Naciones Unidas A/HRC/16/G/7

Asamblea General

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Consejo de Derechos Humanos
16º período de sesiones
Tema 3 de la agenda
Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Nota verbal de fecha 23 de febrero de 2011 dirigida a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por la Misión Permanente de la República de Armenia

La Misión Permanente de la República de Armenia ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra saluda atentamente a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y por la presente tiene el honor de transmitirle las observaciones del Gobierno de la República de Armenia sobre el informe de la Relatora Especial sobre la situación de los defensores de los derechos humanos, Margaret Sekaggya, tras su visita a Armenia (A/HRC/16/44/Add.2)*.

La Misión Permanente de la República de Armenia agradecería que la presente nota y su anexo se distribuyeran como documento del 16º período de sesiones del Consejo de Derechos Humanos en relación con el tema 3 de la agenda.

* Se reproduce únicamente en el idioma en que se presentó.

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Anexo

Comments of the Government of the Republic of Armenia on the report of the Special Rapporteur on the situation of human rights defenders

Page 4, Paragraph 7

We would like to stress the fact that police used force only when protesters began to attack them.

Page 5, Paragraph 9

For the purpose of preventing from the threat to the constitutional order and protecting the rights and lawful interests of the population in the Republic of Armenia, and guided by Articles 55(14) and 117(6) of the Constitution of the Republic of Armenia, the President of the Republic of Armenia signed a Decree on 1 March 2008 "On Declaring a State of Emergency" in the city of Yerevan for twenty days. The Decree of the President of the Republic of Armenia of 10 March 2008 made amendments to Point 4 of the Decree "On Declaring a State of Emergency" of March 1, partially lifting the imposed restrictions. On 21 March 2008, the Decree "On Declaring a State of Emergency" was terminated in accordance with the procedure prescribed by the law. At the same time, according to International obligations, the authorities, through a communication to the Secretary-General of the United Nations, informed about the provisions from which the State had derogated by declaring a state of emergency, as well as of further amendments thereto and the termination of the Decree. Similar letters were also communicated to the OSCE Office for Democratic Institutions and Human Rights in accordance with paragraphs 24 and 25 of the 1990 Copenhagen Document, and paragraph 28 of the 1991 Moscow Document, as well as to the Secretary General of the Council of Europe in accordance with Article 15 of the Convention on Human Rights and Fundamental Freedoms of the Council of Europe.

Page 5, Paragraph 10

A new Law on Amending and Supplementing the Law on Conducting Meetings, assemblies, rallies and Demonstrations has been adopted in line with the Council of Europe standards. The whole process of legislative changes was conducted in consultation with the Venice Commission of the Council of Europe.

On 19 June 2009, upon the initiative of the President of the Republic of Armenia, an extraordinary session of the National Assembly was convened, which discussed the proposal the President of the Republic of Armenia on declaring amnesty. Guided by Article 81 (1) (1) of the Constitution of the Republic of Armenia whereby "upon the recommendation of the President of the Republic of Armenia, the National Assembly shall declare amnesty", the recommendation was accepted, and amnesty was declared (307 persons were released upon amnesty).

A criminal case was instituted with regard to the events of March 1-2 under Articles 225(3) and 235(2) of the Criminal Code of the Republic of Armenia, and the criminal cases were referred to court. Ten out of twenty seven persons accused received sentences from one to five years of imprisonment; the punishment imposed on seventeen persons was conditionally not applied by virtue of Article 70 of the Criminal Code of the Republic of Armenia, and a conditional period was set.

Page 6, Paragraph 14

The preliminary investigation against four policemen who used unauthorized force against citizens has been completed. On the basis of the evidence gathered, they are charged under Article 309, part 2 of the Criminal Code. Video evidence, which has formed the basis for the presentation of charges was attached to the criminal case: the Ad Hoc Commission of the National Assembly made these materials available.

Page 6, Paragraph 15

Civil society members supporting opposition and some human rights defenders, function within an increasingly politicized environment.

Page 6, Paragraph 16

The statement contained in the last sentence does not have any specific examples, and is not justified. Therefore, we suggest deleting the last sentence of this Paragraph.

A. Legal framework

1. Domestic level

(b) Law on conducting meetings, assemblies, rallies and demonstrations

Page 8, Paragraph 26

Due to the recent amendments introduced into the law, gaps relating to the lack of definition of "spontaneous public event" were resolved.

(c) Law on Public Organizations

The Draft Law exists in Armenian only. Its latest version will be provided as soon as the English translation is available.

B. Institutional Framework

3. The National Television and Radio Commission

For the independence of the National Commission on Television and Radio and Council ob Public Television and Radio, legislative amendments were made in the respective laws in 2007 and 2009, which provided for the independence in the formation and functioning of these bodies. The amendments carried out on 10 June 2010 furthered this process and introduced provisions ensuring more professional and independent composition of these bodies: according to the new reading of the Law, Members of Parliament, Members of Government, staff of the President's office and state civil servants cannot become members of the Commission. Efforts to increase gender representation in these regulatory bodies were also carried out and a provision that at least one of the members of the Council should be a woman was introduced into the law.

IV. Challenges faced by human rights defenders

A. Overview of civil society in Armenia

The Government respectfully disagrees with some of the points in the report with the following reasons:

Page 12, Paragraph 54

The Non Governmental Organizations in Armenia operate according to the Law

"On Non-Governmental Organizations" adopted on 4 December 2001.

Article 5 of the Law prescribes that

1. The state shall ensure the protection of the legal rights and interests of an organization.

2. The state shall provide assistance and aid to the organization in cases and manner prescribed by the laws and other legal acts.

3. Organizations, on their own initiative or on the initiative of the state or the local self-governance bodies, may fully implement or participate in the social, healthcare, educational, teaching, cultural, sport and other socially significant programs and actions of the state or the local self-governance bodies by concluding written contracts or other agreements of mutual understanding.

4. Interference of state bodies and local self-governance bodies and their officials in the activities of an organization is prohibited, except for cases stipulated by law.

NGOs and human rights defenders work as independent entities and the evidence of it the fact that more that 3000 organizations registered in Armenia.

Page 13, Paragraph 55

Another point of disagreement relates to statement that "civil society appears to consist primarily of non-governmental organizations, there appears to be lack of trade unions, community organizations or similar entities".

There are a number of civil, social and community organizations working in the country. The Law of the Republic of Armenia "On Trade Unions" was adopted on 5 December 2000 and was amended by the Law HO-171-N of 13 November 2006, according to which a trade union organization shall be founded based on the decision adopted during the founding meeting (conference, congress) convened at the initiative of its founders (minimum three employees).

The founding meeting approves the charter of the organization as well as elects the governing and supervisory bodies.

Two and more trade union organizations and/or associations of trade union organizations may, upon the decision adopted during the meeting (conference, congress) of their representatives, establish a single association of trade union organizations by approving its charter and electing the governing and supervisory bodies.

According to Article 9.1 of the Law of the Republic of Armenia "On Trade Unions", state registration, re-registration of a trade union, as well as registration of amendments to the charter or of restated charter and state registration of liquidation shall be implemented in accordance with the procedure prescribed by this Law, as well as the procedure prescribed by law for state registration of legal persons.

For state registration of a trade union, an appropriate application and other documents provided for by law are submitted to the state registration authority.

The state registration authority must, in a period of 30 days following the making of an entry in the register on accepting the application and the other documents for registration of a trade union, examine the application and register the trade union or reject the registration of a trade union upon appropriate justifications. State registration of a trade union may be rejected in cases and the manner prescribed by law.

According to Article 13 of the same law, a trade union shall be independent from state and local self-government bodies, employers, other organizations and political parties, shall not be accountable thereto and shall not be supervised by them, except for cases as provided for by law.

State and local self-government bodies, employers, other organizations and natural persons may not obstruct or interfere with the exercise of the rights stipulated by a trade union's charter, except for cases as provided for by law.

There are 24 republican branch unions (member organization), 726 trade union organizations within the Confederation of Trade Unions of Armenia. 278,949 trade union members are involved in trade union organizations.

Page 13, Paragraph 56

The statement "The Government seems not to consider NGOs as potential partners, and are also not perceived by society representative and awareness about the activities of civil society organizations is very low" is not accurate.

The Government of Armenia very actively cooperates with NGOs and civil society representatives. All national reports submitted to the United Nations treaty bodies are prepared with the participation of NGO and civil society representatives. Annually there are many joint activities, seminars, roundtables, etc. where the Government together with the NGOs discuss issues related to human rights protection. Vast part of the laws reflects opinions of NGO representatives. Many Armenian laws have been adopted by the initiative of the NGOs. At present there are two such draft laws – "Against Domestic Violence" and "On Equal Opportunities" – under consideration. A very large number of NGOs in Armenia have their websites and information about their activities is widely disseminated and is available virtually to everyone.

The statement contained in the last sentence of this Paragraph is totally inaccurate as well. Armenian Government and/or official structures has never regarded human rights defenders "as foreign agents, spies, cronies, etc." as is stated in Paragraph 54. The Government views them as essential element of its democratic society.

Page 13, Paragraph 57

The first sentence of the Paragraph is not factually correct: there have never been any cases of attacks against human rights defenders in the aftermath of the Presidential elections. (In case the Special Rapporteur is aware of any such cases they should be specified). "Direct violence and assault, especially in the aftermath of the 2008 Presidential elections" have experienced only those certain supporters of the defeated Presidential candidates, who have violated the public law and order in the country. These people definitely cannot be characterized as human rights defenders.

Page 13, Paragraphs 60, 61, 62

Information provided doesn't reflect the reality - all NGOs, including NGOs dealing with LGBT, working in rural areas, etc. have equal rights and opportunities moreover the women rights defenders are among the most active and influential in the country.

Page 14, Paragraph 68, 69

The Article 4 of the draft Law on Amending and Supplementing the Law on Public Organizations proposes to make the following amendment: to add to the Article 16 of the Law on Public Organizations new subparagraph which determines that "if organization during the year has income of more than 1 million Armenian Drams it must provide a report on its annual budget, including membership fees, the title and places of the executed programmes, the number of members of organization as of January 1 of the current year, the governing bodies of organizations, as well as to notify of its current address".

Page 15, Paragraph 74

Last two sentences contain factually incorrect information: 3rd subparagraph of point 4 of Article 9 of the Law describes which kind of information could be considered as credible information – "the information that the Police or National Security Service have officially confirmed as credible data".

Page 16, Paragraph 81

To add the following sentence

Attacks against journalists have been condemned on the highest political level, including the President and the Prime Minister of the Republic and criminal investigations were initiated immediately in each case.

Page 18, Paragraph 88

Regarding the introduction of new amendments to the Law on Radio and Television, it is to be noted that given some concerns, the President of Armenia has suggested establishment of a working group under the Ombudsman's auspices, with the involvement of representatives from human rights organizations, media and political parties for the finalization of the discussion and introduction of legal changes to the Law on Television and Radio Broadcasting, which would allow for smoother transition from analogue to digital broadcasting system.

Page 19, Paragraph 95

The statement "According to information received by the mandate holder, only two policemen have been charged so far and no one has been convicted" is incorrect in numbers: there were four policemen charged and all four of them convicted to different sentences.

Page 19, Paragraph 96

The sentence "violence against journalists, human rights defenders and activists frequently goes unpunished, with the police being reluctant, in some cases, to open investigations" needs additional clarification and concrete examples. There are no cases that were left unattended. Meanwhile, naturally not being perfect in every aspect, a major reform program within the Police system is currently underway.

Page 19, Paragraph 98

The statement that "…decisions of the Constitutional Court are frequently unheeded and judgments of the European Court of Human Rights are very often not implemented" statement is totally incorrect. If in the past there have been certain such cases, since 2007, and in particular after 2008 when the National assembly created a special Working Group there has not been a single decision of the Constitutional court which wasn't implemented.