



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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# **REPORT**

**BY NILS MUIŽNIEKS**

**COMMISSIONER FOR HUMAN RIGHTS OF THE  
COUNCIL OF EUROPE**

**FOLLOWING HIS VISIT TO ARMENIA  
FROM 5 TO 9 OCTOBER 2014**



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## SUMMARY

Commissioner Nils Muižnieks and his team visited Armenia from 5 to 9 October 2014. During the visit, the Commissioner held discussions on the administration of justice and the protection of human rights in the justice system as well as issues pertaining to the rights of women and gender equality.

The present report focuses on the following major issues:

### **Administration of justice**

A strong and well-functioning justice system, fully integrating the principle of respect for human rights, is an indispensable component of the rule of law. The Commissioner encourages the authorities' on-going efforts to reform the justice sector, and emphasises that every effort should be made to enhance its independence, impartiality and effectiveness, in line with European standards. This is essential to ensure the implementation of fair trial rights and public trust in the judiciary as well as for judicial reforms to have any impact in reality. The Commissioner recommends that the procedures for the selection, appointment, promotion and dismissal of judges be reviewed, in order to better ensure the independence of the judiciary from the executive. In particular, the main decision-making prerogative in such matters should be more specifically assigned to the judicial body in charge and the discretionary powers of the President of the Republic should be circumscribed, in line with Council of Europe recommendations.

The Commissioner is concerned about the reported interference by senior judicial instances in the work of lower-court judges. The independence of each individual judge is essential to the independence of the judiciary as a whole. Individual judges must be allowed to adjudicate cases independently and they should be free from any improper influence, either by external actors or higher judicial instances. There should be effective mechanisms for addressing instances of undue interference with the activities of judges in the administration of justice. Disciplinary proceedings must not be used as an instrument of influence or retaliation against judges, and necessary safeguards need to be put in place to prevent their arbitrary use. The Commissioner notes the increasing caseload of courts at all levels and highlights the importance of allocating sufficient resources to the Armenian judiciary and favouring the use of non-judicial mechanisms for the resolution of disputes.

The principles of equality of arms and adversarial proceedings are essential to fair trial rights. The Armenian authorities, as well as all actors in the criminal justice system, have to ensure that those principles are fully effective in practice. Noting that the prosecution retains a dominant position in the Armenian criminal justice system, the Commissioner strongly emphasises the important role of the judge as impartial arbiter. He calls upon the Armenian authorities to ensure the right to defence and access to legal aid from the outset of police custody and throughout the investigation and trial processes. The legal aid system should be reinforced and the judicial, public and political actors should scrupulously respect the principle of the presumption of innocence prior to the assessment of facts by the competent judicial authority. The Commissioner is concerned about the frequent resort to pretrial detention as a preventive measure in Armenia. He reiterates that pretrial detention should be the exception rather than the norm, and urges the Armenian authorities to conduct the necessary reforms in legislation and in practice, in order to allow for the effective use of non-custodial preventive measures. Further, more should be done at the legal and practical level to ensure the respect for children's rights in the criminal justice system.

### **Effective investigation into allegations of human rights abuse**

The Commissioner urges the Armenian authorities to amend the definition of torture in the Criminal Code in compliance with international standards with a view to ensuring proper qualification and punishments of acts of torture. The persisting reports of torture and ill-treatment by the police and other law-enforcement agencies - often with the purpose of obtaining confessions - and the related problem of impunity are of major concern to the Commissioner. While acknowledging the efforts undertaken to increase the independence of investigative bodies responsible for investigating abuses involving officials, the Commissioner urges the Armenian authorities to further enhance the independence of the Special Investigation Service and to increase its capacity, with a view to removing its reliance on police officers in the collection of evidence in potential cases of ill-treatment. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its April 2013 visit to Armenia contains a number of specific

recommendations to ensure accountability, inter alia by improving the existing procedures for the reporting of injuries and the processing of potential cases of ill-treatment by prosecutors.

The Commissioner urges the Armenian authorities to enhance in law and in practice the safeguards against torture and ill-treatment. He stresses the importance of developing criminal investigative techniques with a view to increasing the use of physical evidence and reducing the reliance on confessions and information obtained through questioning. The reported reliance by courts on evidence allegedly obtained under duress, in particular when this constitutes the basis for a conviction, is another matter of serious concern. The Commissioner welcomes the adoption of legal provisions allowing the possibility to claim compensation for non-pecuniary damage in cases of miscarriage of justice and illegal actions of law-enforcement bodies. As regards the investigation into the ten deaths that occurred during the March 2008 events, the Commissioner noted with concern that it has still not yielded results.

The Commissioner commends the Armenian authorities for effectively addressing the long-standing issue of the right to conscientious objection. However, he regrets to note that acts of non-combat violence, sometimes resulting in deaths, have continued to occur in the Armenian army. He calls upon the Armenian authorities to intensify their efforts to tackle this problem, in particular through effective investigations of allegations of human rights abuse. In this context, attention must be paid to fostering the trust of the victims' families and the public. The Commissioner urges the Armenian authorities to implement the measures foreseen in the National Human Rights Action Plan aimed at improving the human rights situation in the army.

### **Rights of women and gender equality**

Gender equality is a basic principle of human rights, and women's rights are an inalienable, integral and indivisible part of universal human rights. The Commissioner's visit revealed that substantial efforts remain to be undertaken in Armenia to ensure the equal status of women in society and to combat discrimination and bias on the grounds of sex. He recalls the international obligations accepted by Armenia in these areas and welcomes the adoption of gender-related policies and the 2013 Law on Equal Rights and Equal Opportunities for Men and Women as steps in the right direction, which should be implemented in practice. A further important step would be to adopt a comprehensive anti-discrimination law, on the basis of the work already performed by the Office of the Ombudsman in consultation with other actors, and taking into account international standards and good practices. The Commissioner calls upon the Armenian authorities to take concrete measures towards empowering women and increasing their participation in public and political life, and to ensure that the education system is free of gender bias and stereotypes.

Violence against women and domestic violence can never be acceptable and the Commissioner encourages political and community leaders to send an unequivocal message to that effect. He underlines the importance of adopting specific legislation against domestic violence and of ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence. Noting with concern that domestic violence cases in Armenia are not being effectively identified, investigated, prosecuted and punished, the Commissioner urges the authorities to remedy these shortcomings and effectively protect the victims of violence. He also notes that pre-natal sex-selection, which is reflected in skewed sex ratios documented at birth, is another manifestation of gender bias and encourages the authorities to take measures to combat this phenomenon.

Finally, the Commissioner highlights the important work performed by civil society actors, in particular human rights organisations and defenders working in the field of women's rights, and stresses the need to ensure that they can carry out their activities in an environment free from intimidation and threats. The issues concerned are now a more prominent part of public discourse, and the media could be encouraged to play an even more active role in increasing the awareness and understanding of the public on the rights of women and gender equality.

## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Nils Muižnieks (the Commissioner), conducted a visit to Armenia from 5 to 9 October 2014.<sup>1</sup> The visit focused on two sets of issues: the administration of justice and the protection of human rights in the justice system (section I of the present report); and the rights of women and gender equality (section II).
2. In Yerevan, the Commissioner met with Mr Serzh Sargsyan, the President of the Republic, and Mr Hovik Abrahamyan, the Prime Minister. In the National Assembly, he met the Chairman (Speaker), Mr Galust Sahakyan, as well as representatives of the different parliamentary factions. From the executive branch, he also met the Minister of Defence, Mr Seyran Ohanyan, the Minister for Foreign Affairs, Mr Edward Nalbandian, the Minister of Justice, Mr Hovhannes Manukyan, the Minister of Labour and Social Affairs, Mr Artem Asatryan, and the Head of the National Police, Mr Vladimir Gasparyan. From the judiciary, he met the Chairman of the Constitutional Court, Mr Gagik Harutyunyan, the Chairman of the Court of Cassation, Mr Arman Mkrtumyan, the Prosecutor General, Mr Gevorg Kostanyan, the Head of the Special Investigation Service, Mr Vahram Shahinyan, the Military Prosecutor, Mr Artavazd Harutyunyan, the Head of the Judicial Department, Mr Karen Poladyan, as well as representatives of the Association of Judges and members of the Chamber of Advocates. In addition, the Commissioner held discussions with the Human Rights Defender (Ombudsman), Mr Karen Andreasyan, representatives of civil society, and the international community.
3. The Commissioner visited the town of Vanadzor located in the northern region Lori, where he met with representatives of the regional and local authorities, a judge of the Lori first instance court, and a number of civil society actors.
4. During his visit, the Commissioner also discussed the [National Human Rights Action Plan](#) (NHRAP) for 2014-2016, a comprehensive document providing for the implementation of specific measures within defined timelines, launched in June 2014 by the Armenian Government on the basis of the National Strategy for Human Rights Protection adopted in 2012. While welcoming the adoption of the Human Rights Action Plan, international organisations, including the Council of Europe, urged the Armenian authorities to expand its scope and take stronger steps in a number of fields, for example in combating discrimination and effectively investigating torture and ill-treatment.<sup>2</sup> The Commissioner is of the opinion that the Human Rights Action Plan should be seen as a work in progress and invites the authorities to conduct an on-going review of its implementation, with the active involvement of civil society, in order to improve it. The [Commissioner's materials on systematic human rights work](#), including national human rights action plans, may be of use in this process.<sup>3</sup>
5. The Commissioner would like to thank the Armenian authorities in Strasbourg and Yerevan for their assistance in organising and facilitating the visit. He is also grateful for the useful support and assistance provided by the Council of Europe Office in Armenia. The Commissioner would like to thank all his interlocutors for sharing their knowledge and insights with him.

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<sup>1</sup> The Commissioner was accompanied by Ms Bojana Urumova, Deputy to the Director of his Office, and Ms Christine Astrig Mardirossian, Adviser.

<sup>2</sup> [Joint Statement](#) on the Launch of the Human Rights Action Plan, June 2014.

<sup>3</sup> [Recommendation](#) on systematic work for implementing human rights at the national level, Commissioner for Human Rights, 18 February 2009; [Conclusions](#) of the Workshop on developing and implementing national action plans for human rights, 27 May 2014.

## 1 THE ADMINISTRATION OF JUSTICE AND THE PROTECTION OF HUMAN RIGHTS IN THE JUSTICE SYSTEM<sup>4</sup>

### 1.1 ADMINISTRATION OF JUSTICE

6. Armenia has sixteen first instance courts of general jurisdiction – seven in Yerevan and nine in the regions - and an Administrative Court. There are three courts of appeal (Civil, Criminal and Administrative), and the court of highest instance - Court of Cassation - reviews judgments of the courts of appeal according to the criteria set out in the Judicial Code. The nine-member Constitutional Court is responsible for the administration of constitutional justice: determining the constitutionality of executive and legislative acts; assessing the compliance of international treaties before they are ratified; resolving disputes relating to referenda and presidential and parliamentary elections; and deciding whether to suspend or prohibit the activities of a political party. The 2005 constitutional amendments extended access to the Constitutional Court, allowing for example individuals and the Ombudsman to file human rights-related applications.
7. The Council of Justice (COJ) is the body tasked with various matters related to the selection of judges and court chairs, as well as promotions and discipline of judges. In addition to preparing the list of judicial candidates and the official promotion list, and presenting them to the President of the Republic for approval, the COJ is responsible for nominating candidates for the positions of Chair and Chamber Chairs of the Court of Cassation, as well as chairs of the courts of appeal, courts of first instance and specialised courts. The COJ is empowered to impose disciplinary sanctions on judges and to submit recommendations to the President of the Republic relating to their dismissal and to criminal or administrative proceedings against judges (including as regards their eventual detention). The COJ consists of 13 voting members: nine judges elected by secret ballot for a five-year term by the General Assembly of Judges; two legal scholars appointed by the President of the Republic; and two legal scholars appointed by the National Assembly. The Chair of the Court of Cassation has management authority over the COJ and chairs its meetings, but does not have the right to vote.

#### 1.1.1 JUDICIAL REFORMS

8. In the second half of the 1990s, the first phase of judicial reforms in Armenia introduced by the 1995 Constitution established a three-tier judicial system comprising the courts of first instance, the courts of appeal and the Court of Cassation. The Constitutional Court was also established at that time and began functioning in 1996. The second phase of judicial reforms started with the Constitutional amendments of 2005 and included the adoption of a Judicial Code in 2007.
9. The third phase of judicial reforms was launched on the basis of the [Strategic Programme for Legal and Judicial Reforms](#) for 2012-2016. With the stated aim of ensuring a fair and effective judiciary, the Strategic Programme proposes improvements to the selection procedure for judges and objective criteria and procedures for their performance evaluation and promotion. Self-governance of judges is to be enhanced, e.g. through the limitation of terms of office for court chairs. The Strategic Programme also foresees reforming the procedures and grounds for subjecting a judge to disciplinary liability. In parallel, a new Criminal Code and Criminal Procedure Code (CPC) are being developed, the former being

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<sup>4</sup> During a visit conducted in October 2007, the former Commissioner addressed inter alia issues related to the judiciary and the work of law enforcement bodies. In particular, he stressed the need to increase the level of judicial independence and take measures to prevent improper influence on judges, and expressed concerns about the lack of respect in practice for the principles of adversarial proceedings and equality of arms. He expressed particular concern about widespread ill-treatment by the police and the related problem of impunity for the officials involved in such practices. Cf. [Report](#) by Thomas Hammarberg following his visit to Armenia, 7-11 October 2007, paragraphs 21 to 61, and Recommendations, paragraphs 6 to 9, pp. 31 to 32.

geared towards a better incorporation of the principle of proportionality of sanctions and providing for alternatives to imprisonment. Enhancing the independence and accountability of the Prosecutor's Office, including through a review of procedures for appointments and disciplinary matters, is another part of the reform package. In order to improve the quality and efficiency of the system of free legal aid, reform of the Public Defender's Offices (see paragraph 41 below) is also envisaged.

10. Further changes to the judicial system are on the horizon. A Specialised Commission on Constitutional Reforms adjunct to the President of the Republic was formed in 2013 and adopted a [Concept Paper on the Constitutional Reforms](#) in October 2014, following a Venice Commission [Opinion](#) on the first draft Concept Paper. The new Concept Paper emphasises the "functional, structural, material and social independence" of the judicial power; proposes to enhance the role and efficiency of the COJ; and evokes possible changes in the structure of the judicial system, by eliminating one level of court instances.
11. The [Council of Europe Action Plan for Armenia](#) (2012-2014) adopted in March 2012 included a number of projects relating to the judiciary, notably with the aim of strengthening the application of the European Convention on Human Rights (ECHR) and of the case-law of the European Court of Human Rights (the Court) at the national level. A project on strengthening the independence, professionalism and accountability of the justice system was launched recently, including a component on improving judicial accountability and building public confidence through improved ethical and disciplinary rules and practice. The project also aims to advise the Armenian authorities in enhancing compliance with European standards in the areas of selection, appointment, promotion and disciplining of judges.
12. Some NGOs have argued that reforms should be implemented in a more holistic manner. For example, instead of the recently-introduced (on the basis of amendments to the Judicial Code adopted in June 2014) system of evaluating individual judges' performance (performed by the Assessment Committee of the General Assembly of Judges), NGOs have advocated establishing a comprehensive court performance monitoring and evaluation system tackling inter alia the length of proceedings, backlogs, productivity and resources, which would map the situation more accurately and point to areas for improvement.

### 1.1.2 INDEPENDENCE, IMPARTIALITY AND EFFECTIVENESS OF THE JUSTICE SYSTEM

#### *Self-governance of the judiciary*

13. Apart from the Council of Justice (see paragraph 7 above), the judicial self-governance function in Armenia is attributed to the following bodies: the General Assembly of Judges and the Council of Court Chairs (CCC). The General Assembly of Judges, established in 2005, consists of all the judges in the country. It is the highest self-governing body of the judiciary and meets at least once a year. The CCC (created in 1998) comprises the chairs of the first instance courts, the Administrative Court, and the courts of appeal, as well as the Chair and Chamber Chairs of the Court of Cassation. Presided by the Chair of the Court of Cassation, the CCC meets at least once per quarter and assumes a number of important functions, including in relation to the budget, human resources, training of judges, and case management. The CCC also manages the work of the Judicial Department, which is a state administrative institution aiming to ensure the performance of functions and powers of judicial bodies. The Judicial Department plays an important role in day-to-day judicial administration by providing material and technical support for courts' activities.
14. The fact that the judicial self-governance function is dispersed between different bodies may affect the effectiveness and transparency of the judiciary. Council of Europe experts have expressed concerns about the parallel functioning of the COJ and the CCC and suggested transferring the CCC's functions to



the COJ in order to guarantee the involvement of ordinary judges in self-governance processes.<sup>5</sup> Several of the Commissioner's interlocutors also highlighted the need to strengthen judicial self-governance. In particular, it was argued that the COJ's decision-making powers in selecting, appointing, promoting and dismissing judges should be better guaranteed in practice, which would thereby strengthen judicial independence.

*Issues relating to the independence and impartiality of judges*

15. Judicial independence and impartiality are essential to an efficient justice system and the effectiveness in practice of the right to a fair trial; they are also conditions *sine qua non* for there to be public trust in the judiciary and for judicial reforms to have any impact in reality.
16. The Armenian Constitution and legislation provide for the independence of judges in the administration of justice. However, the Commissioner is concerned by the persistence of reports regarding the lack of independence of the judiciary in practice, both from external actors such as the executive power at central and local levels (including law enforcement agencies), as well as from internal judicial actors – notably, higher-instance court judges.
17. For example, various interlocutors of the Commissioner argued that the procedures of selection, appointment, promotion and dismissal of judges are not conducive to judicial independence, in particular due to the prominent role of the President of the Republic in those processes. As noted above (paragraph 7), the COJ compiles and submits to the President for his approval the list of judicial candidates for all courts – the President is involved both in approving the list of candidates and in the final appointment of the COJ's nominees - and the official promotion list for judges. The COJ also submits any motion for terminating the powers of a judge to the President. Whereas the President may reject any recommendation of the COJ, he does not have the obligation by law to explain the reasons behind his decision, and there is no procedure to challenge the President's decisions. Council of Europe experts who analysed this system concluded that the decisive role of the President in the process of selection and career development (promotions) of judges is not in line with European standards. The experts considered that the President's role in the procedure should instead be limited to a formal one, whereas the actual decision-making power should belong to judicial self-governing bodies.<sup>6</sup>
18. The unlimited discretionary power of the President of the Republic for the appointment or rejection of the judge nominated by the COJ was also noted by the Venice Commission in its June 2014 Opinion on the draft amendments to the Judicial Code. The Venice Commission found that this could lead to a conflict between the President and the COJ, thereby causing difficulties in the proper administration of courts and harming citizens' trust in the independence of the judiciary. Rethinking the powers of the President, for instance by introducing an obligation to motivate any rejection of the COJ's recommendation or by limiting the basis for such a rejection to certain grounds, would reduce the above-mentioned risks and the danger of politicisation of the appointment and promotion process.<sup>7</sup>
19. According to the Armenian Judicial Code, it is prohibited to interfere with the activities of a judge in ways not foreseen by law. Such interference is subject to criminal prosecution<sup>8</sup> and disciplinary liability

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<sup>5</sup> [Report](#) of the Working Group on Independent Judicial Systems, Directorate General of Human Rights and Rule of Law, March 2013, pages 19 and 20.

<sup>6</sup> [Report](#) of the Working Group on Independent Judicial Systems, Directorate General of Human Rights and Rule of Law of the Council of Europe, March 2013, pages 38-40.

<sup>7</sup> [Opinion](#) on the draft law on introducing amendments to the Judicial Code of Armenia, adopted by the Venice Commission in June 2014, paragraphs 34 and 35. Cf. also [Judicial appointments](#), report of the Venice Commission, March 2007, paragraphs 13 and 14.

<sup>8</sup> Article 332.1 of the Criminal Code: "Any intervention into the activities of the court, with the purpose of hindrance to the administration of justice, is punished with a fine in the amount of 200 to 400 minimal salaries, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 2 years". Article 332.3: "The actions envisaged in part 1 or 2 of this Article, committed by a person by abuse of official position, are punished with a fine in the amount of 300 to 500 minimal

in case civil servants are involved. A judge must inform the Ethics and Disciplinary Committee of the General Assembly of Judges in case of interference with his or her activities related to the administration of justice. If that Committee finds that unlawful interference with a judge's activities has taken place, it must bring the matter to the attention of the relevant authorities so as to hold the perpetrator accountable. However, the Commissioner was informed that the mechanism foreseen in the Judicial Code does not work in practice, and it would appear that there has been no criminal prosecution for such matters.

20. Improper influence upon judges through bribes and gifts, although prohibited by law, has been extensively reported,<sup>9</sup> including by a [special report](#) issued in 2013 by the Ombudsman. The report described the mechanisms of corruption, and revealed that corruption affects all judicial instances, with judges taking bribes at various levels. According to a survey conducted by Transparency International for the Global Corruption Barometer 2013, 69% of the respondents in Armenia considered the judicial system corrupt or extremely corrupt, and 18% of the respondents indicated that they had themselves bribed court officials at least once.
21. The Commissioner is also concerned by the numerous reports of pressure exerted on individual judges by higher judicial instances, mostly by the Court of Cassation. The 2013 [special report](#) of the Ombudsman on the right to a fair trial was particularly critical in this regard, and referred to a mechanism of "zone judges" whereby Court of Cassation judges "control" a number of judges who "coordinate" with them when making judicial decisions. It was alleged that judges are obliged to obtain guidance from Cassation Court "zone judges" before ruling on sensitive cases. In their Joint Opinion issued in March 2014, the Venice Commission and the Council of Europe Directorate of Human Rights also refer to persistent reports of improper and extraordinary interference by judges of higher level courts with those of lower courts.<sup>10</sup>
22. In this context, it should be noted that the Committee of Ministers' [Recommendation \(2010\)12](#) emphasises that "hierarchical judicial organisation should not undermine judicial independence" and that "superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law".<sup>11</sup> Similarly, the Venice Commission has underlined that the principle of the individual independence of judges is incompatible with the subordination of judges in their judicial decision-making activities.<sup>12</sup> Moreover, seeking instructions in individual cases from higher instance judges who would be deciding the appeal deprives the parties from an independent review of their case, leading to a possible breach of Article 6 ECHR and Article 2 of Protocol No. 7 to the ECHR.<sup>13</sup>
23. Judges have immunity for actions taken in their official capacity and this guarantee of immunity also extends to retired judges. A judge may not be detained, named as a defendant, or subjected to administrative proceedings, except with the consent of the President of the Republic based on the recommendation of the COJ. Although there have been concerns in the past that judges might be arrested or threatened with prosecution in retaliation for actions taken in their official capacity, judicial

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salaries, or with imprisonment for the term of up to 4 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years".

<sup>9</sup> [Judicial Reform Index for Armenia](#), American Bar Association, December 2012, page 60.

<sup>10</sup> [Joint Opinion](#) of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the draft law amending the Judicial Code of Armenia, March 2014, paragraph 13.

<sup>11</sup> Recommendation [CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paragraphs 22 and 23.

<sup>12</sup> [Report on the independence of the judicial system](#) Part I – the independence of judges, Venice Commission, 2010, Paragraph 72.

<sup>13</sup> [Joint Opinion](#) of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the draft law amending the Judicial Code of Armenia, March 2014, paragraph 18.

immunity appears to be generally respected.<sup>14</sup> From the perspective of the Head of the Special Investigation Service (see paragraph 68) it is difficult to bring criminal charges against judges because of the relatively high level of judicial immunity.

24. The Commissioner received a number of reports of unfair use of disciplinary proceedings against judges as a means of pressure aimed at influencing their decisions or retaliating against them. By way of example, first instance court Judge Samvel Mnatsakanyan, who had granted a defendant's motion for release on bail, was dismissed by the President of the Republic in July 2011 further to disciplinary proceedings initiated against him by the COJ on motion of the Chair of the Cassation Court. The COJ found that Judge Mnatsakanyan's decision to grant bail had not been substantiated, and this served as the basis for his dismissal, which observers have criticised as being arbitrary.<sup>15</sup>
25. In addition to the above case, the [special report](#) by the Ombudsman documented several other cases of arbitrary and inconsistent application of disciplinary proceedings by the COJ, revealing that for the same infractions - or in the same sets of circumstances - certain judges were subjected to disciplinary proceedings, whereas other judges were not. The Ombudsman's report expressed concerns about the prominent involvement of the Court of Cassation Chair in disciplinary proceedings. According to the Ombudsman's report, in the majority of cases - 31 out of the 51 disciplinary proceedings initiated by the Disciplinary Committee of the COJ in the course of 2010-2013 - the basis was a letter by the Chair of the Court of Cassation; only in 10 cases had proceedings been initiated based on petitions of lawyers, citizens or other bodies. The report also found that the Disciplinary Committee of the COJ failed to provide - contrary to a Constitutional Court decision of 18 December 2012 - adequate justification for not initiating disciplinary proceedings further to a petition by an individual.
26. In June 2014, amendments made to the Judicial Code modified the disciplinary proceedings system. According to the amended version, the Minister of Justice, the Ethics and Disciplinary Committee of the General Assembly of Judges and - in cases involving a Court of Cassation judge - the Chair of the Court of Cassation, have the right to initiate and conduct disciplinary proceedings against judges on the grounds specified in the Judicial Code.<sup>16</sup> The body or person that instigated the disciplinary proceedings can either halt the proceedings or file a motion with the COJ to apply disciplinary sanctions. On that basis, the COJ shall either apply disciplinary sanctions<sup>17</sup> or halt the case. The COJ's decision to apply a disciplinary sanction is final and can only be reviewed if new circumstances emerge. Various interlocutors, including Council of Europe experts and NGOs have expressed the opinion that the involvement of the Minister of Justice in disciplinary proceedings against judges - which should fall under the ambit of self-governance - is not compatible with judicial independence.<sup>18</sup>

#### *Issues related to the effectiveness of the justice system*

27. According to the Judicial Department, there are 230 judge positions in Armenia (as of October 2014, 216 of these positions were filled) and there are between 6 and 7 judges per 100 000 inhabitants in Armenia, which is a lower figure than in most European countries (the European average is 21 and the median

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<sup>14</sup> [Judicial Reform Index for Armenia](#), American Bar Association, December 2012, page 48.

<sup>15</sup> [Administration of justice in the Republic of Armenia](#), Civil Society Institute, Norwegian Helsinki Committee, FIDH, December 2012, page 10.

<sup>16</sup> The grounds foreseen in Article 153 are: (1) an obvious and grave violation of substantive or procedural law in the administration of justice, which was committed maliciously or in gross negligence; (2) a grave violation or regular violations of the Code of Conduct; (3) failure to carry out the duties of a judge as prescribed by the Judicial Code or the Law on the Justice Academy; (4) failure to notify the Ethics and Disciplinary Committee of any interference with the administration of justice or other judicial powers, or of other undue influence.

<sup>17</sup> Disciplinary sanctions foreseen in Article 157 of the Judicial Code are the following: (1) warning; (2) reprimand along with a 25% reduction in salary for six months; (3) severe reprimand along with a 25% reduction in salary for 12 months; (4) motion requesting the President of the Republic to terminate the judge's powers.

<sup>18</sup> [Administration of justice in the Republic of Armenia](#), Civil Society Institute, Norwegian Helsinki Committee, FIDH, December 2012, page 10. [Report](#) of the Working Group on Independent Judicial Systems, Directorate General of Human Rights and Rule of Law, March 2013, pages 98-101.

17.7, according to CEPEJ<sup>19</sup>). Various judicial actors stressed the need to increase the resources of the judiciary, including the number of judges and court staff, in order to cope with the growing workload of cases and ensure the effective administration of justice.

28. The Commissioner was informed that the workload of judges at all levels had increased considerably – for example, the number of civil cases submitted to first instance courts almost doubled over the previous year – whereas there had not been a corresponding increase in the number of judges, with the exception of those in administrative courts. The Association of Judges indicated that judges are more prone to make mistakes in these conditions and are thus more vulnerable to disciplinary proceedings. The importance of maintaining an adequate level of salary and social benefits for judges was also highlighted.
29. The Commissioner recalls that another important step to increase the efficiency and effectiveness of the judiciary would be to put in place Alternative Dispute Resolution (ADR). Of the different forms of ADR used in the Council of Europe member states (most member states apply at least three forms), it would appear that Armenia applies only arbitration.<sup>20</sup>

#### *Conclusions and recommendations*

30. A strong and well-functioning justice system, fully integrating the principle of respect for human rights, is an indispensable component of the rule of law. The Commissioner encourages the authorities' ongoing efforts to reform the justice sector, and emphasises that every effort should be made to enhance its independence, impartiality and effectiveness, in line with European standards.
31. The Commissioner recommends that the procedures for the selection, appointment, promotion and dismissal of judges be reviewed, in order to better ensure the independence of the judiciary from the executive. In particular, the main decision-making prerogative in such matters should be more specifically assigned to the judicial body in charge - the Council of Justice – and the discretionary powers of the President of the Republic should be circumscribed, in line with advice provided by the Venice Commission and other Council of Europe experts. The relevant legislation should, for example, specify the grounds on which the President may reject the Council of Justice nominations on appointment, promotion and dismissal of judges, and provide for an obligation to motivate any rejection by the President of a recommendation by the Council of Justice.
32. The Commissioner is concerned about the reported interference by senior judicial instances in the work of lower-court judges. The independence of each individual judge is essential to the independence of the judiciary as a whole. Individual judges must be allowed to adjudicate cases independently and they should be free from any improper influence, either by external actors (such as the executive) or higher judicial instances. There should be effective mechanisms for identifying undue interference with the activities of judges in the administration of justice, as well as for the proper assessment of accountability for such interference and the imposition of appropriate sanctions.
33. Disciplinary proceedings must not be used as an instrument of influence or retaliation against judges. Necessary safeguards need to be put in place to prevent the arbitrary use of disciplinary proceedings, including the possibility for judges to challenge their outcome.
34. The Commissioner would like to underline the importance of the recommendations of the Venice Commission and the Directorate of Human Rights (March 2014 Joint Opinion relating to the draft amendments to the Judicial Code), as regards the grounds for disciplinary proceedings and respect for the independent adjudication of cases by judges. In particular, disciplinary proceedings and performance

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<sup>19</sup> The European Commission for the Efficiency of Justice (CEPEJ).

<sup>20</sup> [CEPEJ Report](#) on "European judicial systems: efficiency and quality of justice", Edition 2014 (2012 data), p. 149.

evaluation should be seen as distinct processes and should not be used to undermine judicial independence. Further, the role of the Ministry of Justice in disciplining judges should be reconsidered.

35. Consideration should be given to streamlining and reinforcing the system of judicial self-governance, which is exercised by the General Assembly of Judges, the Council of Court Chairs and the Council of Justice. The participation of ordinary judges in the self-governance process should be effectively guaranteed.
36. Having regard to the increasing caseload of courts at all levels, it is important to allocate sufficient resources to the Armenian judiciary, and to favour the use of non-judicial mechanisms for the resolution of disputes.
37. The significant level of corruption in the judiciary which has been reported is a matter of serious concern, not least because of its detrimental effects upon public trust in the rule of law. The Commissioner urges the authorities to step up their efforts to ensure that all cases of corruption in the judiciary are effectively investigated and prosecuted.
38. The Commissioner hopes that the constitutional reforms process will give the opportunity to address some of the issues outlined in the present report in relation to the judiciary and the work of law enforcement bodies.

### 1.1.3 EQUALITY OF ARMS AND THE RIGHT TO DEFENCE

39. The European Court of Human Rights has held that it is a fundamental aspect of the wider concept of a fair trial that criminal proceedings should be adversarial, and that there should be equality of arms between the prosecution and the defence. In a criminal trial, both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party.<sup>21</sup>
40. According to the information received by the Commissioner, the above-mentioned principles are not fully effective in practice in Armenia. In particular, access to a lawyer at the outset of police custody remains problematic. There is also a persistent practice of formally inviting persons to police premises as witnesses and then treating them as suspects, without the rights and safeguards foreseen for the latter category, i.e. the obligations to compile a detention protocol, ensure timely presence of a lawyer and bring the person concerned before a court<sup>22</sup> (see also paragraph 59).
41. According to the Armenian Constitution and the Criminal Procedure Code, everyone has the right to receive legal aid. Suspects and accused persons have the right to retain lawyers of their own choosing. The body conducting criminal proceedings is responsible for ensuring that the suspect or the accused receives legal aid, and to provide it free of charge if the financial situation of the persons concerned necessitates this. For this purpose, the Public Defender's Office was established in 2006 as a part of the Chamber of Advocates to provide legal aid to socially vulnerable categories. While the creation of this system was undoubtedly a positive and necessary step, concerns have been expressed that the heavy workload, the insufficient number and low salaries of public defenders are not conducive to the delivery of quality legal aid, in particular in the regions.
42. The most basic premise of the principle of the presumption of innocence enshrined in Article 6(2) of the ECHR, as well as in the Armenian Constitution and the Criminal Procedure Code, is that members of a court should not start with the preconceived idea that the accused has committed the offence charged. A fair trial must not be undermined by prejudicial statements, in particular those made by judicial

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<sup>21</sup> See for example [Rowe and Davis v. The United Kingdom](#), application No. 28901/95, Judgment of 16 February 2000, paragraph 60.

<sup>22</sup> [Report of the UN Working Group on Arbitrary Detention](#), Mission to Armenia, 2011, paragraph 59.

authorities and public officials. The Commissioner received information about alleged breaches of the principle of the presumption of innocence. Monitoring carried out by NGOs based on extensive interviews revealed that this principle is ineffective in practice due to judges' "biased" and "negatively disposed" attitude towards criminal suspects. The testimony given by defendants during trials is generally disregarded by courts, and statements denying self-incriminating evidence obtained at the pretrial stage and/or of ill-treatment or coerced confessions are seen as "attempts to evade responsibility". It is apparently not uncommon for courts to express their assurance in the defendants' guilt before the end of the process.<sup>23</sup> In addition, it has been reported that high-level politicians have made pronouncements as to the guilt of certain persons before the relevant judgments became final, which is highly problematic not only from the point of view of the presumption of innocence principle but also in terms of the separation of powers.

43. The Commissioner was informed by various interlocutors that the prosecution retains a dominant position in the Armenian criminal justice system, i.e. that the latter is still marked by the legacy of prosecutorial bias. The defence and the prosecution do not enjoy equal access to criminal case materials. The Criminal Procedure Code itself limits the right of the defence to become acquainted with the materials of the case at the pre-trial stage, by specifying that the accused and the defence can only do so from the moment when the preliminary investigation is completed. Defendants and their lawyers have little possibility to challenge testimony by the prosecution's witnesses or evidence adduced by the police, while courts tend to accept those materials routinely. Generally speaking, the main tendency is for judges to endorse prosecutors' motions during investigation and trial processes. It would appear that, at least until recently, a significant number of judicial vacancies were filled by former prosecutors and other members of law enforcement bodies.<sup>24</sup>
44. The Chairman of the Constitutional Court told the Commissioner that efforts were being made in Armenia to curb the prominent role of prosecutors in the criminal justice system and to have judges make decisions more independently. According to the Chairman of the Court of Cassation, judges are no longer as likely to follow the requests of the prosecution and, in several cases, have re-qualified charges against defendants. It was further mentioned by him that only 16% of the prosecution's appeals are granted at the level of the courts of appeal and 34% at the level of the Court of Cassation.
45. The Judicial Department informed the Commissioner that the number of acquittals had steadily increased from 2009 to 2014, and stood at 3.1% for 2014 (as of October, i.e. during the time of the Commissioner's visit). According to the Prosecutor General, weak cases are terminated or suspended before the trial stage, and courts mostly process well-prepared and strong cases with a high likelihood of leading to a conviction. However, some of the Commissioner's interlocutors indicated that the relatively low acquittal rate was partly attributable to a fear by judges that their decisions to acquit a defendant might be perceived as a sign of corruption.
46. The imbalance between the prosecution and the defence tends to undermine the standing of the legal profession. Defence lawyers are not seen as carrying much influence on judicial processes, given the high conviction rate. Some defence lawyers complained that they find it increasingly difficult to make their arguments heard by judges and prosecutors. Due to a combination of factors - lack of confidence in the utility of having a defence lawyer, ignorance regarding their rights, and pressure by investigators - a number of suspects and accused persons renounce the services of defence lawyers, in particular at the pretrial stage. NGOs performing court monitoring reported that there were a large number of defendants without defence lawyers at the appeal stage. The NGOs nevertheless found that the presence of a defence lawyer during criminal proceedings at the investigation and trial stages was beneficial for the protection of rights and interests of suspects and defendants.

<sup>23</sup> [Final Report](#), Trial Monitoring Project in Armenia (April 2008-July 2009), Warsaw, 8 March 2010, page 38 and [The quality and efficiency of the right to defence in the context of public defence](#), Protection of Rights Without Borders NGO, Yerevan, 2013.

<sup>24</sup> As of July 2012, nearly 27% of judges were former prosecutors. See [Judicial Reform Index for Armenia](#), American Bar Association, December 2012, pages 19 and 59.



47. Concerns have previously been expressed about excessively harsh sentences.<sup>25</sup> The Commissioner was informed that in the draft Criminal Code a range of criminal offences would be decriminalised and that the punishments envisaged would be less strict.

#### 1.1.4 PRETRIAL DETENTION

48. Pretrial detention affects the right to a fair trial, the right to defence and the principle of presumption of innocence during investigation and trial stages. Several judgments of the European Court of Human Rights have found a violation of Article 5 of the Convention with respect to Armenia, related in particular to the unlawfulness of detention.<sup>26</sup> The violations related specifically to the absence of a court decision on detention, the unreasonable length of pretrial detention, the lack of relevant and sufficient reasoning by courts while considering detention and its extension, or automatic rejection of applications for bail. In a report on Armenia issued in 2011, the UN Working Group on Arbitrary Detention found that arrests are often not the consequence of a preceding police investigation; rather, people are detained in order to be investigated.<sup>27</sup> Rather than being a measure of last resort, as provided for by international standards, pretrial detention is the norm. Alternative and less severe preventive measures are often not applied or even considered.<sup>28</sup> Some observers linked the use of excessive pretrial detention with the goal of investigative bodies to receive confessions and self-incriminating evidence.<sup>29</sup>
49. The existing Criminal Procedure Code foresees the following preventive measures: arrest, bail, written obligation not to leave a place, personal guarantee, an organisation's guarantee, supervision, supervision by the commander of the military unit.<sup>30</sup> According to the Criminal Procedure Code, judges can only accept or reject requests for pretrial detention. Judges may consider substituting pretrial detention with monetary bail only after first having approved pretrial detention, as monetary bail is not designed as a self-standing preventive measure. A motion to order monetary bail may be made by a defence lawyer, prosecutor or investigator. Other alternative preventive measures are not ordered by a judge but by the competent investigator or the head of the inquiry body.<sup>31</sup>
50. Although the Criminal Procedure Code provides that bail may only be used for someone accused of light or medium-gravity offences, the Court of Cassation has established in its case-law that bail can be granted even for serious and grave crimes. However, it would appear that lower courts do not follow the Court of Cassation case-law in this regard. Representatives of the Association of Judges informed the Commissioner that judges are reluctant to grant preventive measures other than detention as their decision is likely to be reversed on the basis of a complaint lodged by the prosecution.
51. Besides its frequent use, the length of pretrial detention also remains a problem. Under the Criminal Procedure Code, pretrial detention cannot be extended beyond 12 months. However, defendants are sometimes kept for longer periods given that, when trials begin, pretrial detention may run for an

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<sup>25</sup> [Report of the UN Working Group on Arbitrary Detention](#), Mission to Armenia, 2011, paragraph 59.

<sup>26</sup> [Asatryan v. Armenia](#), Application No. 24173/06, Judgment of 09/02/2010; [Poghosyan v. Armenia](#), Application No. 44068/07, Judgment of 20/12/2011; [Muradkhanyan v. Armenia](#), Application No. 12895/06, Judgment of 05/06/2012; [Piruzyan v. Armenia](#), Application No. 33376/07, Judgment of 26/06/2012. [Malkhasyan v. Armenia](#), Application No. 6729/07, Judgment of 26/06/2012; [Sefilyan v. Armenia](#), Application No. 22491/08, Judgment of 02/10/2012.

<sup>27</sup> [Report of the UN Working Group on Arbitrary Detention](#), Mission to Armenia, 2011, paragraph 60.

<sup>28</sup> According to the data provided by the Judicial Department, courts authorised 1091 requests for pretrial detention out of a total number of 1155 requests, and 42 alternative measures out of a total number of 220 requests (first half of 2014). In 2013, courts authorised 3011 requests for pretrial detention out of a total number of 3172 requests and 129 alternative measures out of a total number of 576 requests.

<sup>29</sup> [Pre-Trial Detention and its Alternatives in Armenia](#), Penal Reform International, 2012, pages 30 and 31.

<sup>30</sup> Article 134 of the Criminal Procedure Code.

<sup>31</sup> [Pre-Trial Detention and its Alternatives in Armenia](#), Penal Reform International, 2012, pages 24-29.

unlimited period – no limits are foreseen in the Criminal Procedure Code in this case – and considering that trials may last for lengthy periods.

52. According to various observers, the judicial review of the grounds for arrest and authorisation of pretrial detention fails to comply with national and international legal standards. Judicial decisions on pretrial detention reportedly fail to address specific features of individual cases, instead containing standard formulations. Access by the defence to information provided by investigative bodies in support of decisions on detention is obstructed.<sup>32</sup>
53. In the 2014 [Action Plan](#) related to the *Poghosyan* group of cases, the Armenian authorities envisage addressing the issues concerned through a new Criminal Procedure Code. Apparently, the existing criminal legislation does not allow for a wider use of alternative preventive measures, in particular bail, and the new Criminal Procedure Code would remedy this situation and decrease reliance on pretrial detention.

#### *Conclusions and recommendations*

54. The principles of equality of arms and adversarial proceedings are essential to fair trial rights, and the Armenian authorities, as well as all actors in the criminal justice system, have to play their part to ensure that those principles are made fully effective in practice. The Commissioner strongly emphasises the important role of the judge as impartial arbiter. He calls upon the Armenian authorities to ensure the right to defence and access to legal aid from the outset of police custody and throughout the investigation and trial processes. The legal aid system, in particular the Public Defender's Office, should be reinforced. The defence should have the possibility to mount a credible defence by having proper access to case materials and by having the possibility to challenge prosecution witnesses and evidence presented by the police.
55. The Commissioner is concerned by reports about alleged breaches of the principle of the presumption of innocence by judges and senior officials. Judicial, public and political actors should scrupulously respect the principle of presumption of innocence prior to the assessment of facts by the competent judicial authority.
56. The Commissioner is concerned about the frequent resort to pretrial detention as a preventive measure in Armenia. He reiterates that pretrial detention should be the exception rather than the norm, as provided for by European and international standards, including the Committee of Ministers [Recommendation](#) 2006(13) on the use of remand in custody. The Commissioner urges the Armenian authorities to conduct the necessary legislative reforms in order to allow for the use of effective non-custodial preventive measures. Beyond this, a genuine change in the practice will also depend on the level of judicial independence and changes in the way law enforcement bodies work in the course of investigations.

### 1.2 EFFECTIVE INVESTIGATION INTO ALLEGATIONS OF SERIOUS HUMAN RIGHTS VIOLATIONS

57. The Commissioner is concerned by the persisting reports concerning the lack of effective investigation into allegations of serious human rights abuse in Armenia, including those related to the violation of the right to life and of the prohibition against torture and ill-treatment, which results in the impunity of those responsible for such acts. The Commissioner recalls that the investigation process has a direct impact on the respect of fair trial rights.

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<sup>32</sup> [Report of the UN Working Group on Arbitrary Detention](#), Mission to Armenia, 2011, paragraphs 74-75.



### 1.2.1 LAW ENFORCEMENT BODIES

#### *Alleged human rights violations during criminal proceedings*

58. During its 2010 visit to Armenia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) received a significant number of credible and consistent allegations of ill-treatment – punches, kicks and blows inflicted with truncheons, wooden bats and other objects – with a view to securing confessions and obtaining other information. Sometimes, the severity of ill-treatment could be considered as amounting to torture: extensive beating, infliction of electric shocks, simulated asphyxiation with a gas mask, and blows to the soles of the feet. Numerous individuals reported to the CPT that psychological pressure was applied on them – threats of physical ill-treatment (including sodomy) and of repercussions against family members.<sup>33</sup> The CPT received similar allegations on a significant scale during its 2013 visit and concluded that the phenomenon of ill-treatment by the police still remained widespread.<sup>34</sup> Domestic human rights actors have also reported the use of torture and ill-treatment by police.<sup>35</sup>
59. The phenomenon of torture and ill-treatment should be seen in the context of the functioning of the criminal justice system in Armenia. The reliance of investigative bodies on confessions and information obtained during questioning with a view to securing convictions and the lack of procedural safeguards against ill-treatment from the very outset of custody –including the right to inform a close relative or another person of one’s custody, the right of access to a lawyer, the right of access to a doctor and information on rights – provide favourable grounds for the occurrence of such abuse.<sup>36</sup> The initial stage of deprivation of liberty appears to be frequently used to elicit confessions and/or collect evidence before the apprehended person is formally declared a criminal suspect, and it is exactly then that the risk of ill-treatment is highest.
60. The Commissioner is concerned by reports that illegally-obtained evidence, in particular, in the form of a coerced confession - is regularly used in courts. In the case of *Harutyunyan v. Armenia*, the Court found a violation of Article 6(1), holding that the applicant was denied a fair trial as the evidence obtained under torture was used as a proof of the applicant’s guilt and resulted in his conviction.<sup>37</sup> Moreover, the Commissioner was informed of cases where persons who complained during their appearance in court that they had been subjected to torture and ill-treatment during the investigation were convicted for giving false testimony.
61. The Commissioner was informed by the Armenian authorities that pursuant to the Court’s judgments in the cases of *Poghosyan and Baghdasaryan v. Armenia*<sup>38</sup> and *Khachatryan and Others v. Armenia*,<sup>39</sup> amendments to the Civil Code were adopted, introducing monetary compensation for non-pecuniary damages suffered as a result of miscarriage of justice and illegal actions of law enforcement bodies. Due to the unavailability of compensation for non-pecuniary damage in the Armenian legislation, the Court found that Armenia breached Article 13 of the ECHR and Article 3 of Protocol No.7 to the ECHR in the first case; as well as Article 5.1 and 5.5 of the ECHR in the second case. The Venice Commission welcomed the draft law on amendments to the Civil Code in an [Opinion](#) adopted in December 2013.

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<sup>33</sup> [Report](#) on the visit to Armenia carried out by the CPT from 10 to 21 May 2010, paragraph 12.

<sup>34</sup> [Report](#) on the visit to Armenia carried out by the CPT from 4 to 10 April 2013, paragraphs 12 and 17.

<sup>35</sup> [Report](#) on the Treatment of detained persons in police stations, Helsinki Committee of Armenia, 2013, pages 19-20.

<sup>36</sup> During the visit conducted in 2013, the CPT observed improvements in relation to accessing a doctor and the provision of legal aid. [Report](#) on the visit to Armenia carried out by the CPT from 4 to 10 April 2013, paragraph 56.

<sup>37</sup> *Harutyunyan v. Armenia*, Application No. 36549/03, Judgment of 28 June 2007, paragraphs 63 and 66.

<sup>38</sup> *Poghosyan and Baghdasaryan v. Armenia*, Application No. 22999/06, Judgment of 12 June 2012.

<sup>39</sup> *Khachatryan and Others v. Armenia*, Application No 23978/06, Judgment of 27 November 2012.

*Effective investigation into allegations of ill-treatment*

62. The Commissioner is concerned by the lack of effective investigation into allegations of torture and ill-treatment committed by law enforcement agents, which results in the impunity of perpetrators and the recurrence of such abuse. Various legal and systemic factors stand behind this situation. Domestic and international actors have repeatedly emphasised that the provision in the Armenian Criminal Code criminalising torture<sup>40</sup> does not conform to the definition of torture in Article 1 of the UN Convention Against Torture. Under the Armenian Criminal Code, the definition of torture does not encompass crimes committed by public officials, but only those by individuals acting in a private capacity. As a consequence, no law enforcement agent or member of the security services has ever been convicted of the crime of torture in Armenia. If police officials and investigators are at all held accountable for resorting to ill-treatment, the charges and convictions are for lesser offences, i.e. abuse of authority or exceeding official powers. On several occasions, persons thus convicted have been granted amnesty. The UN Committee against Torture has also expressed concern that the sanctions foreseen for the crime of torture – three years of imprisonment and up to seven years when there are aggravating circumstances – do not reflect the gravity of the crime.<sup>41</sup>
63. The Ministry of Justice informed the Commissioner that it submitted draft amendments to the Criminal Code jointly with the Special Investigation Service with a view to amending the definition of torture and making it compliant with international human rights standards. The Commissioner looks forward to receiving follow-up information in this regard.
64. In *Virabyan v. Armenia*, the Court found a substantive violation of Article 3 of the Convention in the case of the torture of an opposition activist in police custody with a possible political motive. The Court also found a procedural violation of Article 3, as it concluded that the investigation into the applicant's allegations of ill-treatment by the authorities was ineffective, inadequate and fundamentally flawed.<sup>42</sup> In addition, the Court found a violation of Article 6.2 of the Convention on the basis of the breach of the presumption of innocence. The Commissioner is concerned by reports according to which one of the persons complicit in the torture of Mr Virabyan had been promoted to a higher position within the Police Service. The 2013 [Action Plan](#) submitted by the Armenian authorities on the implementation of the aforementioned judgment contains information about a number of individual and general measures, in particular changes to the criminal legislation and the 2013 Order issued by the Chief of Police on the compliance with European standards related to the prevention of ill-treatment.
65. The Commissioner recalls that the basic criteria for effective investigations into human rights violations that have been defined by the Court include: independence, adequacy, promptness, public scrutiny and victim involvement. According to several interlocutors of the Commissioner, investigations are not effective because they lack the necessary level of independence. In this regard, the former Commissioner proposed the establishment of an independent complaint mechanism, with the capacity of conducting investigations into human rights violations implicating members of law enforcement bodies, including the police.<sup>43</sup>
66. Representatives of the Armenian authorities informed the Commissioner that steps had been taken to establish independent investigative services: first, by taking away the investigative functions from the Prosecutor General's Office;<sup>44</sup> second, by creating the Special Investigative Service for investigating crimes committed by public officials; and third, by creating a new Investigation Committee (see below).

<sup>40</sup> Article 119 of the Criminal code stipulates: Torture is willfully causing strong pain or bodily or mental suffering to a person which, if this did not cause consequences envisaged in Articles 112 and 113, is punished with imprisonment for the term up to 3 years.

<sup>41</sup> [Concluding observations of the Committee against Torture](#), 6 July 2012, paragraph 10.

<sup>42</sup> *Virabyan v. Armenia*, application no 40094/05, judgment of 2 October 2012, paragraph 178.

<sup>43</sup> [Report](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Armenia from 18 to 21 January 2011, CommDH(2011)12, paragraph 76.

<sup>44</sup> The change took place following the entry into force in 2007 of the Law on the prosecution.

67. Prosecutorial and judicial authorities have an important role in the prevention of ill-treatment. In this respect, the Commissioner was pleased to note that instructions had been issued in 2011 and 2012 by prosecutorial authorities that all information indicative of ill-treatment by law enforcement officials must be immediately transmitted to the Prosecutor General, and that materials documenting physical injuries at the time of admission to detention facilities (including those in police establishments) should be regarded as grounds for instituting a criminal case. However, the CPT's report on its 2013 visit documents a number of problems in this regard. In particular, if detained persons displaying physical injuries did not make allegations of ill-treatment (e.g. by indicating that the injuries were due to a fall) no further action would be taken either by prosecutorial or by judicial authorities. In the CPT's view, supervising prosecutors needed to adopt a much more proactive approach when receiving information about injuries.<sup>45</sup>
68. The Special Investigation Service (SIS), established in 2007, is an independent body which conducts preliminary investigations of cases possibly involving abuses by any public officials. The Special Investigation Service employs 23 investigators, and its Head is appointed by and reports to the executive branch. The Prosecutor General's Office has the power to refer a case, for further investigation, to the SIS, controls the legality and effectiveness of investigations conducted by the Service, and decides on pressing charges. According to the information provided by the SIS, 51 cases had been received in the first half of 2014 in relation to torture and ill-treatment. The Commissioner was also informed that the Service established a special unit for the investigation of such cases, comprising eight investigators. It would appear that the number of cases submitted to the Special Investigation Service had increased significantly over the last years.
69. Concerns have been expressed about the lack of capacity of the Special Investigation Service to conduct investigation into all cases which it receives. Consequently, other law enforcement structures, in particular the police, are dealing with the investigation into many of these cases. This raises serious questions regarding the independence and impartiality of investigations into allegations of crimes or misconduct implicating law enforcement officials, especially when it comes to allegations of torture and ill-treatment. The CPT expressed concern about the frequent involvement of police officers in the collection of relevant evidence in potential cases of ill-treatment – which it found to run counter to the very concept of setting up the SIS as an independent body – and regretted that the SIS is usually not involved in the collection of evidence during preliminary inquiries regarding possible ill-treatment cases before a formal criminal investigation has been opened.<sup>46</sup>
70. In 2013, an Investigative Committee was created by a decision of the President, which was followed by a Law on the Investigative Committee adopted in 2014. The Committee is responsible for the conduct of pretrial investigation into criminal cases and is meant to be independent from other branches of power. It includes under its authority the investigative services of the Police Service and the Ministry of Defence. The Head of the Investigative Committee, appointed by the President of the Republic, is the former Prosecutor General of Armenia, Mr Aghvan Hovsepyan.
71. The Police Service conducts the vast majority of criminal investigations. A Disciplinary Board within the Police Service has been established in order to examine allegations of disciplinary violations by members of the police service. The Board also includes civil society representatives. Concerns were expressed to the Commissioner that proposals submitted by NGOs represented on the Board for the discussion of specific issues, such as cases of alleged police misconduct during rallies critical of governmental policy, had not been duly considered. Some interlocutors also indicated that the Board's effectiveness was compromised by inactivity – apparently, there had been no meetings over some time – and a lack of independence from the very bodies and individuals whose conduct it was tasked to review.

<sup>45</sup> [Report](#) on the visit to Armenia carried out by the CPT from 4 to 10 April 2013, paragraphs 32 to 43.

<sup>46</sup> *Ibid.*, paragraphs 52 and 53.

### *Allegations of selective justice*

72. The Commissioner noted that strong perceptions persist in parts of society that justice is meted out in a selective manner, and that there appears to be a sense of sharp contrast between, on the one side, the apparent leniency towards those thought to be connected to the authorities or representing them, even if they have allegedly been implicated in grave violations and, on the other, the harsh treatment and sentences imposed upon those opposing the authorities. The lack of results in the investigation into the ten deaths which occurred during the March 2008 events further strengthens this perception and contributes to the low public trust in the judiciary.
73. The Commissioner discussed with various interlocutors the issue of the investigation into the ten deaths that occurred during the March 2008 events. That issue had also been closely followed by the former Commissioner, who in his 2011 report urged the Armenian authorities to pursue vigorously the investigation into the death cases and the instances of police abuse during arrest and detention, and raised the question of the command responsibility of senior police and security officials who were in charge during the events. One of the recommendations of that report was to ensure that the families of the victims are fully involved with and informed about the investigation, as provided for by the Court's case-law. The public should be informed of the progress and outcome of the investigation, as justice should be seen to be done.<sup>47</sup>
74. The investigation into the above-mentioned cases is under the responsibility of the Special Investigation Service, who informed the Commissioner that new investigative activities were still to be performed. Whereas the families of the victims and their lawyers have complained that they had not received information about the on-going investigation and that they could not access the case materials, the Head of the SIS assured the Commissioner that the evidence submitted by the victims' families and successors had been considered and that they had received the results of the forensic analyses which had been carried out.
75. During his visit, the Commissioner discussed the case of Shahan Harutyunyan, a fifteen year old who had participated in an opposition rally together with his father where a confrontation with the police had taken place. The prosecution had requested five years of imprisonment for this minor, who was fourteen at the time of the events in question. In the end, Shahan Harutyunyan was sentenced in October 2014 under Article 258, paragraph 4 of the Criminal Code (Hooliganism combined with medium gravity damage to the health of a person) to conditional imprisonment with a four-year probation period. This case raises the problem of juvenile justice more generally - various actors have pointed out that juveniles are especially vulnerable in the Armenian criminal justice system, and are not protected in practice by the necessary safeguards against violations of their rights. NGO monitoring reported that custodial measures are applied to juvenile defendants and that alternatives to detention are not duly considered. Instances of ill-treatment on juveniles have been reported and were apparently not investigated.<sup>48</sup>

### *Conclusions and recommendations*

76. The persisting reports of torture and ill-treatment by the police and other law enforcement agencies, often with a view to obtaining confessions, are of major concern to the Commissioner. He calls upon the senior political leadership and law enforcement authorities to make clear that there is zero tolerance for such acts by public officials. In this context, he also wishes to recall the Council of Europe Committee of Ministers 2011 [Guidelines on eradicating impunity for serious human rights violations](#) and stresses the

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<sup>47</sup> [Report](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Armenia from 18 to 21 January 2011, CommDH(2011)12, paragraphs 38 to 55.

<sup>48</sup> [Administration of justice in the Republic of Armenia](#), Civil Society Institute, Norwegian Helsinki Committee, FIDH, December 2012, page 10.

need for the Armenian authorities to redouble their efforts to pursue policies and practices with a view to combating impunity.

77. The Commissioner urges the Armenian authorities to amend the definition of torture in the Criminal Code in compliance with international standards with a view to ensuring proper qualification and punishment of acts of torture, which should not be prosecuted as abuse of power or authority. More should be done to make judges and prosecutors aware of their obligations when information indicative of ill-treatment by public officials comes to their attention.
78. The Commissioner acknowledges the efforts undertaken by the authorities to increase the independence of investigative bodies responsible for carrying out investigations into abuses involving officials. He urges the Armenian authorities to further enhance the independence of the Special Investigation Service and to increase its capacity to cope with the workload, with a view to removing its reliance on police officers in the collection of evidence in potential cases of police ill-treatment.
79. The report of the CPT on its April 2013 visit to Armenia contains a number of specific and very useful recommendations to ensure accountability, inter alia by improving the existing procedures for the reporting of injuries and the processing of potential cases of police ill-treatment by prosecutors. Ensuring the confidentiality of medical examinations of detained persons would be an important step, and records of injuries which are consistent with allegations of ill-treatment made by a detained person (or indicative of ill-treatment, even in the absence of an allegation) should be immediately and systematically forwarded to the competent prosecutor. The CPT also recommended reviewing the system of handling cases of possible ill-treatment by police officers, including through reinforcing the role of the Special Investigation Service. Police officers affiliated to the police establishment where the ill-treatment allegedly took place should no longer be involved in (preliminary) criminal investigations into the cases concerned.
80. The Commissioner urges the Armenian authorities to enhance in law and in practice the safeguards against torture and ill-treatment. In particular, the rights to notification of custody, access to a lawyer and to a doctor, as well as the provision of information on rights should be effectively available from the outset of custody. The provision of the aforementioned safeguards should not be delayed until the drawing-up of the protocol of detention. The right to be assisted by a lawyer should also be made fully effective in respect of persons invited to police premises as witnesses. In addition, the Commissioner encourages the Armenian authorities to introduce the recording of police interrogations, as foreseen in the National Human Rights Action Plan.
81. The Commissioner stresses the importance of developing criminal investigative techniques with a view to increasing the use of physical evidence and reducing the reliance on confessions and information obtained through questioning. This will necessitate proper training of police and investigators as well as the availability of necessary equipment and techniques.
82. The reported reliance by courts on evidence allegedly obtained under duress, in particular when this constitutes the basis for a conviction, is another matter of serious concern, as it runs counter to European and international human rights standards, including the case-law of the European Court of Human Rights. The Commissioner welcomes the adoption of legal provisions allowing the possibility to claim compensation for non-pecuniary damage in cases of miscarriage of justice and illegal actions of law enforcement bodies.
83. The Commissioner is concerned about the absence of a child-friendly approach in the context of the criminal justice system in Armenia. More should be done at the legal and practical level to ensure the respect for children's rights in the criminal justice system and that the best interests of the child, as provided for by the [UN Convention on the Rights of the Child](#), are taken into account in decisions made by law enforcement and judicial bodies. It goes without saying that the prohibition against ill-treatment applies *a fortiori* in cases involving minors.

### 1.2.2 MILITARY STRUCTURES

84. In the report on his 2011 visit to Armenia, the former Commissioner discussed aspects of the human rights situation in the army and recommended: conducting effective investigations into cases of non-combat deaths, torture and ill-treatment in the armed forces; ensuring victims' involvement and increasing public trust in investigation and trial processes related to cases of abuse; securing access for servicemen to independent complaint mechanisms outside the military hierarchy; and strengthening civil society oversight and monitoring.<sup>49</sup>
85. Following the publication of the above-mentioned report, information about non-combat deaths, ill-treatment and hazing of conscripts continued to reach the Commissioner. The problem has also been addressed in the National Human Rights Action Plan, which foresees certain measures in this respect. In the course of the October 2014 visit, the Minister of Defence informed the Commissioner that the number of non-combat deaths attributable to violence within the armed forces had gone down in the last five years. However, the authorities and NGOs provide divergent data concerning death cases in non-combat conditions, both in terms of numbers and categorisation of the causes.<sup>50</sup> Some NGOs include in their statistics death cases that happened outside the military units and categorise cases differently than the authorities; for example, certain death cases officially qualified as suicides or fatal incidents are categorised by NGOs as murders. The Prosecutor General informed the Commissioner that several criminal cases initiated in relation to the death of servicemen had resulted in convictions, while others had been suspended or terminated, and some investigations remained open. It is not clear whether, besides the direct perpetrators, any commanding officers have been investigated or sanctioned. Certain of the persons sentenced for inducing a serviceman to suicide have been released from imprisonment through amnesty.
86. There have been allegations of shortcomings marring the investigation and trial processes related to cases of serious human rights violations in the army. The Commissioner has in particular received worrying reports by relatives regarding the investigation into deaths of servicemen, which are sometimes pending for a long time.<sup>51</sup> Many of the problems reported are common to the criminal justice system as a whole and, in addition to undue delays, relate to: flawed forensic examination; coerced testimonies and confessions; improper qualification of crimes; and lack of involvement of victims' relatives. The Commissioner is struck by the high level of distrust of the families of the victims and civil society in relation to such investigations. A common complaint is that victims are not allowed access to the materials of the case and the information they provide is not given proper consideration by the authorities. Even in a case which has led to convictions – the 2010 death of Artak Nazaryan, where five persons were convicted to prison terms ranging from three to ten years – the relatives of the deceased believe that justice has not been served, maintaining that he was murdered, rather than driven to suicide as the investigation concluded.
87. In July 2013, the Military Prosecutor established a working group, with the involvement of five NGOs, to review the investigation of past cases of non-combat deaths. However, two of the NGOs expressed lack of confidence in the process and decided to leave the group, regretting in particular the fact that the working group could only consider cases from 2011 onwards.
88. The Minister of Defence stressed that adequate punishment of those responsible for violations is essential to deter any further abuses. He informed the Commissioner about prevention efforts in this regard: strengthened civil oversight and democratic control over the military; human rights education

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<sup>49</sup> [Report](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Armenia from 18 to 21 January 2011, CommDH(2011)12, paragraphs 137 to 149.

<sup>50</sup> Death cases are categorised by the authorities as: murder by the enemy; murder; suicide or incitement to suicide; violent act; mine explosion; violation of rules on the use of weapon; illness; infliction of death by negligence; car accidents; accidents.

<sup>51</sup> The Commissioner received specific information about the death cases of Tigran Ohandjanyan (died in 2007), Arthur Ghazaryan (2010), Arayik Avetisyan (2001), Artak Nazaryan (2010) and Valerik Muradyan (2010).

and awareness-raising in schools and the military academy; increased responsibility of military commanders; stronger civil society involvement and better preparation of those about to perform their military service.

89. The Commissioner found it positive that monitoring and cooperation activities by civil society organisations are taking place in relation to the army and the Ministry of Defence. However, human rights defenders have also claimed that they had faced obstacles in accessing information related to alleged cases of human rights violations and, in certain cases, had been the subject of threats when reporting information critical of the authorities.
90. The Commissioner commends the Armenian authorities for effectively addressing the long-standing issue of the right to conscientious objection.<sup>52</sup> The law on alternative service was amended in June 2013, offering a genuine civilian service option to conscientious objectors. The Commissioner was informed that all persons detained, prosecuted or convicted for the non-performance of military service on the basis of their conscience or religious beliefs had been given the possibility to apply for alternative service, with any detention/imprisonment already accrued being subtracted from their period of service. From 2013, the Republican Commission on Alternative Service has been receiving and processing applications for alternative service, which have been granted in their overwhelming majority. According to all the Commissioner's interlocutors, conscientious objectors are no longer prosecuted, sentenced and imprisoned for refusing to perform military service on the basis of their religious convictions.

#### *Conclusions and recommendations*

91. The Commissioner notes with regret that acts of non-combat violence, sometimes resulting in deaths, have continued to occur in the Armenian army. He calls upon the Armenian authorities to intensify their efforts to tackle this problem effectively. Effective investigations of any allegations of human rights abuses are essential to prevent any further violations. In this context, attention must be paid to fostering the trust of the victims' families and the public. The authorities in charge should provide information to the public about the outcome of investigations into death cases and other human rights violations.
92. The Commissioner urges the Armenian authorities to implement the measures foreseen in the National Human Rights Action Plan aimed at eradicating violations within the army, increasing human rights awareness therein, and ensuring access of servicemen to their medical file. The Action Plan also proposes the publication by the Ombudsman of an annual report on the human rights situation in the armed forces and the establishment of a Military Ombudsman in Armenia. The Commissioner also urges the authorities to fully associate human rights NGOs in the implementation of the National Human Rights Action Plan.

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<sup>52</sup> Cf. in this regard the [Report](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Armenia from 18 to 21 January 2011, CommDH(2011)12, paragraphs 153 to 158.



## 2 WOMEN'S RIGHTS AND GENDER EQUALITY

93. Gender equality is a basic principle of human rights, and women's rights are an inalienable, integral and indivisible part of universal human rights. It is also a requirement for the achievement of social justice, a *sine qua non* of democracy and a prerequisite for economic development.<sup>53</sup> Women form over half of the Armenian population<sup>54</sup> and it is essential that they fully contribute to the economic, social, cultural and public life of the country, without facing impediments and discrimination.
94. The Commissioner's predecessor discussed issues related to women's rights and domestic violence in a report following his 2007 visit to Armenia.<sup>55</sup> At the time, while there tended to be agreement on the need to improve the status and role of women in society, there was also some scepticism and reluctance on the part of officials to discuss issues related to violence against women, including domestic violence. Certain interlocutors denied the existence of such a phenomenon, whereas others recognised its existence but were of the view that it should be resolved within the family. The aforementioned report emphasised that: violence against women should be dealt with as a fundamental rights issue; victims should be adequately protected including through the availability of sufficient shelters; further studies should be conducted and public awareness raised on this phenomenon; and a law on domestic violence should be adopted.
95. In the course of 2013, Commissioner Muižnieks received reports of verbal and physical attacks as well as threats targeting women's rights defenders and organisations, which occurred as controversies arose over the Law on Equal Rights and Equal Opportunities for Women and Men (see below section 2.4.1).
96. When meeting various interlocutors, including official representatives, the Commissioner engaged in open discussions on the situation pertaining to women's rights and gender equality, specifically focusing on violence against women and domestic violence. The authorities generally acknowledged the challenges and problems in these fields as well as the need to do more in order to address them. This is a constructive basis to undertake decisive steps with the aim of enhancing the position of women in society and improving the level of protection of their rights.

### 2.1 POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

#### 2.1.1 INTERNATIONAL INSTRUMENTS AND OBLIGATIONS

97. Armenia is party to a number of international instruments related to the protection of women's rights and the elimination of discrimination against women. In the UN system, Armenia acceded in 1993 to the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) and the [International Covenant on Civil and Political Rights](#) (ICCPR), which request the state parties to ensure equal rights of women and men to the enjoyment of all economic, social, cultural, civil and political rights (Article 3 of both Covenants). Armenia is also a party to the [UN Convention on the Elimination of Discrimination against Women](#) (CEDAW) and acceded to its [Optional Protocol](#) establishing an individual complaint mechanism in 2006. The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) issued its latest [Concluding observations](#) on Armenia in February 2009.
98. Numerous Council of Europe legal standards and other documents related to women's rights and gender equality apply to Armenia. Article 14 of the ECHR provides that the enjoyment of rights and freedoms

<sup>53</sup> [Recommendation](#) of the Committee of Minister to member states on gender equality standards and mechanisms, CM/Rec2007(17), 21 November 2007, paragraph 1.

<sup>54</sup> According to the data provided by the National Statistical Service of Armenia, 1 573 582 women and 1 443 497 men form the resident population of the country as of 1 January 2014.

<sup>55</sup> [Report](#) by Thomas Hammarberg on his visit to Armenia in 7-11 October 2007, CommDH(2008)4, paragraphs 108 to 115.



set forth in the Convention shall be secured without discrimination on the basis of sex.<sup>56</sup> Armenia has also ratified [Protocol 12](#) to the European Convention, which extends protection against discrimination to any right set forth in law. Further, the [revised European Social Charter](#), to which Armenia acceded in 2004, recognises the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20), and also contains a non-discrimination provision in Article E. Additionally, the Council of Europe [Convention on Action Against Trafficking in Human Beings](#) refers to gender equality and gender mainstreaming when implementing measures under the Convention.<sup>57</sup>

99. Council of Europe standards in the field of women's rights and gender equality are further developed in the Committee of Ministers Recommendations to member states, in particular the Recommendation on gender equality standards and mechanisms.<sup>58</sup> There is also a [Council of Europe Gender Equality Strategy for 2014-2017](#) centred around five strategic objectives: (1) Combating gender stereotypes and sexism; (2) Preventing and combating violence against women; (3) Guaranteeing equal access of women to justice; (4) Achieving balanced participation of women and men in political and public decision-making; and (5) Achieving gender mainstreaming in all policies and measures.

### 2.1.2 DOMESTIC FRAMEWORK

100. The Armenian policy, legal and institutional framework refers to the prohibition of discrimination against women. Article 14.1 of the Armenian Constitution provides that all citizens are equal and that discrimination on the basis of sex is prohibited. Article 143 of the Criminal Code penalises the breach of citizens' legal equality, including on the basis of sex.<sup>59</sup> The Armenian Labour Code includes gender equality as a principle of labour legislation and stipulates that men and women shall receive equal pay for the same or equivalent work. The Code also considers that violation of equal rights of men and women, and sexual harassment of colleagues are gross violations of labour discipline.<sup>60</sup>
101. In 2013, the Law on Equal Rights and Equal Opportunities for Women and Men was adopted and entered into force.<sup>61</sup> The law aims to define concepts and terms related to gender equality, including concrete forms of direct and indirect discrimination as well as sexual harassment. The development and implementation of state gender equality policy and programmes, as well as their evaluation and monitoring including through the collection of statistics, are also mentioned. The Law refers to an institutional mechanism – the “authorised state body” – and bodies responsible for ensuring gender equality at the central and local levels. The supporting role of civil society organisations in ensuring gender equality is recognised, e.g. by participating in and monitoring the implementation of policies, laws and programmes as well as by conducting public awareness activities. The Law generally refers to the possibility for individuals to apply to relevant bodies for alleged violations of rights and freedoms resulting from breaches of the gender equality principle. Finally, it is specified that the implementation of gender equality policies, programmes and activities will be financed by the state budget as well as other sources, including international ones.

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<sup>56</sup> In the case of [Emel Boyraz v. Turkey](#), Application No. 61960/08, Judgment of 2 December 2014, the European Court held that there had been discrimination on grounds of sex and that there had been a violation of Article 14 in conjunction with Article 8.

<sup>57</sup> Armenia ratified the Convention in 2008.

<sup>58</sup> [CM/Rec\(2007\)17](#), 21 November 2007.

<sup>59</sup> Article 143 of the Armenian Criminal Code: (1) Direct or indirect breach of the human rights and freedoms of citizens, for reasons of the citizen's nationality, race, sex, language, religion, political or other views, social origin, property or other statuses, which damaged the citizen's legal interests, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for up to 2 years. (2) The same action committed by abusing official position, is punished with a fine in the amount of 300 to 500 minimal salaries, or by deprivation of the right to hold certain posts or practice certain activities for 2 to 5 years, or with imprisonment for up to 3 years.

<sup>60</sup> [Labour Code](#) of the Republic of Armenia, 2004, Articles 3, 178.2 and 221.4.

<sup>61</sup> [Law No 57](#) on equal rights and equal opportunities for women and men, 2013.

102. Several interlocutors stressed to the Commissioner the need to put in place effective procedures and instruments for the implementation of the Law on Equal Rights and Equal Opportunities for Women and Men, such as monitoring and oversight procedures, legal mechanisms against discrimination, and to make sure that the designated duty-bearers have the capacity to fulfill their tasks. It is also crucial to raise awareness on the newly-adopted law so as to enable its proper understanding and use by the public. During the visit, the Minister of Labour and Social Affairs indicated that a draft governmental decision on monitoring and information exchange related to promoting equal rights of women and men had been developed as a tool to implement the Law; the Commissioner would welcome any further information on this topic. Additionally, training on gender equality was being conducted for civil servants and guidelines for regional and local bodies had been developed to assist them in applying policies, laws and directives on gender equality.
103. Armenia does not have a comprehensive anti-discrimination law at present. The Commissioner was informed that a draft had been developed in 2012 by the Ombudsman's office in consultation with national and international experts as well as civil society representatives. The draft law defines discrimination and its forms, paying particular attention to discrimination in the field of employment. The powers of responsible duty-bearers and other entities – such as the National Assembly, the Ombudsman, the Government, the State Labor Inspectorate, local self-government bodies, and other organisations and persons - are outlined. The Ombudsman is designated as the Anti-Discrimination body in the draft and is entitled to receive and investigate complaints related to allegations of discrimination. However, the draft law has not been submitted to the national Assembly for discussion and adoption, apparently due to the controversies that erupted in 2013 on the occasion of the adoption of the Law on Equal Rights and Equal Opportunities for Women and Men. The National Human Rights Action Plan foresees additional discussions with the aim of deciding whether to adopt a separate anti-discrimination law in Armenia.
104. Strategic Action Plans on Gender Policy and to Combat Gender-based Violence were endorsed by the Armenian Government for the period 2011-2015. The [Action Plan on Gender Policy](#) includes a number of goals and actions to improve equality between men and women, eliminate gender-based discrimination and reduce gender stereotypes. With regard to political representation and decision-making, the Plan for example aims to achieve a level of 30% of women in decision-making positions, make civil servants more gender-sensitive through continuous training, and enhance leadership skills of women. In the socio-economic sector, it is foreseen to integrate a gender component into budgeting and planning processes; to recognise and implement the right to equal pay for work of equal value; to take measures encouraging employment of men and women with family responsibilities; to support employment of women and their involvement in business activities; and to reduce women's unemployment and poverty including by implementing support programmes for the most vulnerable groups. Concerning education, the main points pertain to the introduction of a gender module in the educational system, including appropriate teaching methodology and support materials. In the health sector, besides measures for the improvement of health services the Plan also foresees the prevention of pre-natal sex-selection (see relevant section below). For the culture and public information sector, specific attention is dedicated to make media more gender-sensitive, encourage wider media coverage of gender equality issues, and eliminate gender-based stereotypes and discrimination.
105. While the above-mentioned international and domestic standards, legal obligations, policies and programmes establish a good theoretical foundation for gender equality, this alone does not appear to be sufficient to bring fundamental changes in mentalities and practices. The Commissioner's interlocutors referred to traditional values and patriarchal attitudes to describe the widely-accepted subordination of women and the stereotypical roles applied to both sexes in family and society. The role of women is mainly associated with family support and child rearing (mainly areas of unpaid work) and women's leadership in the public sphere is challenged. This could explain the weak share of women in leading and decision-making positions, even in sectors where they form a large part of employees – for

example in the education and healthcare system<sup>62</sup> - and the reported discrepancy in salaries for work of equal value – according to NGOs, women’s average salary is 64.4% of men’s.<sup>63</sup>

106. The level of political participation and representation of women in state institutions remains low. There are only 14 women among the 131 MPs and only two women ministers (portfolios: Culture and Diaspora) in the Government, out of a total of 18. There are no women governors in any of the ten regions, and none of the 21 city mayors are women.<sup>64</sup> During the visit, the Prime Minister informed the Commissioner about a decision to nominate ten female deputy governors; the Commissioner would welcome follow-up information in that regard. Apparently, slight progress has been registered at the local level as an increasing number of heads of communities are women.
107. In its 2009 Concluding Observations, the CEDAW Committee requested Armenia to continue to review all school textbooks in order to eliminate gender stereotypes.<sup>65</sup> NGOs informed the Commissioner that a module on gender equality which was piloted in Armenian schools is expected to be introduced more widely in the educational system. A concept, textbook and methodological handbook for teachers have also been developed.

### 2.1.3 INSTITUTIONAL DUTY-BEARERS

108. In the course of his visit, the Commissioner received information about the duty-bearers in charge of women’s rights and gender equality. The Ministry of Labour and Social Affairs, in particular its Department of Family, Women and Children Issues established in 2002, appears to be the main body in charge of women’s rights and gender equality. The Department includes a unit dealing with women’s issues, which is responsible for research and projects in the field of gender issues, anti-trafficking and enhancing the role of women in society. Units for the protection of mothers and children as well as gender working groups have reportedly been established at the regional governor’s offices in all ten regions, and are under the authority of the above-mentioned Ministry.
109. The Council of the Prime Minister on Women’s Affairs was established in 2000 with the view to enhancing the role of women in the social, political and economic spheres at all levels of governance, as well as ensuring equal rights and opportunities for men and women. According to its mandate, the Council is considered as a national mechanism for the implementation of policies, strategies and laws related to gender equality. Its main functions relate to the provision of expertise and advice, monitoring and evaluation of policies and activities, and raising public awareness. In practice, the Council meets two or three times per year. Representatives of various ministries, NGOs and international organisations are members of the Council.
110. In its Concluding observations issued in 2009, the CEDAW Committee reminded the Armenian authorities of their responsibility for ensuring Government accountability for gender equality and women’s enjoyment of their human rights under the Convention.<sup>66</sup> The Committee urged Armenia to enact a gender equality bill which would establish a national machinery for the advancement of women with the necessary financial and human resources for coordination and monitoring of the implementation of international obligations, national policies, laws and programmes in the field of gender equality. It would appear that the bodies mentioned previously are not entirely suited to fulfill these functions, and the 2013 Law on Equal Rights and Equal Opportunities for Women and Men does not specify clearly who is the “authorised state body” in charge (see paragraph 101 above).

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<sup>62</sup> [No pride in silence : countering violence in the family in Armenia](#), Amnesty International, 2008, p.9.

<sup>63</sup> [Summary of stakeholders’ information](#) for the universal periodic review, Human Rights Council, 7 November 2014, paragraph 34.

<sup>64</sup> [Report](#) of the Special Representative of the OSCE Chairperson-in-Office on Gender Issues June Zeitlin, 2013.

<sup>65</sup> [Concluding observations](#) of the Committee on the Elimination of Discrimination against Women, 2009, paragraph 31.

<sup>66</sup> [Concluding observations](#) of the Committee on the Elimination of Discrimination against Women, 2009, paragraphs 18 and 19.

111. The Commissioner further notes that, within the National Assembly, gender issues fall under the portfolio of the Committee on the protection of human rights and public affairs. Another Committee is in charge of healthcare, maternity and childhood.

*Conclusions and recommendations*

112. Gender equality is a requirement of democracy and human rights. It affects society as a whole and should not be regarded solely as a women's issue. Although the principle of gender equality has been widely accepted and corresponding policies exist in most countries, a gap persists between principles and practice.
113. The Commissioner welcomes the adoption of the Law on Equal Rights and Equal Opportunities for Women and Men as a positive step towards enshrining in national legislation the commitment to secure gender equality and to prohibit discrimination on the grounds of sex in various fields of life. The Commissioner urges the Armenian authorities to implement the Law in practice by further defining some of its provisions (e.g. responsible duty-bearers and gender equality mechanism), and devising functional implementation mechanisms. It is necessary to equip duty bearers with the necessary resources for them to carry out their functions. Finally, the public should be made sufficiently aware of the Law in order to benefit from it.
114. The Commissioner urges the Armenian authorities to adopt a comprehensive anti-discrimination law on the basis of the work that has already been carried out by the Ombudsman's office in consultation with other actors, including civil society organisations. An important aspect of this process would be the designation of an independent and effective national structure for promoting equality and combating discrimination on a broad range of grounds. The [Commissioner's Opinion on National structures for promoting equality \(2011\)](#) could provide useful guidance in this regard.
115. The Commissioner finds that many good measures and ideas included in the Strategic Action Plans on Gender policy and to Combat Gender-Based Violence have not been implemented. The Commissioner stresses that a proper and independent assessment of the implementation of the Strategic Action Plans which are coming to an end in 2015 should take place, in consultation with NGOs working in the relevant fields. This exercise would provide the basis for next steps, for example in the form of new governmental policy documents aiming to enhance women's rights and gender equality. These documents should contain concrete measures and timelines for their implementation, which should be regularly monitored.
116. The Commissioner strongly believes that the education system should be free from gender bias and stereotypes. He encourages the Armenian authorities to step up their efforts to ensure that this is the case and introduce educational tools emphasising equality between girls and boys, and women and men, building on the work performed by NGOs.
117. The Commissioner encourages the Armenian authorities to undertake concrete steps to empower women and to increase their participation in public and political life, including by adopting relevant legislation and by conducting awareness-raising campaigns for the public on the balanced participation of women and men.
118. The Commissioner encourages the Armenian authorities to ensure that international instruments that the country ratified, obligations it contracted and recommendations made by relevant international bodies related to women's rights and gender equality are widely publicised and discussed throughout society. It is particularly important to inform people about the complaint mechanisms that they can use. The Commissioner also stresses the importance of integrating these standards and recommendations in the training curricula for civil servants, law enforcement bodies, the judiciary and other relevant professionals.

## 2.2 VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

119. The Commissioner recalls that violence against women, including domestic violence, is a major concern in Europe and a human rights violation that affects all Council of Europe member states, including Armenia. The unresponsiveness of state institutions to women reporting cases of violence, in particular the lack of sensitivity and proper treatment of women victims of violence by police as well as inadequate victim support, contribute to the persistence of this phenomenon.<sup>67</sup>
120. According to the Council of Europe Convention on preventing and combating violence against women and domestic violence<sup>68</sup> (the Convention on violence against women), “violence against women” is understood as a violation of human rights and a form of discrimination against women and includes all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Although perpetrators and victims of domestic violence may be either men or women, in the vast majority of cases it is women who are exposed to violence at the hands of men, thereby making it a gender-based phenomenon where women are disproportionately affected. Women and girls are also the primary victims of sexual violence. Consequently, violence against women is regarded as a form of discrimination and an expression of gender inequalities, the subordinate position of women and patriarchal stereotypes and attitudes. The Preamble of the Convention on violence against women recognises that “violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women”.
121. The Convention further provides that “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. “Gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.
122. The Convention also addresses stalking, sexual violence including rape, forced marriage, female genital mutilation, forced abortion and forced sterilisation, and sexual harassment.<sup>69</sup>
123. During his visit to Armenia, the Commissioner discussed in particular violence against women occurring in the family.

### 2.2.1 EXTENT AND FORMS OF DOMESTIC VIOLENCE IN ARMENIA

124. Although many of the Commissioner’s interlocutors acknowledged that domestic violence was an issue in Armenia, it appears that there is a lack of consensus about the prevalence and seriousness of the phenomenon in the country. This is partly due to the low – albeit increasing - level of reporting of incidents of violence in the family. Domestic violence is seen as a private matter and raising it outside the family sphere is considered shameful. Women who voice complaints or attempt to escape a violent situation are generally perceived as endangering family unity and stability. Under the guise of preserving the family, acts of violence, which mostly affect women and children, remain unaddressed. The Commissioner wants to stress that, as for any other human rights violation, it is important that the state and the society protect members of the family who suffer violence and bring the perpetrators to account.

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<sup>67</sup> [Fighting violence against women must become a top priority](#), Human Rights Comment of the Commissioner for Human Rights, 29 July 2014.

<sup>68</sup> [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), 2011, Articles 3a, 3b, 3d.

<sup>69</sup> See Articles 33, 34, 35, 36, 37, 38, 39 and 40 of the Convention.

125. The Commissioner is concerned about the social attitudes accepting and justifying violence against women in some cases, thereby contributing to shield perpetrators from accountability. He was informed that a number of political leaders, including parliamentarians, have denied the problem of domestic violence in Armenia and even justified it in some cases. The Commissioner systematically raised this issue with his official interlocutors at national level and encouraged them to send a clear message of “zero tolerance” for violence against women.
126. There have been a number of surveys on domestic violence in Armenia. In its 2008 report on family violence in Armenia, Amnesty International found that over a quarter of women in Armenia may at some time experience physical violence at the hands of husbands or other family members, with much higher figures reported for psychological forms of violence.<sup>70</sup> The main forms of violence documented by the report were the following: psychological violence; isolation and control; physical violence; sexual violence including marital rape; and sexual harassment, which is believed to be widespread in the workplace.
127. According to a 2011 survey conducted by the National Statistical Service of Armenia and the UNFPA,<sup>71</sup> 8.9% of women taking part in the survey experienced at least one form of physical violence by an intimate partner.<sup>72</sup> The survey revealed that most instances of physical violence against women are committed in the family.<sup>73</sup> It also notes that 25% of women reported having been subjected to at least one form of psychological violence,<sup>74</sup> and 3.3% admitted having experienced at least one form of sexual violence by their intimate partner.<sup>75</sup> Further, 61.7% of the surveyed women reported having endured some form of controlling behavior by an intimate partner - through restricting contacts with family and friends, controlling movement or any undertaking outside the household, or making a woman seeking permission for accessing health services.<sup>76</sup> The survey also tackles forms of economic violence against women such as economic disempowerment, including economic deprivation (e.g. withholding of money, confiscation of earnings and savings, forbidding a woman to work).
128. Another survey on domestic violence released in 2011 by the NGO Proactive Society with the support of the OSCE Office in Yerevan revealed that 59.6% of the respondents have been subjected to domestic violence during their lifetime.<sup>77</sup>
129. According to the data provided by the Armenian Police Service, 2054 cases of violence against women, including 580 cases of domestic violence, were recorded in 2013. For the first nine months of 2014, the police gave the figure of 1759 cases of violence against women, including 428 cases of domestic

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<sup>70</sup> [No pride in silence : countering violence in the family in Armenia](#), Amnesty International, 2008, p.3.

<sup>71</sup> The survey was conducted amongst 4720 households and took place in 2008.

<sup>72</sup> Forms of physical violence referred to: slapping or throwing something that could hurt, pushing or shoving or pulling hair; hitting with fist or something else that could hurt; kicking, dragging or beating up; choking or burning on purpose; threatening to use or using a gun, knife or weapon against a woman.

<sup>73</sup> [Nationwide survey on domestic violence against women in Armenia](#), National Statistical Service of the Republic of Armenia, UNFPA “Combatting Gender-Based Violence in the South Caucasus” Project, Yerevan, 2011, pp. 41-45.

<sup>74</sup> Forms of psychological violence referred to: insults, belittling or humiliation in front of others, attempts to scare or intimidate, threatening to hurt a woman or someone she cares about, including children. [Nationwide survey on domestic violence against women in Armenia](#), National Statistical Service of the Republic of Armenia, UNFPA “Combatting Gender-Based Violence in the South Caucasus” Project, Yerevan, 2011, pages 32-37.

<sup>75</sup> Main forms of sexual violence referred to: physically forcing a woman to have sexual intercourse when she does not want to; engaging in a sexual intercourse out of fear of what the partner might do; forcing a woman to do something sexual that she finds degrading and humiliating. [Nationwide survey on domestic violence against women in Armenia](#), National Statistical Service of the Republic of Armenia, UNFPA “Combatting Gender-Based Violence in the South Caucasus” Project, Yerevan, 2011, pages 45-50.

<sup>76</sup> [Nationwide survey on domestic violence against women in Armenia](#), National Statistical Service of the Republic of Armenia, UNFPA “Combatting Gender-Based Violence in the South Caucasus” Project, Yerevan, 2011, pages 37-41.

<sup>77</sup> [Domestic violence survey in the Republic of Armenia](#), Proactive Society NGO, Yerevan, 2011, page 34.



violence. NGOs documented seven death cases resulting from domestic violence in 2013 and twelve in 2014.

## 2.2.2 EFFECTIVENESS OF EXISTING INSTRUMENTS AND MEASURES

130. Specific Council of Europe standards and instruments on violence against women, including domestic violence, exist in addition to the documents mentioned previously (see paragraphs 98 and 99), such as Committee of Ministers recommendations,<sup>78</sup> the Court's case-law<sup>79</sup> and the Council of Europe Convention on violence against women.
131. The Commissioner would like to point to the extensive and growing case-law of the Court in relation to violence against women. Cases relate for example to ill-treatment in detention,<sup>80</sup> police violence,<sup>81</sup> rape and sexual abuse,<sup>82</sup> social exclusion,<sup>83</sup> trafficking in human beings<sup>84</sup> and violence by private individuals.<sup>85</sup> The Court mostly found violations under Article 3 (prohibition of torture and inhuman or degrading treatment), Article 8 (right to respect for private life), and Article 13 (right to an effective remedy) of the ECHR.
132. The Court also developed specific case-law pertaining to domestic violence, and the violations found have mostly concerned: the right to life (Article 2 of the Convention);<sup>86</sup> the prohibition of torture and inhuman or degrading treatment (Article 3 of the Convention) linked to failure by authorities to provide adequate protection against domestic violence,<sup>87</sup> inadequacy of investigations into complaints of domestic violence<sup>88</sup> and the risk of being submitted to domestic violence in cases of deportation;<sup>89</sup> the right to respect for private and family life (Article 8 of the Convention);<sup>90</sup> and the prohibition of discrimination (Article 14 of the Convention).<sup>91</sup> In most of the cases, children were also affected by acts of domestic violence, as direct victims or witnesses.
133. The Council of Europe Convention on violence against women entered into force on 1 August 2014 and has been ratified by 16 Council of Europe member states as of February 2015. On several occasions the Commissioner called upon Council of Europe member states to ratify the Convention on violence against women,<sup>92</sup> which has a strong focus on prevention, by stipulating that state parties shall run awareness-

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<sup>78</sup> See for example [Recommendation Rec\(2002\)5](#) of the Committee of Ministers to member states on the protection of women against violence, 2002.

<sup>79</sup> ECtHR [factsheet on violence against women](#) and ECtHR [factsheet on domestic violence](#).

<sup>80</sup> See for example [Juhnke v. Turkey](#), Application No. 52515/99, Judgment of 13 May 2008.

<sup>81</sup> See for example [Yazgül Yılmaz v. Turkey](#), Application No. 36369/06, Judgment of 1 February 2011; [B.S. v. Spain](#), Application No. 47159/08, Judgment of 24 July 2012.

<sup>82</sup> See for example [X and Y v. the Netherlands](#), Application No. 8978/80, Judgment of 26 March 1985; [Aydin v. Turkey](#), Application No. 23178/94, Judgment of 25 September 1997; [Maslova and Nalbandov v. Russia](#), Application No. 839/02, Judgment of 24 January 2008; [P.M. v. Bulgaria](#), Application No. 49669/07, Judgment of 24 January 2012.

<sup>83</sup> See for example [N. v. Sweden](#), Application No. 23505/09, Judgment of 20 July 2010.

<sup>84</sup> See for example [Rantsev v. Cyprus and Russia](#), Application No. 25965/04, Judgment of 7 January 2010.

<sup>85</sup> See for example [Ebcin v. Turkey](#), Application No. 19506/05, Judgment of 1 February 2011.

<sup>86</sup> See for example [Kontrova v. Slovakia](#), Application No. 7510/04, Judgment of 31 May 2007; [Branko Tomašić and Others v. Croatia](#), Application No. 46598/06, Judgment of 15 January 2009.

<sup>87</sup> See for example [E.S. and Others v. Slovakia](#), Application No. 8227/04, Judgment of 15 September 2009.

<sup>88</sup> See for example [E.M. v. Romania](#), Application No. 43994/05, Judgment of 30 October 2012; [Valiulienė v. Lithuania](#), Application No. 33234/07, Judgment of 26 March 2013.

<sup>89</sup> See pending application [Khachatryan v. Belgium](#), Application No. 72597/10 where the applicant, an Armenian national, alleges kidnapping, forced marriage and domestic violence by her husband.

<sup>90</sup> See for example [Bevacqua and S. v. Bulgaria](#), Application No. 71127/01, Judgment of 12 June 2008; [A. v. Croatia](#), Application No. 55164/08, Judgment of 14 October 2010.

<sup>91</sup> See for example [Opuz v. Turkey](#), Application No. 33401/02, Judgment of 9 June 2009; [Eremia v. Moldova](#), Application No. 3564/11, Judgment of 28 May 2013.

<sup>92</sup> [Fighting violence against women must become a top priority](#), Human Rights Comment of the Commissioner for Human Rights, 29 July 2014.

raising campaigns regularly; take steps in including teaching materials on gender equality and non-violent conflict resolution in the education system; train professionals dealing with victims or perpetrators of acts of violence covered by the Convention; set up treatment programmes for perpetrators and sex offenders; and work with the media and the private sector in preventing violence and enhancing mutual respect.<sup>93</sup>

134. The Convention stipulates that the protection and support of victims and witnesses include the provision of adequate information, general support services (e.g. psychological counselling, financial assistance, housing, assistance to find employment) and specialised support services (e.g. shelters, telephone helplines, sexual violence referral centres). Effective prosecution and investigation of allegations of violence against women entails the criminalisation of corresponding offences and adequate reaction of law enforcement bodies in responding to calls for help, taking and investigating complaints and implementing protective measures (e.g. emergency barring orders, restraining or protection orders). The Convention provides that investigation into and prosecution of some offences shall not be wholly dependent upon a report or a complaint filed by a victim and that proceedings may continue even if the victim withdraws it. Investigation and judicial processes shall ensure in priority the respect of the rights of victims and avoid re-victimisation.
135. Armenia has not yet ratified the Council of Europe Convention on violence against women. The National Human Rights Action Plan foresees further assessment and discussions regarding the possibility for Armenia to ratify the Convention. The Commissioner discussed this issue with most of his interlocutors and stressed that ratifying the Convention would be a good basis for further developing the national framework to prevent and combat domestic violence, as well as to heal the consequences of such violence. Most representatives of the Armenian authorities stressed that more time was needed to consider the issue in order to assess the compatibility of the Armenian legal framework with the Convention and the financial resources that would be needed.
136. Besides international obligations, separate national policies and legal provisions can be used to combat violence against women and domestic violence in Armenia, in the absence of a comprehensive legal framework to address the problem of domestic violence. The 2011-2015 [Action Plan to Combat Gender-based Violence](#) foresees for example: the inclusion of “gender-based violence” and “domestic violence” concepts in national legal acts; improving data collection and monitoring of gender-based violence; the introduction of a system for identification, recording and reporting of injuries in healthcare institutions; engaging into public awareness and education efforts on gender-based violence and its consequences; developing a law on domestic violence; establishing shelters and other services for victims of domestic violence; providing specialised training for professional staff from health, social and education sectors, law enforcement bodies and judges on identifying, recording, referring and protecting victims; as well as adequately prosecuting and treating perpetrators.
137. The Committee of Ministers Recommendation 2002(5) stipulates that member states should classify all forms of violence within the family as criminal offences.<sup>94</sup> In 2009, the CEDAW Committee requested that Armenia enact, without delay, legislation specifically addressing domestic violence against women. The CEDAW Committee further specified that such legislation should ensure that violence against women and girls constitutes a criminal offence and a civil wrong; that perpetrators are prosecuted and adequately punished; and that women and girls who are victims of violence have access to immediate means of redress and protection, including protection orders; and that a sufficient number of adequate shelters are available, in particular addressing the needs of rural women, women with disabilities, refugees and minority women.<sup>95</sup>

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<sup>93</sup> [The Convention in brief](#), Council of Europe website.

<sup>94</sup> [Recommendation Rec\(2002\)5](#) of the Committee of Ministers to member states on the protection of women against violence, 2002, paragraph 55.

<sup>95</sup> [Concluding observations](#) of the Committee on the Elimination of Discrimination against Women, 2009, paragraph 23.



138. The Armenian criminal legislation does not include a specific offence of gender-based violence, including domestic violence, and does not address prevention, protection and prosecution issues. Crimes of domestic violence may be prosecuted under other, more general, provisions of the Armenian Criminal Code, such as assault, battery, bodily harm and murder.<sup>96</sup> However, some forms of violence against women are not specifically criminalised, such as rape by a husband or intimate partner, and forced abortion. No distinction is drawn in the criminal legislation between strangers or family members perpetrating violent crimes.<sup>97</sup>
139. According to several interlocutors met by the Commissioner, a separate law would contribute to preventing fatalities and grave injuries resulting from domestic violence. The Commissioner was informed that in the last years, a draft law on the prevention of domestic violence had been developed by a working group of governmental and non-governmental actors. The draft law focuses on the prevention of domestic violence as well as protection and assistance for victims. It defines concrete forms of domestic violence, specifies the duties of the official bodies in charge, and provides for the establishment of a counselling centre and shelter. The draft law stipulates special measures to prevent domestic violence – official warning, emergency intervention and protective decision – and the grounds for applying them. According to the draft law, a victim of domestic violence shall benefit from social assistance, housing and employment assistance, as well as vocational training.
140. Despite numerous calls by national and international actors for Armenia to adopt a separate law on domestic violence, the Armenian Government returned the draft law for further revision and consultation in 2013. The Commissioner was told by the authorities that the adoption of such a law was incompatible with the current criminal legislation and that the issue of domestic violence would be addressed in separate pieces of legislation. Another issue which seemed to raise objections is the possibility, through a protective measure, to remove a perpetrator of domestic violence acts from the residence occupied by the family members, even if the perpetrator is the owner of the property. It appears that the draft law was nevertheless reviewed on the basis of the governmental comments, in order to be presented again for the Government's consideration.
141. The Minister of Labour and Social Affairs informed the Commissioner that a draft law on social assistance to be presented to the National Assembly will contain a definition of domestic violence and will regulate the provision of social assistance and support services for victims of domestic violence. The Ministry of Labour and Social Affairs is also developing procedures for the identification of victims of domestic violence, and is considering instituting a referral mechanism for these victims. An interagency group on the prevention of domestic violence, led by the Deputy Minister of Labour and Social Affairs and including government and non-governmental actors, is currently functioning under the Prime Minister.
142. The police play a key role in preventing, investigating and ensuring accountability for domestic violence. The Commissioner received information about the steps taken by the Police Service in this area, including through collecting statistics, training for members of the police on responding to domestic violence cases, and public education efforts throughout the country, including in schools. In February 2013, following an Order by the Chief of Police, the Unit on juvenile affairs within the main criminal investigation department was upgraded into a Department dealing with the protection of the rights of

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<sup>96</sup> See for example: murder (Article 104); causing someone to commit suicide (Article 110); abetment of suicide (Article 111); infliction of wilful heavy damage to health (Article 112); infliction of wilful medium-gravity damage to health (Article 113); battery (Article 118); torture (Article 119); inflicting grave damage through negligence (Article 120); inflicting medium-gravity damage through negligence; kidnapping (Article 131); trafficking (Article 132); illegal deprivation of liberty (Article 133); threat to murder, to inflict heavy damage to one's health or to destroy property (Article 137); rape (Article 138); violent sexual relations (Article 139); forced violent sexual acts (Article 140); sexual acts with a person under 16 (Article 141).

<sup>97</sup> It should be noted that Article 63.8 of the Armenian Criminal Code considers as aggravating circumstance a crime against pregnant woman, children and persons dependent of the perpetrator. Rape and violent sexual acts are mentioned as aggravating circumstances for certain crimes.

juveniles and the fight against domestic violence. Representatives of the Police Service participated in the drafting of the law on domestic violence and in the works of the Ad Hoc Committee on Preventing and Combatting Violence against Women and Domestic Violence (CAHVIO), which led the drafting process of the corresponding Council of Europe Convention. The Chief of Police indicated to the Commissioner that the number of women in the police force is increasing, and that women form over half of the Department staff dealing with domestic violence and juveniles.

143. Despite these encouraging steps, the Commissioner received worrying reports that domestic violence cases are not effectively identified, investigated, prosecuted and punished. It appears that the police do not adequately address and handle allegations of domestic violence, sometimes discouraging women from filing complaints and urging them to reconcile with those who allegedly abused them. In one case discussed with the Commissioner, a woman who had allegedly been a victim of sexual violence and reportedly displayed visible injuries had to file her complaint in the presence of a significant number of male police officers. Apparently, the woman was not provided with medical care. When the Commissioner raised this case, the Chief of Police acknowledged that this was not appropriate on the part of the police and spoke of the need to change police mentalities and practices with regard to the treatment of domestic violence cases.
144. This apparent mishandling by the police of complaints related to domestic violence contributes to the low level of reporting by women for whom it is already very difficult to complain due to societal and family pressure. The difficulty to complain is even greater for women subjected to sexual violence on the part of a husband or intimate partner. Women sometimes withdraw their complaints. In Armenia, investigation and prosecution into some of these cases are only possible if the victim submitted a complaint. The low level of reporting and complaints regarding cases of domestic violence contributes to the persistence of the problem.
145. The Commissioner is concerned that at the trial stage, women victims of domestic violence sometimes face re-victimisation and even disrespect from judicial instances. It would appear that only the most serious cases are prosecuted (e.g. murder, serious and medium bodily harm, torture and battery) but that lower levels of violence are hardly ever addressed.
146. The Commissioner received information on the case of 20-year-old Maro Guloyan, a pregnant woman and mother of an infant girl, who died in July 2012 in the village of Arinj (Kotayk region). The investigation concluded that there had been a suicide by hanging, whereas Ms Guloyan's relatives and NGOs contest this conclusion, maintaining that she was murdered after having been regularly subjected to domestic violence by her husband.
147. Temporary shelters can be of crucial importance for women victims of violence and their children. Medical, psychological, social and legal support is also available in shelters. The Commissioner visited the only shelter in the country specifically receiving victims of domestic violence, which functions thanks to NGO support. There are no state-run shelters in the country. The capacity of shelters for victims of domestic violence is very limited and can only serve the most serious needs, i.e. when the situation is already life-threatening to the persons concerned. The Commissioner was very concerned to learn that the shelter he visited is obliged to refuse accommodation to persons on a regular basis due to resource and space limitations. On several occasions, it was announced that the authorities planned to provide and/or fund some of these services.

#### *Conclusions and recommendations*

148. Violence against women, including domestic violence, violates human rights and is a form of discrimination. The Commissioner calls upon the Armenian political and community leaders to send a clear message that violence against women, including domestic violence, is unacceptable and cannot ever be justified. Efforts to raise public awareness about domestic violence and the necessity to combat it should be vigorously pursued, including in schools. Victims of domestic violence, who are most often women and children, should be protected instead of blamed for breaking up the family.

149. The Commissioner encourages the Armenian authorities to collect detailed data on gender-based violence, including domestic violence, with a view to assessing the root causes of this phenomenon and better devising strategies and concrete measures to combat it.
150. The Commissioner strongly encourages the Armenian authorities to sign and ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and to cooperate with the Council of Europe to raise awareness on the Convention and its implications for Armenia. Recalling that domestic violence incurs serious, sometimes irreparable, damage as well as costs to the state in the social, economic, medical and judicial fields, the Commissioner urges the Armenian authorities to enhance their efforts in the area of prevention.
151. A specific law on domestic violence addressing all forms of violence and the various aspects of this problem - such as prevention, criminalisation and prosecution, as well as protection and assistance to victims - should be adopted and effectively implemented in Armenia. Existing legislation should be amended to allow the implementation of such a law. The Commissioner encourages the Armenian authorities to seek information and guidance in this regard from the Council of Europe.
152. Any person who is complaining of domestic violence should be treated with respect and care. Police officers should treat these allegations with the utmost seriousness, and should receive proper training on how to deal with domestic violence. There should be more women police officers involved in this area. Premises and conditions in which complainants are received should not be intimidating and should encourage them to feel confident.
153. Acts of violence against women and domestic violence should be duly investigated and prosecuted. Perpetrators of domestic violence should also receive appropriate treatment. The Commissioner encourages the Armenian authorities to intensively pursue continuous training of investigators, prosecutors and judges on how to handle domestic violence cases. NGOs with expertise and experience in the field of women's rights and who work on domestic violence issues should be involved in the training process.
154. Given the difficulties for victims of domestic violence to lodge a complaint with the police, including for allegations of serious violations, the Commissioner recommends amending the legislation so that law enforcement bodies can investigate and prosecute a case irrespectively of whether a complaint has been lodged by the victim, or if the latter withdraws the complaint.<sup>98</sup>
155. The Commissioner welcomes the important work conducted by NGOs in providing support and assistance to the victims of domestic violence. NGOs also play an invaluable role in raising public awareness about women's rights and advocating for systemic changes. However, the state has obligations to provide protection against domestic violence, and NGOs should not be expected to act as a substitute. In this regard, the Commissioner urges the Armenian authorities to provide support to shelters for victims of domestic violence and in implementing the measures foreseen in the Action Plan to Combat Gender-Based Violence.

## 2.3 PRENATAL SEX-SELECTION

156. The Commissioner discussed the issue of prenatal sex-selection in Armenia, having regard to the skewed sex-ratios between boys and girls at birth which have been documented. Whereas the normal sex-ratio at birth ranges from 102-106 males to 100 females, in 2011, the Council of Europe Parliamentary Assembly found that the rate stood at 112 to 100 in Armenia.<sup>99</sup> A 2013 United Nations Population Fund

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<sup>98</sup> [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), 2011, Article 55.1.

<sup>99</sup> [PACE Resolution 1829 \(2011\)](#) on Prenatal sex-selection, paragraph 3.

(UNFPA) report gave the figure of 114-115 to 100 for Armenia.<sup>100</sup> It appears that the region of Gegharkunik has the most skewed sex ratio (up to 124 to 100). Resort to pre-natal sex-selection, i.e. selective abortions of female foetuses, is especially likely in families who already have three or four girls. This practice is widely believed to relate to the following factors: a deeply-rooted preference for sons, decreasing average family size, and easier access to modern reproductive technologies. Sons are seen as essential in continuing the family line and in supporting their parents when they are aging. According to many of the Commissioner's interlocutors, this situation is a clear manifestation of the disadvantaged situation of women and gender inequality in the Armenian society.

157. The Council of Europe Committee of Ministers has called on member states to prohibit pre-natal sex-selection,<sup>101</sup> and the Council of Europe Convention on Human Rights and Biomedicine prohibits the use of techniques of medically assisted procreation "for the purpose of choosing a future child's sex, except where serious hereditary sex-related disease is to be avoided."<sup>102</sup> However, Armenia has not ratified that Convention.
158. The Council of Europe Convention on violence against women requires state parties to criminalise forced abortions and psychological violence.<sup>103</sup> The Convention provides useful safeguards in cases where women are under pressure to resort to prenatal sex-selection. In its 2011 resolution on prenatal sex selection, the Parliamentary Assembly of the Council of Europe stressed that "the social and family pressure placed on women not to pursue their pregnancy because of the sex of the embryo/foetus is to be considered as a form of psychological violence and [...] the practice of forced abortions is to be criminalised."<sup>104</sup>
159. The Armenian authorities have begun to devote more attention to this phenomenon, and the National Human Rights Action Plan foresees legal measures to address prenatal sex-selection as well as the organisation of public awareness events on this issue. During his visit, the Commissioner was informed that the Ministry of Health was working on a legal initiative which aims to restrict the disclosure of the sex of the foetus before birth.
160. NGOs expressed caution at the link made between prenatal sex-selection and demographic concerns in Armenia, and emphasised that the measures taken to address this issue should not lead to a restriction of women's reproductive rights. Prenatal sex-selection should be framed as a gender equality issue and more should be done in the field of raising awareness and education in order to change the existing mentality and practice.
161. The Commissioner encourages the Armenian authorities to ratify the Council of Europe Convention on Human Rights and Biomedicine and supports efforts to make prenatal sex-selection illegal. The Commissioner would also like to highlight the following recommendations made by the Council of Europe and other international bodies: collection of reliable data on sex ratios at birth and regular monitoring of their evolution; the development and promotion of guidelines on the ethical use of relevant technologies; researching and addressing root causes of the inequalities that drive sex-selection, including raising the status of women in society and effective implementation of equality and non-discrimination policies; support of the equal value of girls and boys.<sup>105</sup>

<sup>100</sup> [Sex imbalances at birth in Armenia](#), UNFPA, 2013.

<sup>101</sup> [Recommendation Rec\(2002\)5](#) of the Committee of Ministers to member states on the protection of women against violence, 2002, paragraph 79.

<sup>102</sup> [Council of Europe Convention on Human Rights and Biomedicine](#), 1997, Article 14.

<sup>103</sup> [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), 2011, Articles 39 and 33.

<sup>104</sup> [PACE Resolution 1829 \(2011\)](#) on Prenatal sex-selection, paragraph 5.

<sup>105</sup> [Sex-selective abortions are discriminatory and should be banned](#), Human Rights Comment of the Commissioner for Human Rights, 15 January 2015.

## 2.4 THE ROLE OF HUMAN RIGHTS DEFENDERS AND THE MEDIA

162. Human rights organisations and defenders play an essential role in increasing the country's compliance with human rights standards and obligations, including in the field of women's rights and gender equality. Besides acting at the systemic level they are also providing concrete and much-needed assistance to protect the rights of individuals. Their activities include: engaging in continuous public awareness efforts on major issues affecting women's rights; provision of psychological, medical, housing, employment and legal assistance to women victims of violence and their children; advocacy for the adoption of legal and policy instruments for a greater protection of women's rights; and monitoring the implementation and impact of state policies and actions.

### 2.4.1 PRESSURE AGAINST WOMEN'S RIGHTS AND GENDER EQUALITY ORGANISATIONS AND DEFENDERS

163. In Armenia, human rights defenders and organisations can ordinarily conduct their work without any particular hindrances. However, at times, they face impediments to their work, including threats and attacks from state and non-state actors, when dealing with sensitive or unpopular issues which go against mainstream views.
164. The Commissioner received worrying information about a wave of threats and attacks targeting civil society organisations and human rights defenders active in the fields of women's rights and gender equality on the occasion of the discussion and adoption of the Law on Equal Rights and Equal Opportunities for Women and Men in 2013. This process sparked fierce opposition on the part of certain groups hostile to the concept of gender equality, and who equated it to "promotion of homosexuality". A legislative proposal banning homosexual propaganda was even briefly posted on the website of the Police Service in the summer 2013, but was rapidly removed. NGOs reported that, following the controversy, officials avoided using the term "gender", although it appears in many international and domestic documents applicable in Armenia.
165. Conservative and radical groups reportedly disseminated misleading and defamatory information about human rights organisations and defenders supporting the law, describing them as "traitors to the nation", "destroyers of families" and "a threat to Armenian values". The NGO Women's Resource Centre was the subject of on-line harassment, including threats to bomb the Centre and burn women's rights defenders for speaking out on gender issues. No charges were brought against the authors of the threats. An MP allegedly even registered a complaint with the Prosecutor General's Office against the NGO, requesting an investigation into the organisation and its activities.<sup>106</sup>
166. On 22 November 2013, the Council of the Prime Minister on Women's Affairs issued a statement expressing concern over the misinterpretation of the terms "gender", "gender equality" and "gender identity", as well as over the information campaign against, harassment and intimidation of women's rights NGOs. The Council urged law enforcement bodies to be more vigilant in order to prevent such cases and, if needed, to punish the perpetrators strictly. The Council's statement also provided clarification about the aforementioned terms, making clear that Armenia has the obligation to eliminate gender-based discrimination. The Council reaffirmed the Government's commitment to uphold its obligations under domestic and international law to protect and promote women's rights, specifically referring to the implementation of the Council of Europe Gender Equality Strategy.<sup>107</sup> The Commissioner positively assesses this action of the Council on Women's Affairs and would encourage its increased involvement in raising awareness on the Law on Equal Rights and Equal Opportunities for Women and Men.

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<sup>106</sup> [Joint Communication of UN special procedures on Armenia](#), 10 September 2013.

<sup>107</sup> [Report](#) of the Special Representative of the OSCE Chairperson-in-Office on Gender Issues June Zeitlin, 2013.

167. Women's rights organisations and defenders informed the Commissioner during the visit that they still faced some obstacles and hostility, although the level had diminished in comparison to 2013. For example, it was reported to the Commissioner that an event organised by the NGO Society Without Violence in April 2014 on integrating gender education in secondary school curriculum was disrupted by conservative and nationalist groups who attempted to attack the NGO members. The police effectively acted to stop the disruption and avoid further escalation.

#### 2.4.2 ROLE OF THE MEDIA

168. The media play an important role in shaping public opinion. The Commissioner noted an increasing coverage in the Armenian media of issues related to domestic violence and prenatal sex-selection. He nevertheless finds that more could be done by the media to raise public awareness on women's rights and gender equality in Armenia, including about the existing situation and legislation. In some instances, certain media have demonstrated hostility towards human rights organisations and women's rights.
169. The Commissioner specifically addressed instances of hate speech against women, which remains an underreported phenomenon in Europe. The role of the media in preventing, limiting and combating hate speech and incitement to violence against women is highlighted in international instruments and standards, including the Convention on violence against women. One step which could be taken is to devote greater space in the media to human rights organisations and defenders who are promoting women's rights and gender equality.<sup>108</sup>

#### *Conclusions and recommendations*

170. The Commissioner underlines that any threats and attacks against human rights defenders and organisations should be effectively investigated and adequately punished, with a view to avoiding the repetition of such acts. He encourages the authorities to express solidarity with human rights defenders and organisations, as has already been done by the Council of the Prime Minister on Women's Affairs. More generally, he encourages the development of stronger working relations between human rights NGOs and state institutions as well as political groups.
171. The Commissioner emphasises the important role of the media in raising the awareness and understanding of the public about issues related to women's rights and gender equality.
172. Last but not least, the Commissioner would like to underline that issues pertaining to the human rights and status of women are a matter of concern for society as a whole. He strongly believes that men should play a greater role and be fully associated to efforts aiming to combat domestic violence and discrimination against women.

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<sup>108</sup> [Hate speech against women should be specifically tackled](#), Human Rights Comment of the Commissioner, 6 March 2014.