores that contribute to the pollution of the lake were not removed. No high level official has been held responsible so far.

A small hydro-power station was illegally constructed on the tributary of River Argichi, which flows to Lake Sevan, endangering the ecosystem of the river as well as the water supply of 5 village communities with population more than 20,000. There were no steps taken to demolish the construction backed by unknown persons, instead there were efforts to punish rural citizens who dared to organize civic campaigns for protection of their right to water.

Protected areas

Environmental activists observed a construction activity in the Khosrov preserve, while further investigation revealed that the government, still in 2007, reduced the status of the central part of the preserve and created Gilan sanctuary in order to enable private construction and agriculture activities. This decision was taken by the government without any justification and due consultations with experts and the NGO community, who believe that this act will put at risk the whole reserve and make it a private use area for a few oligarchs. The construction is suspended by the order of the Minister of Nature Protection; however no steps are taken to resolve the issue of the status of the area.

No person has been held responsible for the destruction of the natural monument named "Basalt Organ" in the Garni Gorge, even though it is known for a fact that people collect and use the stones of the monument for construction purposes.

General Objectives and Actions Area 3: Economic and social reform, poverty reduction and sustainable development

Development of the forest industry (forest management, protection, maintenance, rehabilitation, balanced and sustainable use of forest resources)

- Forest-related activities were left out of the scope of ENP Action Plan, though on the other hand the European Commission through the World Bank, IUCN and WWF supports the country to implement ENPI FLEG program in this sector.

Forest resources continue to remain under danger. Public monitoring has revealed cases of false reporting of data and manipulations of allocation of forested areas.

Since independence, official sources continue to report that Armenia's forest cover is at 11-12 percent of the territory of the country in spite of continuous deforestation and allocation of forest areas for other use. This is despite the fact that only during January-September 2010 about 209 ha of forest lands were allocated for mining purposes. Recent satellite images recorded the actual size of the forest area to be 7-8 percent.

Independent monitoring of environmental activists and journalists revealed facts of underreporting of illegally cut trees by the Environmental Inspection, while the witnesses were harassed by the officers of forest monitoring and policing authorities not to publicize the findings.

Some representatives of forest department reported "mistakes" made in the community land use plans still in 2004-2005, whereas about 50,000 ha of lands, including large forest areas, were reclassified and allocated to local communities. Monitoring of investigative journalists has already revealed facts of forested areas further alienated to private individuals by local communities to be used for business purposes. In spite of the fact that the government knows about this "mistake," no step has been done to make corrections in land use plans.

Due to the rise in prices of gas, government officials have started hinting about the possible increase in illegal logging by the villagers during the winter.

Taking steps to improve integration of environmental considerations into other policy sectors

- Measure 143/E26: Follow the best EU experience to envisage and implement necessary reforms aimed at improvement of environmental management
    - Development of a program on development and enforcement of the strategic environmental assessment system of environmental expertise and environmental impact assessment, implementation of the EU requirements pertaining thereto

There are some positive legislative improvements in the direction of promotion of SEA protocol. However, more concrete steps are needed for the advancement of the framework to properly enforce the protocol and ensure integration of environmental considerations into other policy sectors.

RA ratified the Strategic Environmental Assessment Protocol, signed in 2003. There are no concrete steps yet for preparation of implementation of this document.

The National Assembly adopted an amendment to RA Law on Legal Acts, which may provide an additional tool for integration of environmental considerations into other policy areas. In particular, the amendment sets a requirement for assessment of environmental impacts of draft laws and some government decisions. Nevertheless, the amendment limits the scope of to-be-assessed legal acts to the ones, which have been initially included within the activity plan of the government, thus leaving out the urgently developed and controversial legal acts. Also, the amendment provides for a limited timeframe - 15 days - for the assessment and respective public consultations, which may not ensure the effectiveness of those processes.

General Objectives and Actions Area 6: Cooperation in specific sectors, including transport, energy and the environment

Establishment of procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention

- Measure 148/E31: Advance in the reforms in the environmental sector, in accordance with EU requirements, Aarhus Convention, Kyoto Protocol, continuation of reporting activity on implementation of provisions inscribed in Kyoto Protocol. In this context steps shall be made towards implementation of the Clean Development mechanism, towards improvement of the necessary mechanisms and establishment of favorable conditions thereof. Armenia must suggest another sector of development, while discussing the sustainable development program with the EU in 2009, in accordance with the environmental programs approved and implemented by Armenia.
    - Presentation of national accounts to the convention secretary according to the iii /6b decree of the 3 rd meeting of the sides in the framework of ORHUS implementation convention and June11-13, 2008 Riga convention.

There is no evident progress in the implementation of the Aarhus Convention. There are no positive developments in access to information and there is no timely and effective public participation in the environmental decision-making. Access to justice for challenging violations of environmental laws and failed public involvement is de jure limited to only a small part of the concerned public, while de facto is rejected to all.

There are no improvements in the field of active dissemination of information. The website of the Ministry of Nature Protection fails to provide comprehensive and user-friendly environmental information. Notifications on EIA and public participation possibilities appear a few days before the

hearings and do not allow for preparation and effective participation of the public in the decision-making. Other holders of the environmental information, such as the Ministry of Agriculture or the Ministry of Energy and Natural Resources fail to ensure active dissemination of information related to the natural resources under their jurisdiction. Some entities, such as Yerevan Municipality, refuse request for most of information related to the environmental matters. E.g., for more than one year the public is not able to get information about the construction on the territories of public parks, while the latter are being extensively allocated for private use purposes without due notification and public participation.

Armenia did not take any steps to implement recommendations adopted in late March 2006 by the Aarhus Convention Compliance Committee and the decision adopted in June 2008 by the Meeting of Parties related to compliance of Armenia with its obligations under the Convention. In September 2010, the Aarhus Convention Compliance Committee issued the draft conclusion related to the second communication submitted by the public in 2009 in respect with the decision-making on Teghut copper-molybdenum mining project. Compliance Committee one more time recognized the failure of the government of Armenia to implement the public participation requirements of the Aarhus Convention.

According to a decision of RA Cassation Court, only those NGOs have a legal standing in the court for challenging environment-related actions of the government, whose charters prescribe a purpose of "environmental protection." Nevertheless, even this decision of the Court of Cassation is not implemented by the lower court, i.e. Administrative Court. An environmental protection oriented NGO's application to challenge the government's acts in respect with violations of national and international laws by Teghut mining project is not being processed. On the other hand, the Administrative Court does not accept applications from individual citizens related to illegal construction in public parks with justification that the constitutional right of people to live in a healthy and decent environment is not a "concrete" right.

Reinforcement of structures and procedures to carry out environmental impact assessments

- Measure 143/E26: Follow the best EU experience to envisage and implement necessary reforms aimed at improvement of environmental management
    - Development of RA draft law on "Environmental expertise" and the regulations envisaging implementation

There is no progress in the field of environmental impact assessment. There are no changes in the respective legislation.

The quality of the environmental impact assessments remains to be poor. Many developers do not submit their projects for state environmental review (expertise) and decision-making bodies provide permits without due conclusions. Oversight authorities in their turn ignore the failure to implement the respective EIA requirements and no one is held responsible.

There are no changes in legal reforms related to environmental assessment. There is an unofficially circulating document by unknown authors on amendments to the existing law, which however fails to address principles of SEA or the recommendations of the Aarhus Convention's Compliance Committee, though has some provisions for implementation of the Espoo Convention.

In practice, EIA in a transboundary context continues to be a serious issue. The government continues to reject the possibility for transboundary impacts of the Teghut mining project,

meanwhile the Armenian and Georgian NGOs more actively demonstrate their concern related to the consequences of this activity in the light of the Espoo Convention.

RECOMMENDATIONS

1. Develop the framework legislation for environmental protection to ensure proper separation of powers in regulation, management, use and oversight and prevent ambiguities in various legal acts. Ensure proper enforcement of the environmental legislation and appropriate punishment/compensation for environmental violations/damage.
2. Improve the environmental assessment legislation taking into consideration international good practices of SEA and EIA as well as recommendations of the Aarhus Convention Compliance Committee and experts of the Espoo Convention. Clarify the hierarchy and linkages of environmental decision-making to ensure early notification and effective public participation in decision-making. Establish an effective system for enforcement of SEA Protocol. As a pilot activity, conduct international assessment of the Teghut mining project to identify its transboundary impacts as well as test the procedures developed in compliance with the Espoo Convention.
3. Develop methodologies for impact assessment on forests, plants, animals and human health as well as cost-benefit analysis. Develop the system of environmental payments to impose the polluter-pays-principle, particularly in the field of mining.
4. Base exploitation of natural resources on sustainable development principles, information on the existing reserves and long-term strategies. Suspend allocation of resources until such strategies are in place. Cease the practice of changing land categories and facilitating the use forests or other public use areas for economic activities. Include forest management in the ENP Action Plan.
5. Revise the Sustainable Development Program to comply with the respective goals. Develop the system for implementation and monitoring of the program. Ensure effective operation of structures, particularly the National Council for Sustainable Development.

PUBLIC PROCUREMENT

Primary Objectives and Priority Measures 16: *Reformation of the state procurement system, ensuring the adequate application of the state procurement regulations. To this end, preparation and adoption of the state procurement system reform package. Development and application of the mechanisms to raise awareness about the electronic procurement strategy and the corresponding tender for the staff; ratification of the international conventions regulating the sphere.*

Overview of the Situation

The improvements in the public procurement field are contradictory in nature. Despite the tendency to improve the public procurement system and show public involvement in the decision making process, there is no considerable progress in the law implementation practice, which creates a low trust level towards the procurement environment. Thus, the public procurement system in RA considered as a high-risk area.

Currently the new draft Law "On procurement" is circulated. This draft law was developed with the support of SIGMA experts[44]. The purpose of this law is to harmonize procurement legislation with existing best practices. In particular, the scope of draft law is extended; (the natural monopolies and other utility companies) are also required to follow public procurement requirements. Moreover some provisions of electronic actions are also included in the draft law. It is expected that the law will be adopted and will be effective in 2011.

In 2010 "Transparency International" Anticorruption center has published "Monitoring of public procurement system of Armenia in 2008-2009" report[45]. The results prove that public procurement is still inefficient and there is a lack of confidence over the system due to numerous problems namely;

- unclear description of the technical specifications in the invitation[46];
- complexity of the required documents (the documents require high transaction costs);
- collusions.

Moreover the procuring entities have a biased approach towards "unpleasant" selected bidders. In particular, due to unreasonable delays contracts are not signed, because of which companies incur considerable losses. In some cases, contracts were signed, but the money was transferred to the bidders with delays. As a result, the bidders carry on additional expenses as they are subject to pay taxes after signing the contract.

As one can see from Ministry of Finance (MoF) data the number of black listed companies is continuously growing[47]. Due to poorly designed needs and cost estimates (especially in construction field) the procuring units can "punish" unpleasant selected bidders.
The public procurement prices are often higher than average market prices. Supervision over the pricing is very weak as the decision makers do not collect information about potential suppliers, and do not compare prices offered in B2B procurement. The 2009 report of Chamber of Control proves this evidence[48].

[44] Support for Improvement in Governance and Management (SIGMA).
[45] http://www.transparency.am/dbdata/procurement_monitoring.pdf
[46] The technical specifications are unclear; this can be noticed while comparing the invitation packages of Project Implementation Unit (PIU) and SPA.
[47] 20 Black listed companies as of 29.10.2010
[48] See Annual Report of the Chamber of Control in the RA, 2009, page 103.

Overall, one can conclude that tenders are mostly not transparent, and the bid-rigging is common in the procurement system. Among bid-rigging schemes the symbolic bidding is one of the most widely used ones in Armenian public procurement. Moreover, there is almost zero innovation in the products and services, which increases the probability of collusion.

EU-Armenia Action Plan (p.24) priority direction: *Develop conditions for open and competitive award of contracts between the parties, in particular through calls for tenders, in line with Article 48 of the PCA and continue reforms in the public procurement system.*
Ensure implementation of the (public) Procurement Law;

Though the procurement legislation in RA generally complies with procurement practices (it was developed based on the UNCITRAL Model Law), the problems existing in law implementation do not stimulate public confidence towards the procurement system.

Based on the Strategy of Improvements of the Procurement System approved by the government in 2009 and procurement system assessment reports of the EU, World Bank and TI experts, a draft government decree on amending the current government decree on the rules and procedures of procurement (853-N) has been approved and a draft Law on Procurement has been submitted to the government. It should be noted that the main government decree regulating rules and procedures of procurement has been changed[49] (the decree is effective since January 28, 2010). These legal amendments provide for significant changes in the current procurement system, including principal reconsiderations of powers of involved bodies and processes of procurement.

Public Procurement Law (PPL) implementation is still inadequate. Below are several examples:

- The current criteria for bidder selection cannot be considered as sufficient: it actually relies solely on the minimal price; the qualified bidder offering the lowest price is selected as a supplier. Moreover, the qualification criteria is usually set very low and the price offer, which practically is playing the role of the single criteria for bidders selection, doesn't support more qualified bidders to compete.

- The practice of single-source procurement is also conditioned by the fact that the procuring entities often do not follow "value for money" principle. According to the budget legislation, the procuring entities must use the planned financial resources until the end of the year, otherwise they will lose them. Single-source procurement by procuring entities is usually made at the end of the year, which accompanied with inadequate capacity of technical audit make the reasonability and urgency of such procurement very doubtful.

- According to the PPL article 7, point 4, the simultaneous participation in procurement process of the organizations founded by the same person(s) or the organizations where the same person(s) own more than 50% share is prohibited. In fact, no inspection is conducted by the members of the tender committee for controlling this provision and as a result such violations of the PPL are widely common especially during car procurement tenders.

[49] RA Government Decree 1521-N "On Amendments in the RA Government Decree N 853-N" http://www.gnumner.am/admin/up/2009%20GoA%20Decree%201521-amboxchakan.pdf

- The communities do not have adequate procurement related skills and qualifications to follow procurement procedures, thus procurement processes in communities do not always comply with the PPL. The probability of collusions and non-competitive procurement volumes are higher in communities. According to the various evaluations procurement procedures in communities were mostly done with violation of the PPL provisions.

Implementation Tools, measure 16.1: "Synchronization of the RA laws on procurement with the EU requirements based on the SIGMA Project consultants' recommendation"
Ensure compliance of the procurement system with EU procurement legislation and principles, in particular transparency, information provision, access to legal recourse, awareness and training among contracting authorities and business community as well as limited use of exceptions.

The government demonstrates its intention to comply with EU procurement legislation by continuously initiating reforms. Currently based on SIGMA Project consultant recommendations there is a draft of new PPL[50]. After its adoption Armenia will be one step towards EU procurement standards. Unfortunately, the main hinder for development in Armenia is lack of proper implementation of legal requirements. The same is true for procurement; beside little progress in law implementation Armenia has severe problems in following issues;
a) transparency
b) procurement specialists' capacity enhancement
c) vendor activation training programs.

The existing appeal system does not comply with the best practices, as it is not independent. According to PPL, the MoF is the Authorized Body (AB) and is responsible for solving the disputes in public procurement. Of course, the bidders can submit appeals also to the court, but in practice it is both time-consuming and expensive[51]. The AB is also responsible for the supervision over the public procurement, which can create conflict of interests.

The members of the tender committee and procuring entities are the same persons, which increases the corruption probability. A legal or procedural requirement for tender committee members to disclose conflicts of interest does not exist. The absence of such provisions can also hinder the competitive environment.

Existing procurement procedures have a high probability of corruption. Ideally, the State Procurement Agency (SPA) should serve as a checks-and-balances mechanism, but in practice, the capacity of the SPA is inadequate to accomplish its tasks. For example, there are cases when firms that should be given award were rejected. After complaint by these firms about tender procedures, they were awarded and selected. Anyway later on these contracts were canceled and SPA signed a contract with initially selected firms (single-source procurement method). It should be mentioned that the price indicated in the contract was higher as before, thus one can conclude that the procurement environment and practices are not fair.

The practice of procurement guidelines development and their public dissemination is limited. In addition, there are no model tender documents and model technical specifications in the SPA. Both technical and human capacity in the SPA are inadequate. In addition, there are no legal or procedural requirements for appointing the Head of SPA and other staff.

[50] It is available on Public Procurement Portal- www.procurement.am
[51] The AB discusses disputes free of charge and within 20 days.

Compared to 2009 in 2010 number of complaints (appeals) submitted to the Authorized Body dropped significantly[52]. During 2009 about 57% of all complaints were approved, while in 2010 about 60% of all complaints were approved. On one hand, it is good that the number of the approved complaints has increased, on the other hand this can be the result of biased approaches/collusions from tender committee members towards bidders.

Implementation Tools, measure 16.3: Introduction of the electronic tendering system
Ensure implementation of the "Strategy for Introduction of an Electronic Procurement System in Armenia"

Steps are taken to introduce the electronic procurement system in Armenia until February 2011. A tender was announced for "E-procurement software development and trainings". "Totalsoft" Romanian company was recognized a winner. Due to financial-economic crisis and shortage of funds, the contract with this company was not signed. Currently the terms of reference (TOR) were revised and a new tender was announced and the winner was recognized.

The implementation of E-procurement (EP) usually decreases the transaction costs and mitigates the corruption risks, which impacts positively on procurement system efficiency[53].
The importance of EP is recognized also in RA. The government has been seeking donor support and assistance for EP implementation. The World Bank has been assisting the government on this path. However, there are some problems which hinder EP implementation in the RA:

- existence of corruption risks in current procurement system,
- inadequate capacity,
- legislative.

As was shown there are a number loops in current business procedures thus it is worth mentioning that EP only automatizes the existing business processes. It is more efficient first to eliminate the procedural risks, and after that start their automatization. In addition, it should be mentioned that the existing EP strategy should be redesigned.

Legislative problems

Though several documents related to EP were already adopted in RA (EP roadmap, government decree on EP[54] and etc.), these documents need serious improvements. In particular, based on the the Government Decree on EP system implementation strategy, the following stages and deadlines were declared:

- I Stage: Preparation of EP (March, 2006),
- II Stage: E-tender (January, 2008)
- III Stage: EP (January 2009)

As can be seen, the deadlines declared by the government were not kept. The government needs to craft a new strategy for EP.
Implementation Tools, measure 16.2: Holding negotiations for the membership to the WTO procurement agreement

Accede to the WTO Agreement on Government Procurement

[52] During January-September 33 complaints (appeals) submitted to the Authorized Body, while during the same period of 2010 only 16. Source MoF
[53] As the best practice shows EP implementation initially gives an opportunity to increase procurement system efficiency on average by 15%.
[54] Government Decree (No-137-N) "Strategy for Introducing the System of Electronic Procurement", approved in January 26, 2006

Armenia has taken definite steps towards acceding to the WTO Agreement on Government Procurement. A round of negotiations between Armenia and Parties to the Agreement on the initial offer of Armenia has taken place during the meeting of the WTO Committee on Government Procurement in December 2009. Considerable work has been done to bring the procurement legislation of Armenia in conformity with the Agreement.

Armenia made an Initial Offer and almost finished bilateral negations with partner countries (Canada, EU, Japan and etc). Currently the government is finalizing the process of transition from WTO GPA observer status to a full member status, in particular Committee meeting will be hold on December 6-10 during which Armenian accession to WTO Agreement on Government Procurement (GPA) is expected to be finalized[55].

Based on above-mentioned arguments, mostly due to the poor practices of the PPL implementation, the trust and perception towards the procurement system is far from being sufficient.

RECOMMENDATIONS

- Develop and implement a methodology of non-price criteria for bid evaluation, and/or in some cases to adopt legislation regarding the opportunity for implementation of "reduction auctions."
- Enhance the internal, as well as the external (Chamber of Control) audit capacity, in particular conduct technical and performance audits.
- Monitor on the periodic bases the SPA, communities, PIU prices and average market prices for a similar product category and publish the results.
- Establish an independent body for procurement appeals and delegate to it the appeal review and decision making authority. Moreover, it is reasonable to include the representatives from various public organizations (ombudsman, consumer protection associations and etc.).
- Implement the practice of minutes recording in public procurement.
- Develop and implement the practice of registering the members of tender committees in the "black list," as well as implement a rotation system for tender committee members.
- Strengthen the SPA's internal audit capacity, which should control the process of committee members' interest declaration and prohibit the participation of the organizations established by the same person or the person owning more than 50% of stocks in the same procurement process.
- Confirm a provision in the legislation according to which the simultaneous participation in procurement process of the organizations founded by the same person(s) or the organizations where the same person(s) own more than 50% share can become a base for including that bidder on the black list.
- Initiate dialog with professional institutions, which can provide assistance in curricula and master courses development[56].
- The statistics on bidders' participation reveal that the procurement environment is not competitive. Thus, the government should consider the business activation programs.
- Develop a new strategy for e-procurement.

[55] At this stage, accession will be conditional, as current PPL should be changed for full compliance.

[56] The assistance of the Australasian Production and Inventory Control Society can be useful in this regard. See http://www.apics.org.au/Default.asp?page=309